



December 5, 2025

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

Ms. Anne Kato
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)

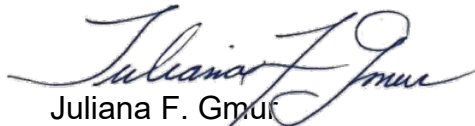
Re: Decision and Parameters and Guidelines

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 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. Kato:

On December 5, 2025 the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-captioned matter.

Very truly yours,


Juliana F. Gmur
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES

San Diego Regional Water Quality Control
Board Order No. R9-2007-0001
Permit CAS0108758,
Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2),
D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi),
D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2),
D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3.,
I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv),
the first sentence of L.1. as it applies to
the newly mandated activities, and
L.1.a.(3)-(6)

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

Case No.: 07-TC-09-R

*San Diego Regional Water Quality Control
Board Order No. R9-2007-0001*

*Permit CAS0108758,
Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2),
D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c),
D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f.,
E.2.g., F.1., F.2., F.3., I.1., I.2., I.5.,
J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first
sentence of L.1. as it applies to the newly
mandated activities, and L.1.a.(3)-(6)*

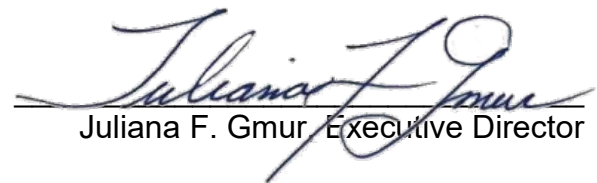
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted December 5, 2025)

(Served December 10, 2025)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on December 5, 2025.


Juliana F. Gmur, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES

San Diego Regional Water Quality Control Board Order No. R9-2007-0001 Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6)

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

Case No.: 07-TC-09-R

San Diego Regional Water Quality Control Board Order No. R9-2007-0001 Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6)

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

(Adopted December 5, 2025)

(Served December 10, 2025)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on December 5, 2025. Anya Kwan and John Quenzer appeared on behalf of the claimants. Marilyn Munoz and Viet-Long Nguyen appeared on behalf of the Department of Finance. Jennifer Fordyce, Ben Neill, and Erica Ryan appeared on behalf of the State Water Resources Control Board and San Diego Regional Water Quality Control Board.

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 the Proposed Decision and Parameters and Guidelines by a vote of 6-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Karen Greene Ross, Public Member	Yes
Renee Nash, School District Board Member	Absent
David Oppenheim, Representative of the State Controller, Vice Chairperson	Yes
William Pahland, Representative of the State Treasurer	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes
Alexander Powell, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	Yes

I. Summary of the Mandate

On March 26, 2010, the Commission on State Mandates (Commission) adopted the Test Claim Decision. The parties litigated the Decision and, in 2017 and 2022, the court affirmed the Commission's Decision, except for the street sweeping requirement in part D.3.a.(5) of the test claim permit, finding the claimants 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.¹

On May 26, 2023, the Commission adopted the Amended Decision on Remand consistent with the court's judgment and writ.² 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);

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

- 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)).³

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 copermittees have fee authority sufficient (within the meaning of Gov. Code § 17556(d)) to pay for them.⁴

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.⁵

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, 2010.⁶ The Department of Finance (Finance) filed comments on the Proposed Parameters and Guidelines on September 3, 2010.⁷ 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

³ Exhibit A, Amended Test Claim Decision on Remand, pages 5-6.

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

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

⁶ Exhibit B, Claimants' Proposed Parameters and Guidelines.

⁷ Exhibit C, Finance's Comments on the Proposed Parameters and Guidelines, page 1.

September 16, 2010.⁸ The claimants filed rebuttal comments and the Revised Proposed Parameters and Guidelines on November 16, 2010.⁹

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.¹⁰ 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).¹¹ On May 26, 2023, the Commission amended the Decision consistent with the Court of Appeal's decision pursuant to the judgment and writ.¹²

Pursuant to section 1183.13(a) of the Commission's regulations, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on July 27, 2023.¹³

The claimants filed comments on the Draft Proposed Decision and Parameters and Guidelines on February 16, 2024, regarding whether the special districts are eligible claimants,¹⁴ and again on February 20, 2024, to propose reasonable reimbursement methodologies (RRMs) and address reasonably necessary activities in the Draft Proposed Decision and Parameters and Guidelines.¹⁵

Finance filed comments on the Draft Proposed Decision and Parameters and Guidelines and opposition to the proposed RRM on October 14, 2024.¹⁶ The State

⁸ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines.

⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines.

¹⁰ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.

¹¹ *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.

¹² Exhibit A, Amended Test Claim Decision on Remand.

¹³ Exhibit F, Draft Proposed Decision and Parameters and Guidelines.

¹⁴ Exhibit G, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹⁵ Exhibit H, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM.

¹⁶ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM.

Controller's Office (Controller) filed a statement of no comment on the Draft Proposed Decision and Parameters and Guidelines on October 14, 2024.¹⁷ The Water Boards filed comments on the Draft Proposed Decision and Parameters and Guidelines and opposition to the proposed RRM's on October 14, 2024.¹⁸ The claimants filed rebuttal comments on December 16, 2024.¹⁹ The Water Board filed late comments on the claimants' rebuttal on March 18, 2025.²⁰

Commission staff issued the Revised Draft Proposed Decision and Parameters and Guidelines on March 20, 2025.²¹ On April 3, 2025, the claimants requested an extension of time to file comments and a postponement of hearing, which was partially granted. On April 9, 2025, the Water Boards requested an extension of time to file comments, which was granted. On April 10, 2025, the Department of Finance and the State Controller's Office filed comments on the Revised Draft Proposed Decision and Parameters and Guidelines.²² On May 16, 2025, San Diego Unified Port District and San Diego County Regional Airport Authority, the Water Boards, and the claimants filed comments on the Revised Draft Proposed Decision and Parameters and Guidelines.²³ On July 9, 2025, the claimants filed a Request for Postponement of the hearing, which was granted for good cause on July 11, 2025.

III. Positions of the Parties

A. County of San Diego and Cities, Claimants

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

¹⁷ Exhibit K, State Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's.

¹⁹ Exhibit M, Claimants' Rebuttal Comments.

²⁰ Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal.

²¹ Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines.

²² Exhibit P, Finance's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines. Exhibit Q, Controller's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

²³ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines. Exhibit S, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines. Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

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

The claimants argue that the San Diego County Regional Airport Authority and the San Diego Unified Port District, which are funded with fees and assessments, should be eligible to claim reimbursement for this program on the ground that section 8(d) of article XIII B expressly defines local governments to include “special district, authority or other political subdivision of or within the State” and that definition governs the interpretation of eligibility under article XIII B, section 6.²⁴ Their specific arguments on this issue are addressed in the analysis.

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

In their originally submitted Proposed Parameters and Guidelines filed June 28, 2010, the claimants proposed reasonably necessary costs for each category of activities the Commission approved, which are summarized in the Discussion.²⁵

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

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

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

For this reason, the Municipal Claimants object to and disagree with the portions of the Proposed Decision that improperly seek to address an

²⁴ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 2-6.

²⁵ Exhibit B, Claimants’ Proposed Parameters and Guidelines, pages 16-28.

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

Second, the Municipal Claimants contend that the Commission’s analysis regarding SB 231 is inconsistent with *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 and *City of Salinas* (2002) 98 Cal.App.4th 1351. Although it is irrelevant to this proceeding and should not be addressed at all by the Commission here, the Municipal Claimants reserve all rights regarding the applicability of SB 231 and its constitutionality. The Municipal Claimants believe that even if SB 231 were applicable, which it is not, the appropriate approach for the Commission to take regarding SB 231 would be to wait until a court of competent jurisdiction resolves the constitutionality of SB 231 in the context of an actual fee enacted under its provisions. Since SB 231 is irrelevant here, the Commission should just delete all references to it in the Proposed Decision.²⁶

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

The claimants also request reimbursement for any owed interest from the reimbursements, as well as recoverable legal and expert costs to process the Test Claim.²⁷

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

All eligible claimants request the Commission adopt several RRM’s in the form of unit costs and formulae pursuant to Government Code section 17518.5 in lieu of providing

²⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 3.

²⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 11; Exhibit M, Claimants’ Rebuttal Comments, pages 15, 20.

detailed documentation of actual costs mandated by the state for the Controller's review and audit in order "to allow for the timely and efficient reimbursement of the mandated activities previously approved by the Commission and confirmed in two Courts of Appeal decisions."²⁸ The claimants retained a consultant, John Quenzer, a principal scientist at D-Max Engineering, Inc., to review documentation maintained by the County of San Diego and to develop proposed RRM's.

In 2023, the County of San Diego, Cities of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, El Cajon, Encinitas, Escondido, La Mesa, National City, Oceanside, San Diego, and Vista (collectively, "Municipal Claimants") retained me and D-Max to assist in developing a reasonable reimbursement methodology.²⁹ According to the claimants, the initial unit costs and formulae proposed would reimburse the claimants an estimated \$252,762,732 in "total reimbursement."³⁰ The claimants have since modified their proposals and reduced some of the proposed unit costs, as explained below.³¹

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

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

²⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 1.

²⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 15 (2025 Quenzer Declaration).

³⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 48.

³¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

way to finally provide the Municipal Claimants with reimbursement for funds that the State required them to expend years ago.³²

If the Commission does not adopt the proposed RRM, claimants request that the Commission include in the Parameters and Guidelines all activities they contend are reasonably necessary to implement the state mandated activities, as described in their February 20, 2024 comments.³³

The claimants' *revised* proposed RRM are identified in Exhibit T, are summarized below, and are supported by 14 volumes of documentation that contain over 80,000 pages and several declarations.

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

The claimants propose an RRM where each eligible claimant would be entitled to claim an estimated unit cost identified, adjusted annually by the Consumer Price Index (CPI).

The proposed unit cost RRM for reporting on the conveyance system cleaning and inspections data is based on the median of the permittees' average annual reporting costs in fiscal years 2007-2008 to 2009-2010, with the following unit cost options provided:

1. Fifty (50) percent of the median cost (\$5,801.67), which represents the average reporting costs for conveyance system reporting from fiscal year 2007-2008 through 2009-2010 for the 12 co-permittees that responded to surveys, or \$2900.83 per year for each eligible claimant.
2. If the average costs for fiscal year 2007-2008 are excluded, then the unit cost would be 50 percent of \$5,887.00, or \$2,943.50 per year for each eligible claimant.
3. If the 2011 survey data is excluded, then the unit cost is revised to \$8,604.67, which is 50 percent of the median of the data set identified in the declarations (which identified average annual costs of \$115,275.67, \$17,209.33, \$3,172.00, and \$940.33, as stated in the table above).
4. If the 2011 survey data and the fiscal year 2007-2008 costs are excluded, then the unit cost is \$8,731.25, which is 50 percent of the median 2007-2008 data excluded (\$17,462.50).³⁴

³² Exhibit M, Claimants' Rebuttal Comments, pages 4-5.

³³ Exhibit M, Claimants' Rebuttal Comments, page 20.

³⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 32-33.

The claimants are willing to accept there is some overlap with the conveyance system cleaning data tracking required under the 2001 Permit and what was required under the 2007 Permit” and thus the claimants reduced their original proposal by 50 percent.³⁵

For reporting the street sweeping data, the claimants propose the following unit costs RRM options:

1. The median unit cost of \$6,143.67, the same as originally proposed, is based on the co-permittee declarations from the cities of Chula Vista, Coronado, Escondido, and National City for the average costs from fiscal year 2007-2008 through 2009-2010. The average costs were the same as reported in the 2011 surveys.
2. If fiscal year 2007-2008 data is excluded, then the median unit cost proposal is \$6,234.00.
3. If the 2011 survey responses are excluded, then the median unit cost, based on the 2025 declarations, is revised to \$3,596.33.
4. If the 2011 survey data and the 2007-2008 costs are excluded, then the median unit cost is \$3,649.25.³⁶

The period of reimbursement for the reporting activities “is from March 24, 2008, which is the date that Co-Permittees were required to begin implementing their JURMP developed per the 2007 Permit requirements, to, June 26, 2013, which is the day before the effective date of the 2013 Permit.”³⁷ However, “[d]ata tracking is the reason why the proposed RRM states that costs in 2007-2008 should be reimbursable. While the first JURMP annual report that contained the new street sweeping and catch basin cleaning requirements was not due until September 2008, which is in fiscal year 2008-2009, the September 2008 report was a report on data from 2007-2008. Therefore, data collection and recording were needed in 2007-2008 to successfully report on 2007-2008 data in the report due September 2008.”³⁸ The claimant further explains that

The 2007/2008 reporting cost claimed should be 27.05% of the standard unit cost for reporting. This reflects that 99 days of the 366 days in fiscal year 2007/2008 were on or after March 24, 2008. The 2012/2013 reporting cost claimed should be 98.90% of the standard unit cost for reporting. This

³⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 32.

³⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 33-34.

³⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 29.

³⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 29.

reflects that 361 of the 365 days in fiscal year 2012/2013 were on or before June 26, 2013.³⁹

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

The claimants propose a unit cost of \$162.32 per storm drain inlet or catch basin (increased from \$150.66 as originally proposed), which is the median cost based on data from fiscal years 2007-2008 through 2009-2010, with the costs of training excluded, and adjusted annually by the Consumer Price Index. If the 2007-2008 costs are removed, the unit cost is \$154.68. If the 2011 survey data is removed, the unit cost is \$89.64. If the 2011 survey data and the 2007-2008 costs are removed, the unit cost is \$88.94.⁴⁰

For linear MS4 cleaning, the claimants propose a single, combined unit cost for both channels and pipes at \$3.02 per linear foot (compared to the original proposal of one linear foot of pipe at \$6.77/ft., and one linear foot of the channel at \$8.52/ft.), based on fiscal year 2007-2008 cost data from the cities of Carlsbad, Chula Vista, and Imperial Beach (three of the 19 eligible claimants).⁴¹ The proposed unit cost is based on the following:

- The approach subtracts the total catch basin cleaning and inspection costs from the overall conveyance system cleaning costs, with the remainder being the linear MS4 cleaning costs. "Conveyance system cleaning programs generally consist of these three activities, so it is reasonable to estimate linear cleaning costs by subtracting the costs of catch basin inspections and cleaning."
- The calculation uses each co-permittee's own cleaning and inspection program costs, rather than relying on an overall average.
- The total linear cleaning costs were then divided by the linear distance of pipe or channel cleaned to get a unit cost per linear foot cleaned.
- The proposed unit cost is the median cost per linear foot cleaned by the cities of Carlsbad, Chula Vista, and Imperial Beach in fiscal year 2007-2008.

³⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 30.

⁴⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 39.

⁴¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 40, 69 (Table 10 to 2025 Quenzer declaration).

- The cities of Escondido and Vista had previously been included in the calculation but were removed after further review due to lack of applicable data needed to calculate linear MS4 cleaning.⁴²

The period of reimbursement is from March 24, 2008, which is the date that co-permittees were required to begin implementing JURMP developed under the test claim permit, to June 26, 2015, which is the day before the claimants were required to submit and begin implementing JRMPs that reflected requirements of the 2013 Permit. The claimant explains the following:

In accordance with the above reimbursement period, the following conservative adjustments are proposed to the conveyance system cleaning for the 2007/2008 and 2012/2013 fiscal years. The 2007/2008 reporting cost claimed should be 27.05% of the standard unit cost. This reflects that 99 days of the 366 days in fiscal year 2007/2008 were on or after March 24, 2008. The 2014/2015 cost claimed should be 98.90% of the standard unit cost. This reflects that 361 of the 365 days in fiscal year 2014/2015 were on or before June 26, 2015.⁴³

- c. RRM Proposal for JURMP Educational Component (Parts D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii.-vi.), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3)).

The proposed RRMs are intended to reimburse claimants for the residential education program development and implementation and the jurisdictional education programs.

The proposed RRM for the residential education program multiplies the actual annual shared costs for developing and implementing the program (called “County Education Costs”) of \$914,828.20, times the claimant’s proportional share of cost based on applicable MOUs.⁴⁴ The claimants explain that the work was performed by their Education and Regional Sources Workgroup, which elected to contract with a consultant to develop the program.⁴⁵ The proposed RRM covers the period from January 24, 2007 (the effective date of the test claim permit and beginning of the period of reimbursement) to June 26, 2013, which is the day before the effective date of the

⁴² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 39-40.

⁴³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 34-35.

⁴⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 41-42.

⁴⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 41-42 (2025 Quenzer declaration).

2013 permit. The claimants started developing the program in 2006-2007, to ensure they could implement it on time.⁴⁶

The proposed RRM for the jurisdictional education programs is calculated using the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015 times the “municipal claimants” total stormwater expenditures each fiscal year. The proposal does not define “municipal claimants,” but presumably it means the local agency claimants that are eligible to claim reimbursement for this program. As originally proposed, the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015 was 2.16 percent. The claimants have reduced that percentage to 0.39 percent of total costs, which is the difference between the median value for education costs as a percentage of total stormwater program costs (jurisdictional component) under the 2001 permit and the median value for education costs as a percentage of total stormwater program costs (jurisdictional component) under 2007 test claim permit.⁴⁷ The proposed RRM covers the period from March 24, 2008 (which is when they began implementing the JURMP under the test claim permit) until June 26, 2015 (which is the day before the JURMP under the next permit went into effect).⁴⁸

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

There are three proposed RRMs in this section: jurisdictional watershed activities; regional watershed activities; and watershed workgroup meetings. The claimants also allege costs for the watershed workgroup cost share contributions, but state they will submit reimbursement claims based on actual costs for these expenses.⁴⁹

The claimants revised their proposed RRM for performing the watershed activities on a jurisdictional basis, which multiplies the median unit cost of 71 watershed activities (\$5,000 per jurisdictional activity adjusted annually by the Consumer Price Index), times four (the minimum number of activities each year), times the number of watersheds

⁴⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 41 (2025 Quenzer declaration).

⁴⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 44.

⁴⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 43.

⁴⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 15, 45.

each co-permittee is located, from March 24, 2008, through June 26, 2013 (the day before the effective date of the 2013 permit) for each eligible claimant.⁵⁰

The proposed RRM for the regional watershed activities reimburses the claimants for the proportional share of costs under the MOU for the Regional WURMP Working Group costs of \$6,025.14 to develop and maintain the Regional Watershed Activities Database from March 24, 2008, through June 26, 2013.⁵¹

The proposed RRM for the watershed workgroup meetings reimburses the claimants from January 24, 2007, to June 26, 2013, for attending meetings, calculated by multiplying the average cost of an employee to attend a meeting by the number of attendees the claimant had attend the meeting by the number of meetings per year as follows:

- For meetings that occurred between the 2007 Permit effective date and the WURMP update submittal in March 2008, the RRM unit cost per attending meetings is reduced by 50%, from \$262.88 to \$131.44. While most of the discussion during those meetings is believed to have related to 2007 Permit requirements, this reduction accounts for discussion of other topics during those meetings.
- For meetings that occurred after the WURMP update submittal in March 2008, the RRM unit cost is reduced by 90%, from \$262.88 to \$26.29.⁵²

The number of meetings each year was identified in the claimants' original proposal as follows:

FY 2007/2008	369
FY 2008-2009	312
FY 2009-2010	334
FY 2010-2011	338
FY 2011-2012	355
FY 2012-2013	320 ⁵³

⁵⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 45-46, 80-85 (Table 17).

⁵¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 47, 86 (Table 19).

⁵² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 49.

⁵³ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

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

The proposed RRM is a claimant's proportional share of costs based on the applicable MOUs for fiscal year 2006-2007 through fiscal year 2012-2013, multiplied by the actual annual costs invoiced by the County for the Regional Urban Runoff Management Plan (RURMP) reporting, and the claimants have not changed this proposal.⁵⁴ Based on the County Watershed Workgroup Expenditure Records, the annual costs are as follows:

FY 2008/2009 \$2,928.91

FY 2009/2010 \$5,230.98

FY 2010/2011 \$1,926.50⁵⁵

This results in total reimbursement of \$10,086.39.⁵⁶

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

The proposed RRM for the Jurisdictional Program Effectiveness Assessment is based on the percentage of the total stormwater budget all copermittees spent assessing the effectiveness of the jurisdiction program (which has been revised from 3.72% to 0.28% to account for the potential overlap with the requirements of the prior permit) times the "municipal claimants'" total stormwater budget, from March 24, 2008, through June 26, 2013.⁵⁷

The proposed RRM for the "Regional Fiscal, Reporting, and Assessment Workgroup is the proportional share of costs based on MOUs times the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup of \$53,173.37 (reduced from \$129,873.60 originally proposed), from January 24, 2007,

⁵⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 43; Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 49, 74-75.

⁵⁵ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 43; Exhibit M, Claimants' Rebuttal Comments, page 75.

⁵⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 44.

⁵⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 44; Exhibit M, Claimants' Rebuttal Comments, page 77; Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 50-51, 87-88 (Table 20).

to June 26, 2013, the day before the effective date of the 2013 permit.⁵⁸ The claimants state the workgroup was formed to develop a standardized fiscal analysis method and to facilitate program effectiveness assessments (which as explained herein, are requirements addressed under the Regional Urban Runoff Management Program (RURMP)).⁵⁹

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

The proposed formula for reimbursement for the long-term effectiveness assessment is the proportional share of costs based on applicable MOUs multiplied by the “actual annual costs of the contractors needed to assess the long term effectiveness of the projects reported by [the] County,” which totals \$344,539.21 from fiscal year 2007-2008 through fiscal year 2012-2013.⁶⁰

h. RRM Proposal for All Permittee Collaboration (Part L.1.).

The proposed RRM contains two formulas to reimburse eligible claimants to collaborate on the educational component of the JURMP.⁶¹

The proposed RRM for “Support for Regional Workgroup Meetings” is the proportional share of costs based on applicable MOUs to the actual costs of \$5,886.02 to support the Educational and Residential Sources Workgroup from January 24, 2007, through June 26, 2013.⁶²

The proposed RRM for “Regional Workgroup Meetings” equals the number of employees from a Municipal Claimant that attended a meeting of the Educational and

⁵⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 45; Exhibit M, Claimants’ Rebuttal Comments, page 78; Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 53-54.

⁵⁹ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 53-54.

⁶⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 10, 45-46; Exhibit M, Claimants’ Rebuttal Comments, page 80; Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 55.

⁶¹ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 55 (2025 Quenzer Declaration).

⁶² Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 56, 86 (Table 18).

Residential Sources Workgroup, times the average costs to attend one meeting of \$262.88, times the number of meetings attended.⁶³ The claimants explain that,

The formula sets a unit cost for attending a meeting. When submitting a claim, each Co-Permittee will supply the number of meetings its staff attended and supporting documentation to demonstrate the meetings were in fact attended.⁶⁴

The claimants are no longer proposing an RRM for the Regional Workgroup Expenditures. The claimants state the following: “Given that the Commission had directed that only certain collaboration among workgroups is reimbursable, and this RRM was developed to include collaboration among all workgroups, the Co-Permittees no longer propose an RRM for this category.”⁶⁵

B. San Diego Unified Port District and San Diego County Regional Airport Authority

San Diego Unified Port District and San Diego County Regional Airport Authority filed separate comments on the Revised Draft Proposed Decision and Parameters and Guidelines, arguing they are eligible to claim reimbursement for the costs of this program as follows:

- Both districts have and maintain stormwater systems and are permittees under the test claim permit.⁶⁶
- They are eligible for reimbursement under article XIII B, section 6 because section 6 involves “local governments” and the special districts satisfy the definition of “local governments” as defined by section 8 of article XIII B.⁶⁷

⁶³ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 57. See prior proposal in Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47; and Exhibit M, Claimants’ Rebuttal Comments, page 82.

⁶⁴ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 57.

⁶⁵ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 59.

⁶⁶ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 1-2.

⁶⁷ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 2-3.

- Section 6 does not include any reference to “appropriations subject to limitation.” Had the drafters of article XIII B intended section 9’s exclusions for appropriations subject to limitation to apply to reimbursements made under section 6, they could have clearly done so.⁶⁸
- Government Code section 7901(e), in its definition of “local agency” subject to article XIII B, section 6, is inconsistent with Government Code section 17518.⁶⁹

C. Department of Finance

Finance argues the Commission should reject the proposed RRM’s because they fail to meet the statutory requirements for adoption of an RRM and would result in more reimbursement than required by law for the following reasons:⁷⁰

- All of the permit’s required activities have already been performed, and claimants know the costs that have actually been incurred to implement the permit activities. Only reliance on claimed costs supported by source documents created at or near the time the actual costs were incurred, together with corroborating evidence, will ensure that reimbursement is not in excess of what is required by law.⁷¹
- The evidence shows that claimants may have additional offsetting revenues that must be accounted for. The differences in revenues and costs among the various claimants are reason enough to reject a one-size-fits-all approach to reimbursement. The claimants must submit actual costs claims identifying all offsetting revenues and deduct those revenues from the costs submitted for reimbursement.⁷²
- The requirements for adoption of a reasonable reimbursement methodology have not been met.

⁶⁸ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 3.

⁶⁹ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 4-5.

⁷⁰ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, pages 2-4.

⁷¹ Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 2.

⁷² Exhibit J, Finance’s Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 2.

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

In addition, the proposed RRM's do not consider the variation in costs among local agencies and make no specific references to how this variation is accounted for. For example, many of the proposed RRM's components are based on an individual claimant's percentage share of a "total stormwater budget." There is nothing in the supporting documentation to validate that the proposed percentage share of a total stormwater budget "is even generally representative of any historic annual expenditures from any claimant, which could otherwise be determined if actual historic expenditures were provided." Further, the activities included in the category "total stormwater budgets" can vary widely among claimants as to what costs are included or not included, and there is no identification and analysis provided for how the RRM's consider that variation.⁷³

- Although the claimants submitted 14 volumes and 80,000 pages of supporting documents, they did not include sufficient and complete information on the datasets, calculations, and methodologies used to develop the proposed RRM's. Finance was unable to determine which information in the supporting documents was used to develop or inform the RRM's, or which information was excluded and why it was excluded.⁷⁴
- The proposed RRM's do not demonstrate that they limit reimbursement to the activities determined to be reimbursable by the Commission.⁷⁵

Finance also argues that SB 231 is relevant and should not be deleted from the analysis of the claimants' costs mandated by the state.⁷⁶

Finance agrees with the Draft Proposed Decision that reimbursement for the claimants' proposed reasonably necessary activities, such as developing policies and procedures to report street sweeping and conveyance system cleaning, and developing educational

⁷³ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 3.

⁷⁴ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 4.

⁷⁵ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 4.

⁷⁶ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 2, 4.

programs, should be denied because there is no substantial evidence in the record to support these requests.⁷⁷

Finance further contends that the Commission has no authority to approve reimbursement for interest, or for any legal and expert costs to process the Test Claim, as requested by the claimants.⁷⁸

Finally, Finance supports the finding in the Draft Proposed Decision that the Port District and Airport Authority special district are not eligible to claim mandate reimbursement because they are not subject to the taxing and spending restrictions in the California Constitution.⁷⁹

Finance filed comments agreeing with the Revised Draft Proposed Decision and Parameters and Guidelines, as follows:

Finance concurs with the staff analysis and conclusion in the Revised Draft Proposed Decision that Claimants' proposed Reasonable Reimbursement Methodologies (RRMs) are overbroad, not limited to the mandated activities, and do not reasonably represent eligible costs. Finance agrees with the staff recommendation to deny the proposed RRMs and instead require Claimants to submit claims based only on actual costs, traceable and supported by source documents, for the activities found reimbursable by the Commission.⁸⁰

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

In comments submitted on September 16, 2010, the Water Boards specifically comment on and oppose each of the claimants' requests for reimbursement of proposed reasonably necessary activities as discussed in the analysis below.⁸¹

In their October 14, 2024 comments, the Water Boards request the Parameters and Guidelines be modified to change the beginning period of reimbursement from January 24, 2007 (the effective date of the test claim permit) to March 24, 2008, based

⁷⁷ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 5-6.

⁷⁸ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 5.

⁷⁹ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition Proposed RRMs, page 2.

⁸⁰ Exhibit P, Finance's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 1.

⁸¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 4-6, 16.

on several permit provisions requiring implementation “no later than 365 days after adoption of” the test claim permit, and a permit Addendum adopted by the Regional Board delaying that implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a regional disaster, for a total delay of 425 days.⁸²

Except for the proposed change to the period of reimbursement, the Water Boards urge the Commission to adopt the Draft Proposed Decision and Parameters and Guidelines issued July 27, 2023, and reject the claimants’ proposed RRM’s for the following reasons:⁸³

- The Water Boards argue the claimants’ proposed RRM’s fail to satisfy the statutory requirements and are not supported by substantial evidence in the record.⁸⁴ The claimants do not show that their RRM’s conform to Government Code section 17518.5(b) because they are not based “on a representative sample of eligible claimants” nor identify which claimants constitute a representative sample so the parties cannot verify whether the purported sample of eligible claimants and costs are representative.⁸⁵
- The RRM’s do not comply with section 17518.5(c) regarding the variation in costs among local agencies. The claimants’ declaration does not specify whether costs of all or a subset of claimants were considered, and if a subset, which claimants make up the subset. Nor do the RRM’s propose to implement the mandate in a cost-effective manner in that variations in costs are not identified,

⁸² Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, pages 3, footnote 2, and 33 (technical analysis) and 38; Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

⁸³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 3. Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 1-20.

⁸⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 2. Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 2-5.

⁸⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 5. Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 4-5.

nor are the costs necessarily confined to those the Commission determined were reimbursable or reasonably necessary to comply with the mandate.⁸⁶

- The RRM's do not comply with section 17518.5(d), which requires RRM's to be based on "general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs." According to the Water Boards:

Claimants do not identify or explain the documentation or assumptions relied upon to develop each of the proposed RRM's. Moreover, claimants fail to demonstrate that the RRM's exclude, or are capable of excluding, costs for activities that are not reasonably necessary to implementing the mandated activities and are therefore not reimbursable. Likewise, claimants fail to demonstrate if, or how, the proposed RRM's can be adjusted to ensure that they result in reimbursement only for the allowable time periods in which the mandated activities are required to be performed and, further, that they are amenable to adjustments for any that [sic] offsetting revenues that reduce an individual claimant's reimbursement amount.⁸⁷

- The claimants' reliance on the 2005 state survey to validate values in the proposed RRM's is inappropriate because that survey's costs were not isolated to only the mandated activities and the survey is not representative because it included six permittees, only one of which (Encinitas) is an eligible claimant under this claim. In addition, the 2005 survey involved compliance with a 2001 San Diego County permit rather than the test claim permit.⁸⁸ Further, the 2005 survey's purpose was not to approximate local costs of permit implementation but primarily to understand costs per household associated with permit implementation, and one of the survey's conclusions was that stormwater budgets that vary with local operations make it challenging to isolate, and are unreliable to determine, expenses for specific permit activities.⁸⁹

⁸⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 6. Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, page 4.

⁸⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 7. See also Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, page 6, 16-17 (Technical Analysis).

⁸⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 8.

⁸⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 8-9.

- The 2011 county copermittee survey is also not reliable because it “does not support an accurate or verifiable approximation of local costs” because individual claimants responded to the surveys with different types of inputs based on subjective determinations, so the survey data are not comparable and cannot be used to develop a reliable, accurate, or verifiable methodology.⁹⁰
- Reliance on stormwater budgets is inherently inaccurate because it is unclear whether the budgets are proposed budgets, locally approved budgets, reconciled budgets or those submitted to the Regional Board for permit reporting, or what years’ budgets are used. According to the Water Boards, “[u]se of a percentage of a stormwater budget that was developed to support implementation of a claimant’s comprehensive stormwater program for the limited purpose of supporting an RRM for a discrete permit activity cannot and does not yield an approximate cost to perform that discrete activity.”⁹¹
- The proposed RRM’s are exceedingly complex and incapable of reproduction, objective evaluation, and validation, the Water Boards note:

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

[¶] . . . [¶]

For each of the 34 factors that comprise the proposed RRM methodology, . . . no documentation was provided to identify the location of the specific data used for each equation factor, which data

⁹⁰ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, page 9.

⁹¹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, page 9. See also Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, page 7.

were used, or how each factor was calculated for the proposed RRM . .

..⁹²

- The proposed RRM's rely on time periods that may reimburse the claimants before the effective date of the permit (or before the implementation that delayed by 365 days implementing permit parts D., E., and F, and another 60-day delay due to a December 12, 2007 Addendum to the permit) until March 24, 2008, so the RRM's may provide reimbursement under the preceding 2001 MS4 permit during the transitional period.⁹³
- The claimants' formula descriptions and summary table are internally inconsistent. And the formulas do not reflect or allow for prorating the costs to compare the prior (2001) permit.⁹⁴
- The proposed RRM's fail to balance simplicity with accuracy and ignore accuracy, although it can be achieved.⁹⁵ Rejecting the proposed RRM's in favor of reimbursement based on fully known costs "is the only practical approach to reimburse eligible claimants for implementing activities mandated in the varied and complex MS4 permit context."⁹⁶ According to the Water Boards, "the level of effort to implement [MS4-related] mandated activities is not consistent across claimants and does not lend itself to a single methodology, unit cost or otherwise, per mandated activity."⁹⁷

⁹² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 10-11, 23 (Ryan Declaration).

⁹³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 12. See also Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, pages 6-7.

⁹⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 12.

⁹⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 2, 13.

⁹⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, pages 2-3, 14-15.

⁹⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM's, page 15.

- The proposed RRM do not account for “offsetting revenues on a claimant-by-claimant basis to assure that claimants are only reimbursed for mandated activities actually performed.”⁹⁸
- The claimants’ contention that it is unreasonable to expect them to have retained actual cost information to support reimbursement is not a legal or recognized basis to approve an RRM. That eight RRM purport to be based on actual costs, and two more based on a combination of actual and approximation of costs, makes it reasonable to conclude that claimants have retained cost information. In addition, if the claimants retained documentation of the specific reimbursable activities they performed during the reimbursement period, they should also have retained associated cost information.⁹⁹
- The claimants have not provided a supportable rationale or legal justification for a CPI annual adjustment factor to all unit costs in the RRM formulas for recovery of wholly past expenditures, nor have they provided a legal basis for recovering interest due to the passage of time or legal or expert fees to compensate them for engaging in the test claim process.¹⁰⁰
- The claimants’ RRM for all permittee collaboration seeks reimbursement not only for revising the cost-sharing MOU development, which was required as a one-time activity early in the permit term, but also for activities the Commission has not determined are reasonably necessary to implement this MOU development mandate. This would improperly reimburse the claimants for activities that are proposed for reimbursement through other RRM formulas.¹⁰¹
- The claimants’ Appendix A Guidelines in their rebuttal comments that provide summary tables for claimants to fill out for each activity by fiscal year relies on claimants to manually make the proposed percent reductions for each mandated activity for the correct fiscal year and apply each footnote for each table with the narrative in the Quenzer declaration. But the tables provide no narrative guidance to ensure that the claimants’ submitted information excludes activities that are not eligible for reimbursement or for activities conducted outside of the

⁹⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 15. Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, page 8.

⁹⁹ Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 5-6.

¹⁰⁰ Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 5-6.

¹⁰¹ Exhibit N, Water Boards’ Late Comments on Claimants’ Rebuttal, pages 7-8.

correct time period of reimbursement. These and other errors in the tables result in reimbursement to which the claimants are not entitled.¹⁰²

The Water Boards also submitted a declaration from Erica Ryan, a Water Resource Control Engineer at the San Diego Regional Water Quality Control Board since 2015, who prepared a technical analysis of each proposed RRM formula.¹⁰³

The Water Boards contrast the proposed RRMs with one the Commission adopted in 2015 (14-PGA-01) that was supported by a declaration from the Controller that two years of data relied on was true and correct, and a school district declaration regarding how the data was obtained and how the methodology was formulated based on the data.¹⁰⁴ The Commission found the RRM was based on a representative statistical analysis of various school districts constituting a representative state sample that considered the variation in costs that was tied to the number of students.¹⁰⁵ As the Water Boards note:

The methodology approved in 2015 was accurate, verifiable, and capable of reproduction. The reader was able to understand from the declaration which school districts' data were considered, which were not considered, and why. Here, it is impossible to ascertain what specific information claimants' expert either considered or relied on to develop his opinion of what is a reasonable cost for a given mandated activity. The lack of specificity in claimants' comments and declarations renders the RRMs here incapable of a determination that the proposed RRMs are supported by substantial evidence.¹⁰⁶

¹⁰² Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, pages 18-19 (Technical Analysis).

¹⁰³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, pages 20 et seq. Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, pages 16-20.

¹⁰⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed, pages 12-13. Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, page 8.

¹⁰⁵ See Commission on State Mandates, Parameters and Guidelines Amendment on *Immunization Records – Pertussis* 14-PGA-01 (11-TC-02), adopted September 25, 2015, <https://csm.ca.gov/decisions/doc25.pdf> (accessed on October 24, 2024), pages 8-25.

¹⁰⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 13. Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, page 8.

The Water Boards filed comments agreeing with the Revised Draft Proposed Decision and Parameters and Guidelines as follows:

The Water Boards agree with the Commission staff's conclusion that the "claimants' proposed RRMs are overbroad and not limited to the mandated activities, and there is no evidence that the proposed unit costs reasonably represent the costs mandated by the state for all eligible claimants for only to comply with the higher levels of service activities the Commission approved for reimbursement." (Revised Draft, p. 26.) The Commission staff explain: "An RRM, as defined in Government Code section 17518.5, is generally a formula or unit cost adopted by the Commission for the reimbursement of an approved activity, so that the claimants do not need to provide detailed documentation of the actual costs to the State Controller's Office for its review and audit of the claimants' reimbursement claims. Rather the Controller simply reviews the claimant's application of the RRM to the costs claimed." (Revised Draft, pp. 25-26.)

In the Revised Draft, the Commission staff further explain that the time period for reimbursement in this matter begins with the January 24, 2007 test claim permit effective date. It further recognizes that the San Diego Water Board allowed individual claimants to postpone implementation of numerous mandated permit provisions until March 24, 2008. (Revised Draft, p. 60.) Under the general approach to reimbursement, claimants would be required to submit documentation of actual costs to the State Controller's Office for review and audit, thereby ensuring reimbursement only for actual performance of reasonably necessary activities to implement mandated permit provisions. In contrast, under the RRM approach described above, reliance upon the permit effective date to initiate the time period for reimbursement here results in the likelihood that *all* claimants could receive reimbursement beginning January 24, 2007, even if *not a single* claimant commenced implementation of any reasonably necessary activities to perform mandated permit provisions until March 24, 2008.

As the Water Boards have previously pointed out, the numerous flaws with the proposed RRMs underscore that the alternative RRM approach is not well-suited to reasonably reimburse Claimants for implementation of the mandated permit provisions. The prospect that the proposed RRMs, if approved, would unreasonably reimburse claimants for a period of up to 425 days from the permit effective date, regardless of whether they actually performed any mandated activities during this period, further illustrates that the RRM approach is unsupported and inappropriate in this context.

For the above reasons and the reasons stated in prior comments, the Water Boards urge the Commission to adopt the Revised Draft without revision and require claimants to submit documentation of actual costs for review and audit by the State Controller's Office.¹⁰⁷

E. State Controller's Office

The Controller's Office states it reviewed the Draft Proposed Decision and Parameters and Guidelines and Revised Draft Proposed Decision and Parameters and Guidelines, and has no comments.¹⁰⁸

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.¹⁰⁹

The San Diego County Regional Airport Authority and the San Diego Unified Port District are also copermittees,¹¹⁰ and both were on the claimants' proposed list of eligible claimants.¹¹¹ However, neither are eligible to claim reimbursement under article XIII B, section 6 because their revenues are not proceeds of taxes subject to the appropriations limit.

Adopted by the voters in 1979, article XIII B, section 6 of the California Constitution was specifically designed to protect the tax revenues of local governments from state mandates that would require spending those revenues. The purpose is to prevent "the state from shifting financial responsibility for carrying out governmental functions to local

¹⁰⁷ Exhibit S, Water Boards' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 2-3. Footnote omitted.

¹⁰⁸ Exhibit K, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines; Exhibit Q, Controller's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

¹⁰⁹ Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

¹¹⁰ Exhibit A, Amended Test Claim Decision on Remand, page 4, footnote 6.

¹¹¹ Exhibit B, Claimants' Proposed Parameters and Guidelines, page 14.

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.”¹¹²

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.¹¹³ 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 6.¹¹⁴

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

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

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 1/2 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.

¹¹² *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763, quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185, holding that reimbursement under article XIII B, section 6 is only required when a mandated 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.”

¹¹³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

¹¹⁴ *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.

Government Code section 7901(e) implements article XIII B,¹¹⁵ and clarifies that special districts that existed on January 1, 1978, and did not levy a property tax in excess of 12 ½ cents per \$100 of assessed value in 1977-1978, are not “local agencies” for purposes of article XIII B:

The term “special district” [as part of the definition of “local agency”] shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one 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.¹¹⁶

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.¹¹⁷

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

¹¹⁵ 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.”

¹¹⁶ 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.”

¹¹⁷ Government Code section 7901(e), California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

permit the Authority to levy taxes.¹¹⁸ 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.¹¹⁹ It also has authority to levy special benefit assessments.¹²⁰ Pursuant to Government Code section 7901(e), the Authority is not a “local agency” for purposes of article XIII, section B. This comports with the Authority’s financial report for fiscal years 2021 and 2022 that states it is not funded by tax revenues.¹²¹ Therefore, the Airport Authority’s revenues are not subject to the taxing and spending limitations of articles XIII A and B, so it is not an eligible claimant.

The San Diego Unified Port District was formed in 1962 pursuant to Appendix 1 of the Harbors and Navigation Code, which *does* authorize the District to impose taxes.¹²² 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 1970.¹²³

As a special district that has not levied taxes since 1970 (and absent any evidence it levied tax dollars in fiscal year 1977-1978 or after), the District is not subject to an appropriations limit because it existed on January 1, 1978 and did not levy a property tax in excess of 12 ½ cents per \$100 of assessed value in fiscal year 1977-1978. Additionally, it is totally funded by revenues other than the proceeds of taxes.¹²⁴

¹¹⁸ Public Utilities Code, section 17000, et seq. (Stats. 2001, ch. 946).

¹¹⁹ Public Utilities Code, section 170064 (a)-(c).

¹²⁰ Public Utilities Code section 170072.

¹²¹ Exhibit U (10), San Diego County Regional Airport Authority, Annual Comprehensive Financial Report, Fiscal Year Ended June 30, 2022, https://www.san.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?EntryId=16004&Command=Core_Download&language=en-US&PortalId=0&TabId=197 (accessed on June 15, 2023), page 14.

¹²² Harbors and Navigation Code, Appendix 1, sections 43-45.

¹²³ Exhibit U (11), San Diego Unified Port District, Annual Comprehensive Financial Report, 2021, 2022, <https://pantheonstorage.blob.core.windows.net/administration/2022-ACFR-final.pdf> (accessed on June 15, 2023), page 8.

¹²⁴ California Constitution, article XIII B, section 9(c). Government Code section 7901(e).

Therefore, the San Diego Unified Port District is not subject to the appropriations limit of article XIII B and is not an eligible claimant.

The claimants, however, argue that the special districts should be able to claim reimbursement under article XIII B, section 6 because section 8(d) of article XIII B expressly defines local governments to include “special district, authority or other political subdivision of or within the State” and is a specific definition that governs the interpretation of eligibility under article XIII B, section 6.¹²⁵ The claimants also assert that the taxation requirements in Government Code section 7901’s definition of local agency do not apply to section 6 of article XIII B.¹²⁶ The claimants further argue recovery should be granted because special districts are subject to a vote requirement before they can levy any taxes or fees.¹²⁷ In addition, the Airport Authority has the power to levy assessments.¹²⁸ Finally, the claimants argue that equity requires that special districts receive the same reimbursement as municipalities.¹²⁹

Section 8(d) of article XIII B defines local government to include “special district, authority or other political subdivision of or within the State” as does Government Code section 17518.¹³⁰ However, not all special districts are funded with proceeds of taxes subject to the appropriations limit, as shown by article XIII B, section 9(c) and Government Code section 7901. Those special districts funded by *other* than proceeds of taxes cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.¹³¹

¹²⁵ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 2.

¹²⁶ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 3-4.

¹²⁷ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 2-4.

¹²⁸ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 4.

¹²⁹ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 5.

¹³⁰ “Local agency” is defined in Government Code section 17518 as “any city, county, special district, authority, or other political subdivision of the state.” According to Government Code section 17500, “It is the intent of the Legislature in enacting this part [Gov. Code, § 17500 et seq.] to provide for the implementation of Section 6 of Article XIII B of the California Constitution.”

¹³¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282;

Despite the claimants' arguments to the contrary, Government Code section 7901(e) directly applies to article XIII B, section 6, and must be considered in interpreting the Constitution because Government Code section 7900(a) states the division (§ 7900 et seq.) of which section 7901 is a part, "is to provide for the effective and efficient implementation of Article XIII B of the California Constitution." In addition, a specific definition only governs a general one if they are inconsistent,¹³² but there is no inconsistency between article XIII B, section 8's definition of local agency and section 7901(e), which defines local agencies consistent with section 9(c) of article XIII B to include special districts subject to the appropriations limit *except those* "that existed on January 1, 1978, and did not levy ad valorem property taxes as of the 1977-1978 fiscal year" or that "existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes." The Commission is required to read the constitutional and statutory provisions together so they are "construed in a manner that gives effect to each, yet does not lead to disharmony with the others."¹³³

In addition, the San Diego Unified Port District and the San Diego County Regional Airport Authority urge the Commission to not rely on Government Code section 7901(e), on the ground that its definition of "local agency" is inconsistent with Government Code section 17518, which broadly defines "local agency" to mean "any city, county, special district, authority, or other political subdivision of the state."¹³⁴ However, under the rules of statutory construction, the code sections must be read together and harmonized.¹³⁵

Government Code sections 7901(e) and 17518 are not inconsistent and can be read together and harmonized. If a special district has the statutory authority to levy a tax, is funded by proceeds of taxes, and is subject to the taxing and spending limitations of articles XIII A and XIII B, the special district may be eligible to claim reimbursement

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

¹³² Code of Civil Procedure section 1859.

¹³³ *Lacy v. City and County of San Francisco* (2023) 94 Cal.App.5th 238, 251. Code of Civil Procedure section 1859.

¹³⁴ Exhibit R, San Diego Unified Port District and San Diego County Regional Airport Authority Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 2-3.

¹³⁵ *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955; *Tan v. Superior Court of San Mateo County* (2022) 76 Cal.App.5th 130, 137-138 ["Thus, when two codes are to be construed, they "must be regarded as blending into each other and forming a single statute." [Citation.] Accordingly, they "must be read together and so construed as to give effect, when possible, to all the provisions thereof."].

under article XIII B, section 6.¹³⁶ The Commission has consistently held that special districts or other local governments funded by *other* than proceeds of taxes that are not subject to the appropriations limit, are not eligible to claim reimbursement under article XIII B, section 6 of the California Constitution.¹³⁷

The claimants also maintain that the Airport Authority has taxing authority under the Public Utilities Code that authorizes it to levy special benefit assessments.¹³⁸ According to the claimants, “both [taxes and benefit assessments] are relevant to the purposes of purpose of Article XIII B to protect local property owners from funding unfunded state mandates.”¹³⁹

The claimants are incorrect. Since 1980, courts have held that local special assessments for public improvements are not “proceeds of taxes” subject to the article XIII B appropriations limit.¹⁴⁰ Under article XIII B, section 6, assessments are treated the same as fees and other non-tax revenue.¹⁴¹ This is why the Commission is prohibited by statute from finding that a local government incurs costs mandated by the

¹³⁶ See for example, Commission on State Mandates, Test Claim Decision on *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections B.2; C.; D.; F.1.d.; F.1.d.7.i.; F.1.f.; F.1.h.; F.3.a.4.c.; F.3.d.; F.4.b.; F.4.d.; F.4.e.; G.6.; I.; J.; K.1.b.4.n.; and, Only as They Relate to the Reporting Checklist, Section K.3.a., and Attachment D, Adopted December 16, 2009, 10-TC-11*, adopted October 27, 2023, <https://www.csm.ca.gov/decisions/10-TC-11-103123.pdf> (accessed on July 3, 2025), pages 59-60, which found that the Orange County Flood Control District has the statutory authority to levy taxes and adopted an appropriations limit and was, therefore, an eligible claimant to claim reimbursement under article XIII B, section 6.

¹³⁷ See for example, Commission on State Mandates, Test Claim Decision on *SANDAG: Independent Performance Auditor*, 19-TC-03, adopted September 25, 2020 (<https://www.csm.ca.gov/decisions/19tc03-decision.pdf> (accessed on July 3, 2025)); and Test Claim Decision on *Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric and La Grange Hydroelectric Project*, 21-TC-02, adopted July 22, 2022, <https://www.csm.ca.gov/decisions/072622-21tc02.pdf> (accessed on July 3, 2025).

¹³⁸ Public Utilities Code section 170072.

¹³⁹ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 4.

¹⁴⁰ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

¹⁴¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

state if it “has the authority to levy service charges, fees, or *assessments* sufficient to pay for the mandated program or increased level of service.”¹⁴²

Finally, the Commission does not have the authority to provide equitable remedies to these special districts as asserted by the claimants.¹⁴³ The reimbursement requirement of article XIII B, section 6 is a question of law,¹⁴⁴ and the courts have held, “there is no basis for applying section 6 [of article XIII B] as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴⁵

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

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

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim on June 20, 2008,¹⁴⁶ 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, 2007.¹⁴⁷

The Water Boards assert the reimbursement period for most of the mandated activities starts March 24, 2008, rather than January 24, 2007, based on permit provisions applicable to Parts D., E., and F. requiring implementation “no later than 365 days after adoption of” the test claim permit and an Addendum adopted by the Regional Board delaying implementation another 60 days due to San Diego County wildfires in October 2007 for which the Governor proclaimed a regional disaster, for a total delay of 425 days.¹⁴⁸ The Addendum was adopted December 12, 2007, and modified the following relevant test claim provisions:

¹⁴² Government Code section 17556(d), emphasis added.

¹⁴³ Exhibit G, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines, page 5.

¹⁴⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁴⁵ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281.

¹⁴⁶ Exhibit U (13), Test Claim, page 3.

¹⁴⁷ Exhibit U (13), Test Claim, page 331 (Order No. R9-2007-0001).

¹⁴⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 3, footnote 5, and 33 and 38

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

[¶]

- c. Watershed Urban Runoff Management Program, Section E.1, . . . “Each Copermittee shall implement all requirements of section E of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of this Order, each Copermittee shall collaborate with the other Copermittees within its Watershed Management Area(s) (WMA) to at a minimum implement its Watershed URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.”
- d. Regional Urban Runoff Management Program, Section F, . . . “The Copermittees shall implement all requirements of section F of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order.” ¹⁴⁹

The Addendum affects the following mandated activities:

- Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)).
- Educational Component (Parts D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3).
- Watershed Urban Runoff Management Program (WURMP) activities (Parts E.2.f. and E.2.g.).
- Regional Urban Runoff Management Program (Parts F.1-F.3).

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

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

(technical analysis); Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

¹⁴⁹ Exhibit U (13), Test Claim, pages 112, 143, 147 (Order No. R9-2007-0001). Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

The test claim permit is an executive order and requires interpretation like a statute.¹⁵⁰ When interpreting a statute, “our fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning.... If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”¹⁵¹ The California Supreme Court said:

Our office is simply to ascertain and declare what the statute [or permit] contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute [or permit] to conform to an assumed intention that does not appear in its language.”¹⁵²

Instead of the permit language to “implement all requirements . . . no later than 425 days after adoption of the Order,”¹⁵³ the Water Boards urge an opposite interpretation of “no earlier than” 425 days after permit adoption. However, the courts have interpreted “no later than” to mean “on or before.”¹⁵⁴ This is consistent with Webster’s Dictionary definition of “no later than” to mean “by (a specified time): at, in, on, or before (a specified time).”¹⁵⁵ Thus, the “no later than” language functions as a delayed operative date for those affected activities, but it does not change the effective date of the test claim permit. The California Supreme Court explained the difference between effective and operative dates:

[T]he postponement of the operative date of the legislation . . . does not mean that the Legislature intended to limit its application to transactions occurring after that date. (Stats.1993, ch. 887, § 5, p. 4831.) “The effective date [of a statute] is ... the date upon which the statute came into being as an existing law.” (*People v. McCaskey* (1985) 170 Cal.App.3d 411, 416, 216 Cal.Rptr. 54.) “[T]he operative date is the date upon which the

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

¹⁵¹ *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.

¹⁵² *Vazquez v. State of California* (2023) 45 Cal.4th. 243, 253.

¹⁵³ Exhibit U (13), Test Claim, pages 112, 143, 147 (Order No. R9-2007-0001). Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

¹⁵⁴ *City of Pasadena v. A.T & T Communications of California, Inc.* (2002) 103 Cal.App.4th 981, 986 (“no later than” means “on or before.”); see also, *Blue Shield Life and Health Insurance v. Superior Court* (2011) 192 Cal.App.4th 727, 736-738.

¹⁵⁵ Exhibit U (6), Merriam-Webster Dictionary, no/not later than, <https://www.merriam-webster.com/dictionary/no%20later%20than> (accessed February 18, 2025).

directives of the statute may be actually implemented.” (*Ibid.*) Although the effective and operative dates of a statute are often the same, the Legislature may “postpone the operation of certain statutes until a later time.” (*People v. Henderson* (1980) 107 Cal.App.3d 475, 488, 166 Cal.Rptr. 20.) The Legislature may do so for reasons other than an intent to give the statute prospective effect. For example, the Legislature may delay the operation of a statute to allow “persons and agencies affected by it to become aware of its existence and to comply with its terms.” (*People v. Palomar* (1985) 171 Cal.App.3d 131, 134-135, 214 Cal.Rptr. 785.) In addition, the Legislature may wish “to give lead time to the governmental authorities to establish machinery for the operation of or implementation of the new law.” (*Estate of Rountree* (1983) 141 Cal.App.3d 976, 980, fn. 3, 192 Cal.Rptr. 152.)¹⁵⁶

The test claim permit was adopted on January 24, 2007, and became effective as law that day.¹⁵⁷ With the adoption of the Addendum on December 12, 2007, a claimant may delay implementation of the affected activities until 425 days after January 24, 2007, or until March 24, 2008. If a claimant delays implementation, then the claimant “shall at a minimum” implement the requirements of the prior 2001 permit.¹⁵⁸ Reimbursement is not required to comply with the prior 2001 permit, but the date when costs were first incurred to implement the affected activities may vary by claimant, since implementation is required to occur “on or before” the 425th day after January 24, 2007. The language of the Addendum has been included in Section IV. Reimbursable Activities, where relevant. However, the period of reimbursement for this claim begins with the effective date of the test claim order on January 24, 2007.

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

The claimants’ Proposed Parameters and Guidelines state that the permit term ends January 23, 2012.¹⁵⁹ However, reimbursement under article XIII B, section 6, for all

¹⁵⁶ *Preston v. State Board of Equalization* (2001) 25 Cal.4th. 197, 224.

¹⁵⁷ Exhibit U (13), Test Claim, page 331 (Order No. R9-2007-0001).

¹⁵⁸ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007. Exhibit U (13), Test Claim, page 269.

¹⁵⁹ Exhibit B, Claimants’ Proposed Parameters and Guidelines, page 16. Exhibit U (13), Test Claim, page 174 (Order No. R9-2007-0001).

programs continues to be required for each fiscal year that local agencies incur actual increased costs to comply with the reimbursable state-mandated program.¹⁶⁰

Under the Clean Water Act, the term of an NPDES permit is five years.¹⁶¹ 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.¹⁶² 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.¹⁶³ 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.¹⁶⁴

On May 8, 2013, the San Diego Regional Water Quality Control Board adopted a new permit, which, by its terms, became effective June 27, 2013 (Order No. R9-2013-0001). The state-mandated requirements imposed by the test claim permit may continue uninterrupted under the 2013 permit, so reimbursement for those requirements continues until the activity is no longer mandated by the state or an exception to reimbursement becomes applicable.¹⁶⁵ However, any *new* activities required by Order R9-2013-0001 are not reimbursable under this test claim permit and will not become reimbursable unless they are the subject of a later-approved test claim decision on that permit.

Beginning January 1, 2018, based on Government Code sections 57350 and 57351 as amended by Statutes 2017, chapter 536 (SB 231, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351), there are no costs mandated by the state within the meaning of Government Code section 17556(d) for the reimbursable activities because the claimants' have the legal authority to impose a stormwater fee on property owners subject only to the voter protest provisions of article XIII D. Senate Bill 231 amended the Government Code's definition of "sewer" to include stormwater sewers within the meaning of article XIII D, thereby allowing local governments to use their constitutional police powers to impose stormwater fees on property owners without having to first seek the voter's approval of the fee and making

¹⁶⁰ California Constitution, article XIII B, section 6; Government Code sections 17514, 17560, 17561.

¹⁶¹ United States Code, title 33, section 1342(b).

¹⁶² Code of Federal Regulations, title 40, section 122.6(d).

¹⁶³ California Code of Regulations, title 23, section 2235.4.

¹⁶⁴ Exhibit U (13), Test Claim, page 185 (Order No. R9-2007-0001).

¹⁶⁵ 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.

the fee subject only to the voter protest provisions of article XIII D.¹⁶⁶ As the court in *Paradise Irrigation Dist.* held, there are no costs mandated by the state within the meaning of Government Code section 17556(d) when local government's fee authority is subject only to a voter protest.¹⁶⁷ Under these circumstances, the claimant has "authority, i.e., the right or power, to levy fees sufficient to cover the costs" of a state mandated program, and reimbursement is not required, notwithstanding other factors that may make the exercise of that authority impractical or undesirable.¹⁶⁸ Therefore, reimbursement for this state-mandated program ends on December 31, 2017.

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

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

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

¹⁶⁶ 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.

¹⁶⁷ *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195. See also *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 577, holding that SB 231 does not apply retroactively.

¹⁶⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

competent jurisdiction resolves the constitutionality of SB 231 in the context of an actual fee enacted under its provisions.¹⁶⁹

First, there is no evidence in this record that the reimbursable activities, most of which are ongoing, were completed and no longer mandated by the state as of January 1, 2018, the effective date of SB 231. That determination requires an analysis of the 2013 permit when the Commission hears and determines the Test Claim in *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001*, 14-TC-03. Thus, the state-mandated requirements imposed by the 2007 test claim permit may continue uninterrupted in the 2013 permit, and remain reimbursable under article XIII B, section 6, *as part of these Parameters and Guidelines* each fiscal year that local agencies incur actual increased costs to comply with the reimbursable state-mandated program.¹⁷⁰

In addition, although the claimants allege that SB 231 is unconstitutional, the Commission is required to presume that SB 231 is valid and constitutional. The California Constitution prohibits administrative agencies, including the Commission, from refusing to enforce or declaring a statute unconstitutional.¹⁷¹

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

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

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

(d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not

¹⁶⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 3.

¹⁷⁰ California Constitution, article XIII B, section 6; Government Code sections 17514, 17560, 17561.

¹⁷¹ California Constitution, article III, section 3.5.

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.¹⁷²

In accordance with the Government Code and the Commission's regulations, any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state-mandate.¹⁷³ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.¹⁷⁴

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.-6.¹⁷⁵

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

¹⁷² California Code of Regulations, title 2, section 1183.7(d).

¹⁷³ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

¹⁷⁴ California Code of Regulations, title 2, section 1187.5.

¹⁷⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 109-112, 150.

Commission approved in its Decision. Reimbursement is not required for activities or requirements not pled in the Test Claim, imposed by the prior (2001) permit, or expressly denied by the Commission (e.g., collaboration with the other copermittees to develop and implement a Hydromodification Management Plan or developing urban runoff activities related to municipal activities, like low impact development (LID) BMPs (Best Management Practices) and plans).¹⁷⁶ The Commission found the prior permit also required the parties to enter into a Memorandum of Understanding (MOU) and expressly limited reimbursement for collaboration to the new activities found to mandate a new program or higher level of service.¹⁷⁷ 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.¹⁷⁸

In compliance with Part L.1.a.3.-6. of the permit, the copermittees entered into a new MOU dated November 16, 2007.¹⁷⁹ 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.¹⁸⁰ The MOU also

¹⁷⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112, 118-126.

¹⁷⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112. The Decision states: "Part L.1. of the 2007 permit, the first paragraph in L requiring collaboration, is identical to part N of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e, not in the 2001 permit) including the Regional Urban Runoff Management Program."

¹⁷⁸ Exhibit A, Amended Test Claim Decision on Remand, page 111.

¹⁷⁹ Exhibit U (13), Test Claim, filed June 20, 2008, pages 495 -579 (MOU).

¹⁸⁰ Exhibit U (13), Test Claim, pages 517-525, 535. The MOU's nine regional workgroups or sub-workgroups include: fiscal, reporting, and assessment workgroup; education and residential sources workgroup; regional monitoring workgroup and two

includes the copermitees' fiscal and cost sharing responsibilities¹⁸¹ a management structure for regional activities;¹⁸² and a dispute resolution process for non-compliance.¹⁸³

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, decision-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.*¹⁸⁴

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:

sub-workgroups for dry weather and coastal monitoring; regional watershed URMP workgroup; land development workgroup; municipal activities workgroup; and industrial and commercial sources workgroup.

¹⁸¹ Exhibit U (13), Test Claim, pages 501-507 (MOU).

¹⁸² Exhibit U (13), Test Claim, pages 507-521 (MOU).

¹⁸³ Exhibit U (13), Test Claim, pages 529-531 (MOU).

¹⁸⁴ Exhibit A, Amended Test Claim Decision on Remand, page 111.

- 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.¹⁸⁵

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

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

¹⁸⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 64-67.

- Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.¹⁸⁶

Part J.3.a.2. explains that the principal permittee (which is the County of San Diego) is required to submit the “unified” JURMP annual report by September 30 of each year, *beginning September 30, 2008*, and that the report shall contain the individual annual reports from the copermitees required to be provided under Part J.3.a.1. to the principal permittee by a date specified by the principal permittee.¹⁸⁷

Part J.3.a. of test claim permit explains that “Each Jurisdictional Urban Runoff Management Program Annual Report shall contain a comprehensive description of all activities conducted by the Copermitee to meet all requirements of section D. The reporting period for these annual reports shall be the previous fiscal year. For example, the report submitted September 30, 2008 shall cover the reporting period July 1, 2007 to June 30, 2008.”¹⁸⁸

Section D. of the test claim permit addresses the substantive requirements for the JURMP and, as relevant here, requires the permittees to implement a schedule of maintenance activities and inspections of the catch basins, storm drain inlets, and open channels (as required by section D.3.a.3.b.)¹⁸⁹ and sweeping of municipal roads, streets, highways, and parking facilities (as required by section D.3.a.5.)¹⁹⁰ The Commission found that the street sweeping activities required by Section D. were new requirements when compared to the prior permit and federal law, but the claimants had fee authority sufficient as a matter of law to pay for those requirements.¹⁹¹ The Commission also found that the conveyance system inspection activities were not new but were required by the prior permit, and the requirements related to the conveyance system cleaning (as required by Part D.3.a.3.b.iii. of the test claim permit and discussed

¹⁸⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 70-73.

¹⁸⁷ Exhibit U (13), Test Claim, page 319 (Order No. R9-2007-0001).

¹⁸⁸ Exhibit U (13), Test Claim, page 319 (Order No. R9-2007-0001 Part J.3.a. Thereafter, the permittees had the option of integrating the JURMP, WURMP, and RURMP annual reports into one report, which would be due the first January 31 after approval of the report form, and each January 31 thereafter. “The reporting period for Integrated Annual Reports shall be the previous fiscal year. For example, a report submitted January 31, 2010 shall cover the reporting period July 1, 2008 to June 30, 2009.” Exhibit U (13), Test Claim, pages 328-329 (Order No. R9-2007-0001, Part J.3.a.).

¹⁸⁹ Exhibit U (13), Test Claim, pages 287-288 (Order No. R9-2007-0001).

¹⁹⁰ Exhibit U (13), Test Claim, page 288 (Order No. R9-2007-0001).

¹⁹¹ Exhibit A, Amended Test Claim Decision on Remand, pages 67-68, 131-134.

in the next section below) were new, mandated requirements.¹⁹² The reimbursable state-mandated activity at issue here to *report* the conveyance system inspection and cleaning and street sweeping information comes from the permittees' implementing their JURMPs.

As originally adopted, each permittee had 365 days after adoption of the test claim permit, or until January 24, 2008, to implement their JURMPs. Prior to that time, the permittees were required to comply with the JURMP document prepared under the prior permit (Order No. 2001-01).¹⁹³ Since implementation of the street sweeping requirements and conveyance system cleaning requirements are new, the permittees had until January 24, 2008, to implement those requirements. The conveyance system inspection activities required under the prior permit, however, had to be implemented as required by the prior permit without delay.

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

- a. Jurisdictional Urban Runoff Management Program, Section D, . . . "Each Copermittee shall implement all requirements of section D of this Order no later than ~~365~~ **425** days after adoption of the Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of the Order each Copermittee shall at a minimum implement is Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01."¹⁹⁴

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

The JURMP annual reporting requirements were not delayed, however. The first report was due September 30, 2008, and had to cover the reporting period from July 1, 2007, to June 30, 2008, and every September 30 thereafter so that the report due September 30, 2009, covered the reporting period from July 1, 2008, to June 30, 2009.¹⁹⁵ The first report due September 30, 2008, may only cover a three and a half month time period from March 2008 through June 30, 2008, for the information reported about street sweeping and conveyance system cleaning since those activities were delayed until no later than March 24, 2008. However, the information required to be reported on conveyance system *inspections*, which are bulleted again below, would address the entire 2007-2008 fiscal year:

¹⁹² Exhibit A, Amended Test Claim Decision on Remand, pages 70-72.

¹⁹³ Exhibit U (13), Test Claim, page 269 (Order No. R9-2007-0001).

¹⁹⁴ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

¹⁹⁵ Exhibit U (13), Test Claim, page 319 (Order No. R9-2007-0001, Parts J.3.a. & J.3.a.2.).

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

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

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

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

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

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

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

Contracted Services: Any of the costs described above may be incurred through the use of vendors, contractors, consultants, or other service

providers. In such case, only actual costs to the claimant will be claimed, and will only include that portion of the cost that is related to the reimbursable mandate. Claimants may also include the costs of preparing requests for proposals or requests for bids, negotiating and drafting third party contracts, and subsequently administering service contracts for the time they are performing these tasks using the claimant's Personnel rates. (Hereinafter referred to as "Contracted Services".)¹⁹⁶

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.¹⁹⁷ 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.¹⁹⁸ Regarding report writing, the Water Boards repeat their objection to computer equipment and upgrade purchases, and repeat their objection to unspecified personnel costs.¹⁹⁹ 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.²⁰⁰ Further, the Water Boards argue that claimants should only be allowed to claim 'contracted services' costs to prepare requests for bids, negotiate and draft third party contracts, and administer service contracts if the claimants can demonstrate that these costs, together with the costs of the contracted service, is the most cost effective and reasonable manner, through a cost-benefit analysis, of complying with the street sweeping reporting mandate.²⁰¹

In response, the claimants argue that policies and procedures to track and report street sweeping and conveyance system cleaning should be reimbursable:

In order for the Municipal Claimants to report on street sweeping and conveyance system cleaning, they had to have policies and procedures as to how the reporting should be done. Without policies and procedures, it

¹⁹⁶ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 36, 37, 40-41.

¹⁹⁷ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

¹⁹⁸ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

¹⁹⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

²⁰⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 9.

²⁰¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 8-9, 12, 21-22.

would not be clear to the reporting staff what needed to be reported. As such, the costs to update and implement street sweeping reporting and tracking policies and procedures is necessary to accurately report on the street sweeping and conveyance system cleaning and should be subject to reimbursement. As part of the claims process, the Municipal Claimants should be permitted to submit evidence of these reasonable and necessary costs.²⁰²

The 2025 Declaration of John Quenzer, the claimants' consultant, further explains the following:

The activities described above ["developing policies and procedures, or developing, updating and implementing data tracking and analysis methods and procedures for reports to the Regional Board"] are necessary to comply with the mandate and therefore should be considered reimbursable. To complete reporting as required by the 2007 Permit, Co-Permittees must identify the data that will be needed for reporting, develop procedures to collect and record that data, and implement those procedures such that the necessary data is recorded and is available to be compiled for reporting. When an annual report is required, Co-Permittees need to develop and implement procedures across their organizations to collect the necessary data. A reporting mandate imposes both data tracking system development and implementation, which is an ongoing effort, and the actual preparation and submittal of the required report, which occurs over a limited portion of each fiscal year.

For street sweeping, the 2007 Permit required the Co-Permittees to track information such as the frequency of sweeping completed on three categories of roads (high, moderate, and low debris generation), the frequency of sweeping completed for municipal parking lots, curb miles swept, and debris removed. Tracking all of this data was not required under the 2001 Permit, so Co-Permittees would need to develop and implement procedures to track this information and ensure the staff responsible for tracking the information understand and properly implement the procedures.

For conveyance system cleaning reporting, the 2001 Permit required only "record keeping of cleaning and the overall quantity of waste removed."

The 2007 Permit required reporting much more detailed information, such as numbers or linear distances inspected, found with waste exceeding the cleaning criteria, and cleaned and the total debris removed for each of the

²⁰² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 13.

following three categories: (1) catch basins and inlets, (2) linear municipal separate storm sewer systems ("MS4") facilities other than open channels, and (3) open channels. Because this is not the same information required to be tracked and reported under the 2001 Permit, work to develop and implement new data tracking procedures designed to collect the information the 2007 Permit required to be reported, including oversight and training of staff involved in implementing these procedures, were necessary.²⁰³

Section 1183.7 defines "reasonably necessary activities" and the requirements to approve reimbursement of those activities as follows:

"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.

Based on the 2025 Quenzer declaration submitted by the claimants, which is signed under penalty of perjury, the Commission finds that developing policies and procedures and a data tracking system (one-time), recording and analyzing data in the data tracking system in order to prepare the street sweeping and conveyance systems reports to the Regional Board, and one-time training per employee assigned to track the information identified above to ensure the staff responsible for tracking the information understand and properly implement the procedures, are reasonably necessary to comply with the mandate. As indicated above, the data required to be reported is detailed and comprehensive information and includes the total number of curb miles generating the most trash, a moderate amount of trash, and low volumes of trash; the total number of municipal parking lots swept and the frequency of sweeping, and total distance of miles swept and tons of trash collected; cleaning activities including number of catch basins, number of inlets and miles of MS4 cleaned and tons of trash collected; and inspection activities including the number of catch basins and inlets inspected, the distance of the MS4 inspected, and identification of any MS4 facility found to require inspection less than annually following two years of inspection. This information has to be recorded by each permittee over the course of the year and then reported to the County of San Diego as the principal permittee to combine and submit as a unified annual report to the

²⁰³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 30-31 (2025 Quenzer Declaration, para. 14.b.)

Regional Board. And Mr. Quenzer declares under penalty of perjury that these activities were necessary to comply with the mandate. Thus, the Parameters and Guidelines authorize reimbursement as follows:

- iii. Reimbursement for the reporting activities identified in Section IV.B.1.a.i. and ii. of these Parameters and Guidelines includes the following:
- The *one-time* activity of developing policies and procedures and a data tracking and analysis system for gathering and reporting only the new data identified above.
 - One-time training per employee assigned to track the information identified above to ensure the staff responsible for tracking the information understand and properly implement the procedures.
 - The *ongoing* activity of recording the new data identified above in the data tracking system to prepare the annual street sweeping and conveyance systems report.

In addition, the claimants' requests for "personnel," "contracted services" and "computer hardware and software" are addressed as direct costs in Section V.A. of the Parameters and Guidelines, governing salaries and benefits, contracted services, and fixed assets (expressly including "computer equipment") and do not need to be repeated in Section IV. of the Parameters and Guidelines. The pro rata share of these costs attributable to the reimbursable activities are eligible for reimbursement and are subject to the Controller's review and audit.²⁰⁴ Section V.A. of the Parameters and Guidelines states in pertinent part:

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

²⁰⁴ 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.

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.

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

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

- 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.²⁰⁵
- 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.²⁰⁶
- iii. Reimbursement for the reporting activities identified in Section IV.B.1.a.i. and ii. of these Parameters and Guidelines includes the following:
- The *one-time* activity of developing policies and procedures and a data tracking and analysis system for gathering and reporting only the new data identified above.

²⁰⁵ The requirements for street sweeping were delayed until no later than March 24, 2008. Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁰⁶ The requirements for conveyance system cleaning were delayed until no later than March 24, 2008. Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- *One-time* training per employee assigned to track the information identified above to ensure the staff responsible for tracking the information understand and properly implement the procedures.
 - The *ongoing* activity of recording the new data identified above in the data tracking system to prepare the annual street sweeping and conveyance systems report.
- 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.²⁰⁷

As indicated above, the implementation of these activities was delayed under the December 12, 2007 Permit Addendum by the Regional Board until no later than March 24, 2008.²⁰⁸

In addition, the test claim permit explains that the cleaning requirements are annual, but can be *reduced* for facilities (defined above as catch basins, storm drain inlets, open channels, etc.) that are *not* self-cleaning, to every other year following two years of

²⁰⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 70-71. The conclusion in the Decision (p. 140) incorrectly states that the following in Part D.3.a.(3)(a) of the test claim permit is reimbursable: "Implement a schedule of inspection and maintenance activities to verify proper operation of all municipal structural treatment controls designed to reduce pollutant discharges to or from its MS4s and related drainage structures." This activity was expressly denied by the Commission on page 72: "[P]art D.3.a(3)(a) is not a new program or higher level of service because the 2001 permit also required maintenance and inspection in part F.3.a.(5)(b) and (c)." Thus, the Parameters and Guidelines identify the Commission's findings to authorize reimbursement only for Part D.3.a.3.b.iii.

²⁰⁸ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

inspections if the facility requires less than annual cleaning, which at the earliest would be in fiscal year 2010-2011.²⁰⁹ Thus, the following activities represent the higher level of service and are reimbursable beginning no later than March 24, 2008:

- Cleaning catch basins and storm drain inlets when accumulated trash and debris is greater than 33% of design capacity.
- Cleaning those MS4 facilities designed to be self-cleaning immediately of any accumulated trash and debris.
- Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

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

- b. Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:²¹⁰
 - i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc).
 - ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which shall be cleaned in a timely manner.
 - Any MS4 facility that is designed to be self-cleaning shall be cleaned of any accumulated trash and debris immediately.
 - Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

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

- Conveyance System Inspection. Claimant’s personnel costs to inspect the conveyance system for the purpose of assessing the accumulation of trash, debris, or litter, or for verifying the proper operation of structural treatment controls.

²⁰⁹ Exhibit U (13), Test Claim, page 287 (Order No. R9-2007-0001, Parts D.3.b.ii.).

²¹⁰ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- 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.
- 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.²¹¹

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.²¹² The Water Boards also state that inspections were required under the 2001 permit, so they should not be reimbursable.²¹³ As to cleaning system operations, the Water Boards argue that phrases such as “including Personnel Costs” are not specific enough.²¹⁴ 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.²¹⁵

²¹¹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 38-39.

²¹² Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 9-10.

²¹³ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

²¹⁴ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

²¹⁵ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 10.

The Water Boards further argue to the extent that conveyance system cleaning is contracted, fuel should be included in the contract cost.²¹⁶ 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.²¹⁷

The Water Boards also disagree that vendor training is necessary because vendors should be well versed in the services they provide. And vendors’ costs should be prorated if necessary to only the reimbursable activities in the permit.²¹⁸ In addition, the Water Boards question whether parking enforcement signs would be the same as for street sweeping. To the extent the signage overlaps with other types of parking enforcement unrelated to the permit, costs should be segregated. And the claimants should be required to offset any reimbursement for signage enforcement with enforcement revenue.²¹⁹

Regarding the last two activities, employee supervision and management and contracted services, the Water Boards assert that the claimants should demonstrate how their supervising work is prorated to only mandated provisions. Further, the claimants should only be allowed to claim costs to negotiate and prepare contract-related documents if they can demonstrate through a cost-benefit analysis that these costs, together with the cost of the service, are the most cost-effective and reasonable way to comply with the conveyance system cleaning mandate.²²⁰

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.²²¹ The claimants also acknowledge that MS4 inspections are not reimbursable because they were required

²¹⁶ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

²¹⁷ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

²¹⁸ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 11.

²¹⁹ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 11.

²²⁰ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 8-9.

²²¹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 15-16.

under the prior permit.²²² The claimants removed “including Personnel Costs” from its Revised Proposed Parameters and Guidelines.²²³ 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 Controller’s Mandated Cost Manual. Claims for equipment are limited to the permit term “with the proviso that . . . depreciation and use allowance costs are also allowable even if the initial purchase was made in a prior period and accounting requirements found in SCO’s Manual are met.”²²⁴ The claimants concur that disposal of materials is not reimbursable.²²⁵ 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.²²⁶ In response to the Water Boards’ comments on program development, the claimants state that they removed “internal” from the term “conveyance system cleaning program.”²²⁷ 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.”²²⁸ The claimants acknowledge that signage should only be reimbursed once, and that unrelated parking enforcement costs should not be claimed. The claimants argue that they cannot use enforcement revenue to offset the cost of signage because of Proposition 26, which exempts fines and penalties from the definition of taxes and requires that the amount charged bears a fair or reasonable relationship to the payor’s burden on, or benefit received from the government activity.

²²² Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 16.

²²³ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 5, 16, 38-39.

²²⁴ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 17-18.

²²⁵ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 18.

²²⁶ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 6, 18-19.

²²⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 19, 39.

²²⁸ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 6.

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.²²⁹ 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 is the most cost-effective method to comply with the mandate. Rather, the claimants rely on the Mandated Cost Manual, which authorizes contracting without a cost-benefit analysis.²³⁰

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

First, direct costs like employee supervision and management, materials and supplies, fixed assets, and contracted services that directly relate to the state-mandated activities may be claimed under Section V.A. of the Parameters and Guidelines and are subject to review and audit by the Controller.²³¹

However, the Commission found the inspection requirements in Part D.3.a.(3).a. and b. are not a new program or higher level of service because inspections were required under the prior permit.²³² 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.²³³ Thus, the Parameters and Guidelines clarify the activities that are *not* eligible for reimbursement as follows:

The following conveyance system activities are *not* reimbursable:

1. Implementing a schedule of inspection activities (Part D.3.a.(3)(a));
2. Inspections of MS4 facilities (D.3.a.(3)(b)(i), D.3.a.(3)(b)(ii).);
3. Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (Part D.3.a.(3)(b)(iv).);

²²⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 11-12, 20.

²³⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

²³¹ Government Code section 17561.

²³² Exhibit A, Amended Test Claim Decision on Remand, page 79.

²³³ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 15.

4. Proper disposal of waste removed pursuant to applicable laws (Part D.3.a.(3)(b)(v));
5. Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (Part D.3.a.(3)(b)(vi)).²³⁴

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.²³⁵ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.²³⁶

The 2025 Quenzer declaration addresses training by concluding that training "is reasonably necessary to carry out the required catch basin cleaning," but there is no explanation on why training is necessary to comply with the mandate which appears straight forward and represents only a higher level of service when compared to the prior permit, which expressly required MS4 cleaning for the removal of waste and proper disposal of waste.²³⁷ In addition, the claimants' proposed RRM for this activity does not include any training costs and, thus, it is not clear why the claimants are requesting reimbursement for training.²³⁸

Therefore, the claimants' proposed reasonably necessary activities related to the JURMP Conveyance System Cleaning requirements 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

²³⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 57-62.

²³⁵ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

²³⁶ California Code of Regulations, title 2, section 1187.5.

²³⁷ See Exhibit A, Amended Test Claim Decision on Remand, page 72.

²³⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 36 (2025 Quenzer Declaration, paragraph 15.b.2.).

those for “municipal departments and personnel.”²³⁹ Thus, the Commission found that the following new education-related activities are eligible for reimbursement:

- D.5.a.(1): Each copermittee shall educate each target community (municipal departments, construction site owners and developers, industrial owners and operators, commercial owners and operators, the residential community, the general public, and school children) on the following topics: erosion prevention, non-stormwater discharge prohibitions, and BMP types: facility or activity specific, LID, source control, and treatment control.
- D.5.a.(2): The educational programs shall emphasize underserved target audiences, high-risk behaviors, and “allowable” behaviors and discharges, including various ethnic and socioeconomic groups and mobile sources.
- D.5.b.(1)(a): Implement an education program so that planning boards and elected officials, if applicable, have an understanding of: (i) Federal, state, and local water quality laws and regulations applicable to Development Projects;²⁴⁰ 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.”²⁴¹
- 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,

²³⁹ Exhibit A, Amended Test Claim Decision on Remand, page 79.

²⁴⁰ 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 U (13), Test Claim, page 345 (Order No. R9-2007-0001, Attachment C).

²⁴¹ The conclusion in the Amended Decision states that these educational topics in i.-iv. are reimbursable for “Planning Boards and Elected Officials.” Exhibit A, Amended Test Claim Decision on Remand, pages 141-142. The Commission found, however, that all the topics in (a) i.-iv. are new for planning boards and elected officials, and the topics in (a) iii.-iv. are also new for planning and development review staffs. Exhibit A, Amended Test Claim Decision on Remand, page 80.

and grading review staffs, inspectors, and other responsible construction staff have, at a minimum, an understanding of the topics in parts D.5.b.(1)(b)(iii), (iv), (v), and (vi) of the permit, as follows:

- iii. Proper implementation of erosion and sediment control and other BMPs to minimize the impacts to receiving water quality resulting from construction activities.
 - iv. The Copermittee's inspection, plan review, and enforcement policies and procedures to verify consistent application.
 - v. Current advancements in BMP technologies.
 - vi. SUSMP [Standard Urban Storm Water Mitigation Plan]²⁴² 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

²⁴² 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 U (13), Test Claim, page 351 (Order No. 2007-0001, Attachment C).

trips, hands-on experiences, or other educational methods.²⁴³ The topics of education are listed in Table 3 of the test claim permit.²⁴⁴

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

Jurisdictional Urban Runoff Management Program, Section D, . . . "Each Copermittee shall implement all requirements of section D of this Order no later than ~~365~~ **425** days after adoption of the Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of the Order each Copermittee shall at a minimum implement is Jurisdictional URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01."²⁴⁵

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.²⁴⁶ 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."²⁴⁷ Thus, this portion of the Parameters and Guidelines references both Part D.5.b.3. and the first sentence in Part L.1. Although there is overlap between Part D.5.b.3. and Part L.1., and Part L.1. was not delayed by the Regional Board's Addendum, the Commission finds that the collaboration required here was delayed until no later than March 24, 2008, since all of the provisions of Part D. were delayed.²⁴⁸

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,

²⁴³ Exhibit A, Amended Test Claim Decision on Remand, pages 74, 78-84, 141-143.

²⁴⁴ Exhibit U (13), Test Claim, pages 298-299 (Order R9-2007-0001, Table 3).

²⁴⁵ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁴⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

²⁴⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 82-83.

²⁴⁸ Under the rules of statutory interpretation, when a conflict exists between general and specific provisions in the law, the specific provisions prevail over the general provisions relating to the same subject. Code of Civil Procedure section 1859; *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, 942-943.

collaboration, and development of the educational program, training, policy development, establishment of procedures, and updates to the same. While program development tasks are generally one-time costs, the permit requires measurable increases in knowledge and measurable changes in behavior, which necessitate annual reviews and periodic updates to the program; therefore these costs are also included.

- Reporting and Tracking Policies and Procedures: Claimant's personnel costs to develop, update and implement reporting and tracking policies and procedures.
- Data Tracking and Analysis: Claimant's costs to implement and update data tracking and analysis methods and procedures and personnel costs to develop and maintain data tracking methods or systems and performing data tracking and analysis for reports to the Regional Water Quality Control Board, as well as the costs of purchases of and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting in of the reimbursable mandate in compliance with the Permit.
- Educational Materials. Claimant's personnel and printing costs to develop, produce, and distribute educational materials and related reporting to document the efforts.
- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for providing education to target communities and the costs of training of all claimant 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).²⁴⁹

²⁴⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 44-45.

The Water Boards comment that there is insufficient detail for the first two activities: report tracking policies and procedures and data tracking and analysis.²⁵⁰ 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 copermitees must segregate those costs to avoid seeking improper reimbursement.²⁵¹ As to data tracking and analysis, the Water Boards state that claimants have not identified the computer upgrades or why they are necessary to perform the reimbursable activities. The Water Boards also object to purchasing computer equipment and upgrades unless they are limited to what is necessary to comply with the permit and segregated for reimbursable activities. According to the Water Boards, the claimants should be required to transparently demonstrate what percentage of computer equipment is reimbursable beyond the prior permit.²⁵²

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 copermitees must segregate those costs to avoid seeking improper reimbursement.²⁵³ 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.²⁵⁴ 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.²⁵⁵

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

²⁵⁰ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, page 12.

²⁵¹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 12-13.

²⁵² Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 12, 13.

²⁵³ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 13.

²⁵⁴ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 6, 13.

²⁵⁵ Exhibit D, Water Boards' Combined Comments on the Proposed Parameters and Guidelines, pages 6, 13.

a cost-benefit analysis, that they are the most cost effective and reasonable way to comply with the mandate.²⁵⁶

In response to the Water Boards, the claimants revised their proposed reimbursable activities to specify only those that are reasonably necessary, and agree that only prorated costs are appropriate. The claimants also explain that Educational Program Development activities that incorporate hydromodification management plan activities or low impact development activities are now explicitly prohibited in the claimant's revised proposed Parameters and Guidelines.²⁵⁷ In response to the Water Boards' comments on data tracking and analysis, the claimants state that computer and software upgrades are necessary to comply with the updated data tracking and analysis requirements in the test claim permit. Because computer systems vary among the claimants, the claimants propose that each jurisdiction claim upgrades that fit their system, which would be "disclosed and justified on reimbursement claim forms submitted to SCO in accordance with their Mandated Cost Manual. . . ." ²⁵⁸ 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.²⁵⁹ 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."²⁶⁰ The claimants revised their proposed activities for educating target audiences and report writing to increase specificity and agree that proration is appropriate.²⁶¹ 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

²⁵⁶ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 8-9, 12.

²⁵⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 13.

²⁵⁸ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 12, 13, 22-23.

²⁵⁹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 3-5, 23.

²⁶⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 24.

²⁶¹ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 4-5, 24.

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.”²⁶²

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.”²⁶³

However, the introductory paragraph in Part D.5. and language in Part D.5.b.1.-2. mandate that each copermittee only *implement* an education program for the other target communities (municipal departments and personnel, new development and construction) and does not expressly require developing those programs.²⁶⁴ In construing regulations and statutes, it is a well-established rule that the use of different words indicates that different meanings are intended.²⁶⁵ 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.

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

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

Additionally, the Commission’s reliance on rules relating to legislative interpretation is misplaced. The general rules of statutory construction

²⁶² Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 13, 22.

²⁶³ Exhibit A, Amended Test Claim Decision on Remand, pages 82-83.; see also Exhibit U (13), Test Claim, page 300 (Order No. R9-2007-0001).

²⁶⁴ Exhibit U (13), Test Claim, pages 297-300 (Order No. R9-2007-0001).

²⁶⁵ *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.

and interpretation requires laws and rules to be read in a manner that is harmonious with *all* laws. [Citation omitted.] Here, interpreting the mandate as only including the implementation of the education system is improper because it explicitly conflicts with both Government Code section 17557 and California Code of Regulations, title 2, section 1183.7.

Reimbursement is proper for “activities that are reasonably necessary for the performance of the state mandated program.” [Cite to Gov. Code, § 17557 & CCR, tit.2, § 1183.7.] As stated above, it is unreasonable to expect implementation of a program that is new or different without some type of development of this program. Interpreting the mandate as only including implementation improperly ignores Government Code section 17557 and California Code of Regulations, title 2, section 1183.7. Therefore, development costs should be reimbursed along with the implementation. As part of the claims process, the Municipal Claimants should be permitted to submit evidence of these reasonable and necessary costs.²⁶⁶

However, educational programs for municipal departments and personnel, as well as for developers and construction site owners *were also required under the prior permit*,²⁶⁷ and as stated above, the plain language of the test claim permit does not require developing the program. Moreover, there is no evidence in the record that developing a program for the other target communities is reasonably necessary to comply with the mandate.²⁶⁸ Thus, the Commission finds 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.²⁶⁹

²⁶⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 13.

²⁶⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 79-83.

²⁶⁸ California Code of Regulations, title 2, section 1183.7(d).

²⁶⁹ Exhibit A, Amended Test Claim Decision on Remand, page 100. According to declarations in the Test Claim record, including this by Jon Van Rhyn of the County of San Diego: “Compliance with these mandated activities [in Section D.5.] requires the routine incorporation of testing and surveying methods into the program elements to ensure that implementation is resulting in the targeted outcomes. To comply with this mandate, the County expects to expend 288 hours of staff time in FY 2008-09, and

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.²⁷⁰

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."²⁷¹

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.²⁷² In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation, and all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so.²⁷³

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

- c. Educational Component (Parts D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii.-vi.), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3),

each year thereafter, to develop, administer and analyze surveys and tests." Exhibit U (13), Test Claim, page 589, (Declaration of Jon Van Rhyn, Water Quality Manager, County of San Diego).

²⁷⁰ Government Code section 17561.

²⁷¹ California Code of Regulations, title 2, section 1183.7(d).

²⁷² Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

²⁷³ California Code of Regulations, title 2, section 1187.5.

and the first sentence in Part L.1.) No later than March 24, 2008, the claimants shall comply with the following mandated activities:²⁷⁴

- 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.

²⁷⁴ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- 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).²⁷⁵*

- 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 on those topics listed in Table 3 of the test claim permit. The plan shall evaluate use of mass media, mailers, door hangers, booths at public events,

²⁷⁵ Exhibit A, Amended Test Claim Decision on Remand, page 82.

classroom education, field trips, hands-on experiences, or other educational methods. (D.5.b.(3) and the first sentence in Part L.1.)

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

The Commission partially approved reimbursement for the following new state-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):²⁷⁶

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

f. Watershed Activities

(1) The Watershed Copermittees shall identify and implement Watershed Activities that address the high priority water quality problems in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education Activities. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.

²⁷⁶ 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 U (13), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

Watershed Urban Runoff Management Plan is defined in Attachment C of the test claim permit as: “A written description of the specific watershed urban runoff management measures and programs that each watershed group of Copermittees will implement to comply with this Order and ensure that pollutant discharges in urban runoff are reduced to the MEP and do not cause or contribute to a violation of water quality standards.” Exhibit U (13), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

The Watershed Management Areas (WMAs) identified in the test claim permit are: Santa Margarita River, San Luis Rey River, Carlsbad, San Dieguito River, Peñasquitos, Mission Bay, San Diego River, San Diego Bay, and Tijuana River. Exhibit U (13), Test Claim, pages 303-304 (Order No. R9-2007-0001, Table 4).

(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.²⁷⁷

In addition, the first sentence in Part L.1. of the test claim permit that the Commission found reimbursable requires copermittee collaboration “to address common issues, [and] promote consistency among Watershed Urban Runoff Management Programs” and, therefore, this section of the Parameters and Guidelines also references the first sentence in Part L.1.²⁷⁸ 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.²⁷⁹

Section E.1. of the test claim permit required each copermittee to implement the requirements of Section E no later than 365 days after the adoption of the test claim permit (or no later than January 24, 2008), and until then, the permittees were required to implement the Watershed URMP document developed under the prior permit, Order No. 2001-01.²⁸⁰ Implementation of Section E was subsequently delayed by order of the Regional Board dated December 12, 2007, to March 24, 2008, as follows:

- c. Watershed Urban Runoff Management Program, Section E.1, . . . “Each Copermittee shall implement all requirements of section E of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order. Prior to ~~365~~ **425** days after adoption of this Order, each Copermittee shall collaborate with the other Copermittees within its

²⁷⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 72-77, emphasis added.

²⁷⁸ Exhibit U (13), Test Claim, page 329 (Order No. R9-2007-0001).

²⁷⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 90, 111. According to the Decision: “Part L.1 of the 2007 permit, the first paragraph in L. requiring collaboration, is identical to part N. of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e., not in the 2001 permit) including the Regional Urban Runoff Management Program.”

²⁸⁰ Exhibit U (13), Test Claim, page 300 (Order No. R9-2007-0001).

Watershed Management Area(s) (WMA) to at a minimum implement its Watershed URMP document, as the document was developed and amended to comply with the requirements of Order No. 2001-01.”²⁸¹

Although there is overlap between Parts E.2.f. and E.2.g. and Part L.1., and Part L.1. was not delayed by the Addendum of the Regional Board, the Commission finds that the collaboration required here was delayed until no later than March 24, 2008, since all of the provisions of Part E were delayed.²⁸²

Thus, the mandated activities are identified in Section IV.B.2. of the Parameters and Guidelines, with clarification that implementation began no later than March 24, 2008.

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

- Working Body Support and Representation: Claimant’s costs to organize and administer the Watershed Urban Runoff Management Program (“WURMP”) Working Bodies.²⁸³ And the costs incurred 1) to perform the responsibilities of chairs,²⁸⁴ co-chairs, and secretaries,²⁸⁵ 2) attend and participate at meetings

²⁸¹ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

²⁸² Under the rules of statutory interpretation, when a conflict exists between general and specific provisions in the law, the specific provisions prevail over the general provisions relating to the same subject. *Pacific Lumber Co. v. State Water Resources Control Board* (2006) 37 Cal.4th 921, 942-943.

²⁸³ Permit Part E.2.g. requires the collaborative development and implementation of a WURMP for each of the following WMAs: 1) Santa Margarita River; 2) San Luis Rey River; 3) San Dieguito River; 4) Peñasquitos; 5) Mission Bay; 6) San Diego River; 7) San Diego Bay; 8) Tijuana River. Exhibit U (13), Test Claim, pages 302-304 (Order No. R9-2007-0001, Table 4).

²⁸⁴ MOU Section I defines a Chair as follows: “Chair means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as the Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs.” Exhibit U (13), Test Claim, page 497 (MOU).

²⁸⁵ 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,

(including preparation and travel time), 3) other activities required for planning, discussion, and coordination such as telephone calls, emails, and video conferencing. Required tasks include 1) developing and distributing meeting agendas and notes, and 2) distributing, presenting, reviewing, and approving any of the Watershed Work Products described below.

- Collaborative Watershed Work Product Development. Claimant's Personnel costs to develop and update WURMP Work Products and the costs of such activities, including:
- Watershed Urban Runoff Management Programs ("WURMPs"). A WURMP that includes all the elements described in Permit Part E.2.;
- Watershed Activities Lists. Any Watershed Quality Activity²⁸⁶ or Watershed Education Activity²⁸⁷ 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 Copermittees 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 Copermittees, 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 Copermittees and interested parties. Status reports typically describe Watershed Working Body activities and

coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body." Exhibit U (13), Test Claim, page 497-499 (MOU).

²⁸⁶ Watershed quality activities are "activities other than education that address high priority water quality problems in the WMA." Exhibit U (13), Test Claim, page 302 (Order No. R9-2007-0001).

²⁸⁷ Watershed education activities are "Outreach and training activities that address high priority water quality problems in the WMA." Exhibit U (13), Test Claim, page 302 (Order No. R9-2007-0001).

accomplishments, success in completing scheduled tasks, and key issues, activities, and tasks to be addressed; and

- Other Watershed Work Products. Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2.
- Watershed Implementation of Programs and Activities. Claimant's costs for the ongoing implementation of programs and activities funded and/or conducted at the watershed level and Watershed programs and activities costs including:
 - Watershed Water Quality Activities
 - Watershed Education Activities
 - Other programs and activities required to implement the WURMP.

Implementation costs associated with these programs and activities including:

- Materials production and distribution, equipment, supplies, fees, media purchases, and other costs associated with program implementation.
- Equipment. The actual cost of purchasing, renting, leasing, or contracting for vehicles and equipment to perform watershed activities mandated by the Permit. This includes one-time costs for vehicle and equipment purchases and corresponding equipment depreciation costs.
- Vehicle and Equipment Maintenance. Annual vehicle and equipment maintenance costs, including parts, supplies (e.g., water), and Personnel Costs. This also includes the costs of operating, renting, leasing, or contracting for facilities to store and maintain the vehicles and/or equipment and supplies.
- Fuel. The actual cost of the fuel for the vehicles and equipment performing watershed activities mandated by the Permit.
- Reporting and Tracking Policies and Procedures. Claimant's personnel costs to develop, update, and implement each WMA activity and tracking policies and procedures.
- Data Tracking and Analysis. Claimant's costs to develop, update, and implement data tracking and analysis methods and procedures for reports to the Regional Water Quality Control Board and costs of purchases and upgrades to equipment, hardware, software necessary to support data tracking, analysis, and reporting in compliance with the Permit and subject to the reimbursable mandate.
- Report Writing. Claimant's personnel costs to develop and write reports to the Regional Water Quality Control Board.

- Employee and Vendor Annual Training. Claimant's costs to develop, update, and conduct training of staff responsible for developing or conducting WMA activities and costs of training of all claimant and vendor employees who perform tasks necessary to implement these functions during the life of the Permit.
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with WURMP development and implementation and costs of documenting and monitoring expenditures incurred in developing and distributing budget balance and expenditure reports, and claim submittal forms and costs of individual Copermittee activities in developing and maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis and reporting.
- Coordination. Claimant's personnel costs, to coordinate WURMP Working Body content, issues, programs, and activities with organizations and parties outside the claimant's jurisdiction and the costs of coordination with Regional Board staff, participation at professional organizations and societies, and representation on applicable California Stormwater Quality Association ("CASQA") working bodies.
- Employee Supervision and Management. (See Section IV.A).
- Contracted Services. (See Section IV.A).²⁸⁸

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.²⁸⁹

²⁸⁸ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 49-52.

²⁸⁹ Exhibit D, Water Boards' Comments on the Proposed Parameters and Guidelines, pages 13-14.

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.²⁹⁰

The 2025 Quenzer Declaration also addresses mileage costs and states that the costs associated mileage costs are reasonably necessary to comply with the mandate as follows:

Many watershed activities include field work to make observations, interact with the public, etc. Because these activities take place away from Co-Permittees' offices, mileage or other transportation costs are appropriate. Where a watershed activity can be completed without transportation being needed, mileage and other transportation costs are not included in the activity's cost.²⁹¹

First, as stated earlier, pro rata direct costs for employee supervision and management, materials and supplies, fixed assets (including computers and software), travel (including mileage), and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A.

In addition, the proposed "reporting" and "report writing activities," including the data tracking and analysis for reports, are too broadly stated and, as stated, may be required by Parts J.1.b. (submitting the WURMP to the Regional Board) and J.3.b. (submitting WURMP annual reports to the Regional Board) of the test claim permit, which were not pled in the Test Claim. The mandate here is limited to submitting the Watershed Activities List to the Regional Board, and not the plan or annual report itself. In this respect, however, the 2025 Quenzer declaration, signed under penalty of perjury, states that a Regional Watershed Activities Database was developed to track the watershed activities that are newly required by the test claim permit.²⁹² The mandate is to submit a Watershed Activities List with each updated WURMP and updated annually thereafter. The Watershed Activities List is required to include the following detailed 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

²⁹⁰ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 24-26.

²⁹¹ Exhibit T, Claimants' Comments on the Revised Proposed Decision and Parameters and Guidelines, page 46 (2025 Quenzer Declaration, para. 17.b.3.).

²⁹² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 47 (2025 Quenzer Declaration, para. 17.c.2.).

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.

Based on the 2025 Quenzer declaration and the fact that the Watershed Activities List requires detailed information on each activity to be submitted to the Regional Board, the Commission finds that the following activities are reasonably necessary to comply with the Watershed Activities List requirements:

- The *one-time* activity and pro-rata share of costs to develop a data tracking and analysis system for gathering and reporting the new data required to be included in the Watershed Activities List identified above. Reimbursement is **not** required to the extent that the data tracking and analysis system was developed for the purpose of submitting the WURMP annual report as a whole.
- The *ongoing* activity of recording the data identified above in the data tracking system to prepare the Watershed Activities List.

However, the claimants' remaining 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"²⁹³ 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.²⁹⁴ 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.²⁹⁵ The Test Claim Decision limited reimbursement for collaboration to the new activities in Part E.2.f., which the Commission found mandated a new program or higher level of service.²⁹⁶ Thus,

²⁹³ Exhibit U (13), Test Claim, page 499 (MOU).

²⁹⁴ Exhibit U (13), Test Claim, page 527 (MOU).

²⁹⁵ Exhibit A, Amended Test Claim Decision on Remand, page 90; see also pages 111-112 for a discussion of the MOU under the prior permit.

²⁹⁶ Exhibit A, Amended Test Claim Decision on Remand, page 90. The Decision states: "As to part E.2.g., although the 2001 (in parts J.1. & J.2.) and 2007 permits both require

substantial evidence in the record is required to show that the costs incurred to “organize and administer the WURMP Working Bodies” are reasonably necessary to comply with the mandate to “develop and implement an **updated** Watershed Urban Runoff Management Program.” In addition, the claimant’s reimbursement request for developing and updating WURMP work products “that includes all the elements described in Permit Part E.2.” is overly broad, as the Commission only approved Parts E.2.f. (watershed activities, including watershed education activities) and E.2.g. (copermittee collaboration) for reimbursement.

Accordingly, Section IV.B.2. of the Parameters and Guidelines identifies the following reimbursable activities:

1. Watershed Urban Runoff Management Program (WURMP) (Parts E.2.f, E.2.g, and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following activities:²⁹⁷
 - a. Each Copermittee shall collaborate with other Copermittees within its Watershed Management Area identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below.
 - b. Update the WURMP to include and implement *only* the following elements:
 - i. Watershed Activities that address the **high priority** water quality problems in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education Activities. Watershed Water Quality Activities are activities other than education that address the high priority water quality problems in the WMA. A Watershed Water Quality Activity implemented on a jurisdictional basis must be organized and implemented to target a watershed’s high priority water quality problems or must exceed the baseline jurisdictional requirements of section D of this Order. Watershed Education Activities are outreach and training activities that

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.”

²⁹⁷ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

address high priority water quality problems in the WMA.²⁹⁸ 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.
- iv. Reimbursement for the Watershed Activities List identified in Section IV.B.2.b.ii. and iii. of these Parameters and Guidelines includes the following:
 - The *one-time* activity and pro-rata share of costs to develop a data tracking and analysis system for gathering and reporting the new data required to be included in the Watershed Activities List identified above. Reimbursement is **not** required to the extent that the data tracking and analysis system was developed for the purpose of submitting the WURMP annual report as a whole.

²⁹⁸ Exhibit U (13), Test Claim, page 143 (Order No. R9-2007-0001, Part E.2.f.1.a. & b.).

- The *ongoing* activity of recording the data identified above in the data tracking system to prepare the Watershed Activities List.
- c. Each Watershed Copermittee shall implement identified Watershed Activities pursuant to established schedules. For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences.

4. Regional Urban Runoff Management Program (Part IV.B.3. of the Parameters and Guidelines)

The Commission approved the following new state-mandated activities based on Parts F.1.-F.3. of the test claim permit relating to the Regional Urban Runoff Management Program (RURMP):²⁹⁹

Each copermittee shall collaborate with the other copermittees 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

²⁹⁹ 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 Copermittees 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 U (13), Test Claim, page 350 (Order No. R9-2007-0001, Attachment C).

program, the pollutant can be substituted for one of these pollutants.

- b. Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a.
2. Develop the standardized fiscal analysis method required in section G of the permit,³⁰⁰ and,
3. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs.³⁰¹

These activities are identified in the Parameters and Guidelines, with clarifying modifications as discussed below.

There is some overlap between Parts F.1.-F.3. and other parts of the permit the Commission found reimbursable. For example, collaboration is also required in Part L.1., and the Commission approved reimbursement for the requirement in Part L.1. for the copermittees to collaborate with each other to address common issues, and to plan and coordinate activities, which were found to mandate a new program or higher level of service.³⁰² Thus, the Parameters and Guidelines identify Part L.1. together with Parts F.1.-F.3.

However, the requirement in Part F.3., that the RURMP be developed and implemented to “facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs,” needs further interpretation. Part I also requires program effectiveness assessment. As described in the next section below, the Commission

³⁰⁰ 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 U (13), Test Claim, page 305 (Order No. R9-2007-0001, Part G.2.)

³⁰¹ Exhibit A, Amended Test Claim Decision on Remand, pages 91-92, 96, 144-145.

³⁰² Exhibit A, Amended Test Claim Decision on Remand, pages 109-112, 150.

approved reimbursement to annually assess the jurisdictional and watershed programs, as required by Parts I.1. and I.2., and to conduct a long-term effectiveness assessment (a one-time activity) that addresses the jurisdictional, watershed, and regional programs “no later than 210 days in advance of the expiration of this [test claim permit],” as required by Part I.5. Conducting the assessments is provided for in Part I, so “*facilitate* the assessment . . . of the jurisdictional, watershed, and regional programs” does not mean to actually assess these programs. The general rule is that materially different language in a statute or regulation on the same or related subjects indicates a different meaning is intended.³⁰³ 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.³⁰⁴ Neither the test claim permit nor the Fact Sheet explains what “*facilitate*” the assessment of the effectiveness of the jurisdictional, watershed, and regional programs means. The best description of facilitating assessments is in the MOU, which lists the general responsibilities of regional workgroups and sub-workgroups (or working bodies), including their roles in facilitating consistency in the program and developing, annually reviewing, and updating as necessary subject-specific standards for assessments. It states in pertinent part:

The purpose of Regional Workgroups and Sub-workgroups is to provide regional coordination of urban runoff management activities within assigned subject areas, to develop and implement recommended Regional General Programs, and to provide coordination of activities with stakeholders and interested parties. Regional Workgroups are advisory to the Management Committee through the Planning Subcommittee. Regional Sub-workgroups are advisory to the Regional Workgroups to which they are subordinate.

¶ . . . ¶

At a minimum, each Regional Workgroup and Sub-workgroup shall have the following responsibilities within its assigned subject area:

¶ . . . ¶

Facilitate consistency in the development, implementation, review, and revision of General Programs, and the development of associated reports and work products;

³⁰³ *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.

³⁰⁴ Exhibit U (13), Test Claim, pages 201, 209-212 (Order No. R9-2007-0001).

Develop, annually review, and update as necessary subject-specific standards for reporting, *assessment*, and data and information management;³⁰⁵

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].³⁰⁶ 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.5.³⁰⁷

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.³⁰⁸ The dictionary defines "facilitate" as "to make easier" or to "help bring out."³⁰⁹ The MOU's description of developing, annually reviewing, and updating as necessary subject-specific standards for assessments fall within that definition. Thus, the Parameters and Guidelines clarify that reimbursement for this activity includes "facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments."

In addition, Section F. of the test claim permit states "The Copermittees shall implement all requirements of section F of this Order no later than 365 days after adoption of this Order," or by January 24, 2008.³¹⁰ By an Addendum of the Regional Board dated December 12, 2007, that date was further delayed until March 24, 2008, as follows:

³⁰⁵ Exhibit U (13), Test Claim, pages 513-514 (MOU). Emphasis added.

³⁰⁶ 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 U (13), Test Claim, page 499 (MOU).

³⁰⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 53.

³⁰⁸ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 567.

³⁰⁹ Exhibit U (5), 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).

³¹⁰ Exhibit U (13), Test Claim, page 304 (Order No. R9-2007-0001).

- c. Regional Urban Runoff Management Program, Section F, . . . “The Copermittees shall implement all requirements of section F of this Order no later than ~~365~~ **425** days after adoption of this Order, unless otherwise specified in this Order.”³¹¹

This information is included in the Parameters and Guidelines.

The claimants also request reimbursement for the following costs and alleged “reasonably necessary” activities:

- Regional Coordination of Copermittees and Regional Working Bodies. Claimant’s costs to develop, distribute, review, and present work products necessary for regional planning, coordination, and collaboration amongst Copermittees and Regional Working Bodies and the costs of written work products, presentations at meetings, and other means of coordination and review such as email.
- 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;

³¹¹ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- 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.³¹²
 - 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

³¹² The standardized fiscal method must be submitted to the Regional Board by January 31, 2009. It is a one-time requirement.

- Annual Regional Effectiveness Assessments
- Programs and Activities Included as Part of the Regional URMP
- Cost Accounting and Documentation. Claimant's personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with Regional Working Body Work Plans and Budgets and the Copermittees' Annual Regional Work Plan and Regional Shared Costs Budget and costs associated with documenting and monitoring expenditures (e.g., developing and distributing budget balance and expenditure reports, claim submittal forms) incurred pursuant to approved Regional Working Body Work Plans and Budgets. It also includes the individual Copermittee costs of developing or maintaining data tracking methods or systems, and of performing data tracking and analysis (including staff training), as well as the costs of purchases and upgrades to equipment, hardware, and software necessary to support expenditure tracking, analysis, and reporting.
- 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).³¹³

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.³¹⁴ 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

³¹³ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 53-56.

³¹⁴ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 15.

unreimbursable purposes . . . in a verifiable manner.”³¹⁵ Additionally, the Water Boards specifically object to the claimant’s proposed Report of Waste Discharge (ROWD) as a regional work product because a ROWD was not approved by the Commission and is required by federal law.³¹⁶

In rebuttal comments, the claimants revised their proposed activities to reduce open ended and vague activities.³¹⁷ 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.³¹⁸ The claimants also disagree that vendor training should not be recoverable.³¹⁹ The claimants acknowledge that costs for computer equipment should be prorated to cover only the reimbursable activities.³²⁰ The claimants also agree that the costs of preparing and submitting a ROWD should not be reimbursable, and deleted it from their proposed activities.³²¹

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.

³¹⁵ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, pages 6, 14-15.

³¹⁶ Exhibit D, Water Boards’ Comments on the Proposed Parameters and Guidelines, page 15.

³¹⁷ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 5.

³¹⁸ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 27.

³¹⁹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, pages 5-6, 27.

³²⁰ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 27.

³²¹ Exhibit E, Claimants’ Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 28.

In addition, the reimbursement request for regional implementation of programs and activities, including the “annual regional effectiveness assessments” is denied. As indicated above, the claimants did not plead Part I.3. of the test claim permit, which addresses the regional annual effectiveness assessment.

Moreover, much of the claimants’ proposed language is overbroad and not narrowly tailored to the state-mandated activities approved by the Commission. These include, for example, “Claimant’s personnel costs to develop and update *any regional work product* identified in an approved Regional Working Body Work Plan and Budget;” “Any Regional Working Body Work Product not specifically identified above, but required by the Permit or necessary to achieve or maintain Permit compliance;” “Claimant’s personnel costs to monitor and conduct cost accounting for all expenditures incurred in accordance with Regional Working Body Work Plans and Budgets;” and “Claimant’s personnel costs to coordinate Regional Working Body content, issues, programs, and activities with external organizations and parties and coordination with Regional Board 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.³²²

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:

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

No later than March 24, 2008, each copermitttee shall collaborate with the other Copermitttees to develop, implement, and update as necessary a Regional Urban Runoff Management Program that reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.³²³ 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.

³²² California Code of Regulations, title 2, section 1183.7(d).

³²³ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- Education efforts focused on the specific residential sources of the pollutants listed in section F.1.a. (bacteria, nutrients, sediment, pesticides, and trash).
- b. Develop the standardized fiscal analysis method required in Section G. of the permit. The standardized fiscal analysis method shall:
- Identify the various categories of expenditures attributable to the urban runoff management programs, including a description of the specific items to be accounted for in each category of expenditures.
 - Identify expenditures that contribute to multiple programs or were in existence prior to implementation of the urban runoff management program.
- c. Facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs. This includes facilitating consistency in the assessment 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 Copermittee 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 1-6³²⁴ 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.

³²⁴ 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 U (13), Test Claim, pages 345-346 (Order No. R9-2007-0001, Attachment C).

- (5) Utilize Implementation Assessment,³²⁵ Water Quality Assessment,³²⁶ and Integrated Assessment,³²⁷ where applicable and feasible.
- b. Based on the results of the effectiveness assessment, each copermitttee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order.³²⁸ The copermitttees 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 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.

2. Watershed

³²⁵ Implementation Assessment is defined in Attachment C of the test claim permit as an “Assessment conducted to determine the effectiveness of copermitttee programs and activities in achieving measurable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” Exhibit U (13), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).

³²⁶ 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 U (13), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).

³²⁷ 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 U (13), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).

³²⁸ Section A of the permit governs discharge prohibitions and receiving water limitations. Exhibit U (13), Test Claim, 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.³²⁹ 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.³³⁰

As indicated above, the effectiveness assessment of the JURMP is required to be included in the annual report, which as stated previously, is due September 30, 2008 and every September 30 thereafter for the previous fiscal year.³³¹ In addition, the effectiveness assessment of each watershed group of permittees (as identified in Table 4 of the test claim permit) is required to be reported in the annual WURMP report, which is due by January 31, 2009 and every January 31 thereafter for the previous fiscal year.³³² The Parameters and Guidelines identify these activities in Section IV.B.4. and these reporting due dates are included in the Parameters and Guidelines.

The Commission also approved reimbursement to conduct a one-time, long term effectiveness assessment.

Long Term Effectiveness Assessment (Part I.5.):

- a. Collaborate with the other Copermittees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' August 2005 Baseline LTEA. The LTEA shall be

³²⁹ Section A of the permit governs prohibitions and receiving water limitations. Exhibit U (13), Test Claim, pages 265-267 (Order R9-2007-0001.)

³³⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 145-149.

³³¹ Exhibit U (13), Test Claim, page 319 (Order R9-2007-0001.)

³³² Exhibit U (13), Test Claim, page 327 (Order R9-2007-0001.)

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)³³³ of this Order, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle.
- c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).
- d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis 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

³³³ Part I.3.a.(6) of the permit states: "At a minimum, the annual effectiveness assessment shall: (6) Include evaluation of whether the Copermittees' jurisdictional, watershed, and regional effectiveness assessments are meeting the following objectives: (a) Assessment of watershed health and identification of water quality issues and concerns. (b) Evaluation of the degree to which existing source management priorities are properly targeted to, and effective in addressing, water quality issues and concerns. (c) Evaluation of the need to address additional pollutant sources not already included in Copermittee programs. (d) Assessment of progress in implementing Copermittee programs and activities. (e) Assessment of the effectiveness of Copermittee activities in addressing priority constituents and sources. (f) Assessment of changes in discharge and receiving water quality. (g) Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality. (h) Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies." Exhibit U (13), Test Claim, page 309 (Order No. R9-2007-0001).

Urban Runoff Management Programs, and to plan and coordinate activities required under this Order.³³⁴

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.³³⁵ 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].”³³⁶ Therefore, this is listed as a one-time activity in section IV.A.2. of the Parameters and Guidelines.

The claimants also request reimbursement for the following alleged reasonably necessary activities:

- Program Development. Claimant’s costs to develop and annually update JURMP and WURMP effectiveness assessment methods, approaches, and documentation (e.g., policies, procedures, manuals and forms), as well as data management systems and tools necessary to support the implementation of effectiveness assessments.
- Program Implementation. Claimant’s personnel costs to conduct the annual JURMP and WURMP effectiveness assessments in accordance with the Copermittee’s effectiveness assessment program and the requirements of Parts I.1 and I.2 of the Permit and the costs of purchases and upgrades to equipment, hardware, and software necessary to support data tracking, analysis, and reporting.
- Employee and Vendor Annual Training. Claimant’s costs to develop, update, and conduct training of staff responsible for developing or conducting effectiveness assessments and the costs of training claimant and vendor employees who perform tasks necessary to implement assessment functions during the life of the Permit.
- JURMP and WURMP Modifications. Claimant’s personnel costs to modify the JURMP and WURMP based upon the results of effectiveness assessments in accordance with the requirements of Parts I.1.b and I.2.b of the Permit and the costs of the development

³³⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 149-150.

³³⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

³³⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 105, 107, 149.

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).³³⁷

First, the direct costs for personnel, materials and supplies, fixed assets, and contracted services that relate directly to the state-mandated activities may be claimed under Section V.A.

In addition, the claimants' request for reimbursement "to develop and write reports" required as part of the annual assessments of the JURMP and WURMP is already identified in the mandated activities. As indicated above, the Commission approved the following activities required by Part I.1.c. and I.2.c. as reimbursable state-mandated activities:

- As part of its Jurisdictional Urban Runoff Management Program Annual Reports, each Copermittee *shall report* on its Jurisdictional Urban Runoff Management Program effectiveness assessment as implemented under each of the requirements of sections I.1.a and I.1.b above.³³⁸
- 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.³³⁹

The annual reports for the JURMP and WURMP are governed by Part J.3. of the test claim permit, which generally requires the copermittees to submit detailed annual reports comprehensively describing all their efforts to meet the JURMP and WURMP requirements, including reporting the assessment of the effectiveness of these programs.³⁴⁰ 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.

³³⁷ Exhibit E, Claimants' Rebuttal Comments and Revised Proposed Parameters and Guidelines, page 61.

³³⁸ Exhibit A, Amended Test Claim Decision on Remand, pages 101, 147.

³³⁹ Exhibit A, Amended Test Claim Decision on Remand, pages 103, 149.

³⁴⁰ Exhibit U (13), Test Claim, pages 324, 327 (Order No. R9-2007-0001, Part J.3.a.3.i., JURMP and J.3.b.2.m., WURMP).

There is no evidence in the record supporting any of the claimants' proposed reasonably necessary activities to comply with the mandate in Part I, so these requested activities and costs are denied. Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandated activity in accordance with the Government Code and Commission's regulations.³⁴¹ In addition, the Commission's regulations require that oral or written representations of fact shall be under oath or affirmation and if written must be signed under penalty of perjury by persons who are authorized and competent to do so.³⁴²

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 Copermittees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' August 2005 Baseline LTEA. The LTEA shall be submitted by the Principal Permittee to the Regional Board no later than 210 days in advance of the expiration of the test claim permit.
 - b. The LTEA shall be designed to address each of the objectives listed below, and to serve as a basis for the Copermittees' Report of Waste Discharge (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.

³⁴¹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

³⁴² California Code of Regulations, title 2, section 1187.5.

- Assessment of the relationship of program implementation to changes in pollutant loading, discharge quality, and receiving water quality.
 - Identification of changes necessary to improve Copermittee programs, activities, and effectiveness assessment methods and strategies.
- c. The LTEA shall address outcome levels 1-6, and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).
 - d. The LTEA shall assess the effectiveness of the Receiving Waters Monitoring Program in meeting its objectives and its ability to answer the five core management questions. This shall include assessment of the frequency of monitoring conducted through the use of power analysis and other pertinent statistical methods. The power analysis shall identify the frequency and intensity of sampling needed to identify a 10 percent reduction in the concentration of constituents causing the high priority water quality problems within each watershed over the next permit term with 80 percent confidence.
 - e. The LTEA shall address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment.

Section IV.B.4. of the Parameters and Guidelines identifies the annual program effectiveness assessments of the JURMP and WURMP as follows:

4. Program Effectiveness Assessments (Parts I.1., I.2.)
 - a. Annual Effectiveness Assessment of Jurisdictional Urban Runoff Management Program (Part I.1.)
 1. Each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
 - (i) Specifically assess the effectiveness of each of the following:
 - Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;
 - Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge Detection and Elimination, and Education); and
 - Implementation of the Jurisdictional Urban Runoff Management Program as a whole.

- (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items listed above.
 - (iii) Utilize outcome levels 1-6, as defined in Attachment C to Order No. R9-2007-0001, to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.
 - (iv) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.
 - (v) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, as defined in Attachment C of Order No. R9-2007-0001, where applicable and feasible.
- 2. Based on the results of the effectiveness assessment, each Copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The Copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.
- 3. Each copermittee shall *include* in the Jurisdictional Urban Runoff Management Program Annual Report due September 30, 2008, and every September 30 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.
- b. Annual Effectiveness Assessment of the Watershed Urban Runoff Management Program Watershed (Part I.2.)
 - 1. Each watershed group of Copermittees identified in Table 4 of the test claim permit shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:

- (i) Specifically assess the effectiveness of each of the following:
 - Each Watershed Water Quality Activity implemented;
 - Each Watershed Education Activity implemented; and
 - Implementation of the Watershed Urban Runoff Management Program as a whole.
 - (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items that are part of the WURMP listed above.
 - (iii) Utilize outcome levels 1-6 to assess the effectiveness of each Watershed Water Quality Activity implemented and each Watershed Education Activity implemented, where applicable and feasible.
 - (iv) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
 - (v) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban Runoff Management Program implementation on the high priority water quality problem(s) within the watershed.
 - (vi) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items that are part of the WURMP listed above, where applicable and feasible.
 - (vii) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.
2. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each watershed group of Copermittees shall *include* in the Watershed Urban Runoff Management Program Annual Report January 31, 2009 and every January 31 thereafter, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

Reimbursement is not required to conduct the annual effectiveness assessment of the Regional Urban Runoff Management Program.

6. The Commission Has No Authority to Approve Reimbursement for Interest and Legal and Expert Costs in These Parameters and Guidelines as Requested by the Claimants.

The claimants request reimbursement for any owed interest from the reimbursements, as well as recoverable legal and expert costs to process the Test Claim.³⁴³ This request is denied.

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or Constitution.³⁴⁴

While article XIII B, section 6 and Government Code section 17514 require reimbursement for all costs mandated by the state to comply with the state-mandated program, the Commission has no authority to approve reimbursement for interest. Government Code 17561.5 only authorizes reimbursement for interest if the Controller's payment of the claim is made more than 365 days after adoption of the statewide cost estimate:

The payment of an initial reimbursement claim by the Controller shall include accrued interest at the Pooled Money Investment Account rate, if the payment is being made more than 365 days after adoption of the

³⁴³ Exhibit H, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 11; Exhibit M, Claimants' Rebuttal Comments, pages 15, 20.

³⁴⁴ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

statewide cost estimate for an initial claim. Interest shall begin to accrue as of the 366th day after adoption of the statewide cost estimate for the initial claim. Payment of a subsequent claim that was reported to the Legislature pursuant to paragraph (2) of subdivision (b) of Section 17562 shall include accrued interest at the Pooled Money Investment Account rate for any unpaid amount remaining on August 15 following the filing deadline. Interest shall begin to accrue on August 16 following the filing deadline.

In addition, the Commission previously approved the *Mandate Reimbursement Process I and II* programs authorizing reimbursement for “[a]ll costs incurred by local agencies and school districts in preparing and presenting successful test claims . . . [including] the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.”³⁴⁵ However, the Legislature has suspended that program for many years pursuant to Government Code section 17581, assigning a zero dollar appropriation for the program and making it voluntary during the suspended budget years.³⁴⁶ Thus, there are no costs mandated by the state for expert or legal costs to file a successful test claim during the years the program is suspended.

Accordingly, the Commission has no authority to approve reimbursement for interest and legal and expert costs in these Parameters and Guidelines as requested by the claimants.

D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)

1. Training

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement. Training costs are included in Section V.6. because, as indicated above, the state-mandated activities include training. Accordingly, Section V.6. on Training provides:

Report the cost of training an employee as specified in Section IV of this document. Report the name and job classification of each employee

³⁴⁵ Commission on State Mandates, Parameters and Guidelines Amendment, *Mandate Reimbursement Process I and II*, 12-PGA-03 (CSM 4204, 4485, and 05-TC-05), adopted May 24, 2013, <https://www.csm.ca.gov/decisions/052813a.pdf> (accessed on July 3, 2025).

³⁴⁶ Statutes 2007, chapter 171 (SB 77), line item 8885-295-0001, schedule 3 (y), suspending the program for fiscal year 2007-2008, when the Test Claim was filed. The suspension continues today; see, Statutes 2024, chapter 22 (AB 107), line item 8885-295-0001, schedule 5 (aa), (bb). The suspension process in Government Code section 17581 has been upheld by the courts and determined constitutional. *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287.

preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

2. Travel

In addition, Part E.2 (Watershed Urban Runoff Management Program) also mandates that the collaboration with other copermittees within its Watershed Management Area, “with frequent regularly scheduled meetings.”³⁴⁷ And other parts require copermittee collaboration. Thus, Section V.4. identifies the direct costs for travel as follows:

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

All other direct costs identified in the boilerplate language of Section V. of the Parameters and Guidelines are reimbursable as specified.

E. The Claimants’ Proposed Unit Cost Reasonable Reimbursement Methodologies (RRMs) Are Not Supported by Substantial Evidence or Evidence that the Proposals Reasonably Represent the Actual Costs Mandated by the State for All Eligible Claimants to Comply with the Higher Levels of Service Approved by the Commission.

Government Code section 17561 provides that the state shall reimburse each local agency for all costs mandated by the state and that payment of the claim is subject to the Controller’s audit of the records of any local agency “to verify the actual amount of the mandated costs.”³⁴⁸ The Controller may reduce any claim the Controller determines is excessive or unreasonable.³⁴⁹

Government Code section 17557(b) provides, however, that “[i]n adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology,”

³⁴⁷ Exhibit U (13), Test Claim, page 146, (Order No. R9-2007-0001, Part E.2.g.).

³⁴⁸ Government Code section 17561(d)(1)(C).

³⁴⁹ Government Code section 17561(d)(1)(C).

or RRM. An RRM, as defined in Government Code section 17518.5, is a general allocation formula, unit cost, or other approximation of local costs mandated by the state, which may be adopted by the Commission for the reimbursement of an approved activity, so that the claimants do not need to provide detailed documentation of the actual costs to the State Controller's Office for its review and audit of the claimants' reimbursement claims. When an RRM is adopted, the Controller simply reviews the claimant's application of the RRM to the costs claimed.³⁵⁰ Government Code section 17518.5 states the following:

- (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.
- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party.
- (f) This section shall become operative on July 1, 2019.

The Commission has adopted RRMs in the past when the costs were consistent and repetitive in nature (like counting widgets) and the RRM proposal was supported by

³⁵⁰ Government Code section 17561(d)(2).

substantial evidence that the unit cost and formula reasonably represented the costs mandated by the state for all eligible claimants.

For example, in 2011, the Commission approved a unit cost and formula RRM in *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21 to reimburse eligible claimants in the Los Angeles region for the ongoing direct and indirect costs to maintain trash receptacles at \$6.74 for each trash collection or pickup, multiplied by the annual number of trash collections, subject to the limitation of no more than three pickups per week. This RRM was based on declarations filed by the claimants, sworn testimony, and other supporting information including contracts and surveys.³⁵¹

In 2015, the Commission approved a unit cost RRM in an amendment to the Parameters and Guidelines for the *Immunization Records – Pertussis* program, 14-PGA-01 (11-TC-02). That program reimburses school districts to annually verify whether pupils entering the 7th through 12th grades are fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age. The unit cost RRM of \$9.17 per eligible pupil, which covers both direct and indirect costs, was adopted for future reimbursement claims based on the weighted average of costs identified and already claimed in the initial reimbursement claims filed with the State Controller's Office and signed under penalty of perjury, less any outliers that were identified, and the costs were supported by a declaration from the Controller's Office and CDE enrollment data.³⁵²

The Commission has also denied proposed unit cost RRMs when the proposal was based solely on survey or time study responses, which are generally considered hearsay and are not sufficient by themselves to support a finding under the Commission's regulations.³⁵³ For example, in 2012, the Commission considered a proposed unit cost RRM in *Voter Identification Procedures*, 03-TC-23.³⁵⁴ The test claim

³⁵¹ Commission on State Mandates, Parameters and Guidelines, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, <https://www.csm.ca.gov/decisions/033011c.pdf> (accessed on July 3, 2025).

³⁵² Commission on State Mandates, Parameters and Guidelines Amendment, *Immunization Records – Pertussis*, 14-PGA-01 (11-TC-02), adopted September 25, 2015, <https://www.csm.ca.gov/decisions/doc25.pdf> (accessed on July 3, 2025).

³⁵³ California Code of Regulations, title 2, section 1187.5.

³⁵⁴ Commission on State Mandates, Adopted Final Staff Analysis, Proposed Parameters and Guidelines, *Voter Identification Procedures*, 03-TC-23, adopted March 23, 2012, <https://www.csm.ca.gov/matters/03-TC-23/Item5-StaffAnalysisPsGs.pdf> (accessed on July 3, 2025); Minutes of the March 23, 2012 Commission hearing, adopted May 25,

statute requires the elections official to compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration and if the signatures do not compare, to reject the provisional ballot. The test claimant proposed a unit cost RRM of 1.88 minutes per provisional ballot, determined from "various survey data and time study data" from counties, multiplied by average salaries of employees, and then adjusted each year by the Implicit Price Deflator. The Commission did not adopt the RRM because the county responses identified in the spreadsheets of survey responses were out-of-court hearsay statements that were *not* provided under oath or affirmation from the responder. Also, it was also not clear from the record and there was no direct evidence explaining if the reported times in the spreadsheet to comply with the mandate were estimated by counties or were recorded as the actual time to check a signature on a provisional ballot during an election. If the times were estimated, there was no indication how time was estimated or who performed the estimate. Thus, the adopted Parameters and Guidelines required the claimants to submit reimbursement claims with the State Controller's Office based on a showing of actual costs incurred.³⁵⁵

The RRMs proposed here are more complicated. In this case, the reimbursable program has several different parts, with several proposed RRMs for each part. In addition, the period of reimbursement ended on December 31, 2017, and the claimants indicate that reimbursement ended June 26, 2013 (the day before the next permit was adopted) or June 26, 2015 (the day before the implementation of the next JURMP) and, thus, the costs were already incurred.³⁵⁶ As indicated above, however, the claimants allege they no longer possess the source documents supporting the actual costs incurred due to the length of time this case has been pending.

The claimants' initial proposed RRMs was estimated to provide total reimbursement at over \$252 million.³⁵⁷ The claimants have recently modified their proposals to reduce

2012, <https://www.csm.ca.gov/matters/03-TC-23/032312minutes.pdf> (accessed on July 3, 2025).

³⁵⁵ Commission on State Mandates, Adopted Final Staff Analysis, Proposed Parameters and Guidelines, *Voter Identification Procedures*, 03-TC-23, adopted March 23, 2012, <https://www.csm.ca.gov/matters/03-TC-23/Item5-StaffAnalysisPsGs.pdf> (accessed on July 3, 2025); Minutes of the March 23, 2012 Commission hearing, adopted May 25, 2012 <https://www.csm.ca.gov/matters/03-TC-23/032312minutes.pdf> (accessed on July 3, 2025).

³⁵⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 27-28.

³⁵⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 48.

some of these costs, as explained in the analysis below.³⁵⁸ The proposals do *not* take into account offsetting revenues, so to the extent the claimants used funds that are *not* their proceeds of taxes on the reimbursable activities (i.e., revenue from fees or assessments, grant funding), those revenues would have to be deducted from the costs claimed under any approved RRM and the Controller could audit the reimbursement claims for this purpose.

The claimants developed the proposals by hiring John Quenzer, a principal scientist at D-Max Engineering, Inc. to evaluate the following data retained by the County of San Diego, the principal permittee, relating to the test claim permit: 2011 county surveys, declarations from copermitees, JURMP annual reports, WQIP annual reports, WURMP annual reports, county fiscal analysis documents, MOUs, county watershed workgroup expenditure records, regional cost sharing documentation, and “D-Max proposal records relating to JRMP annual reporting services (‘D-Max Files’).”³⁵⁹ Mr. Quenzer is a certified professional in stormwater quality and stormwater pollution prevention planning, has focused on stormwater management for municipal agencies within San Diego County, and has worked to implement the test claim permit.³⁶⁰ The claimants provide Mr. Quenzer’s declarations,³⁶¹ and those of County of San Diego employee Lara Barrett,³⁶² City of Chula Vista employee Marisa Soriano,³⁶³ City of Coronado

³⁵⁸ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

³⁵⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 4, 32; Exhibit T, Claimants’ Comments on the Revised Proposed Decision and Parameters and Guidelines, pages 25-26 (2025 Quenzer Declaration).

³⁶⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 32.

³⁶¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 32-49 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 52-102 (Quenzer Declaration). Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 24-88 (2025 Quenzer Declaration).

³⁶² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 27-31 (Barrett Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 21-22 (Barrett Declaration). Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 116-117 (Barrett Declaration).

³⁶³ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 89-93 (Soriano Declaration).

employee Kim Godby,³⁶⁴ City of El Cajon employee Dennis Davies³⁶⁵ City of Escondido employee Rafael Rivera,³⁶⁶ City of National City employee Stephen Manganiello,³⁶⁷ City of Solana Beach employee Dan King,³⁶⁸ and City of Vista employee John Conley,³⁶⁹ along with 14 volumes of documentation to support the proposed RRM.³⁷⁰

Both the State Water Boards and the Department of Finance opposed the RRM proposals initially filed by the claimants.³⁷¹

As explained below, the Commission finds that while some of the proposed formulas for reimbursement are reasonable, the proposed unit cost RRMs are not supported by substantial evidence in the record or evidence that the proposals reasonably represent the costs mandated by the state for all eligible claimants to comply with the higher levels of service. Section IV. of the Parameters and Guidelines therefore includes the following boilerplate language:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in

³⁶⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 94-95 (Godby Declaration).

³⁶⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 96-99 (Davies Declaration).

³⁶⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 100-105 (Rivera Declaration).

³⁶⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 106-108 (Manganiello Declaration)

³⁶⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 109-111 (King Declaration).

³⁶⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 112-115 (Conley Declaration).

³⁷⁰ Exhibit M, Claimants' Rebuttal Comments, pages 52-102 (Quenzer Declaration). Exhibit I (1-14), Claimants' Supporting Documentation for Proposed RRMs.

³⁷¹ Exhibit J, Finance's Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs. Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs.

question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

And Section VI. of the Parameters and Guidelines, Record Retention, requires the retention of documentation of actual costs incurred during the period subject to the Controller’s review and audit, which is conducted by the Controller’s Office in accordance with Government Auditing Standards issued by the Comptroller General of the United States. These standards require the auditor to obtain “appropriate evidence to provide a reasonable basis for the auditors’ findings and conclusions” on each audited reimbursement claim.³⁷²

1. The Legal Requirements for an RRM

- a. The RRM shall consider the variation in costs among local government claimants, balance accuracy with simplicity, and reasonably reimburse all eligible claimants for the actual costs mandated by the state.

Article XIII B, section 6 provides: “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]....” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their

³⁷² Exhibit U (12), State Controller’s Office, Frequently Asked Questions, May 2022, https://sco.ca.gov/Files-ARD-Local/mancost_FAQsmandates2022.pdf (accessed on June 17, 2025), page 6 [“Section 1.04 of the standards states that ‘These standards are for use by auditors of government entities...’ The performance audit fieldwork standards (section 6.56) require an auditor to obtain sufficient, appropriate evidence to provide a reasonable basis for the auditors’ findings and conclusions.”].

increasingly limited revenue resources.”³⁷³ Government Code section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.”³⁷⁴ The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a reimbursable state mandate is determined by the Commission.³⁷⁵

The statute authorizing the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6, and thus any RRM approved by the Commission must reasonably represent the actual costs mandated by the state for all eligible claimants to comply with the mandated new programs or higher levels of service approved by the Commission.³⁷⁶

In a 2007 report, the Legislative Analyst’s Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the Controller’s audit reductions. The report identifies, under the heading “Concerns With the Mandate Process,” the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”)

³⁷³ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, footnote 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

³⁷⁴ Emphasis added.

³⁷⁵ *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

³⁷⁶ Government Code sections 17500, et seq.

typically require local governments to document their actual costs to carry out each element of the mandate.

- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller's Office.³⁷⁷

The LAO's recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute.³⁷⁸

Thus, Government Code section 17518.5 was enacted to provide a flexible definition of an RRM based on "general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs."³⁷⁹

As noted above, an RRM "shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of other local costs."³⁸⁰ The statute does not provide for a minimum number of claimants to constitute a representative sample. However, the regulations provide that a "representative sample of eligible claimants" does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data."³⁸¹

In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.³⁸² "Costs to implement the mandate in a cost-efficient manner" is defined in the Commission's regulations to "include only those costs for the activities that were determined to be reimbursable by the Commission in the decision on the test claim, and the costs of reasonably necessary activities to comply with the mandate pursuant to section 1183.7(d) of these regulations."³⁸³

³⁷⁷ Exhibit U (8), Office of the Legislative Analyst, "State-Local Working Group Proposal to Improve the Mandate Process," June 21, 2007, pages 2-3.

³⁷⁸ Exhibit U (8), Office of the Legislative Analyst, "State-Local Working Group Proposal to Improve the Mandate Process," June 21, 2007, page 3.

³⁷⁹ Government Code section 17518.5(d).

³⁸⁰ Government Code section 17518.5(b).

³⁸¹ California Code of Regulations, title 2, section 1183.10(b)(2).

³⁸² Government Code section 17518.5(c).

³⁸³ California Code of Regulations, title 2, section 1183.10(b)(1).

Government Code section 17557(f) provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.” As indicated above, the Department of Finance and the affected state agencies (the Water Boards), oppose the adoption of the RRM.

By determining a unit cost RRM based on approximations or averages of local costs pursuant to section 17518.5, some local entities may receive more than their actual costs incurred to comply with a state-mandated program and some may receive less. Therefore, for any given program with a unit cost, there may be some entities that are not reimbursed the full costs actually incurred, as the courts have determined is required by article XIII B, section 6. Nevertheless, the Legislature has the power to enact statutes, such as Government Code section 17518.5, that provide “reasonable” regulation and control of the rights granted under the Constitution.³⁸⁴ The Commission must presume that Government Code section 17518.5 is constitutionally valid.³⁸⁵ Additionally, the Commission has the duty to apply Government Code section 17518.5 in a constitutional manner. If the Commission approves a unit cost that does not comply with the requirements of section 17518.5 and does not represent a reasonable approximation of the actual costs mandated by the state for all eligible claimants, then the Commission’s decision could be determined unconstitutional and invalid by the courts.

Accordingly, the substantive requirements to adopt an RRM are to consider the variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses all eligible claimants the actual costs mandated by the state to comply with the new programs or higher levels of service approved by the Commission.

b. The RRM must be based on substantial evidence in the record.

The process to include RRM formulas and unit costs in the Parameters and Guidelines is not the equivalent of a settlement agreement.³⁸⁶ Rather, the adoption of an RRM

³⁸⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 493.

³⁸⁵ California Constitution, article III, section 3.5.

³⁸⁶ In this respect, the adoption of an RRM for inclusion in the Parameters and Guidelines is distinguished from the process outlined in Government Code sections 17557.1 and 17557.2, which allow the claimants and the Department of Finance to develop a joint reasonable reimbursement methodology and statewide estimate of costs, which is reviewed by the Commission only to determine if the parties complied with the process. It is also distinguished from the settlement process in Government Code section 17573, which allows the Department of Finance and local government or

must be based on substantial evidence in the record to support the conclusion that the proposed RRM reasonably represents the actual costs mandated by the state for all eligible claimants.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”³⁸⁷ Section 1094.5 states that “abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.” And the Commission’s regulations require: “If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations.”³⁸⁸ “A common formulation of the substantial evidence test asks whether a reasonable person could have reached the same conclusion on the evidence.”³⁸⁹

The evidence required to adopt an RRM is necessarily more relaxed than an actual cost reimbursement methodology.³⁹⁰ However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.³⁹¹ Thus, the plain language of the statutory mandates scheme requires substantial evidence in the record to adopt an RRM.

The Commission is not required to observe strict evidentiary rules, but its decisions cannot be based on hearsay evidence alone. The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally

statewide associations of local governments to jointly request the Legislature to establish a reimbursement methodology.

³⁸⁷ Government Code section 17559(b) (Stats. 1999, ch. 643).

³⁸⁸ California Code of Regulations, title 2, section 1183.12.

³⁸⁹ *Napa Valley Unified School Dist. v. State Board of Education* (2025) 110 Cal.App.5th 609, 625.

³⁹⁰ See Government Code section 17518.5 that employs, for example, the terms “projections” and “approximations.”

³⁹¹ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.³⁹²

The Commission's regulations provide that when exercising its quasi-judicial functions, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."³⁹³ This regulation is borrowed from the Administrative Procedures Act (APA), which contains substantially the same language.³⁹⁴ The Commission's regulation also requires oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.³⁹⁵

Both the Commission's regulations and the APA provisions in the Government Code provide that hearsay evidence is admissible if it is inherently reliable, but *will not be sufficient in itself* to support a finding unless the evidence would be admissible over

³⁹² *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. The board based its denial of land use permit for a race track on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to "reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." *Id.* page 456.

³⁹³ California Code of Regulations, title 2, section 1187.5(a).

³⁹⁴ Government Code section 11513.

³⁹⁵ California Code of Regulations, title 2, section 1187.5(c).

objection in a civil case with a hearsay exception.³⁹⁶ Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence.³⁹⁷

Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated.³⁹⁸ Under the evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination.³⁹⁹ However, under the relaxed rules of evidence in the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁴⁰⁰

Out-of-court statements that are *not* made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence alone cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁴⁰¹ There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁴⁰²

In addition, the Commission may take official notice of any facts which may be judicially noticed by the courts.⁴⁰³ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.

The Commission's regulations further provide that each party has the right to present witnesses, introduce exhibits, and propose to the chairperson questions for opposing

³⁹⁶ California Code of Regulations, title 2, section 1187.5; Government Code section 11513.

³⁹⁷ California Code of Regulations, title 2, section 1187.5.

³⁹⁸ Evidence Code section 1200(a). "Statement" is defined in Evidence Code section 225(a) as "oral or written verbal expression."

³⁹⁹ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁴⁰⁰ California Code of Regulations, title 2, section 1187.5.

⁴⁰¹ *People v. Cudjo* (1993) 6 Cal.4th 585; *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁴⁰² See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁴⁰³ California Code of Regulations, title 2, section 1187.5. See also, Evidence Code sections 451 and 452.

witnesses, and “[i]f declarations are to be used in lieu of testimony, the party proposing to use the declarations shall comply with Government Code section 11514.”⁴⁰⁴ Government Code section 11514, in turn, provides:

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, *shall be given the same effect as if the affiant had testified orally*. If an opportunity to cross-examine an affiant is not afforded after request therefore is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.⁴⁰⁵

Note that the Commission’s regulations use the word “declaration,” and the Government Code refers to an “affidavit.” An affidavit, by definition, if it is to be used before a court, must “be taken before any officer authorized to administer oaths,” usually a judge.⁴⁰⁶ But under the Code of Civil Procedure, section 2015.5, a declaration made *under penalty of perjury* is given the same force and effect as an affidavit sworn before an authorized officer. Such declaration must be in writing, must be “subscribed by him or her,” and must name the date and place of execution.⁴⁰⁷

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge:

- Commission decisions must be supported by “substantial evidence” under Government Code section 17559. Thus, substantial evidence is required before the Commission can find that a proposed RRM reasonably represents the actual costs mandated by the state for all eligible claimants to the state-mandated program.
- Any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely. Oral or written representations of fact offered by any person shall be under oath or affirmation. All written representations of fact must be signed under penalty of perjury by

⁴⁰⁴ California Code of Regulations, title 2, section 1187.5.

⁴⁰⁵ Government Code section 11514(a), emphasis added.

⁴⁰⁶ Code of Civil Procedure section 2012.

⁴⁰⁷ Code of Civil Procedure section 2015.5.

persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief.⁴⁰⁸

- Hearsay evidence may be used to supplement or explain, although it shall not be sufficient alone to support a finding unless admissible over objection in civil actions.⁴⁰⁹
- Under Government Code section 11514, as referenced in the Commission's regulations, an affidavit or declaration may be "given the same effect as if the affiant had testified orally," if properly noticed and an opportunity to cross-examine the affiant is given.⁴¹⁰
- The Commission may take official notice of any facts which may be judicially noticed by the courts, including official acts of any legislative, executive, or judicial body and records of the court.⁴¹¹
- Furthermore, surveys and other cost analyses of eligible claimants as a method of gathering cost data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission's regulations and the evidence rules, as discussed above.⁴¹²

2. The Proposed RRM's Are Not Supported by Substantial Evidence in the Record Showing they Reasonably Represent the Costs Mandated by the State for All Eligible Claimants to Comply with the Higher Levels of Service.

a. The proposed RRM's for annual reporting on street sweeping and conveyance system inspections and cleaning

The Parameters and Guidelines authorize reimbursement for annual reporting on street sweeping and conveyance system inspection and cleaning. This involves reporting certain information in the JURMP Annual Reports regarding each jurisdiction's sweeping (including the total number of curb miles generating the most trash, a moderate amount of trash, and low volumes of trash; the total number of municipal parking lots swept and the frequency of sweeping, and total distance of miles swept and tons of trash collected), cleaning activities (including number of catch basins, number of inlets and miles of MS4 cleaned and tons of trash collected), and inspection activities

⁴⁰⁸ California Code of Regulations, title 2, section 1187.5.

⁴⁰⁹ California Code of Regulations, title 2, section 1187.5.

⁴¹⁰ California Code of Regulations, title 2, section 1187.5.

⁴¹¹ California Code of Regulations, title 2, section 1187.5; Government Code section 11515.

⁴¹² Government Code section 17518.5; California Code of Regulations, title 2, sections 1183.10(b), 1187.5.

(including the number of catch basins and inlets inspected, the distance of the MS4 inspected, and identification of any MS4 facility found to require inspection less than annually following two years of inspection) as required by Permit Parts J.3.a.(3)(c)(x.-xv) and J.3.a(3)(c)(iv.-viii.).

The first report was due September 30, 2008, covering the information reported from July 1, 2007 to June 30, 2008, and every September 30 thereafter for the prior fiscal year.⁴¹³ As indicated above, the first report due September 30, 2008, may only cover a three and a half month time period from March 2008 through June 30, 2008, for the information reported about street sweeping and conveyance system cleaning since implementing those new activities was delayed until no later than March 24, 2008. However, the information required to be reported on conveyance system *inspections* would address the entire 2007-2008 fiscal year, since the inspections were not new.

i. Initial RRM Unit Cost Proposal.

Initially, the claimants proposed an RRM where each Municipal Claimant would be entitled to claim \$5,784.85 adjusted annually by the Consumer Price Index (CPI) “for each of the six-and-a-half-years Conveyance Reporting Cost was required” and \$6,143.67 adjusted annually for CPI for “each of the six and- a-half-years for Sweeping Reporting Cost was required.”⁴¹⁴ This totals \$87,247.59 per claimant, or an estimated \$1,657,704.21 for all eligible claimants to comply with the requirement to report on street sweeping and conveyance system cleaning from “FY 2006/2007 through FY2012/2013.”⁴¹⁵

The claimants state the “Conveyance Reporting Cost standard unit cost represents the median of the permittee’s average annual conveyance system cleaning reported costs between FY 2007/2008 to FY 2009/2010 as reported by the Co-Permittees in submitted 2011 Co-Permittee Surveys focused on conveyance system cleaning located in Vol. 1, pp. 22-239 and the County 2011 County Survey 2 attached and authenticated in the Barrett Declaration” and was “selected as a representative value for a standard unit cost for this unfunded mandate as it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittees.”⁴¹⁶

⁴¹³ Exhibit U (13), Test Claim, page 319 (Order No. R9-2007-0001, Parts J.3.a., J.3.a.2.).

⁴¹⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 36 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 58-59 (Quenzer Declaration).

⁴¹⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 5, 35 (Quenzer Declaration).

⁴¹⁶ Exhibit M, Claimants’ Rebuttal Comments, page 7, 21-22 (Barrett Declaration), 58 (Quenzer Declaration).

Similarly, the claimants state the following:

The standard unit cost for Sweeping Reporting Cost represents the median of the permittee's average annual reporting costs to cover street sweeping reporting between FY 2007/2008 to FY 2009/2010 as reported by the subset of Co-Permittees that prepared and submitted 2011 Co-Permittee Surveys focused on street sweeping located in Vol. 1, pp. 240-376. [Fn. omitted.] The median was selected as a representative value for a standard unit cost for this unfunded mandate as it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittee.⁴¹⁷

The declaration of Mr. Quenzer also states that the proposal is consistent with an "NPDES Stormwater Cost Survey Final Report from January 2005" as follows:

In my opinion, the total cost spent on reporting for each Co-Permittee is comparable to the amounts reported in the NPDES Stormwater Cost Survey Final Report from January 2005 ("2005 State Survey").⁴¹⁸

The Water Boards opposed the proposal, contending that the 2011 survey does not support an accurate or verifiable approximation of local costs since individual claimants responded to the surveys with different types of inputs based on subjective determinations. The data are not comparable and cannot be normalized for purposes of developing a methodology that can be relied upon as accurate and verifiable.⁴¹⁹ The Water Boards also argue that the proposed RRM is overbroad since the first annual JURMP report was not due until the 2008-2009 fiscal year.⁴²⁰ In addition, the Water Boards assert that the claimants were not required to start implementing the 2007 Order required activities until near the end of the second half of fiscal year 2007/2008 or nine months from the start of fiscal year 2007/2008, and that the claimants did not begin fully implementing the 2007 Order activities until fiscal year 2008-2009 or July 1, 2008, through June 30, 2009.⁴²¹ The Water Boards further object to the use of the 2005 State

⁴¹⁷ Exhibit M, Claimants' Rebuttal Comments, page 7.

⁴¹⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 35 (Quenzer declaration).

⁴¹⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 9.

⁴²⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 36, 42.

⁴²¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 38, 42-43.

Cost Survey, since that survey is not representative of local costs and does not represent local agency stormwater budgets.⁴²²

ii. New RRM unit cost proposals.

In response to the Revised Draft Proposed Decision and Parameters and Guidelines, which found the claimants' proposed RRM was overbroad, not limited to the mandated activities, and not supported by substantial evidence,⁴²³ the claimants revised their RRM reporting proposals as described below. The period of reimbursement "is from March 24, 2008, which is the date that Co-Permittees were required to begin implementing their JURMP developed per the 2007 Permit requirements, to, June 26, 2013, which is the day before the effective date of the 2013 Permit."⁴²⁴ However, "[d]ata tracking is the reason why the proposed RRM states that costs in 2007-2008 should be reimbursable. While the first JURMP annual report that contained the new street sweeping and catch basin cleaning requirements was not due until September 2008, which is in fiscal year 2008-2009, the September 2008 report was a report on data from 2007-2008. Therefore, data collection and recording were needed in 2007-2008 to successfully report on 2007-2008 data in the report due September 2008."⁴²⁵ The claimant further explains that

The 2007/2008 reporting cost claimed should be 27.05% of the standard unit cost for reporting. This reflects that 99 days of the 366 days in fiscal year 2007/2008 were on or after March 24, 2008. The 2012/2013 reporting cost claimed should be 98.90% of the standard unit cost for reporting. This reflects that 361 of the 365 days in fiscal year 2012/2013 were on or before June 26, 2013.⁴²⁶

Reporting on Conveyance System Cleaning and Inspections

The proposed unit cost for reporting on the conveyance system cleaning and inspections is based on the median (or middle value) of the permittees' average annual reporting costs for the conveyance system between fiscal years 2007-2008 to 2009-2010, adjusted annually by the Consumer Price Index. The costs are identified in the

⁴²² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 85.

⁴²³ Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines, pages 142-150.

⁴²⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 29.

⁴²⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 29.

⁴²⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 30.

2011 Surveys by the following 12 permittees: County of San Diego and the cities of Carlsbad, Chula Vista, El Cajon, Escondido, Imperial Beach, La Mesa, Lemon Grove, Poway, San Marcos, Santee, and Solana Beach. The claimants also filed declarations from the County of San Diego and the cities of Chula Vista, Escondido, and Solana Beach to support the average conveyance system reporting costs and the 2025 Quenzer Declaration states that while the costs for Escondido and Solana Beach were the same as their 2011 survey responses, the Chula Vista costs were “somewhat lower than reported in the 2011 Survey.”⁴²⁷

The claimants identify the average costs for each of the responding 12 co-permittees, the overall median costs when the fiscal year 2007-2008 are included and when they are not, and the location of the documentation in the record to support these numbers (which are the 2011 survey responses and the declarations) in Table 1 to the Quenzer declaration, as follows:⁴²⁸

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Conveyance System Cleaning Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of Data
Carlsbad	\$531	\$547	\$563	\$547.00	Vol. 1, page 25 ⁴²⁹
Chula Vista	\$111,885	\$115,242	\$118,700	\$115,275.67	Soriano Declaration, par. 14 and 15 ⁴³⁰

⁴²⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 31.

⁴²⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 59 (Table 1).

⁴²⁹ “Vol.1” refers to Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey). This document is on PDF page 26.

⁴³⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 92 (Declaration from Marisa Soriano, Environmental Manager for the City of Chula Vista). Paragraphs 14 and 15 of the Declaration state the following:

14. In FY 2007-08, the City incurred \$24,863 in personnel costs relating to staff time for reporting on conveyance system inspections. In FY 2008-09, the City incurred \$25,609 in personnel costs relating to staff time for reporting on conveyance system inspections. In FY 2009-10, the City incurred \$26,378 in personnel costs relating to staff time for reporting on conveyance system inspections.

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Conveyance System Cleaning Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of Data
County of San Diego - Roads	\$3,079	\$3,171	\$3,266	\$3,172.00	Barrett Declaration for Rebuttal, Exhibit B, page 4 ⁴³¹
El Cajon	\$31,994	\$32,954	\$33,942	\$32,963.33	Vol. 1, page 52 ⁴³²
Escondido	\$16,703	\$17,204	\$17,721	\$17,209.33	Rivera Declaration, par. 17 and 18 ⁴³³

15. In FY 2007-08, the City incurred \$87,022 in personnel costs relating to staff time for reporting on conveyance system cleaning operations. In FY 2008-09, the City incurred \$89,633 in personnel costs relating to staff time for reporting on conveyance system cleaning operations. In FY 2009-10, the City incurred \$92,322 in personnel costs relating to staff time for reporting on conveyance system cleaning operations.

When these fiscal year costs are added, they show the costs identified in Table 1.

⁴³¹ Exhibit M, Claimants' Rebuttal Comments, pages 22-23, 39 (Exhibit B to Barrett Declaration, which is the "County Roads portion of the County 2011 County Permittee Survey 2," showing reporting costs for conveyance system cleaning as identified in Table 1.)

Ms. Barrett's declaration was signed December 12, 2024, she has been employed for the County of San Diego as an Environmental Planner III for the six years prior to date she signed the declaration and, thus, not during the period of reimbursement, and she declares that "On December 11, 2023, I was asked to gather records to support the creation of reasonable reimbursement methodologies to support reimbursement for the stormwater mandates from the 2007 Permit." Exhibit M, Claimants' Rebuttal Comments, pages 22-23.

⁴³² Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 53.

⁴³³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 100-105 (Rivera Declaration). Paragraphs 17 and 18 of the Declaration state the following:

17. In FY 2007-08, the City incurred \$9,515 in personnel costs relating to staff time for reporting on conveyance system inspections. In FY 2008-09, the City incurred \$9,801 in personnel costs relating to staff time for reporting on conveyance system

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Conveyance System Cleaning Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of Data
Imperial Beach	\$591	\$240	\$270	\$367.00	Vol. 1, page 93 ⁴³⁴
La Mesa	\$8,183	\$8,429	\$8,682	\$8,431.33	Vol. 1, page 107 ⁴³⁵
Lemon Grove	\$30,292	\$31,200	\$32,136	\$31,209.33	Vol. 1, page 120 ⁴³⁶
Poway	\$1,291	\$1,330	\$1,370	\$1,330.33	Vol. 1, page 146 ⁴³⁷
San Marcos	\$0	\$19,555	\$112,669	\$44,074.67	Vol. 1, page 185 ⁴³⁸
Santee	\$1,529	\$1,575	\$1,622	\$1,575.33	Vol. 1, page 200 ⁴³⁹
Solana Beach	\$913	\$940	\$968	\$940.33	King Declaration, par. 9 ⁴⁴⁰

inspections. In FY 2009-10, the City incurred \$10,095 in personnel costs relating to staff time for reporting on conveyance system inspections.

18. In FY 2007-08, the City incurred \$7,188 in personnel costs relating to staff time for reporting on conveyance system cleaning operations. In FY 2008-09, the City incurred \$7,403 in personnel costs relating to staff time for reporting on conveyance system cleaning operations. In FY 2009-10, the City incurred \$7,626 in personnel costs relating to staff time for reporting on conveyance system cleaning operations.

When these fiscal year costs are added, they show the costs identified in Table 1.

⁴³⁴ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 94.

⁴³⁵ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 108.

⁴³⁶ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 121.

⁴³⁷ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 147.

⁴³⁸ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 186.

⁴³⁹ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 201.

⁴⁴⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 111 (King Declaration, paragraph 9, which says the following: "In FY 2007-08, the City incurred \$913 in personnel costs relating to staff

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Conveyance System Cleaning Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of Data
MEDIAN				\$5,801.67	
MEDIAN if 2007-2008 data is excluded				\$5,887.00 ⁴⁴¹	

Mr. Quenzer further declares that the “Co-Permittees are willing to accept the . . . contention that there is some overlap with the conveyance system cleaning data tracking required under the 2001 Permit and what was required under the 2007 Permit” and thus, the claimants are willing to reduce the proposal by 50 percent:

For these reasons, the Co-Permittees propose that the RRM unit cost for conveyance system maintenance reporting, or *Conveyance Reporting Costs*, should be reduced to \$2,900.83, which is 50% of the previously proposed unit cost. The percentage is based on my best professional judgment informed by experience preparing annual reports under both the 2001 and 2007 Permits and working with agencies to prepare updated stormwater programs and procedures (via JURMP documents) in response to the 2007 Permit.⁴⁴²

From this information, the claimants propose the following unit cost options:

1. Fifty (50) percent of the median cost (\$5,801.67), which represents the average reporting costs for conveyance system reporting from fiscal year 2007-2008 through 2009-2010 for the 12 co-permittees, or \$2900.83 per year for each eligible claimant.
2. If the average costs for fiscal year 2007-2008 are excluded, then the unit cost would be 50 percent of \$5,887.00, or \$2,943.50 per year for each eligible claimant.
3. If the 2011 survey data is excluded, then the unit cost is revised to \$8,604.67, which is 50 percent of the median of the data set identified in the declarations

time for reporting on conveyance system inspections. In FY 2008-09, the City incurred \$940 in personnel costs relating to staff time for reporting on conveyance system inspections. In FY 2009-10, the City incurred \$968 in personnel costs relating to staff time for reporting on conveyance system inspections.”)

⁴⁴¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 59.

⁴⁴² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 32, emphasis in original.

(which identified average annual costs of \$115,275.67, \$17,209.33, \$3,172.00, and \$940.33, as stated in the table above).

4. If the 2011 survey data and the fiscal year 2007-2008 costs are excluded, then the unit cost is \$8,731.25, which is 50 percent of the median 2007-2008 data excluded (\$17,462.50).⁴⁴³

Thus, under these proposals, reimbursement to the 19 eligible claimants for reporting the conveyance system data would total between \$289,882 and \$827,644, depending on the options above, adjusted annually by the Consumer Price Index.⁴⁴⁴

Reporting Street Sweeping Data

The claimants propose the following unit cost RRM for reporting the street sweeping data:

1. The median unit cost of \$6,143.67, the same as originally proposed, is based on the co-permittee declarations from the cities of Chula Vista, Coronado, Escondido, and National City for the average costs from fiscal year 2007-2008 through 2009-2010. The average costs were the same as reported in the 2011 surveys.
2. If fiscal year 2007-2008 data is excluded, then the median unit cost proposal is \$6,234.00.
3. If the 2011 survey responses are excluded, then the median unit cost, based on the 2025 declarations, is revised to \$3,596.33.
4. If the 2011 survey data and the 2007-2008 costs are excluded, then the median unit cost is \$3,649.25.⁴⁴⁵

⁴⁴³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 32-33.

⁴⁴⁴ The low cost of \$2900.83 x 19 eligible claimants = \$55,115.77 per fiscal year. \$55,115.77 x 27.05% for data collecting after March 24, 2008 (FY 2007-2008) plus \$55,115.77 x 4 fiscal years (2008-2009, 2009-2010, 2010-2011, 2011-2012), plus \$55,115.77 x 98.9% for fiscal year 2012-2013, with costs ending June 26, 2013 = \$289,882.

The higher proposal of \$8,731.25 (which does not include fiscal year 2007-2008 or the 2011 survey data) x 19 eligible claimants = \$165,893.75 per fiscal year. \$165,893.75 x 4 fiscal years (2008-2009, 2009-2010, 2010-2011, 2011-2012), plus \$165,893.75 x 98.9% for fiscal year 2012-2013, with costs ending June 26, 2013 = \$827,644.

⁴⁴⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 33-34.

The claimants identify these numbers in Table 3 to Mr. Quenzer's 2025 declaration, which shows annual costs ranging from a low of \$138 to a high of \$69,975.00 as follows:⁴⁴⁶

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Street Sweeping Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of data
Chula Vista	\$16,097.00	\$16,097.00	\$16,097.00	\$16,097.00	Soriano Declaration, par. 12 ⁴⁴⁷
Coronado	\$1,018.00	\$1,049.00	\$1,080.00	\$1,049.00	Godby Declaration, par. 9 ⁴⁴⁸
El Cajon	\$31,993.00	\$32,953.00	\$33,942.00	\$32,962.67	Vol. 1, page 275
Escondido	\$5,963.00	\$6,142.00	\$6,326.00	\$6,143.67	Rivera Declaration, par. 15 ⁴⁴⁹

⁴⁴⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 61 (Table 3).

⁴⁴⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 92 (Soriano Declaration, paragraph 9, which states: "In each year from FY 2007-08 through FY 2009-10, the City incurred \$16,097 in costs relating to contractor time for reporting on street sweeping.")

⁴⁴⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 95 (Godby Declaration, paragraph 9, which states: "In FY 2007-08, the City incurred a total of \$1,018 for personnel costs relating to staff time for reporting on street sweeping costs. In FY 2008-09, the City incurred a total of \$1,049 for reporting on street sweeping cost. In FY 2009-10, the City incurred a total of \$1,080 for reporting on street sweeping cost.")

⁴⁴⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 103 (Rivera Declaration, paragraph 15, which states: "In FY 2007-08, the City incurred a total of \$5,963 for personnel costs relating to staff time for reporting on street sweeping costs. In FY 2008-09, the City incurred a total of \$6,142 for reporting on street sweeping cost. In FY 2009-10, the City incurred a total of \$6,326 for reporting on street sweeping cost.")

Co-Permittee	2007-2008	2008-2009	2009-2010	Average Annual Reported Street Sweeping Reporting Costs (Average of FY 07/08 to FY 09/10 costs)	Location of data
Lemon Grove	\$138.00	\$138.00	\$138.00	\$138.00	Vol. 1, page 307
National City	\$893.00	\$920.00	\$947.00	\$920.00	Manganiello Declaration, par. 7 ⁴⁵⁰
Oceanside	\$65,958.00	\$67,937.00	\$69,975.00	\$67,956.67	Vol. 1, page 323
City of San Diego	\$25,111.00	\$25,864.00	\$26,640.00	\$25,871.67	Vol. 1, page 347
County of San Diego	\$3,079.00	\$3,171.00	\$3,266.00	\$3,172.00	Vol. 1, page 339
MEDIAN				\$6,143.67	
MEDIAN if 2007-2008 data is excluded				\$6,234.00	

- iii. *There is not substantial evidence to support the conclusion that the proposed unit cost RRM for the reporting requirements reasonably represent the actual costs mandated by the state for all eligible claimants.*

The Commission denies the proposed RRM for reporting the street sweeping and conveyance system cleaning and inspections.

The claimants' proposal is based on survey data from 12 eligible claimants and declarations filed in 2025 showing average personnel costs for three fiscal years to comply with the mandate, and the base unit cost proposal is the median or middle value of these costs.

Even *assuming* the survey responses and declarations were all determined to be reliable evidence and the numbers identified in the Tables submitted in the 2025 Quenzer Declaration accurately represent the actual costs incurred to comply with the mandated activity, the proposed annual unit cost RRM between \$5,081.67 and \$8,731.25 for street sweeping and the proposed unit cost RRM between \$3,596.33 and

⁴⁵⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 107 (Manganiello Declaration, paragraph 7, which states the following: "In FY 2007-08, the City incurred a total of \$893 for personnel costs relating to staff time for reporting on street sweeping costs. In FY 2008-09, the City incurred a total of \$920 for reporting on street sweeping cost. In FY 2009-10, the City incurred a total of \$947 for reporting on street sweeping cost.")

\$6,234.00 for conveyance system cleaning and inspections, which represent the median cost range based on the options proposed, do not reasonably represent the actual costs mandated by the state for all eligible claimants.

The range of costs identified in the tables is wide. For street sweeping, the City of Oceanside had an average cost of \$67,956.67 per year to comply with the street sweeping reporting, while the City of Lemon Grove had an average cost of \$138. Given the detailed information that is required to be reported, which is based on the total distance swept and cleaned, it may be reasonable that a larger city like the City of Oceanside (42.9 square miles) would have higher costs for reporting on street sweeping than a smaller jurisdiction like the City of Lemon Grove (3.88 square miles). However, assuming those costs are accurate, the proposed median unit cost of either \$5081.67 or \$8,731.25, or anywhere between those numbers, does not reasonably represent the actual costs mandated by the state because those two eligible claimants would be either grossly overpaid or grossly underpaid, and thus, the RRM would not satisfy the requirements of article XIII B, section 6. Similarly, three additional responders reported costs far exceeding the proposed unit cost RRM: Chula Vista (\$16,097.00), El Cajon (\$32,962.67), and the City of San Diego (\$25,871.67), and thus taking the middle or median value of the averages reported by half of the eligible claimants as the proposed RRM of \$5081.67 or \$8,731.25, or anywhere between those figures, does not reasonably provide reimbursement for the actual costs mandated by the state for all eligible claimants.

Similarly, the average costs reported by 12 of the 19 eligible claimants to comply with the conveyance system reporting requirement ranges from \$367 per year (City of Imperial Beach) to \$115,275.67 (City of Chula Vista) and, thus, if those figures are accurate, the proposed unit cost of either \$2,900.83 or \$8,731.25, or anywhere between those numbers, does not reasonably represent the costs mandated by the state for these eligible claimants. Three other eligible claimants also reported average annual costs far exceeding the proposed unit cost: Escondido (\$17,209.33), Lemon Grove (\$31,209.33), and San Marcos (\$44,074.67). And two other eligible claimants reported average annual costs far below the proposed unit cost: Solana Beach (\$940.22) and Carlsbad (\$547). Thus, based on the numbers reported, the proposed unit cost RRMs do not reasonably represent the actual costs mandated by the state by seven of the 12 responders. And no information is provided by the other seven eligible claimants.

Moreover, substantial evidence in the record is required to support an RRM proposal. However, the survey data identified by the claimants to develop the proposed unit cost cannot be considered evidence of either actual or estimated costs incurred by the eligible claimants to perform the mandated activity because the survey responses are hearsay. The responses are out-of-court statements that are *not* provided under oath or affirmation. The claimant is using the out-of-court responses to prove the truth of the matters asserted; i.e. that the surveys focused on conveyance system cleaning and street sweeping and “was selected as a representative value for a standard unit cost for

this unfunded mandate.”⁴⁵¹ For these reasons, the courts have held that survey data is hearsay and cannot be considered evidence unless a hearsay exception applies.⁴⁵² But the surveys do not fall under the hearsay exception for records prepared in the normal course of business.⁴⁵³ The surveys, entitled “Reasonable Reimbursement Methodology Unit Cost Survey,” were prepared for the sole purpose of obtaining mandate reimbursement and cannot be considered records prepared in the normal course of business.⁴⁵⁴

The claimants allege that the survey responses can be admitted under the official public records exception.⁴⁵⁵ That exception is in Evidence Code section 1280, which states the following:

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

However, there is no evidence that the survey was made by and within the scope of duty of a public employee. Even if it is assumed a public employee completed the survey, the surveys are not signed and the job title of the contact person’s name is not identified.⁴⁵⁶ Thus, it is impossible to tell if filling out the survey is within the employee’s “scope of duty” as required by subdivision (a). These facts are similar to those in *Furman v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 416. In that case, Furman challenged a forensic alcohol report submitted by DMV was hearsay. The court

⁴⁵¹ Exhibit M, Claimants’ Rebuttal Comments, pages 7 and 21-22 (Barrett Declaration).

⁴⁵² *People v. R.J. Reynolds Tobacco Co.* (2004) 116 Cal.App.4th 1253, 1269.

⁴⁵³ Evidence Code section 1271.

⁴⁵⁴ Exhibit M, Claimants’ Rebuttal Comments, pages 7 and 21-22 (Barrett Declaration). Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 23, 241.

⁴⁵⁵ Exhibit T, Claimants’ Comments on Revised Draft Proposed Decision and Parameters and Guidelines, pages 8-9.

⁴⁵⁶ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 1-376.

agreed it was hearsay because DMV did not meet its burden to produce evidence to establish the foundation for finding if Evidence Code section 1280's hearsay exception applied. The court rejected DMV's argument regarding the presumption in Evidence Code section 664 that public employees properly performed their official duties. In holding DMV did not provide a foundation to support a finding that the document preparer had an official duty to do so, the court said: "It is this 'official duty' that underlies both Evidence Code section 664's presumption and Evidence Code section 1280's exception to the hearsay rule."⁴⁵⁷ Here, as in the *Furman* case, the claimants do not support a finding that those who filled out the surveys had an official duty to do so.

In addition, the survey responses were not made at or near the time of the costs were allegedly incurred. The surveys were due January 19, 2011, and purport to collect data from three prior fiscal years: 2007-2010.⁴⁵⁸ The surveys are not dated except for the pre-printed due date. With a potential four-year gap between the information surveyed and the writing, the Commission cannot find that the surveys comply with the timeliness requirement. As one court said in finding a motorist's blood alcohol test report was not timely recorded and did not meet this requirement despite being prepared only five working days after the motorist's arrest, "memory is subject to erosion with every day that passes, whether working or nonworking."⁴⁵⁹

Moreover, there is not substantial evidence to show the source of information relied on by the survey responders. The survey instructions state: "**Note 6 (Source of Information)**. Please indicate the documents and assumptions used for reported costs. Also document any assumptions used to derive the reported values."⁴⁶⁰ Yet, in some responses, the source of information in Note 6 of the survey form was left blank.⁴⁶¹ In others, the response is not clear. For example, in one response, the source of information for reporting, which was reported as costing \$30,294 and does not include supervision and management, was described based on an estimate of time spent on maintenance of data management and reporting as follows:

One Public Works Specialist dedicated to storm drain inspection and maintenance data management and reporting. Estimated 20% time for inspections, 80% for maintenance. Based on 1,800 working hours per

⁴⁵⁷ *Furman v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 416, 422, emphasis in original.

⁴⁵⁸ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 14-26.

⁴⁵⁹ *Glatman v. Valverde* (2006) 146 Cal.App.4th 700, 705.

⁴⁶⁰ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 25.

⁴⁶¹ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 31, 126.

year. Rates from Fully Allocated Hourly Rates minus Maintenance and Operation.⁴⁶²

It is not clear from this response if the permittee was claiming all of maintenance data management and reporting costs (representing 80 percent of that person's time), or only the pro rata share representing the mandated higher level of service here, which is limited to reporting specified information. Other responses to that question indicated "Approximately 8 hours per year in a year composed of approximately 1,992 hours" spent on reporting and another estimated 16 hours.⁴⁶³ Similarly, other responses include: "Supervisor used work order assignments from past years to calculate along with Best Professional Judgement [sic] for information not recorded or easily available."⁴⁶⁴ There is no consistency in the responses regarding the source of information for the costs identified and no evidence to indicate that the information is reliable and trustworthy. Therefore, the public records exception to the hearsay rule does not apply to the survey responses and the survey responses are hearsay, which under the Commission's regulations cannot be relied upon as direct evidence.⁴⁶⁵

There are similar issues with the claimants' declarations. The Barrett declaration relies on the survey responses, which are hearsay.⁴⁶⁶ The other declarations all identify total personnel or contract costs in fiscal years 2007-2008 and 2008-2009 for reporting and are signed under penalty of perjury, but do not identify the contract or the terms of the contract to determine if the scope of work is within the scope of the mandate, or the source of information for the personnel costs.⁴⁶⁷ Thus, the claimants have not provided a foundation to support the costs alleged.

Finally, the claimants originally opined that the total cost spent on reporting for each copermitttee is comparable to the amounts reported in the NPDES Stormwater Cost Survey Final Report from January 2005 ("2005 State Survey").⁴⁶⁸ However, the 2005 State Survey only surveyed six municipalities, one of which is an eligible claimant

⁴⁶² Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM's, Volume 1 (2011 Permittee Survey), page 41.

⁴⁶³ See for example, Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM's, Volume 1 (2011 Permittee Survey), pages 59, 149.

⁴⁶⁴ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM's, Volume 1 (2011 Permittee Survey), page 110.

⁴⁶⁵ California Code of Regulations, title 2, section 1187.5.

⁴⁶⁶ Exhibit M, Claimants' Rebuttal Comments, pages 22-23.

⁴⁶⁷ Exhibit T, Claimants' Comments on the Revised Proposed Decision and Parameters and Guidelines, pages 92, 95, 103-104, 107, and 111.

⁴⁶⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM's, page 35 (Quenzer declaration).

(Encinitas), and represents about five percent of all the eligible claimants here.⁴⁶⁹ The purpose of that survey was to determine total stormwater costs per household.⁴⁷⁰ The report considered reporting as part of the overall stormwater management program, but there is no information in that survey about reporting the information required for street sweeping and conveyance system inspection and cleaning that represent the mandated higher level of service in this case. Moreover, Encinitas reported costs based on the prior 2001 San Diego County permit and not the 2007 test claim permit.⁴⁷¹ Thus, the 2005 survey is not relevant to the issues here.

Accordingly, there is not substantial evidence in the record supporting the proposed unit cost RRM or that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants. Thus, the Commission denies this proposal.

b. The proposed RRMs for conveyance system cleaning.

The Parameters and Guidelines authorize reimbursement for the following conveyance system cleaning activities:

Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:⁴⁷²

- i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc.).
- ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which shall be cleaned in a timely manner.

⁴⁶⁹ Exhibit U (7), NPDES Stormwater Cost Survey, January 2005, pages 5-6. The surveyed local governments were Encinitas, Fremont, Santa Clarita, Corona, Sacramento, and the Fresno-Clovis metropolitan area, https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

⁴⁷⁰ Exhibit U (7), NPDES Stormwater Cost Survey, January 2005, pages 5-6. The surveyed local governments were Encinitas, Fremont, Santa Clarita, Corona, Sacramento, and the Fresno-Clovis metropolitan area, https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025).

⁴⁷¹ Exhibit U (7), NPDES Stormwater Cost Survey, January 2005, https://www.owp.csus.edu/research/papers/papers/NPDES_Stormwater_costsurvey.pdf (accessed on January 3, 2025), page 33.

⁴⁷² Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- Any MS4 facility that is designed to be self-cleaning shall be cleaned of any accumulated trash and debris immediately.
- Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

i. Initial Unit Cost RRM Proposal.

Initially, the claimants proposed a unit cost RRM (based on “reasonable values in 2007”) to clean one inlet or storm basin (\$150.66), one linear foot of pipe (\$6.77/ft.), and one linear foot of the channel (\$8.52/ft.); times the total number of inlets and storm basins, feet of channel cleaned, and feet of pipe cleaned; adjusted annually by the Consumer Price Index, for fiscal years 2007-2008 through 2014-2015.⁴⁷³ The claimants state that the following feet of structures and channels have been cleaned:

Fiscal Year	# MS4 Structures Cleaned (#S)	Linear ft of MS4 Pipe Cleaned (P)	Linear ft of MS4 Open Channel Cleaned (C)
FY 2006/2007	12092	131439.75	1553201.076
FY 2007/2008	41847	140301.15	485964.3222
FY 2008/2009	37227	106249.1	2016202.269
FY 2009/2010	34392	182277.3	1981611.457
FY 2010/2011	35260	142610.9	1955701.586
FY 2011/2012	54261	128042.25	1609647.248
FY 2012/2013	29820	142091.1	1620035.61
FY 2013/2014	38952	142091.1	1620035.61
FY 2014/2015	38952	142091.1	1620035.61 ⁴⁷⁴

The total for conveyance system cleaning was initially estimated at over \$192.43 million,⁴⁷⁵ which is 76 percent of the original estimate of total costs for the program.

⁴⁷³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 6-7; Exhibit M, Claimants’ Rebuttal Comments, pages 8, 61-62.

⁴⁷⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 38.

⁴⁷⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 7, 37, emphasis added.

The claimants state that the unit costs are based on Mr. Quenzer's review of the County 2011 Co-Permittee Surveys and JRMP Annual Reports⁴⁷⁶ and the costs align with 2005 State Survey responses from the Cities of Santa Clarita and Corona:

The *Unit Costs* align with those found in the 2005 State Survey. The 2005 State Survey determined that the average cost of basin cleaning in Santa Clarita was one hundred and seventy dollars (\$170) per basin which is more than the 2007 (*Unit Cost*)*S*. Additionally, the State Survey found that the average cost of drain line and channel cleaning in the City of Corona was eight dollars per linear foot (\$8/ft), which is more than a weighted average of the 2007 (*Unit Cost*)*P* and 2007 (*Unit Cost*)*C*. Therefore, the 2005 State Survey supports that the Unit Costs are reasonable to apply to all Co-Permittees.⁴⁷⁷

The claimants further state that the reported costs are in the 2011 Co-Permittee Surveys, located in Vol. 1, pp. 22-239, 2010 Co-Permittee Declarations located in Vol. 1, pp. 377-743, data included JRMP Annual Reports located in Vols. 2-11, and the County 2011 County Survey 2 attached and authenticated in the Barrett Declaration. "Each Unit Cost is the median cost to clean during FY 2007/2008. The median was selected as a representative value for a standard unit cost for this unfunded mandate as it is a more conservative value than that obtained by utilizing the average of costs reported by the subset of Co-Permittees."⁴⁷⁸

The Water Boards opposed the RRM on the following grounds:

- The permit did not require claimants to fully implement conveyance system cleaning until March 24, 2008. Thus, for the majority of fiscal year 2007-2008 (75 percent), the claimants implemented the 2001 permit, and did not implement the test claim permit.⁴⁷⁹
- The Quenzer declaration includes a table of the storm drain inlets cleaned, which increased by 20,000 from 2010-2011 to 2011-2012, when the number of inlets would decrease based on the 2007 test claim permit's reduction in cleaning. The Water Boards argue that claimants do not indicate whether their formula

⁴⁷⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 36 (Quenzer Declaration).

⁴⁷⁷ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 37.

⁴⁷⁸ Exhibit M, Claimants' Rebuttal Comments, page 8.

⁴⁷⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 44 (Technical Analysis).

accounts for the permit's debris volume or facility design criteria regarding which conveyances actually need to be cleaned.⁴⁸⁰

- The information the claimants provided does not reflect an accurate or representative number of the total number of facilities cleaned. The claimants do not identify a process that affirms or demonstrates that they actually cleaned a facility as required by the test claim permit. Without indication that the facilities that were cleaned were *required* to be cleaned, the proposed RRM would overstate reimbursement amounts and potentially reimburse for cleaning that the test claim permit did not actually require due to the timing or debris criteria.⁴⁸¹

ii. There is not substantial evidence in the record to support the conclusion that the new proposed unit cost RRMs reasonably represent the actual costs mandated by the state for all eligible claimants.

In response to the Revised Draft Proposed Parameters and Guidelines, which found the proposed unit cost RRMs for conveyance system cleaning were not supported by substantial evidence, nor evidence that the proposed unit costs reasonably represents the costs mandated by the state for all eligible claimants to comply with the higher levels of service approved by the Commission,⁴⁸² the claimants have submitted revised RRM proposals for cleaning catch basins or storm drain inlets and for linear MS4 cleaning.

The period of reimbursement is from March 24, 2008, which is the date that Co-Permittees were required to begin implementing JURMP developed under the test claim permit, to June 26, 2015, which is the day before the claimants were required to submit and begin implementing JRMPs that reflected requirements of the 2013 Permit. The claimant explains the following:

In accordance with the above reimbursement period, the following conservative adjustments are proposed to the conveyance system cleaning for the 2007/2008 and 2012/2013 fiscal years. The 2007/2008 reporting cost claimed should be 27.05% of the standard unit cost. This reflects that 99 days of the 366 days in fiscal year 2007/2008 were on or after March 24, 2008. The 2014/2015 cost claimed should be 98.90% of

⁴⁸⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 46 (Technical Analysis).

⁴⁸¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 48 (Technical Analysis).

⁴⁸² Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines, pages 150-156.

the standard unit cost. This reflects that 361 of the 365 days in fiscal year 2014/2015 were on or before June 26, 2015.⁴⁸³

Catch Basins or Storm Drain Inlets

The claimants propose a unit cost of \$162.32 per storm drain inlet or catch basin (increased from \$150.66 as originally proposed), adjusted annually by the Consumer Price Index, which is the median cost based on data from fiscal years 2007-2008 through 2009-2010, with the costs of training excluded. The proposed unit cost is based on 2011 survey responses and 2025 declarations from the cities of Chula Vista, El Cajon, Escondido, Solano Beach, and Vista.⁴⁸⁴ The following table (Table 7 to 2025 Quenzer declaration) identifies the average costs to clean a storm drain inlet or catch basin and the median proposed unit cost of \$162.32 per storm drain inlet or catch basin based on the 2011 survey data and the declarations.⁴⁸⁵

Co-Permittee	Data Referenced	2007-2008	2008-2009	2009-2010	Agency Average (All three years)	Agency Average (2008-2009, 2009-2010; excludes 2007-2008)
Carlsbad	Contract	\$325.40	\$325.40	\$325.40	\$325.40	\$325.40
Chula Vista	In-House	\$107.42	\$127.23	\$124.42	\$119.69	\$125.82
City of San Diego	In-House	NA	NA	\$275.72	\$275.72	\$275.72
County of San Diego - Flood Control	In-House	\$1,474.41	\$2,459.08	\$1,612.06	\$1,848.52	\$2,035.57
El Cajon	In-House	\$87.97	\$88.48	\$89.39	\$88.61	\$88.94
Escondido	In-House	\$2,729.37	\$2,271.88	\$1,086.84	\$2,029.36	\$1,679.36
Imperial Beach	In-House	\$877.97	\$760.61	\$474.96	\$704.52	\$617.79
La Mesa	In-House	\$77.40	\$71.02	\$95.95	\$81.46	\$83.49
Lemon Grove	In-House	\$2,421.05	\$2,200.32	\$2,266.32	\$2,295.90	\$2,233.32

⁴⁸³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 34-35.

⁴⁸⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 38.

⁴⁸⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 67.

Co-Permittee	Data Referenced	2007-2008	2008-2009	2009-2010	Agency Average (All three years)	Agency Average (2008-2009, 2009-2010; excludes 2007-2008)
Oceanside	Contract	\$19.31	\$21.98	\$20.50	\$20.60	\$21.24
Poway	In-House	\$101.31	\$85.51	\$136.28	\$107.70	\$110.89
San Marcos	In-House, Contract (weighted average)	\$164.27	\$102.76	\$89.86	\$118.96	\$96.31
Santee	In-House	\$2,582.00	\$1,696.35	\$1,901.15	\$2,059.83	\$1,798.75
Solana Beach	In-House	\$87.00	\$117.15	\$60.35	\$88.17	\$88.75
Vista	In-House	\$91.62	\$87.18	\$90.12	\$89.64	\$88.65
Median (proposed unit cost)					\$162.32	\$154.68
<i>Average (not used, for reference only)</i>					\$686.45	\$646.59

If the 2007-2008 costs are removed, the unit cost is \$154.68. If the 2011 survey data is removed, the unit cost is \$89.64. If the 2011 survey data and the 2007-2008 costs are removed, the unit cost is \$88.94.⁴⁸⁶

Table 8 of the 2025 Quenzer declaration summarizes the costs and the number of catch basins cleaned, as identified in the declarations filed by the cities of Chula Vista, El Cajon, Escondido, Solano Beach, and Vista.⁴⁸⁷

Table 8: Supporting Data for Unit Cost for Catch Basin Cleaning: In-House Costs (Co-Permittee Declarations Only)

Co-Permittee	Catch Basin Cleaning Cost			Number of Catch Basins Cleaned			Location of Data in Documentation
	2007-2008	2008-2009	2009-2010	2007-2008	2008-2009	2009-2010	

⁴⁸⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 39.

⁴⁸⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 68.

	Catch Basin Cleaning Cost			Number of Catch Basins Cleaned			
Chula Vista	\$412,747	\$674,099 [sic] ⁴⁸⁸	\$519,917	2,324	3,830	3,899	Soriano Declaration, par.19 and 20 ⁴⁸⁹
El Cajon	\$42,225	\$43,002	\$43,803	480	486	490	Davies Declaration, par.14 and 15 ⁴⁹⁰
Escondido	\$379,382	\$390,764	\$408,650	139	172	376	Rivera Declaration, par.24 and 25 ⁴⁹¹

⁴⁸⁸ As indicated in the next footnote, this number should be \$674,099. Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 93 (Soriano Declaration, paragraph 20).

⁴⁸⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 93 (Soriano Declaration, paragraphs 19 and 20), which states:

19. In FY 2007-08, the City cleaned 2324 catch basins. In FY 2008-09, the City cleaned 3830 catch basins. In FY 2009-10, the City cleaned 3899 catch basins.

20. In FY 2007-08, the City incurred a total of \$412,747 for conveyance system cleaning which includes conveyance system cleaning operations, employee supervision and management, equipment maintenance and fuel ("Conveyance System Cleaning"); Conveyance System Cleaning does not include reporting. In FY 2008-09, the City incurred a total of \$674,099 for Conveyance System Cleaning. In FY 2009-10, the City incurred a total of \$519,917 for Conveyance System Cleaning.

⁴⁹⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 98-99 (Davies Declaration, paragraphs 14 and 15), which state:

14. In FY 2007-08, the City cleaned 480 catch basins. In FY 2008-09, the City cleaned 486 catch basins. In FY 2009-10, the City cleaned 490 catch basins.

15. In FY 2007-08, the City incurred a total of \$42,225 for conveyance system cleaning which includes conveyance system cleaning operations, equipment maintenance and fuel ("Conveyance System Cleaning"); Conveyance System Cleaning does not include reporting and employee and vendor training. In FY 2008-09, the City incurred a total of \$43,002 for Conveyance System Cleaning. In FY 2009-10, the City incurred a total of \$43,803 for Conveyance System Cleaning.

⁴⁹¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 105 (Rivera Declaration, paragraphs 24 and 25), which states:

	Catch Basin Cleaning Cost			Number of Catch Basins Cleaned			
Solana Beach	\$1,479	\$1,523	\$1,569	17	13	26	King Declaration, par. 10 and 11 ⁴⁹²
Vista	\$132,937	\$136,792	\$140,763	1,451	1,569	1,562	Conley Declaration, par.15 and 16 ⁴⁹³

The proposal then requires each claimant to provide supporting documentation to the Controller's Office to demonstrate that only the catch basin cleanings that meet the criteria of the mandate (cleaning is required when any catch basin or storm drain inlet

24. In FY 2007-08, the City cleaned 139 catch basins. In FY 2008-09, the City cleaned 172 catch basins. In FY 2009-10, the City cleaned 376 catch basins.

25. In FY 2007-08, the City incurred a total of \$379,382 for conveyance system cleaning which includes conveyance system cleaning operations, employee supervision and management, equipment maintenance and fuel ("Conveyance System Cleaning"); Conveyance System Cleaning does not include reporting and employee and vendor training. In FY 2008-09, the City incurred a total of \$390,764 for Conveyance System Cleaning. In FY 2009-10, the City incurred a total of \$408,650 Conveyance System Cleaning.

⁴⁹² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 111 (King Declaration, paragraphs 10 and 11), which states:

10. In FY 2007-08, the City cleaned 17 catch basins. In FY 2008-09, the City cleaned 13 catch basins. In FY 2009-10, the City cleaned 26 catch basins.

11. In FY 2007-08, the City incurred a total of \$1,479 for conveyance system cleaning which includes conveyance system cleaning operations ("Conveyance System Cleaning"); Conveyance System Cleaning does not include reporting and employee and vendor training. In FY 2008-09, the City incurred a total of \$1,523 for Conveyance System Cleaning. In FY 2009-10, the City incurred a total of \$1,569 for Conveyance System Cleaning.

⁴⁹³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 114-115 (Conley Declaration, paragraphs 14 and 15), which state:

14. In each year from FY 2007-08 through FY 2009-10, the City incurred \$843 in conveyance system cleaning costs relating to non-personnel equipment maintenance.

15. In FY 2007-08, the City cleaned 1451 catch basins. In FY 2008-09, the City cleaned 1569 catch basins. In FY 2009-10, the City cleaned 1562 catch basins.

has accumulated trash and debris greater than 33% of design capacity) are being claimed for reimbursement.⁴⁹⁴

The Commission finds that there is not substantial evidence in the record to support the conclusion that the proposed unit cost RRM of \$162.32 per storm drain inlet or catch basin reasonably represents the actual costs mandated by the state for all eligible claimants.

First, the proposed unit cost RRM \$162.32 per storm drain inlet or catch basin relies on survey responses, which are not signed or dated or contain any explanation of the costs or where the information is coming from, and as explained above, are considered hearsay and cannot be used as direct evidence of actual or estimated costs.

Second, even assuming the survey data is reliable, the average costs reported to clean each catch basin and storm drain inlet are wide and range from \$20.60 per catch basin or inlet (Oceanside) to \$2,059.83 (Santee) per catch basin or inlet. When the survey data is removed and the five declarations are considered, the costs range from \$88.17 (Solana Beach) to \$2,029.36 (Escondido) per catch basin or storm drain inlet. The City of Escondido's declarant states that the costs include "conveyance system cleaning operations, employee supervision and management, equipment maintenance and fuel," but the City of Solana Beach's declaration does not explain the costs except to say that the cost per catch basin and storm drain inlet does not include reporting and employee and vendor training.⁴⁹⁵ In any event, a proposed unit cost RRM based on median averages of either \$162.32 or \$89.64, given the wide range of costs reported (from \$20.60 to \$2,059.83), does not reasonably represent the actual costs mandated by the state for all eligible claimants.

Accordingly, the Commission denies the RRM proposal for catch basin and storm drain inlet cleaning.

Linear MS4 Cleaning

The claimants' new proposal is a single, combined unit cost for both channels and pipes at \$3.02 per linear foot (compared to the original proposal of one linear foot of pipe at \$6.77/ft., and one linear foot of the channel at \$8.52/ft.), based on fiscal year 2007-2008 cost data from the cities of Carlsbad, Chula Vista, and Imperial Beach (three of the 19 eligible claimants).⁴⁹⁶ The proposed unit cost is based on the following:

⁴⁹⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 38.

⁴⁹⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 105 (Rivera Declaration, paragraph 25), 111 (King Declaration, paragraph 11).

⁴⁹⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 40, 69 (Table 10 to 2025 Quenzer declaration).

- The approach subtracts the total catch basin cleaning and inspection costs from the overall conveyance system cleaning costs, with the remainder being the linear MS4 cleaning costs. “Conveyance system cleaning programs generally consist of these three activities, so it is reasonable to estimate linear cleaning costs by subtracting the costs of catch basin inspections and cleaning.”
- The calculation uses each co-permittee’s own cleaning and inspection program costs, rather than relying on an overall average.
- The total linear cleaning costs were then divided by the linear distance of pipe or channel cleaned to get a unit cost per linear foot cleaned.
- The proposed unit cost is the median cost per linear foot cleaned by the cities of Carlsbad, Chula Vista, and Imperial Beach in fiscal year 2007-2008.
- The cities of Escondido and Vista had previously been included in the calculation but were removed after further review due to lack of applicable data needed to calculate linear MS4 cleaning.⁴⁹⁷

Table 10 to the 2025 Quenzer declaration shows the median cost per linear foot at \$3.02, along with citations to declarations that support the information presented.⁴⁹⁸ As indicated in Table 10, the City of Carlsbad’s overall MS4 cleaning costs in fiscal year 2007-2008 was \$56,000⁴⁹⁹ less the catch basin cleaning and inspection costs of \$3,254⁵⁰⁰ and \$8,966,⁵⁰¹ for a total of \$43,780. The length of pipe cleaned in fiscal year 2007-2008 was 15,000 feet⁵⁰² and the length of MS4 channel cleaned in fiscal

⁴⁹⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 39-40.

⁴⁹⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 69.

⁴⁹⁹ Exhibit U (13), Test Claim, page 607 and Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 404, 412 (Declaration of Glenn Pruim, Public Works Director for the City of Carlsbad, in Support of the Test Claim, filed with the Test Claim in 2008 (“Because all inspected facilities must be cleaned in accordance with specific requirements, the City of Carlsbad has encumbered \$53,000 to pay for a contractor to provide these services for FY 2007-08. An additional \$3,000 is allocated for staff time to oversee these activities.”)).

⁵⁰⁰ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 26 (City of Carlsbad 2011 survey response).

⁵⁰¹ Exhibit I (1), Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 26 (City of Carlsbad 2011 survey response).

⁵⁰² Exhibit I (2), Claimant’s Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), pages 879, 927 (City of Carlsbad

year 2007-2008 was 1,100 feet, for a total of 16,100 feet cleaned.⁵⁰³ Thus, the cost per linear foot cleaned in fiscal year 2007-2008 (\$43,780 divided by 16,100) was \$2.72 per foot.⁵⁰⁴

As reported in Table 10, the City of Chula Vista's overall MS4 cleaning costs in fiscal year 2007-2008 was \$824,196⁵⁰⁵ less the catch basin cleaning and inspection costs of \$499,769⁵⁰⁶ and \$205,491⁵⁰⁷ for a total of \$118,936. The length of pipe cleaned in fiscal year 2007-2008 was 6,917 feet⁵⁰⁸ and the length of MS4 channel cleaned in fiscal year 2007-2008 was 720 feet, for a total of 7,637 feet cleaned.⁵⁰⁹ Thus, the cost per

JURMP Annual Report for fiscal year 2007-2008, signed under penalty of perjury on September 26, 2008, by Glen Pruim, Public Works Director).

⁵⁰³ Exhibit I (2), Claimant's Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), pages 879, 927 (City of Carlsbad JURMP Annual Report for fiscal year 2007-2008, signed under penalty of perjury on September 26, 2008, by Glen Pruim, Public Works Director).

⁵⁰⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 69 (Table 10).

⁵⁰⁵ Exhibit U (13), Test Claim, page 626 and Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), pages 423, 430 (Declaration of Khosro Aminpour, Senior Civil Engineer for the City of Chula Vista, in Support of the Test Claim, filed with the Test Claim in 2008 ("City of Chula Vista's additional conveyance system inspection and cleaning costs in FY 2007-2008 for staff and equipment is \$824,196.")).

⁵⁰⁶ Table 10 identifies the Soriano Declaration, paragraphs 15 and 20, to support the catch basin cleaning and inspection costs of \$499,769. Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 92.

⁵⁰⁷ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 39 (City of Chula Vista 2011 survey response).

⁵⁰⁸ Exhibit I (2), Claimants' Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), pages 3500, 3551 (City of Chula Vista JURMP Annual Report for fiscal year 2007-2008, signed under penalty of perjury on September 23, 2008, by Matt Little, Assistant Director of Public Works ("A total of 1.31 miles of MS4 was cleaned", which amounts to 6916.8 feet.)).

⁵⁰⁹ Table 10 identifies "Vol 2, page 3550" as the supporting documentation for the 720 feet of MS4 Channel Cleaned in fiscal year 2007-2008. This page is in Exhibit I (2), Claimants' Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), pages 3551; the City of Chula Vista JURMP Annual Report for fiscal year 2007-2008.

linear foot cleaned in fiscal year 2007-2008 (\$118,836 divided by 7,637) was \$15.57 per foot.⁵¹⁰

The City of Imperial Beach's overall MS4 cleaning costs in fiscal year 2007-2008 was \$171,200⁵¹¹ less the catch basin cleaning and inspection costs of \$34,163⁵¹² and \$62,987⁵¹³ for a total of \$74,050. The length of pipe cleaned in fiscal year 2007-2008 was 24,481 feet⁵¹⁴ and the length of MS4 channel cleaned in fiscal year 2007-2008 was 0 feet.⁵¹⁵ Thus, the cost per linear foot cleaned in fiscal year 2007-2008 (\$74,050 divided by 24,481) was \$3.02 per foot, which is the median cost of the three cities.⁵¹⁶

The Commission finds that the proposed unit cost RRM for linear MS4 cleaning at \$3.02 per linear foot is not supported by substantial evidence in the record that the proposed unit cost reasonably represents the costs mandated by the state for all eligible claimants.

First, the claimants are also relying on survey responses to support the costs of linear MS4 cleaning for the City of Imperial Beach. Survey responses, however, are hearsay and cannot be used as direct evidence of the costs incurred.

In addition, some of the information in Table 10 is not clear. For example, Table 10 says that the City Chula Vista's costs for catch basin cleaning and inspections, which

⁵¹⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 69 (Table 10).

⁵¹¹ Exhibit U (13), Test Claim, pages 743, 746 and Exhibit I (1), Claimants' Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), page 547, Declaration of Judith Keir, Environmental Program Manager for the City of Carlsbad, in Support of the Test Claim, filed with the Test Claim in 2008 ("The City of Imperial Beach's cost in FY2007-08 for two Sewer Division Personnel required to perform the extra cleaning duties is \$107 per hour. The increase to the City of Imperial Beach's staffing cost to comply with this mandated activity in FY 2007-08 is \$17,200 . . .").

⁵¹² Exhibit I (1), Claimants' Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), page 94 (City of Imperial Beach 2011 survey response).

⁵¹³ Exhibit I (1), Claimants' Supporting Documentation for Proposed RRMs, Volume 1 (2011 Permittee Survey), page 94 (City of Imperial Beach 2011 survey response).

⁵¹⁴ Exhibit I (3), Claimants' Supporting Documentation for Proposed RRMs, Volume 3 (JURMP Reports), pages 3812, 3849 (City of Imperial Beach JURMP Annual Report for fiscal year 2007-2008, signed under penalty of perjury on September 28, 2008, by H.A. Levien, Public Works Director).

⁵¹⁵ The claimant does not cite to any supporting documentation for the length of MS4 channel cleaned by the City of Imperial Beach in fiscal year 2007-2008.

⁵¹⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 69 (Table 10).

were deducted from the proposed RRM, total \$499,769. The Table cites to the Soriano Declaration, paragraphs 15 and 20. However, paragraph 15 of the Soriano Declaration addresses reporting and not cleaning or inspections.⁵¹⁷ And Paragraph 20 identifies costs of \$412,747 and not \$499,769 for conveyance system cleaning.⁵¹⁸ There is no evidence cited to support the City's reduction of inspection costs. In addition, Table 10 identifies the length of pipe cleaned by the City of Chula Vista in fiscal year 2007-2008 as 6,917 feet *and* the length of MS4 channel cleaned in fiscal year 2007-2008 as 720 feet, for a total of 7,637 feet cleaned. The 6,917 feet of pipe cleaned is supported by the City's 2007-2008 JURMP; however, there is no evidence supporting the 720 feet of MS4 channel cleaned. Table 10 identifies "Vol 2, page 3550" as the supporting documentation for the 720 feet of MS4 Channel Cleaned in fiscal year 2007-2008. This page is in Exhibit I, Volume 2, page 3551; the City of Chula Vista JURMP Annual Report for fiscal year 2007-2008. However, there is no reference in that report of 720 feet of MS4 channel cleaned. Rather, that report says "A total of 1.31 miles of MS4 was cleaned", which amounts to 6916.8 feet, which supports the length of pipe cleaned.⁵¹⁹

Even if the figures in Table 10 are reliable, data from just three claimants (or just 16% of the 19 eligible claimants) for one fiscal year, with a wide range of costs from \$2.72 to \$15.57 per foot, does not provide substantial evidence in the record that the proposed RRM of \$3.02 per linear foot reasonably represents the actual costs mandated by the state incurred by all eligible claimants during the period of reimbursement.

Accordingly, the Commission denies the proposed unit cost RRM for linear MS4 cleaning.

c. The proposed RRMs for the JURMP educational component.

The Parameters and Guidelines authorize reimbursement for the jurisdictional educational activities identified in the JURMP section of the test claim permit. This

⁵¹⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guideline, page 92: "In FY 2007-08, the City incurred \$87,022 in personnel costs relating to staff time for *reporting* on conveyance system cleaning operations. In FY 2008-09, the City incurred \$89,633 in personnel costs relating to staff time for reporting on conveyance system cleaning operations. In FY 2009-10, the City incurred \$92,322 in personnel costs relating to staff time for reporting on conveyance system cleaning operations."

⁵¹⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 93: "In FY 2007-08, the City incurred a total of \$412,747 for conveyance system cleaning which includes conveyance system cleaning operations, employee supervision and management, equipment maintenance and fuel ("Conveyance System Cleaning").

⁵¹⁹ Exhibit I (2), Claimants' Supporting Documentation for Proposed RRMs, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), page 3551.

includes educating municipal departments, construction site owners and developers, industrial owners and operators, planning boards and elected officials, on a number of new specified topics in accordance with Part D.5.a. and b.1-2.

The claimants are also required to collaboratively develop and implement a plan for educating residents, the general public, and school children in accordance with Part D.5.b.3., which must evaluate the use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods.⁵²⁰

As indicated above, implementation of the Education Component requirements of the JURMP was delayed to no later than March 24, 2008.⁵²¹

i. Initial RRM Proposal

The claimants propose two RRM formulae; one for the jurisdictional education program and one for the residential education program.

The RRM initially proposed by the claimants for the *jurisdictional education program* (presumably to educate municipal departments, construction site owners and developers, industrial owners and operators, planning boards and elected officials, on a number of new specified topics) is calculated using the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015, which is 2.16 percent, times the Municipal Claimant's total stormwater budget each fiscal year, resulting in an estimated reimbursement of \$16,336,242.47.⁵²²

The claimants state:

The value of Education Costs was determined by compiling a dataset of the total stormwater expenditures as reported by a subset of Co-Permittees as education costs. The expenditures listed in the JRMP annual reports located in Vols. 2-11, the jurisdictional education program expenditures as reported in JRMP annual reports located in Vols. 2-11, WURMP Annual Reports located in Vol. 13 pp. 1-10,756, and D-Max Proposal Documents located in Vol. 14, pp. 8-189 were used to calculate the percentage of each years reported total stormwater expenditures each Co-Permittee spent on jurisdictional educational costs."⁵²³ The Quenzer declaration states "[t]he formula and components of the formula [for the

⁵²⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 112, 150.

⁵²¹ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

⁵²² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 7, 39-40; Exhibit M, Claimants' Rebuttal Comments, page 66.

⁵²³ Exhibit M, Claimants' Rebuttal Comments, pages 9-10.

jurisdictional education programs] were determined by reviewing the JRMP Annual Reports, WQIP Annual Reports, D-Max Files, and County Fiscal Analysis Documents.⁵²⁴

The Quenzer declaration further states the average percentage spent on education of 2.16 percent is reasonable based on: “The 2005 State Survey found that permittees spent between two and seven percent of the annual stormwater budget on education. The *Education Costs* are within the range found by the state supporting that this average percentage is reasonable to apply to the Co-Permittees.”⁵²⁵

For the *residential education program* (educating residents, the general public, and school children), the initial proposal multiplies the actual annual shared costs for developing and implementing the program (called “County Education Costs”), times the claimant’s proportional share of cost based on applicable MOUs.⁵²⁶ The claimants state the yearly program development and implementation costs are estimated as follows:

Fiscal Year	County Costs for Regional Residential Education Program Development and Implementation
FY 2007/2008	\$219,226.90
FY 2008/2009	\$438,452.75
FY 2009/2010	\$876,907.50
FY 2010/2011	\$920,752.90
FY 2011/2012	\$966,791.36
FY 2012/2013	\$138,040.00
FY 2013/2014	\$8,880.99

⁵²⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 38.

⁵²⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 40.

⁵²⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 39; see also, Exhibit M, Claimants’ Rebuttal Comments, page 9, which states: “The yearly County Education Costs were reported in the Co-Permittee Declarations for FY 2007/2008 to FY 2011/2012 located in Vol. 1, pp. 377-743. [Fn. omitted.] For FY 2012/2013, the County Education Costs were determined by reviewing Regional Cost Sharing Documentation located in Vol. 13, pp. 10,917- 13,074. [Fn. omitted.] The data from both sources were summarized by year to calculate total annual regional education program development and implementation cost incurred by the Co-Permittees.”

Fiscal Year	County Costs for Regional Residential Education Program Development and Implementation
FY 2014-2015	\$102,746.96 ⁵²⁷

This brings the total estimated costs under the initial proposal for developing and implementing the Residential Education Program to \$3,560,171.41. The formula and components of the formula were determined by reviewing the JRMP Annual Reports,⁵²⁸ WQIP Annual Reports,⁵²⁹ D-Max Files,⁵³⁰ and county fiscal analysis documents.”⁵³¹

Based on these proposals, the claimants’ total estimate for the educational program reimbursement under the initial proposal is \$23.68 million.⁵³² In rebuttal comments, the claimants reduce a percentage of these costs based on when implementation was required to begin.⁵³³

The Water Boards opposed the RRM’s on the following grounds:

- The claimants were not required to implement the educational component until March 24, 2008, before which they implemented the prior (2001) permit during all of 2006-2007 and 75 percent of 2007-2008.⁵³⁴ This also applies to the Regional

⁵²⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, page 39; Exhibit M, Claimants’ Rebuttal Comments, pages 64-65.

⁵²⁸ Exhibit I (2-11), Claimants’ Supporting Documentation for Proposed RRM’s, Volumes 2-11.

⁵²⁹ Exhibit I (12), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 12 (Water Quality Improvement Project Reports).

⁵³⁰ Exhibit I (14), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 14 (Quenzer Resume, DMAX Files).

⁵³¹ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM’s, Volume 13 (WURMP reports, County Records, MOUs), pages 10757-10784.

⁵³² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM’s, pages 7, 38 (Quenzer declaration).

⁵³³ Exhibit M, Claimants’ Rebuttal Comments, page 65 (Quenzer Declaration).

⁵³⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM’s, pages 35, 51 (Technical Analysis).

Education Program in part F of the permit.⁵³⁵ The claimants' summary table does not prorate 25 percent of costs for 2007-2008.⁵³⁶

- Using each claimants' "total stormwater budget" contains costs that are not for mandated reimbursable activities, and costs already proposed for reimbursement for other mandated activities outside of the education component, so the RRM equation reflects reimbursing the same mandated activity, fully or partially, more than once.⁵³⁷
- Stormwater budgets vary broadly among claimants as to what is included. Annual reports under the test claim permit indicate stormwater budgets were inconsistently reported based on each claimant's interpretation of what to include in the fiscal analysis. This inconsistency among stormwater budgets has been an ongoing and long-standing concern for assessing MS4 permit annual reports statewide since 2005.⁵³⁸
- The proposed RRMs do not subtract developing educational programs or calculate a pro rata adjustment for just the increased level of service.⁵³⁹
- The claimants do not address local variation in costs from one claimant to another. For example, a large jurisdiction may have a significant stormwater budget and a small jurisdiction may have a much smaller stormwater budget that will increase the total percent of a budget component across the board for all claimants and is not representative or reasonable.⁵⁴⁰
- The claimants request reimbursement for developing an educational program, but in the Draft Proposed Decision, staff found that (except in part D.5.(b)(3) for educating residential, general public, and school children target communities) only implementing but not developing education program was reimbursable and that costs for developing regional and jurisdictional programs were to be prorated

⁵³⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 51 (Technical Analysis).

⁵³⁶ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 35, 51 (Technical Analysis).

⁵³⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 49 (Technical Analysis).

⁵³⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 50 (Technical Analysis).

⁵³⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 49-50 (Technical Analysis).

⁵⁴⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 50 (Technical Analysis).

for the higher level of service in the test claim permit. The claimants do not prorate these costs.⁵⁴¹

- The claimants do not indicate if the MOU cost share is implementing section F requirements (residential education program) which are not part of the reimbursable section D requirements.⁵⁴² The claimants do not differentiate between jurisdictional development and implementation costs from regional development and implementation costs. Regional educational programs were not a requirement of the reimbursable activities in Section D. of the test claim permit.⁵⁴³

*ii. There is not substantial evidence in the record to support the conclusion that the **new** proposed unit cost RRM for the JURMP education requirements reasonably represent the actual costs mandated by the state for all eligible claimants.*

The claimants have revised their RRM in response to the Revised Draft Proposed Decision and Parameters and Guidelines⁵⁴⁴ as described below.

Residential Education Program

The proposed RRM still multiplies the actual annual shared costs for developing and implementing the program (called “County Education Costs”), times the claimant’s proportional share of cost based on applicable MOUs. However, the claimant has clarified the proposal.

The 2025 Quenzer declaration explains that since the Residential Education program requires public outreach, which benefits from consistency throughout the region, all agencies through their Education and Regional Sources Workgroup elected to contract with a consultant to develop that program.

As required by the 2007 Permit, the Co-Permittees developed and implemented a Regional Education Program. The Co-Permittees retained a consultant to complete the mandated activities and each Co-Permittee

⁵⁴¹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 52-53 (Technical Analysis).

⁵⁴² Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed Reasonable Reimbursement Methodology, page 53 (Technical Analysis).

⁵⁴³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 53 (Technical Analysis).

⁵⁴⁴ Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines, pages 156-163.

provided covered a share of the costs as determined by a formula set out in the MOUs.

The implementation of the Regional Education Program was a separate mandated activity in addition to the implementation of jurisdictional educational programs by each Co-Permittee. The Regional Education Program does not overlap with jurisdiction education activities as the Regional Education Program was completed via contracted work, with the cost shared among the Co-Permittees. Regional education activities are targeted at the public. Because public outreach benefits from consistency, all agencies elected to utilize a consultant, via the Education and Regional Sources Workgroup, to provide consistency to regional education activities.⁵⁴⁵

The proposed RRM covers the period from January 24, 2007 (the effective date of the test claim permit and beginning of the period of reimbursement) to June 26, 2013, which is the day before the effective date of the 2013 permit. The claimants started developing the program in 2006-2007, to ensure they could implement it on time. To adjust for these dates, the RRM proposes to reduce the fiscal year 2006-2007 costs to 43.29 percent of the costs, because 158 days in fiscal year 2006-2007 were on or after January 24, 2007. In addition, the fiscal year 2012-2013 costs should be 98.9 percent of the total costs, to reflect that 361 days in fiscal year 2012-2013 were on or before June 26, 2013.⁵⁴⁶

The formula takes the total costs for development and implementation of the residential education program, as noted in Table 11 to the 2025 Quenzer declaration, and each permittee would receive their share of costs identified in their MOU. Costs total \$914,828.20.⁵⁴⁷ Table 11, however, does not show any costs for fiscal years 2006-2007 and 2007-2008. Table 11 starts with fiscal year 2008-2009.⁵⁴⁸

⁵⁴⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 41-42 (2025 Quenzer declaration).

⁵⁴⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 41 (2025 Quenzer declaration).

⁵⁴⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 42, 71-72 (Table 11).

⁵⁴⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 71-72.

The revised RRM proposal includes only those costs reported by the Education and Regional Sources Workgroup “that were clearly targeted at educating the general public.”⁵⁴⁹ The 2025 Quenzer declaration describes these tasks as follows:

- Materials Development and Distribution (most often Subtask 3.A): This subtask was defined by the workgroup as work that focused on “Development of regional education outreach materials for dissemination to the public [that] will utilize a regional brand and will target pollutants outlined in the Regional Residential Education Plan.” (Vol 13 p 10994.)
- Partnership Development (most often Subtask 3.B): This subtask was defined by the workgroup as work to “Continue identifying new partners and support current partners that have a regional influence in the following categories: 1) Other governmental agencies; 2) Corporations; and 3) Non-governmental Agencies (NGOs)” (Vol 13 p 10994). The broad range of entities targeted for partnerships shows that this subtask was focused on providing education for the general public.
- Regional Branding [fn. omitted] (most often Subtask 3.C): This subtask was defined as work to “Manage [the] Regional Branding Program” (Vol 13 p 10994). The Regional Branding was associated with the development, review, and maintenance of materials and messaging used for materials distribution to general public audiences and mass media campaigns such as the program’s logo.
- Market Research and Assessment Tools (often subtask 3.C, sometimes subtask 3.D): Work under this task included telephone survey, event survey, and associated data analysis. This work was undertaken to support the development of educational materials and inform the development and implementation of outreach and engagement efforts to the general public.
- Regional Website (often subtask 3.D, sometimes subtask 3.E): Work for this subtask was focused on the maintenance of and updates to a regional website. The website was designed to reach a general audience.
- Underserved Target Audience (often subtask 3.F): This subtask was defined by the workgroup as work to “develop and implement outreach strategies and materials to address low socioeconomic communities” (Vol 13 p 10995). This work focused on how to better engage more of the general public and underserved residential audiences.
- Mass Media Campaign (often subtask 3.G): This subtask was defined as work to “develop and implement mass media and PR campaign” (Vol 13 p 10996). These

⁵⁴⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 42.

campaigns were designed to support the engagement of and outreach to the general public.

- Regional Events (often subtask 3.H): This subtask was defined as work to “coordinate community outreach events throughout San Diego County” (Vol 13 p 10996). Community outreach work targeted the general public.⁵⁵⁰

Table 11 breaks down the costs incurred, which are supported by workplan, budget, and expenditure summaries of the Educational and Residential Sources Workgroup, and invoices from consultants:

Fiscal Year	ERS Workgroup Task	Reported Expenditures	Data Location	Fiscal Year Total RRM
FY08-09	Subtask 3.A. Materials Development and Distribution	\$1,110.70	Vol 13 - p 10,985 [fn. omitted] ⁵⁵¹	\$210,633.39
	Subtask 3.B. Partnership Development	\$325.99		
	Subtask 3.C. Regional Brand	\$14,979.66		
	Subtask 3.D. Market Research and Assessment Tools	\$62,943.12		
	Subtask 3.E. Regional Website	\$4,976.40		
	Subtask 3.G. Mass Media and Public Relations	\$121,940.88		
	Subtask 3.H. Regional Events	\$4,356.64		

⁵⁵⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 42-43. The document cited in the declaration is a “Educational and Residential Sources Workgroup FY 2009-2010 Workplan and Budget.” (Exhibit I (13), Claimants' Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), pages 10994-10997.)

⁵⁵¹ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), page 10986 (“2008-09 Education and Residential Sources Workgroup Expenditure Summary,” dated January 14, 2010, which identifies the numbers in the Table).

Fiscal Year	ERS Workgroup Task	Reported Expenditures	Data Location	Fiscal Year Total RRM
FY09-10	Market Research and Assessment	\$32,372.75	Vol 13 – pp 11,020 to 11,208 [fn. omitted] ⁵⁵²	\$277,607.28
	Mass Media	\$146,568.82		
	Materials Development and Distribution	\$69,667.51		
	Partnership Development	\$14,308.15		
	Regional Brand	\$11,270.21		
	Regional Events	\$1,794.51		
	Regional Website	\$1,039.86		
	Underserved	\$213.95		
FY10-11	Sub-task 3.A. Materials Development and Distribution	\$25,443.00	Vol 13 – pp 11,941 to 11,942 [fn. omitted] ⁵⁵³	\$153,551.00
	Subtask 3.B. Partnership Development	\$565.00		
	Subtask 3.C. Market Research and Assessment Tools	\$79,378.00		

⁵⁵² Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), pages 11021-11029 (FY 2009-2010 Education and Residential Sources Workgroup expenditure claim sheets and invoices from Action Research, with a certification of costs signed by the County and City of San Diego for the “4th Quarter FY 2009-10 (April 1- June 30, 2010),” dated in 2010, for \$133,405.25 for expenditures during those months).

However, the costs in the Table do not match the figures on these pages, do not total \$277,607.28, and do not total the amount certified. PDF page 11022 (hard page 11021) shows costs of \$1,182.66 for market research and assessment, regional website, and mass media campaign from April 1-June 30, 2010; page 11023 shows costs of \$318.30 for regional events and materials development from April 1-June 30, 2010; pages 11024, 11026-11027, and 11028-11029 show costs of \$18,900.65 for market research and assessment with invoices from Action Research and materials development from April 1-June 30, 2010; and page 11025 shows costs of \$114,504.61 from May 30-June 11, 2010 for mass media. This totals \$134,906.22, which does not match the amount certified of \$133,405.25, or the total amount in the Table of \$277,607.28.

⁵⁵³ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports County Records, MOUs), pages 11941-11942 (FY 2010-2011 Education and Residential Sources Workgroup expenditures, marked “Final September 2011, which identifies the costs in the Table.)

Fiscal Year	ERS Workgroup Task	Reported Expenditures	Data Location	Fiscal Year Total RRM
	Subtask 3.D. Regional Website	\$2,220.00		
	Subtask 3.E. Underserved Target Audience	\$871.00		
	Subtask 3.F. Mass Media Campaign	\$43,674.00		
	Subtask 3.G. Regional Events	\$1,354.00		
	Subtask 3.H. Regional Logo	\$46.00		
Fiscal Year	ERS Workgroup Task	Reported Expenditures	Data Location	Fiscal Year Total RRM
FY11-12	3B1 Materials Development and Distribution	\$57,298.00	Vol 13 - p 12,305 [fn. omitted] ⁵⁵⁴	\$140,320.00
	3B2 Partnership Development	\$0.00		
	3B3 Underserved Target Audience	\$0.00		
	3B4 Regional Events	\$6,591.00		
	3C Market Research and Assessment Tools	\$12,469.00		
	3D Website	\$866.00		
	3E Mass Media Campaign	\$63,096.00		
FY12-13	Materials Development and Distribution	\$45,968.69	Vol 13 pp 12,372 to 12,414 [fn. omitted] ⁵⁵⁵	\$132,716.53
	Regional Events	\$8,930.24		

⁵⁵⁴ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), page 12306 (FY 2011-2012 Education and Residential Sources Workgroup expenditures, which identifies the costs in the Table).

⁵⁵⁵ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), pages 12373-12415 (FY 2012-2013 Education and Residential Sources Workgroup expenditures and invoices, with two certifications of costs signed by the County of San Diego for fiscal year 2012-2013, totaling \$136,587.94). The invoices are from RBF Consulting, Action Research, Webster Design, Xerox Corp., Freedom Three Publishing, Emerge Industries, San Diego County Fairgrounds, Events Online, UltraStar Cinemas, several radio stations.

	Market Research and Assessment Tools	\$15,762.60		
	Regional Website	\$630.00		
	Mass Media	\$61,425.00		
Total:				\$914,828.20 556

The Commission finds that the formula to reimburse claimants based on actual annual shared costs for developing and implementing the residential education program, times the claimant's proportional share of cost based on applicable MOUs, satisfies the definition of the RRM and provides reimbursement for the actual costs mandated by the state for all eligible claimants. The requirement in Part D.5.b.3. to "collaboratively conduct or participate in development and implementation of a plan to educate residential, general public, and school children target communities" to "[t]he . . . use of mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods" was found to be a new state-mandated activity.⁵⁵⁷ The test claim permit authorizes the permittees to develop and implement urban runoff management activities on a regional level and requires the permittees to execute and submit an MOU to the Regional Board that identifies the collaborative arrangements to comply with the permit.⁵⁵⁸ Thus, the Parameters and Guidelines, in Section IV. Reimbursable Activities, following the identification of the reimbursable activity in Part D.5.b.(3) says the following:

Reimbursement for the activities required by Part D.5.b.(3) may be based on the actual annual shared costs of developing and implementing the program, times the claimant's proportional share of costs indicated in the claimants' MOU.

The Commission also finds that the types of costs identified above fit within this reimbursable activity, as long as they are limited to educating residential, general public, and school children target communities on the topics listed in Table 3 of the test claim permit.⁵⁵⁹

However, there is not substantial evidence in the record to support a finding that the total costs of the program are \$914,828.20, as alleged by the claimants. As indicated

The costs identified on these pages, however, do not total the amount in the Table of \$132,716.53.

⁵⁵⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 71-72.

⁵⁵⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 74, 78-84, 141-143.

⁵⁵⁸ Exhibit U (13), Test Claim, pages 304, 329-330 (Order R9-2007-0001).

⁵⁵⁹ Exhibit U (13), Test Claim, pages 298-299 (Order R9-2007-0001).

above, there is no evidence supporting any costs incurred in fiscal years 2006-2007 and 2007-2008, yet the 2025 Quenzer declaration states that the claimants began developing the program in 2006-2007 and the proposed RRM begins reimbursement on January 24, 2007.⁵⁶⁰ In addition, and as explained in footnote 729, the costs identified in Table 11 for fiscal year 2009-2010 are not supported by the documents cited in the table. In addition, some of the expenditure summaries provided to support the costs are not signed, dated, or certified; it is not clear if an employee of an eligible claimant prepared those documents; and it is not clear where the information is coming from.⁵⁶¹ The expenditure summary documents are hearsay and cannot be used as direct evidence to support the costs alleged.

Thus, the proposed unit cost RRM of \$914,828.20 is denied.

Jurisdictional Education Program

The claimants have made some adjustments to their RRM proposal for the Jurisdictional Education Program.

The proposed RRM covers the period from March 24, 2008 (which is when they began implementing the JURMP under the test claim permit) until June 26, 2015 (which is the day before the JURMP under the next permit went into effect).⁵⁶² The fiscal year 2007-2008 costs claimed should be 27.05 percent of the unit cost to reflect the 99 days of the 366 days in fiscal year 2007-2008 that were on or after March 24, 2008. The fiscal year 2014-2015 costs claimed should be 98.90 percent of the proposed unit cost, which reflects that 361 of the 365 days in fiscal year 2014-2015 were on or before June 26, 2015.⁵⁶³

The revised RRM is calculated using the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015 times the Municipal Claimant's total stormwater expenditures each fiscal year. As originally proposed, the average percentage of the stormwater budget spent on yearly education costs between fiscal year 2007-2008 and fiscal year 2014-2015 was 2.16 percent. The claimants have reduced that percentage to 0.39 percent of total costs, which is the difference between the median value for education costs as a percentage of total stormwater program costs (jurisdictional component) under the 2001 permit and

⁵⁶⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 41 (2025 Quenzer declaration).

⁵⁶¹ See for example, the expenditure summary in Exhibit I (13), Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), page 10986.

⁵⁶² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 43.

⁵⁶³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 43.

the median value for education costs as a percentage of total stormwater program costs (jurisdictional component) under the test claim permit as follows:

For each year, the education cost was compared to the total stormwater program cost, both of which were reported in the fiscal analysis sections of JURMP annual reports. Not all Co-Permittees reported education program costs as unique line items prior to the 2007 Permit, after which a standard fiscal reporting method that required reporting education as a line item was adopted. Data from Co-Permittees that reported education costs both before and after the 2007 Permit was used to perform this calculation. As shown in Table 14 in Attachment 1, the median value for education costs as a percentage of total stormwater program cost was 1.44% during the 2001 Permit years and 1.83% during the 2007 Permit years, an increase of 0.39%. If averages were used, the increase would be 1.72%, but the median is proposed to be conservative.

The Co-Permittees proposed updating the jurisdictional “Education Costs” of the total stormwater program budget to 0.39%.⁵⁶⁴

Table 14 then identifies the percentages as follows:

Co-Permittee	2001 Permit			2007 Permit				
	2005-2006 [A]	2006-2007 [B]	Average	2008-2009 [C]	2009-2010 [D]	2010-2011 [E]	2011-2012 [F]	Average
City of San Diego	3.87%	6.72%	5.30%	11.73%	9.04%	5.33%	3.80%	7.48%
Encinitas	0.46%	0.02%	0.24%	0.03%	1.23%	0.92%	0.94%	0.78%
La Mesa	1.24%	1.64%	1.44%	2.05%	1.59%	1.97%	1.72%	1.83%
Solana Beach	0.39%	0.36%	0.37%	2.10%	9.73%	8.79%	5.70%	6.58%
Vista	2.61%	1.99%	2.30%	0.95%	0.77%	1.14%	2.24%	1.28%
Median			1.44%					1.83%
Average			1.85%					3.56%
Proposed RRM, Education % of Total Stormwater Budget: 0.39% (2007 Median – 2001 Median) ⁵⁶⁵								

The footnote to Table 14 says “Percentages for individual agencies and years in this table are taken from the preceding table. Averages and medians were calculated from those numbers.” The preceding table is Table 13, which identifies the costs of the

⁵⁶⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 44.

⁵⁶⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 78 (Table 14).

jurisdictional component of the stormwater program and education costs, percentages, and supporting documents for fiscal years 2005-2006 through 2006-2007, and 2008-2009 through 2011-2012 for the cities of San Diego, Encinitas, La Mesa, Solana Beach, and Vista.⁵⁶⁶ For example, Table 13 shows the following figures for the City of San Diego, supported by the City's JURMP annual report:

Fiscal Year	Total Stormwater Costs	Jurisdictional Education Costs	Education % of Total Cost	Supporting Documentation Cited
05-06	\$33,562,843	\$1,300,000	3.87%	May 2025 Barret Decl, Exhibit C, p 94 ⁵⁶⁷
06-07	\$44,602,619	\$2,996,927	6.72%	Vol 6 pp 2,599 - 2,560 ⁵⁶⁸
08-09	\$47,821,511	\$5,610,999	11.73%	Vol 7 pp 655 - 656 ⁵⁶⁹
09-10	\$35,582,609	\$3,216,076	9.04%	Vol 7 p 5,173 ⁵⁷⁰
10-11	\$52,342,560	\$2,789,130	5.33%	Vol 7 p 6,135 ⁵⁷¹

⁵⁶⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 76.

⁵⁶⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 546 (City of San Diego, 2006 JURMP Annual Report, Fiscal Assessment).

⁵⁶⁸ Exhibit I (6), Claimants' Supporting Documentation for Proposed RRM, Volume 6 (JURMP Reports), pages 2599-2600 (2007 JURMP Annual Report).

⁵⁶⁹ Exhibit I (7), Claimants' Supporting Documentation for Proposed RRM, Volume 7 (JURMP Reports), pages 655-656 (2009 JURMP Annual Report), which identifies the total cost of the jurisdictional component of the stormwater program and \$5,610,999 spent on "Education, *Residential*, & Public Participation." Residential education costs, however, are captured above in the proposed RRM for "Residential Education Program."

⁵⁷⁰ Exhibit I (7), Claimants' Supporting Documentation for Proposed RRM, Volume 7 (JURMP Reports), page 5174 (2010 JURMP Annual Report), which identifies the total cost of the jurisdictional component of the stormwater program and \$3,216,076 for "Education, *Residential*, and Public Participation."

⁵⁷¹ Exhibit I (7), Claimants' Supporting Documentation for Proposed RRM, Volume 7 (JURMP Reports), page 6136 (2011 JURMP Annual Report), which identifies the total

Fiscal Year	Total Stormwater Costs	Jurisdictional Education Costs	Education % of Total Cost	Supporting Documentation Cited
11-12	\$46,086,836	\$1,753,316	3.80%	Vol 7 p 8,032 ⁵⁷²

It is generally reasonable to compare the percentage of education costs from the prior permit to the percentage of state-mandated costs incurred under the test claim permit since the Commission found that the requirements for the education and training of municipal departments and personnel, was not a new program but represented a higher level of service compared to prior law.⁵⁷³

In addition, the JURMP annual reports are required by the test claim permit and are reports prepared in the normal course of business and, thus, are excepted from the hearsay rule and can be relied on as direct evidence.⁵⁷⁴

However, the fiscal analysis in some of the JURMP annual reports relied on for this proposal identify total costs for education, which in some cases includes additional costs for public participation, investigation, and “residential” costs, which goes beyond the scope of the mandated requirements imposed here.⁵⁷⁵ It is not clear what investigation costs are, but investigation was not approved as a reimbursable activity and public participation requirements are imposed by Part D.6. of the test claim permit, which was not pled in the Test Claim and not approved by the Commission. The “Residential Education” costs are supposed to be covered by the proposed RRM identified in the section above, and while the 2025 Quenzer declaration states the

cost of the jurisdictional component of the stormwater program and \$2,789,130 for “Education, *Residential*, and Public Participation.”

⁵⁷² Exhibit I (7), Claimants’ Supporting Documentation for Proposed RRMs, Volume 7 (JURMP Reports), page 8033 (2012 JURMP Annual Report), which identifies the total cost of the jurisdictional component of the stormwater program and \$1,753,316 for “Education, *Residential*, and Public Participation.”

⁵⁷³ Exhibit A, Amended Test Claim Decision on Remand, page 79.

⁵⁷⁴ Evidence Code 1271.

⁵⁷⁵ See, for example, Exhibit I (3), Claimants’ Supporting Documentation for Proposed RRMs, Volume 3 (JURMP Reports), page 2599 (City of San Diego, 2007 JURMP Annual Report), showing total education costs, which include “public participation”; page 1402 (City of Encinitas, 2008-2009 JURMP Annual Report), showing costs for “Education & Public Participation”; Exhibit I (10) Claimants’ Supporting Documentation for Proposed RRMs, Volume 3 (JURMP Reports), page 1817 (City of Solana Beach, 2006-2007 JURMP Annual Report), showing costs for “Education and Investigation”; page 2819 (City of Solana Beach, 2009-2010 JURMP Annual Report), showing costs for “Residential, Education, and Public Participation.”

residential education program costs are separate from the jurisdiction education costs,⁵⁷⁶ the JURMP annual reports identify the costs for education as a whole. Thus, the costs included in the percentages may include more than the costs mandated by the state for this RRM proposal.

Even assuming the costs included in the calculations cover only the mandated costs and are accurate, using the median percentage of costs of five of the 19 eligible claimants does not reasonably represent the actual costs mandated by the state for all eligible claimants. The average percentage of costs spent on education by the City of Vista went down under the test claim permit (from 2.30% to 1.28% of its total stormwater costs) and, thus, there is no showing that this claimant has increased costs for education.⁵⁷⁷ Second, assuming the percentages of the remaining four claimants are accurate, the difference in percentages of costs spent on education from the 2001 permit to the test claim permit ranges from a low of 0.39 percent (La Mesa) to a high of 6.21 percent (Solana Beach).⁵⁷⁸ This wide range of percentages suggests that the claimants are not performing the mandated activities in the same way and there is no consistency in costs. While 0.39 percent of total costs may be a reasonable percentage of reimbursement for La Mesa (which is their actual percentage) and for Encinitas (at 0.54%), reimbursing Solana Beach six percent of their costs (0.39% divided by 6.21%) does not comply with the requirement to provide reimbursement for all costs mandated by the state.⁵⁷⁹ Moreover, the claimants have not pointed to any evidence of costs incurred by the remaining 14 eligible claimants.

Accordingly, the Commission denies this proposal.

d. The proposed RRM's for the watershed activities and collaboration in the updated WURMP.

The Parameters and Guidelines authorize reimbursement for the following new state-mandated activities required for the Watershed Urban Runoff Management Program (WURMP), including the first sentence in Part L.1. requiring collaboration on the *updated* WURMP, no later than March 24, 2008:

⁵⁷⁶ Exhibit T, Claimants' Comments on the Revised Proposed Decision and Parameters and Guidelines, page 41.

⁵⁷⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 78 (Table 14).

⁵⁷⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 78 (Table 14).

⁵⁷⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 78 (Table 14); California Constitution, article XIII B, section 6; Government Code section 17514.

- Each Copermittee shall collaborate with other Copermittees within its Watershed Management Area identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below.
- Update the WURMP to include and implement *only* the following elements:
 - Watershed water quality activities (activities other than education) and education activities (outreach and training) that address *high priority* water quality problems in the watershed management area. These activities may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.
 - Submit a Watershed Activities List with each updated WURMP and updated annually thereafter. The Watershed Activities List shall include the following information: a description of the activity; a time schedule for implementation of the activity, including key milestones; an identification of the specific responsibilities of Watershed Copermittees in completing the activity; a description of how the activity will address the identified high priority water quality problem(s) of the watershed; a description of how the activity is consistent with the collective watershed strategy; a description of the expected benefits of implementing the activity; and a description of how implementation effectiveness will be measured.
 - Each Watershed Copermittee shall implement identified Watershed Activities pursuant to established schedules. For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase (i.e., the activity shows significant pollutant load reductions or other quantifiable benefits, and the education activities show changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences).

i. Initial RRM Proposals.

The claimants initially proposed four RRM formulae in this section: watershed workgroup cost share contributions; jurisdictional watershed activities; regional watershed activities; and watershed workgroup meetings.

Watershed Workgroup Cost Share Contributions

For the watershed workgroup cost share contributions, the original RRM proposal reimbursed each “municipal claimant” based on its proportional share of cost identified in the applicable MOUs of the total yearly “watershed lead costs.” The “watershed lead costs” are defined as follows: “The yearly Watershed Lead Costs that [sic] for the

Watershed Workgroup lead Co-Permittee were determined by reviewing the County of San Diego costs included in the County Watershed Workgroup Expenditure Records located in Vol. 13, p. 10908 and dividing the reported County costs by the percent of watershed costs that the County was responsible for in a given year”⁵⁸⁰ When costs are added across fiscal years, the total reimbursement was estimated at \$616,316.21.⁵⁸¹

As explained below, the claimants are no longer proposing an RRM for these costs.

Jurisdictional Watershed Activities

The proposed RRM initially proposed for performing the watershed activities on a jurisdictional basis multiplies the average cost in fiscal year 2007-2008 to perform one jurisdictional activity per co-permittee (a unit cost of \$2,500), adjusted annually for the CPI, by the number of activities required each year (with the assumption that each jurisdiction completed the minimum four watershed activities). The proposed unit cost of \$2,500 is based on the median cost to perform one jurisdictional activity in fiscal year 2007-2008 as reported in “Co-Permittee Declarations located in Vol. 1, pp. 377-743.”⁵⁸² The total watershed activity cost is then divided by the number of watersheds in which the copermitttee is located to account for the copermitttees being in multiple watersheds that implemented different or duplicative activities in different watersheds.⁵⁸³ This proposal is also based on the County Watershed Activities Database.⁵⁸⁴ Mr. Quenzer’s declaration states that “[u]sing this formula, each Copermitttee would receive . . . \$221,461.50”; and when “added across the time the mandate applied and all the Municipal Claimants, the total is: Reimbursement = \$4,207,768.50.”⁵⁸⁵

Regional Watershed Activities

The proposed RRM initially proposed for performing the watershed activities on a regional basis is each claimant’s proportional share of costs based on applicable MOUs

⁵⁸⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 40; see also Exhibit M, Claimants’ Rebuttal Comments, pages 10-11.

⁵⁸¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer declaration).

⁵⁸² Exhibit M, Claimants’ Rebuttal Comments, page 71 (Quenzer declaration).

⁵⁸³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer Declaration). Exhibit M, Claimants’ Rebuttal Comments, pages 11, 71.

⁵⁸⁴ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 41 (Quenzer Declaration).

⁵⁸⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 41-42 (Quenzer Declaration).

times the “WURMP costs.” “WURMP costs” are the actual annual costs for the Regional Watershed Urban Runoff Management Plan Working Group’s costs (“WURMP costs”) to develop and maintain the Regional Watershed Activities Database.⁵⁸⁶ Mr. Quenzer’s declaration states that, based on the County Watershed Workgroup Expenditure Records, the average amount spent on the Regional Watershed Urban Runoff Management Plan Working Group’s costs totals \$2,737.91 in fiscal year 2008-2009, and \$3,287.23 in fiscal year 2009-2010,⁵⁸⁷ and “[w]hen the WURMP Costs are added across the time the mandate applied and all the Municipal Claimants, the total” estimated reimbursement is \$6,025.14.⁵⁸⁸

Watershed Workgroup Meetings

And, finally, the proposed RRM initially proposed for the Watershed Workgroup Meetings is calculated by multiplying the average cost of an employee to attend a meeting by the number of attendees the claimant had attend the meeting, by the number of meetings per year.⁵⁸⁹ Based on Co-Permittees’ Declarations, County 2011 Co-Permittee Surveys, and WURMP Annual Reports, the average cost to attend a meeting in fiscal year 2007-2008 was \$262.88.⁵⁹⁰ The number of meetings each year are as follows:

FY 2007/2008	369
FY 2008-2009	312
FY 2009-2010	334
FY 2010-2011	338
FY 2011-2012	355

⁵⁸⁶ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, pages 11, 72.

⁵⁸⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, page 72.

⁵⁸⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42 (Quenzer Declaration).

⁵⁸⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 42 (Quenzer declaration); Exhibit M, Claimants’ Rebuttal Comments, page 74.

⁵⁹⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 42-43 (Quenzer declaration); Exhibit M, Claimants’ Rebuttal Comments, page 74.

Assuming one attendee per meeting, total costs for all “municipal claimants” are estimated at \$560,630.93.⁵⁹²

The claimants estimate the total for these WURMP activities at \$5.39 million, based on the initial proposals.⁵⁹³

The Water Boards opposed the RRM proposals on the following grounds:

- The Section E requirements under the 2007 permit were not required to be implemented until March 24, 2008, or the last 90 days of 2007-2008. Claimants should not be reimbursed for “watershed lead costs” for fiscal year 2006-2007 and 75 percent of fiscal year 2007-2008 because they implemented the 2001 permit before that time.⁵⁹⁴
- The claimants propose the annual proportionate share of costs implementing the “applicable” MOUs for fiscal years 2006-2007 through 2012-2013 as the basis for the RRM equation for these mandated activities, but no description of the MOU or activities are referenced. Costs for developing an MOU or developing programs are not reimbursable and claimants do not differentiate between development and implementation of reimbursement costs specific to the mandated watershed activities for 2007.⁵⁹⁵ Also, the claimants do not provide a methodology to prorate the cost differential required to implement the 2007 permit requirements above and beyond the 2001 permit program implementation.⁵⁹⁶
- A minimum of four activities required to be implemented per watershed per claimant in the proposed RRM appears reasonable, but the claimants are unclear how the average cost was calculated for a jurisdictional activity in FY 2007-2008,

⁵⁹¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43 (Quenzer declaration).

⁵⁹² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43 (Quenzer declaration).

⁵⁹³ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 8, 40 (Quenzer declaration).

⁵⁹⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 54-55, 56-57, 57-58 (Technical Analysis).

⁵⁹⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 55-56 (Technical Analysis).

⁵⁹⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 56 (Technical Analysis).

since they were implementing activities required under the 2001 permit and not the 2007 permit until March 24, 2008. And it is also unclear whether the costs were only for the mandated activities.⁵⁹⁷

- Under table 4 of the test claim permit, the number of annual activities in each watershed can range from four to 40. The claimants do not identify the methodology in their proposed RRM formula to calculate the number of jurisdictional activities they implemented annually in the nine watersheds to arrive at the total cost.⁵⁹⁸
- The claimants do not explain their RRM equation for Permit Part E.2.f. that states the activities “may be implemented individually or collectively, and may be implemented at the regional, watershed, or jurisdictional level.”⁵⁹⁹ Nor do claimants explain their methodology to calculate the average proportional share of costs based on the “applicable MOUs,” nor are the proportional shares adjusted to include only the costs to implement the section E.2.f. activities.⁶⁰⁰ The claimants also do not provide a methodology to adjust the total number of meetings each fiscal year to account for those focused on 1) the 2001 Permit requirements; 2) development of watershed programs; 3) development and management of MOUs and 4) claimant meetings focused on implementing the mandated activity required by the 2007 permit.
- The claimants are unclear if the 2012-2013 activities during these meetings were development of the MOU or discussions regarding the 2013 Permit.⁶⁰¹
- The claimants do not include supporting documentation or a methodology for the total number of meetings in the summary table held for each fiscal year, and do not include the basis of the assumption that every claimant had an attendee at every single watershed group meeting for fiscal years 2007-2008 through 2012-

⁵⁹⁷ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 57 (Technical Analysis).

⁵⁹⁸ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 57 (Technical Analysis).

⁵⁹⁹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 58 (Technical Analysis).

⁶⁰⁰ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 58 (Technical Analysis).

⁶⁰¹ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines Opposition to Proposed RRMs, page 59 (Technical Analysis).

2013, although the 2007 MOU only identified some claimants to attend and others with voting rights.⁶⁰²

- For regional workgroup meetings, the claimants provide no supporting methodology for calculating the average rate of meeting attendance (\$262.88). The 2011 copermittee survey instructions asked the claimants to use a rate equivalent to the annual salary of the consultant when a consultant attended the meetings. The claimants do not identify if contractor rates are included in the average from the 2011 survey. The Water Boards point to the Draft Proposed Decision that says the claimants cannot be reimbursed for contractor or consultant costs beyond that charged to the claimants.⁶⁰³
- The claimants adjust the number of jurisdictional activities to include the number of watersheds where claimant is geographically located and for which it is required to perform the mandated activity, but do not identify how the number of watersheds in which a claimant is located would be determined. Nor do the claimants account for costs that were incurred on a region-wide basis or demonstrate how this formula does not duplicate costs for mandated activities already accounted for in the other RRM formulas. The claimants do not provide documentation of, or otherwise explain, how all jurisdictional efforts would have been conducted equally, or approximately equally, by all claimants in all watersheds at the same cost. These costs vary significantly. For almost all claimants except a few located in only one watershed, claimants did not conduct jurisdictional activities in all watersheds solely because some portion of the jurisdictional boundary was included in the watershed.⁶⁰⁴

ii. *There is not substantial evidence in the record to support the conclusion that the **new** proposed unit cost RRMs for Watershed activities and collaboration on the updated WURMP reasonably represent the actual costs mandated by the state for all eligible claimants.*

The claimants submit new RRM proposals as explained below.

Watershed Workgroup Cost Share Contributions

The claimants are no longer proposing an RRM for the Watershed Workgroup Cost Share Contributions, and plan to submit reimbursement claims based on actual costs for these expenses. They state the following:

⁶⁰² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 60 (Technical Analysis).

⁶⁰³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 60 (Technical Analysis).

⁶⁰⁴ Exhibit N, Water Boards' Late Comments on Claimants' Rebuttal, pages 17-18.

a. Watershed Workgroup Cost Share Contributions

The Co-Permittees no longer propose an RRM for this category. Invoices for services provided via contract services will be reviewed to determine which charges are for work considered an unfunded mandate, such as the WURMP update. The Co-Permittees anticipate submitting those charges as part of claims based on actual cost.⁶⁰⁵

Jurisdictional Watershed Activities

The claimants revised the proposed RRM for performing the watershed activities on a jurisdictional basis, which multiplies the median unit cost of these activities (\$5,000 per jurisdictional activity adjusted annually by the Consumer Price Index), times four (the minimum number of activities required to be implemented each year),⁶⁰⁶ times the number of watersheds each co-permittee is located, from March 24, 2008, through June 26, 2013 (the day before the effective date of the 2013 permit) for each eligible claimant.⁶⁰⁷ The 2025 Quenzer declaration states, “it is assumed that each Co-Permittee performed the minimum number of watershed activities required under the 2007 Permit in each watershed.”⁶⁰⁸

Mr. Quenzer declares that the 2013 permit did not include a provision requiring the co-permittees to continue implementing their WURMP while the Water Quality Improvement Plans (WQIPs) were in development, which is why the period of reimbursement ends when the 2013 went into effect. The costs claimed for fiscal year 2007-2008 should be 27.05 percent of the unit costs to reflect the 99 days on or after March 24, 2008. The 2012-2013 costs claimed should be 98.9 percent of the costs to reflect the 361 days on or before June 26, 2013.⁶⁰⁹

The median unit cost of \$5,000 is based on 71 watershed activities in each watershed management area, which are identified in WURMP annual reports and listed in

⁶⁰⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 15, 45.

⁶⁰⁶ The test claim permit requires the following: “For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase.” Exhibit U (13), Test Claim, pages 302-304 (Order R9-2007-0001, Part E.2.f.).

⁶⁰⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 45-46, 80-85 (Table 17).

⁶⁰⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 46.

⁶⁰⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 45.

Table 17 to Mr. Quenzer's declaration. The 2025 Quenzer declaration explains the following:

. . . watershed activities with reported costs were identified in WURMP annual reports, and those costs are now used as the basis for the proposed unit cost. This data set includes 71 activities; each watershed management area within the area subject to the 2007 Permit is included in this data set. The activity costs were included in WURMP annual reports from 2008-2009 through 2011-2012. Activities that were reported to be funded by exclusively grant or state proposition funding were excluded from this subset as were activities reported with "costs not to exceed" a set amount. For activities that were partially funded by grant or proposition funding, only the portion of costs that were matching or supplemental costs provided by a Co-Permittee were included.

The Commission also noted that it was unclear why certain costs, such as mileage, might be applicable to watershed activities. Many watershed activities include field work to make observations, interact with the public, etc. Because these activities take place away from Co-Permittees' offices, mileage or other transportation costs are appropriate. Where a watershed activity can be completed without transportation being needed, mileage and other transportation costs are not included in the activity's cost.

The Jurisdictional Activities is \$5,000. See Attachment 1, Table 17 for a table of the activities and costs, along with references. While the Co-Permittees acknowledge that WURMP annual reports did not include cost data for every watershed activity, the proposed unit cost is based on a substantial number of watershed activities and is believed to be reasonably representative of the typical cost to perform a watershed activity.⁶¹⁰

Table 17 contains a five-page list of activities identified in WURMP Reports organized by watershed and fiscal year, with costs and references to WURMP annual reports filed with the Regional Board and included in Exhibit I, Volume 13, to support the costs identified.⁶¹¹ While the table shows several activities costing \$5,000 or below, the range in costs goes from a low of \$190 for the "Aubrey Street Continuous Deflective Separation Device" to a high of \$84,000 for the "Buena Vista Creek Cleanup and Restoration," with several other activities costing \$47,112.00, \$33,000.00, \$27,086.00,

⁶¹⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 46.

⁶¹¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 80-85.

\$16,065.90, \$15,000.00.⁶¹² Given the wide range of costs identified (between \$190 to \$84,000), the Commission finds that the proposed unit cost of \$5,000 per activity does not reasonably represent the actual costs mandated by the state for all eligible claimants.

Therefore, the Commission denies this proposed RRM.

Regional Watershed Activities

The claimants clarify their proposed RRM for the regional watershed activities, which reimburses the claimants for the proportional share of costs under the MOU for the Regional WURMP Working Group to develop and maintain the Regional Watershed Activities Database from March 24, 2008, through June 26, 2013.⁶¹³ Table 19 identifies the costs incurred in fiscal years 2008-2009 and 2009-2010, which are the same as the costs originally proposed, and the supporting documentation as follows:⁶¹⁴

Table 19: Supporting Data for Regional Watershed Activities - WURMP

Co-Permittee	WURMP Costs	Data Location
FY 2008/2009	\$2,737.91	Vol. 13, p 10982
FY 2009/2010	\$3,287.23	Vol. 13, pp. 11630-11650

The supporting documents identified in the chart are the Regional WURMP Workgroup costs for “Subtask 2.C. Watershed Activities Database, \$2,737.91” in fiscal year 2008-2009⁶¹⁵ and expenditure sheets showing costs incurred by the Regional WURMP Working Group for “Sub-task 2.F., Watershed Activities Database” for fiscal year 2009-2010 of \$3,287.23.⁶¹⁶

As indicated above, the Commission approved reimbursement for the following activities as reasonably necessary to comply with the Watershed Activities List requirements:

⁶¹² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 80-81.

⁶¹³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 47.

⁶¹⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 86.

⁶¹⁵ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), page 10983.

⁶¹⁶ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 11633 (\$423.89), 11635 (\$252.24), 11637 (\$343.70), 11646-11647 (\$803.16), 11649 (\$825.84), and 11651 (\$638.30).

- The *one-time* activity and pro-rata share of costs to develop a data tracking and analysis system for gathering and reporting the new data required to be included in the Watershed Activities List identified above. Reimbursement is **not** required to the extent that the data tracking and analysis system was developed for the purpose of submitting the WURMP annual report as a whole.
- The *ongoing* activity of recording the data identified above in the data tracking system to prepare the Watershed Activities List.

The proposed formula for reimbursement based on the proportional share of costs under the MOU for the Regional WURMP Working Group to develop and maintain the Regional Watershed Activities Database is a reasonable formula, and language has been added to the Parameters and Guidelines to indicate that costs may be claimed this way as follows: “The claimants may claim these costs based on their proportional share of costs under the MOU for the Regional WURMP Working Group to develop and maintain the Regional Watershed Activities Database.”

However, there is not substantial evidence in the record to support a finding that the \$6,025.14 in costs alleged represents the actual total costs for these activities. The expenditure spreadsheet documents provided by the claimants are considered hearsay and not direct evidence. The expenditure documents are out-of-court documents offered to prove the truth of matter asserted. They are not signed or dated; it is not clear who prepared the documents or where the information is coming from; and the only “certification” page identified in the referenced pages certifies unknown expenditures of \$1,591.93 from the Regional WURMP Workgroup, dated October 2009.⁶¹⁷

Thus, there is not substantial evidence supporting the total proposed RRM unit cost of \$6,025.14, and that proposal is denied.

Watershed Workgroup Meetings

The claimants have revised their proposed RRM for the watershed workgroup meetings to reduce the unit cost per meeting and to identify the supporting documentation. Specifically, the proposal reimburses the claimants from January 24, 2007, or the effective date of the test claim permit, to June 26, 2013. Mr. Quenzer states the following:

The period of summation for watershed workgroup meetings contributions is from January 24, 2007, or the effective date of the 2007 Permit, to June 26, 2013, which is the day before the effective date of the 2013 Permit. The watershed workgroups are an element of Co-Permittee collaboration that required significant planning and development work that

⁶¹⁷ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), page 11631.

took place before Co-Permittees were required to begin implementing WURMPs that were developed per the 2007 Permit requirements. After WURMP implementation began, meetings to coordinate implementation of and reporting on the WURMPs continued throughout the period the 2007 Permit was in effect. The requirements for watershed workgroup collaboration related to the WURMP did not carry over in the same capacity following the effective date of the 2013 Permit (June 27, 2013). After the effective date of the 2013 Permit, watershed groups meetings were primarily focused on work to develop and implement Water Quality Improvement Plans required under the 2013 Permit.⁶¹⁸

Fiscal year 2006-2007 costs are reduced to 43.29 percent of the cost to reflect that 158 days of the year were on or after January 24, 2007, and fiscal year 2012-2013 costs are 98.9 percent of the total costs to reflect the 361 days in fiscal year 2012-2013 that were on or before June 26, 2013.⁶¹⁹

The proposed unit cost per meeting is reduced from \$262.88 per meeting as originally proposed (based on the average cost to attend a meeting in 2007) to the following:

- For meetings that occurred between the 2007 Permit effective date and the WURMP update submittal in March 2008, the RRM unit cost per attending meetings is reduced by 50 percent, from \$262.88 to \$131.44. While most of the discussion during those meetings is believed to have related to 2007 Permit requirements, this reduction accounts for discussion of other topics during those meetings.
- For meetings that occurred after the WURMP update submittal in March 2008, the RRM unit cost is reduced by 90 percent, from \$262.88 to \$26.29.⁶²⁰

The 2025 Quenzer declaration further states that the “WURMP annual reports, which include lists of meetings with topics covered during the meetings, are included at Vol. 13, pp. 1-10,756.”⁶²¹ In addition, he states, “The formula and components of the formula were determined by reviewing the Co-Permittee Declarations, 2011 Surveys

⁶¹⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 48.

⁶¹⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 48.

⁶²⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 49.

⁶²¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 49. These documents are located in Exhibit I (13) Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 2-10767.

focused on mandated meetings.”⁶²² The original proposal identified the following number of meetings:

FY 2007/2008	369
FY 2008-2009	312
FY 2009-2010	334
FY 2010-2011	338
FY 2011-2012	355
FY 2012-2013	320 ⁶²³

As indicated above, the test claim permit mandates the claimants to collaborate with the co-permittees 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 to reflect the new state-mandated requirements. Thus, meetings are required. However, the Commission denies the RRM unit cost proposal because there is not substantial evidence in the record that the unit costs reasonably represent the actual costs mandated by the state for each eligible claimant.

First, the 2025 Quenzer declaration states that meetings occurred to coordinate implementation of and “*reporting on the WURMPs*.” Reimbursement is not required for the annual WURMP report. Parts J.1.b. (submitting the WURMP to the Regional Board) and J.3.b. (submitting WURMP annual reports to the Regional Board) of the test claim permit were not pled in the Test Claim. Thus, the alleged costs and number of meetings may be overstated.

Second, the claimants state the proposal is based on the “WURMP annual reports, which include lists of meetings with topics covered during the meetings, [and] are included at Vol. 13, pp. 1-10,756,” Co-Permittee Declarations, and 2011 Surveys focused on mandated meetings. The claimants do not identify the specific pages in that volume or the data referred to in the annual reports and do not identify which declarations are relevant for the proposal. In addition, there is no evidence supporting how the unit cost of \$262.88, and then reduced by a percentage, was specifically calculated. As the courts have held, “A party is required to support its argument with appropriate and page-specific references to the record; failure to do so effectively waives the argument.”⁶²⁴ Thus, without specific references to the record, the Commission will not consider the WURMP annual reports, declarations, or surveys for

⁶²² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 48.

⁶²³ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43 (Quenzer declaration).

⁶²⁴ *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.

the meetings to update the WURMP. Moreover, as discussed earlier, the survey responses are hearsay and may not be used as direct evidence.

Accordingly, the Commission denies the proposed unit cost RRM.

- e. The proposed RRM for the Regional Urban Runoff Management Program (RURMP) and Collaboration in the updated RURMP.

The Parameters and Guidelines authorize reimbursement for the copermittees to collaborate to develop, implement, and update as necessary a RURMP that meets the requirements of section F, reduces the discharge of pollutants from the MS4 to the MEP, and prevents urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards. As part of the updated plan, the copermittees are required to develop and implement a Regional Residential Education Program with specified content, develop the standardized fiscal analysis method required in section G of the permit,⁶²⁵ and facilitate assessing the effectiveness of jurisdictional, watershed, and regional programs (which includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments, but does not include actually assessing these programs).⁶²⁶

The proposed RRM for the Regional Urban Runoff Management Plan is claimant's proportional share of costs based on the applicable MOUs for fiscal year 2006-2007 through fiscal year 2012-2013, multiplied by the actual annual costs invoiced by the

⁶²⁵ 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 U (13), Test Claim, page 305 (Order No. R9-2007-0001, Part G.2.)

⁶²⁶ Exhibit A, Amended Test Claim Decision on Remand, pages 91-92, 96, 144-145.

County for *annual reporting*, as discussed below.⁶²⁷ The claimants have not revised this proposal.⁶²⁸

Based on the County Watershed Workgroup Expenditure Records, the annual costs are estimated at:

FY 2008/2009 \$2,928.91

FY 2009/2010 \$5,230.98

FY 2010/2011 \$1,926.50⁶²⁹

The claimants explain the following:

RURMP costs are Regional Workgroup Expenditures *specifically designated as allocated for RURMP annual reporting* as reported by the following workgroups: Fiscal, Reporting, and Assessment (FRA); Industrial and Commercial Sources (ICS), Monitoring (MON), Municipal (MUNI), WURMP, Education and Regional Sources (ERS), and Land Development (LD). [Fn. omitted.] The RURMP expenditures reported by these workgroups were removed from the workgroup expenditures presented for some of these workgroups in other categories (e.g., FRA expenses in item 17.b [Regional Fiscal, Reporting, and Assessment (“FRA”) Workgroup Expenditures, discussed in the next section below]) to avoid double counting. [Fn. omitted.] Expenditures data can be found in the County Watershed Workgroup Expenditure Records located in Vol. 13, pp. 10,908-10,916 and the Regional Cost Sharing documentation located in Vol. 13, pp. 19,017-13,074.⁶³⁰

The 2025 Quenzer declaration further states that the proposed RRM covers only the work group’s costs for *RURMP annual reporting* as follows:

Many of the items discussed in the Revised Proposed Decision, such as a Regional Residential Education Program and developing standardized fiscal analysis method, are covered in other RRMs. *As described in*

⁶²⁷ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43.

⁶²⁸ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 49, 74-75.

⁶²⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 43; Exhibit M, Claimants’ Rebuttal Comments, page 75; Exhibit T, pages 74-75 (Table 12), emphasis added.

⁶³⁰ Exhibit M, Claimants’ Rebuttal Comments, page 12, emphasis added. The reference to pages “19,017-13,074” appears to be a mistake, and should be “10,917-13,074” as stated in the Table of Contents to Exhibit I (1).

Claimants' Rebuttal, the proposed RRM for the RURMP covers only Co-Permittee work groups' costs for RURMP annual reporting. These costs do not overlap with costs included in any other RRM. RURMP annual reporting is a reimbursable activity because it is required by the 2007 Permit and is part of implementing the RURMP. A more detailed table of costs used to develop the RURMP RRM and specific citations for these costs is included in Attachment 1, Table 12.⁶³¹

The proposed RRM estimates total reimbursement at \$10,086.39.⁶³²

The documents cited as support for the proposed RRM are identified in Table 12 to the 2025 Quenzer declaration and consist of the workgroup expenditure summaries that identify costs for RURMP annual reporting.⁶³³

The Water Boards object to the proposed RRM on the following grounds:

- Section F of the permit was not effective until March 24, 2008 due to the 365-day implementation delay in the permit and the Addendum that added 60 days due to a wildfire emergency in San Diego County. But the claimants proposed RRM period is from July 1, 2006, to June 30, 2013.⁶³⁴
- Regarding the MOU basis for the cost share, the claimants do not state which MOUs were relied on, and the claimants' summary table gives a proportion to each claimant without explanation. Claimants are "unclear if the MOU costs were for implementing the mandated activities, or for managing, facilitating and developing MOUs or activities."⁶³⁵

⁶³¹ Exhibit T, Claimants' Comments on the Revised Proposed Decision and Parameters and Guidelines, page 50 (2025 Quenzer Declaration), emphasis added.

⁶³² Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 44; Exhibit T, Claimants' Comments on the Revised Proposed Decision and Parameters and Guidelines, pages 74-75 (Table 12).

⁶³³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 74-75 (Table 12); Exhibit I (13), Claimants' Documentation Supporting Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 10986 et al. (as cited in Exhibit T, Table 12).

⁶³⁴ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 61 (Technical Analysis). The claimants revised these dates in their rebuttal to January 24, 2007 to June 26, 2013. Exhibit M, Claimants' Rebuttal Comments, page 74 (Quenzer Declaration).

⁶³⁵ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 61-62 (Technical Analysis).

The Commission finds the proposed RRM goes beyond the scope of the mandate since *annual reporting on the RURMP* is *not* a reimbursable activity. The reimbursable activities are limited to those requirements in Part F.1-3. of the test claim permit as follows:

- 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. This includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments. (Part F.3.)

Section F. also says “the Regional Urban Runoff Management Program may: . . . Develop and implement a strategy to integrate management, implementation, and reporting of jurisdictional, watershed, and regional activities, as determined to be necessary by the Copermittees.”⁶³⁶ Developing and implementing a strategy to integrate reporting of the regional activities is discretionary, not mandated by the state, and was not approved as a reimbursable state-mandated activity. In addition, annual reporting on the RURMP, which identifies all regional activities conducted by the co-permittees during the previous annual reporting period, is required by Part J.3.c. of the test claim permit, but that Part was not pled in the Test Claim.⁶³⁷

Thus, the proposed RRM for the RURMP annual reporting is denied.

⁶³⁶ Exhibit U (13), Test Claim, page 305 (Order R9-2007-0001).

⁶³⁷ Exhibit U (13), Test Claim, page 327 (Order R9-2007-0001).

The claimants do propose RRM for the activities in Parts F.2. and F.3. described above but include them in the discussion of program effectiveness assessment requirements in the next section below.

f. The proposed RRM for the Program Effectiveness Assessment.

The Parameters and Guidelines authorize reimbursement for conducting an annual assessment of the JURMP for permit Part I.1. and of the WURMP for Permit Part I.2. based on assessment outcome levels, annually review those programs following the assessments to determine if they comply with receiving water limitations and discharge prohibitions, and report to the Regional Board on the effectiveness assessment as implemented under each of the requirements.

i. *Initial RRM Proposals*

The RRM initially proposed for the Jurisdictional Program Effectiveness Assessment is based on the percentage of the total stormwater budget all copermittees spent assessing the effectiveness of the jurisdiction program (which is 3.72 percent, based on JRMP annual reports in Volumes 2-11 and D-Max Proposals in Volume 14, pages 8-189) to the Municipal Claimant's total stormwater budget, from fiscal year 2007-2008 through fiscal year 2012-2013.⁶³⁸ Mr. Quenzer states that total reimbursement would be \$26,804,749.26, but in that statement, he refers to the "Residential Education Program."⁶³⁹

The proposed RRM for the "Regional Fiscal, Reporting, and Assessment Workgroup is the proportional share of costs based on MOUs to the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup, from fiscal year 2006-2007 through 2012-2013.⁶⁴⁰ Based on a review of the County Watershed Workgroup Expenditure Records, Mr. Quenzer declares that the actual shared costs for developing and implementing the program was as follows for the following three fiscal years:

FY 2008/2009	\$24,466.92
FY 2009/2010	\$32,423.11

⁶³⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 44; Exhibit M, Claimants' Rebuttal Comments, page 77.

⁶³⁹ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 44 (Quenzer Declaration).

⁶⁴⁰ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 45 (Quenzer Declaration); Exhibit M, Claimants' Rebuttal Comments, page 78 (Quenzer Declaration).

FY 2010-2011 \$72,983.57⁶⁴¹

The declaration states that “When the costs for developing and implementing the *Residential Education Program* is added across the time the mandate applied for all Municipal Claimants, the total is: *Reimbursement* = \$129,873.60.”⁶⁴²

The Water Boards opposed the proposed RRM on the following grounds:

- The claimants were not required to implement the JURMP or WURMP mandated activities until March 24, 2008, or near the end of fiscal year 2007-2008. Until this date, claimants were required to implement the 2001 Permit requirements.⁶⁴³

In addition, the test claim permit did not require submitting annual reports for the JURMP and WURMP until September 30, 2008, or fiscal year 2008-2009. Claimants were required to implement annual effectiveness assessments under the 2001 permit for the JURMP and WURMP until March 28, 2008 and would not have been fully implementing the test claim permit until 2009-2010.⁶⁴⁴

- For the Jurisdictional Program Effectiveness Assessment, the claimants do not provide any summary or supporting documentation explaining the methodology or basis for calculating the percentage of 3.72 percent or how the total of the claimant’s total stormwater budget was calculated to identify a \$26.8 million reimbursement.⁶⁴⁵
- Section 15.b. of the claimants’ declaration does not contain the total annual stormwater budgets, as the claimant indicated, but contains the “Claimant Jurisdictional Activities basis for reimbursement costs.” It is unclear what “total annual stormwater budget” for reimbursement costs the claimants refer to in section 15.b when they state the basis of their costs.⁶⁴⁶

⁶⁴¹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, pages 44-45 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, page 79 (Quenzer Declaration).

⁶⁴² Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 45 (Quenzer Declaration), emphasis added.

⁶⁴³ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 62 (Technical Analysis).

⁶⁴⁴ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 62-63, 64-65 (Technical Analysis).

⁶⁴⁵ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, page 63 (Technical Analysis).

⁶⁴⁶ Exhibit L, Water Boards’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 63-64 (Technical Analysis).

- The claimants do not provide a description or specific data or records for the Regional Fiscal, Reporting and Assessment (FRA) Workgroup expenditure formula the claimants say were determined by reviewing the County Watershed Workgroup Expenditure Records.⁶⁴⁷ Nor do the claimants describe the methodology or data used to calculate the proportional share of MOU costs for the workgroups or for the summary table for each fiscal year of reimbursement.⁶⁴⁸ And the claimants do not identify if the MOU costs were adjusted or prorated to remove non-mandated activities such as developing and managing the MOUs for each fiscal year. The effectiveness assessment was a requirement of the 2001 permit that continued into the 2007 test claim permit with some minor modifications.⁶⁴⁹
- The RRM includes costs of the Regional FRA Workgroup that are not required in Sections I.1. and I.2. of the test claim permit, which only address 1) implementing and annual reporting of each claimant's jurisdictional effectiveness assessment and 2) implementing each Claimant's WURMP effectiveness assessment. Regional Effectiveness Assessment and Reporting is included in Section I.3 under the RURMP.⁶⁵⁰
- The claimants do not identify if the MOU cost shares were actual spent costs or proposed budgets. Claimants refer to the Residential Education costs which is under a different proposed RRM methodology.⁶⁵¹
 - ii. *There is not substantial evidence in the record to support the **new** proposed unit cost RRMs for the program effectiveness assessments of the JURMP and WURMP or the conclusion that the new proposed unit cost RRMs reasonably represent the actual costs mandated by the state for all eligible claimants.*

The claimants have revised their proposals as follows:

⁶⁴⁷ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 64 (Technical Analysis).

⁶⁴⁸ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 65 (Technical Analysis).

⁶⁴⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 65 (Technical Analysis).

⁶⁵⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 65-66 (Technical Analysis).

⁶⁵¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 66 (Technical Analysis).

Jurisdictional Program Effectiveness Assessment

The claimants' revised RRM is still based on the percentage of the total stormwater expenditures on the jurisdictional program effectiveness assessment each fiscal year from March 24, 2008, through June 26, 2013 (with the fiscal year 2007-2008 costs 27.05 percent of the reported costs and 90.9 percent of the costs claimed for fiscal year 2012-2013).⁶⁵² However, the unit percentage proposed is lowered from 3.72 percent of the total stormwater expenditures to 0.28 percent of the stormwater expenditures, based on data for some fiscal years from the cities of La Mesa (2007-2008 through 2011-2012), National City (2008-2009), Poway (2010-2011 and 2011-2012), San Diego (2007-2008, 2008-2009), and Santee (2007-2008 through 2011-2012), and reduced to account for potential overlap with the requirements of the prior permit.⁶⁵³ The 2025 Quenzer declaration states the following:

The standard percentage of Co-Permittees' total stormwater budget reasonably estimated to be spent on jurisdictional program effectiveness assessment is 0.37%. This number was revised compared to the previous RRM submittal based on additional data review and analysis completed in response to the Commission's comments (see Attachment 1, Table 20). The standard percentage of total stormwater budget spent by Co-Permittees on assessing jurisdictional program effectiveness was determined by evaluating the actual costs charged to several Co-Permittees for work completed by D-Max to fulfill the program effectiveness assessment requirements and costs for program effectiveness assessment implementation reported by Co-Permittees in JURMP annual reports where available. [Fn. omitted.] The D-Max costs are a conservative estimate because they only include program effectiveness work performed as part of annual reporting and do not include any other program effectiveness assessment work Co-Permittees completed.

The Commission expressed that the source of jurisdictional program effectiveness assessment costs used to develop the RRM was not clear. The procedure was based on data reported by Co-Permittees in the fiscal analysis components of their JURMP annual reports. In the fiscal analysis, each Co-Permittee reports their total stormwater program costs from the applicable reporting year. Certain Co-Permittees also reported how much of that total cost was attributable to program effectiveness assessment. The effectiveness assessment cost was divided by the total stormwater

⁶⁵² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 50-51.

⁶⁵³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 51, footnote 15, and pages 87-88 (Table 20).

program cost to yield the percent of the total stormwater cost attributable to program effectiveness assessment. A more detailed table of costs used to develop the RRM and associated citations is provided in Attachment 1, Table 20.

The Commission noted that claiming all jurisdictional program effectiveness costs is not supported because the 2001 Permit also required some level of jurisdictional program effectiveness assessment. [Fn. omitted.] While the 2001 Permit required some effectiveness assessment, the 2007 Permit was a significant increase in effectiveness assessment requirements. The Co- Permittees developed and implemented procedures to perform assessments of the six levels discussed in the 2007 Permit. This was a new effort that served as a model for other agencies in the State and was later incorporated into Statewide guidance for municipal stormwater programs by the California Stormwater Quality Association. [Fn. omitted.] The Co-Permittees also formed the FRA Workgroup (discussed in more detail below) to provide guidance on new program assessment procedures necessary to meet the 2007 Permit requirements. These large changes indicate that complying with the 2007 Permit's effectiveness assessment requirements was a substantial increase over the 2001 Permit requirements.

The 2007 Permit's effectiveness assessment requirements were a major increase over the relatively minimal requirements of the 2001 Permit. This suggests that almost all of the reported program effectiveness assessment costs under the 2007 Permit were new costs. However, to account for some overlap in program effectiveness requirements across the two permits, the Co-Permittees propose reducing the RRM standard percentage of stormwater program costs (as reporting in the fiscal analysis sections of jurisdictional annual reports) by 25%, [fn omitted] which reduces it from 0.37% to 0.28%. **The new value for *Effectiveness* is 0.28%.**⁶⁵⁴

The Quenzer declaration explains the reduction of the unit percentage by an additional 25 percent (from 0.37% to 0.28%) to account for overlap with the prior permit as follows:

The City of San Diego reported program effectiveness assessment costs in 2006-2007, before the 2007 Permit was adopted, and in 2007-2008 and 2008-2009. The 2006-2007 program effectiveness assessment cost was 3.03 % of the City's stormwater program costs (\$1,351,292/\$44,602,619 = 3.03%; numbers from Vol. 6 pp 2599-2600). As shown in Attachment 1,

⁶⁵⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 51-52.

Table 20, the average program effectiveness assessment cost from 2007-2008 and 2008-2009, after the 2007 Permit was adopted (2007-2008: 16.84%; 2008-2009: 10.07%) was 13.46%. The 2006-2007 number (3.03%) was about 22.5% of the average for the 2007-2008 and 2008-2009. This suggests removing about 25% of the program effectiveness assessment costs to account for 2001 Permit program effectiveness assessment costs is reasonable.⁶⁵⁵

Table 20 identifies the numbers supporting the unit percentage and the supporting documentation.⁶⁵⁶ The percentages for program effectiveness to the total stormwater budgets for the Cities of San Diego, La Mesa, National City, Poway, and Santee range from a high of 16.84 percent (City of San Diego, fiscal year 2007-2008) to a low of 0.13 percent (City of Poway, for fiscal years 2007-2008 and 2008-2009), with the median of 0.37 percent.⁶⁵⁷ The supporting documents identified in Table 20 are JURMP Annual Reports, which show the total stormwater budgets for these cities for the fiscal years identified in Table 20 and the City of San Diego's fiscal reports show costs for "program assessment."⁶⁵⁸ "Program assessment" annual costs are not shown in the remaining

⁶⁵⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 52-53, footnote 18.

⁶⁵⁶ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 87-88.

⁶⁵⁷ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 87-88.

⁶⁵⁸ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 87-88; Exhibit I (6), Claimants' Supporting Documentation for Proposed RRM, Volume 6 (JURMP Reports), page 4668 (City of San Diego's 2008 JURMP Annual Report); Exhibit I (7), Claimants' Supporting Documentation for Proposed RRM, Volume 7 (JURMP Reports), page 655 (City of San Diego's 2009 JURMP Annual Report); Exhibit I (4), Claimants' Supporting Documentation for Proposed RRM, Volume 4 (JURMP Reports), pages 655, 1614, 2311, 3129, 3641 (City of La Mesa's 2007/2008 through 2011-2012 JURMP Annual Reports) showing the total stormwater budget only; Exhibit I (5), Claimants' Supporting Documentation for Proposed RRM, Volume 5 (JURMP Reports), page 1706 (National City's 2008-2009 JURMP Annual Report), showing total stormwater budget only; Exhibit I (6), Claimants' Supporting Documentation for Proposed RRM, Volume 6 (JURMP Reports), pages 1884, 2237 (City of Poway's 2010-2011 and 2011-2012 JURMP Annual Reports), showing the total stormwater budget only; Exhibit I (9), Claimants' Supporting Documentation for Proposed RRM, Volume 9 (JURMP Reports), pages 562-563, 1487-1488 (City of Santee's 2007-2008, 2008-2009 JURMP Annual Reports), showing the total stormwater budget only; Exhibit I (10), Claimants' Supporting Documentation for Proposed RRM, Volume 10 (JURMP Reports), pages 1069, 1383

JURMP Annual Reports, but are taken from proposals to prepare JURMP annual reports, including an analysis of the program effectiveness using outcome levels 1-6 and the proposed costs to perform that work, from D-Max Engineering, Inc.⁶⁵⁹

The Commission finds that while reimbursing the claimants based on a percentage of total stormwater costs spent on the jurisdictional program effectiveness assessment requirements is reasonable, there is not substantial evidence in the record to support a finding that the proposed unit percentage of 0.37 percent, and then reduced again by 25%, reasonably represents the actual costs mandated by the state for all eligible claimants to comply with the state mandated activities.

The JURMP reports from the City of San Diego, which identify the costs spent on “program effectiveness” in a pie chart, appears to identify total program effectiveness assessment costs for the year, which is more than just assessing the jurisdictional component. As explained above, it includes assessing the watershed program as well. In addition, there is a long-term assessment requirement. Thus, the JURMP annual reports from the City of San Diego do not clearly show that the costs identified are limited to the jurisdictional assessment.

Moreover, the D-Max *proposals* show costs estimated to complete the jurisdictional effectiveness assessment, but there is no evidence in the record to show the costs spent by the cities to comply with the requirements in any fiscal year. Invoices from D-Max or other documents of costs spent on the mandated activities are not provided.

In addition, the Commission found that the prior 2001 permit required an assessment of the jurisdictional program, but that the test claim permit more specifically required an assessment using outcome levels 1-6 for each jurisdictional activity and, thus, a higher

(City of Santee’s 2010-2011 and 2011-2012 JURMP Annual Reports), showing the total stormwater budget only.

⁶⁵⁹ Exhibit I (14), Claimants’ Supporting Documentation for Proposed RRM, Volume 14 (Quenzer Resume, DMAX Files), pages 9-11, 12-18, 19-25, 26-32, 33-39 (D-Max proposals to the City of La Mesa to prepare the 2006-2007 through 2011-2012 JURMP Annual Reports, including the proposed costs to analyze program effectiveness of \$2,080 (2006-2007), \$2,230 (2007-2008), \$1,760 (2008-2009, 2009-2010, 2011-2012); pages 61-68 (D-Max proposal to National City to prepare the 2007-2008 JURMP Annual Report, including the proposed cost to analyze program effectiveness of \$6,865); pages 144-146, 147 (D-Max proposal to the City of Poway to prepare the 2009-2010 and 2010-2011 JURMP Annual Report, including the proposed cost to analyze program effectiveness of \$2,390 and \$2,400); and pages 160-167, 168-174, 175-182, 183-186 (D-Max proposal to the City of Santee to prepare the 2007-2008 through 2011-2012 JURMP Annual Reports, including the proposed cost to analyze program effectiveness of \$5,600, \$2,540, \$2,458, \$2,618.)

level of service was required.⁶⁶⁰ However, there is no evidence that 25 percent accurately represents the higher level of service for all eligible claimants since that assumption is based only on reports from the City of San Diego for “program effectiveness assessment costs.”

Finally, even assuming the costs and percentages of costs are reliable and limited only to the effectiveness assessment for the jurisdictional program, reimbursing all eligible claimants based on the median percentage identified by five of the 19 eligible claimants, which range from 0.13 to 16.84 percent of their total stormwater costs, does not reasonably represent the actual costs mandated by the state to comply with the mandated activities for all eligible claimants. Moreover, the claimants have not pointed to any evidence of costs incurred by the remaining 14 eligible claimants.

Thus, the proposed RRM is denied.

“Regional Fiscal, Reporting, and Assessment Workgroup”

The proposed RRM for the “Regional Fiscal, Reporting, and Assessment Workgroup” remains the proportional share of costs based on MOUs to the total shared costs for developing and implementing the Regional Fiscal, Report, and Assessment Workgroup, from January 24, 2007, to June 26, 2013, the day before the effective date of the 2013 permit, and is based on the County Watershed Workgroup Expenditure Records and Cost-Sharing MOUs.⁶⁶¹ However, recognizing the overlap in the RRM proposal with other RRM proposals, this calculation subtracts the following costs, reducing overall costs to \$53,173.37: Long Term Effectiveness Assessment costs, RURMP development and reporting costs, and development of the ROWD for the 2013 permit, all of which were done by this workgroup.⁶⁶² The 2025 Quenzer declaration explains the following:

As noted on pages 170 to 171 of Revised Proposed Decision, developing a standardized fiscal analysis method and facilitating program effectiveness assessment are reimbursable activities. The FRA was formed for these purposes. [Fn. omitted.][⁶⁶³] The other activities the FRA

⁶⁶⁰ Exhibit A, Amended Test Claim Decision on Remand, page 104.

⁶⁶¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 53.

⁶⁶² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 53-54.

⁶⁶³ The footnote omitted states the following: “See workgroup duties description on page 12 of the 2007 Co-Permittee MOU, Section E.1.” This MOU is in Exhibit U (13), Test Claim, page 517, which describes the work of the Fiscal, Reporting, and Assessment Workgroup as follows:

The purpose of the Fiscal, Reporting, and Assessment Workgroup is to provide regional standards and consistency in the implementation, assessment, and reporting of Copermittee urban runoff management

workgroup performed were overseeing development of the Long Term Effectiveness Assessment ("LTEA") and RURMP development and reporting; both of those activities are also reimbursable and are included in separate RRM's. The FRA Workgroup RRM includes the FRA workgroup expenditures, less the workgroup meeting support, LTEA and RURMP development and reporting costs included in other categories. Development of the Report of Waste Discharge, which was not identified as a reimbursable activity, is also excluded. Because in 2010-2011 the FRA Workgroup only reported costs related to the Report of Waste Discharge or LTEA, costs from 2010- 2011 have been excluded. Therefore, it is limited to reimbursable activities. A table of FRA Workgroup costs and citations for those costs is included in Attachment 1, Table 15.⁶⁶⁴

Table 15 identifies the total costs proposed and supporting documentation as follows:

activities and programs. At a minimum, the Fiscal, Reporting, and Assessment Workgroup shall have the following responsibilities:

- a. Develop, annually review, and update as necessary regional reporting, assessment, and program data and information management standards;
- b. Develop regional fiscal analysis standards and metrics by December 31, 2008;
- c. Develop, annually review, and update as necessary standards for tracking and reporting expenditures.
- d. Receive and consolidate data for budget preparation and monitoring;
- e. Develop the Copermittees' Regional URMP (RURMP);
- f. Develop the Copermittees' Regional Annual Reports;
- g. Develop the Copermittees' Long Term Effectiveness Assessment (LTEA);
- h. Develop the Copermittees' Report of Waste Discharge (ROWD); and
- i. Provide representation on the CASQA Effectiveness Assessment Subcommittee or equivalent.

⁶⁶⁴ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 53-54.

Fiscal Year	FRA Workgroup Task¹	Reported Expenditures	Data Location	Fiscal Year Total RRM value
FY08-09	Subtask 2.E. Fiscal Reporting Standards	\$20,518.00	Vol 13 – p 11,011 ²⁶⁶⁵	\$21,369.62
	Subtask 2.F. Regional Standards for Reporting and Assessment	\$851.62		
FY09-10	Subtask 2.F. Regional Standards for Reporting and Assessment	\$31,803.75	Vol 13 p 11,597 to 11,600 ³⁶⁶⁶	\$31,803.75
Total:		\$53,173.37		

[Notes omitted.]⁶⁶⁷

This request is confusing and needs further explanation. The Quenzer declaration states that the Fiscal, Reporting, and Assessment (FRA) workgroup was formed to “develop a standardized fiscal analysis method,” which is *not* a reimbursable activity under the program effectiveness assessment requirements of the WURMP in Part I. It is instead addressed under the Regional Program requirements (RURMP) in Part F.2., which requires the claimants to “develop the standardized fiscal analysis method required in section G of this Order,” and Section G states the following:

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:

⁶⁶⁵ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 11012-11013, Expenditure Summaries for fiscal year 2008-2009.

⁶⁶⁶ Exhibit I (13), Claimants’ Documents Supporting Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 11597-11,600, Certification and Expenditure Summaries for fiscal year 2009-2010, but at a cost of \$29,868.25 (a difference of \$1,935.50 from what is in Table 15).

⁶⁶⁷ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 79 (Table 15).

- 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.⁶⁶⁸

As indicated earlier, the claimants state that the costs to develop a standardized fiscal analysis method were not included in the proposed RRM for the RURMP activities, but were instead included in other proposed RRMs, which must mean here, under the program effectiveness assessment of the WURMP.

Table 15 identifies total costs incurred in fiscal year 2008-2009 of \$20,518.00, supported by an expenditure summary document from the workgroup showing 2008-2009 costs of \$20,518.00 as a result of “Subtask 2.E. Fiscal Reporting Standards.” This document is an out-of-court document offered to prove the truth of the matter asserted regarding the costs to develop a standardized fiscal analysis method and is considered hearsay. The document is not signed or certified under penalty of perjury, it contains no signature or indication of the person who prepared the document or the person’s job title, and no information is provided regarding how the costs were calculated. Thus, there is no evidence supporting the proposed unit cost RRM to develop a standardized fiscal analysis method, as required by Part F.2.

The Quenzer declaration also states that the FRA workgroup was formed to facilitate the program effectiveness assessment. That activity is not required by the program effectiveness assessment of the WURMP in Part I. of the permit, but by Part F.3., as discussed under the RURMP. Part F.3. requires permittees to “facilitate the assessment of the effectiveness of jurisdictional, watershed, and regional programs,” and as discussed in that section, “facilitate” does not mean to *do* the assessment on the WURMP. As stated in the Parameters and Guidelines, “facilitate” in this context means “facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments.”

The documents identified in Table 15 include the expenditure summary document from the workgroup showing 2008-2009 costs of \$851.62 from “Subtask 2.F. Regional Standards for Reporting and Assessment” with no explanation of the activities performed or if they are related to the WURMP or facilitating the assessment programs overall,⁶⁶⁹ and the other expenditure summary documents identified in “Vol. 13, pages

⁶⁶⁸ Exhibit U (13), Test Claim, page 305 (Order No. R9-2007-0001, Part G.2.)

⁶⁶⁹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 79 (Table 15).

11597-11,600”, do not appear to have anything to do with assessing the effectiveness of the WURMP or the other programs.⁶⁷⁰ Instead those pages provide the following information:

- Page 11597 shows costs of \$3,186.78 for the following meetings and distribution of meeting materials by the Regional Program Planning Subcommittee:
December meeting e-mail distribution of meeting summary and materials;
January meeting e-mail distribution of meeting summary and materials;
March meeting e-mail announcement and materials;
Preparation of materials for Mar. 18, 2010 Management Committee meeting (implementation of Regional Work Plans and Budgets; regional budget update; approval of work products for RWQCB submittal);
March meeting e-mail distribution of meeting summary and materials;
June meeting e-mail announcement and materials;
Preparation of materials for June 17, 2010 Management Committee meeting (FY 2009-10 regional shared cost budget and work plan; regional shared cost expenditures documentation); and
June meeting e-mail distribution of meeting summary and materials.⁶⁷¹
- Pages 11598-11600 contain a “Co-permittee expenditures cover and certification sheet” for fiscal year 2009-2010 with a co-permittee certification statement signed by County of San Diego’s water quality manager certifying costs of \$6,370.69 in hourly expenditures claimed and \$29,868.23 in “contract/other expenditures claimed.” Attached to the certification are expenditure summary sheets for different sub-tasks of the working group.⁶⁷² Table 15 refers specifically to costs incurred by “Subtask 2.F. Regional Standards for Reporting and Assessment.” However, these pages do not include any information about that sub-task or the alleged costs of \$31,803.75.

Pages 11633, 11635, 11637 of Volume 13 do identify costs for “Sub-Task 2.F, Watershed Activities Database” of \$423.89, \$252.34, \$343.70, but these are for meetings on database development, revisions to the list of sub-categories,

⁶⁷⁰ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), page 11597-11637.

⁶⁷¹ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), page 11597.

⁶⁷² Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), pages 11598-11600.

research and revision to sub-categories, and preparation of materials for “Leads Meeting.”⁶⁷³

Thus, the documents relied on by the claimants do not provide any evidence of the total costs incurred to perform the mandated activities to annually assess the effectiveness of the WURMP. Accordingly, this proposal is denied.

g. The proposed RRM for the one-time long term effectiveness assessment (LTEA).

The Parameters and Guidelines authorize reimbursement to comply with the new requirement in Part I.5, to collaborate with the other copermitees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of an August 2005 Baseline LTEA conducted by the copermitees. The LTEA is required to be designed to address the effectiveness outcome levels 1-6; assess the effectiveness of the Receiving Waters Monitoring Program; and address the jurisdictional, watershed, and regional programs, with an emphasis on watershed assessment. The LTEA is required to be submitted no later than 210 days before the end of the permit term and serves as the basis for the permittees’ ROWD for the next permit cycle. As explained above, this assessment is a one-time requirement. The County of San Diego Report of Waste Discharge for the next term permit states that the LTEA for the receiving waters monitoring program was conducted in 2010 as follows:

The LTEA analysis was conducted in 2010 and evaluated data from the MS4, receiving water (RW), wet, and ambient separately. In addition, inclusion of a constituent on the §303(d) list did not result in that constituent categorized as high priority. Constituent groups are used for the comparison of the BLTEA [Baseline Long Term Effectiveness Assessment] and the receiving waters LTEA. Priorities within watersheds were also evaluated. The purpose of this evaluation was to determine if the answer to management question #1 (conditions in receiving waters protective of beneficial uses) is the same in 2010 (LTEA) as the 2005 (BLTEA).⁶⁷⁴

The claimants’ proposed RRM formula for reimbursement for the LTEA is the proportional share of costs based on the applicable MOUs times the “actual annual costs of the contractors needed to assess the long term effectiveness of the projects reported by [the] County” (which totals \$344,539.21, according to the Regional Workgroup Expenditure Records) from fiscal year 2007-2008 through fiscal year 2012-

⁶⁷³ Exhibit I (13), Claimants’ Supporting Documentation for Proposed RRM, Volume 13 (WURMP Reports, County Records, MOUs), pages 11633, 11635, 11637.

⁶⁷⁴ Exhibit U (4), County of San Diego, Report of Waste Discharge, June 24, 2011, page 72.

2013.⁶⁷⁵ “The Regional Cost Sharing Documentation located in Vol. 13, pp. 10,917-13,074 was used to determine the *Contractor Costs*,” but the claimants do not point to any specific pages.⁶⁷⁶

The claimants do not revise the proposed RRM in their most recent comments but explain the following:

As described in the Claimants’ Rebuttal, LTEA costs are limited to the cost of preparing and submitting the LTEA as required by the 2007 Permit. This includes consultant costs and contract management. Costs for LTEA preparation were identified only in 2010-2011 and therefore are also claimed only for that year. These costs were shared among Co-Permittees according to the Co-Permittees’ MOU. Therefore, the RRM proposes that each Co-Permittee may claim its percentage of the cost share times the total LTEA preparation cost.⁶⁷⁷

The 2025 Quenzer declaration includes Table 16, which shows the costs proposed and the supporting documentation as follows:

Table 16: Supporting Data for Long Term Effectiveness Assessment (LTEA) Costs⁶⁷⁸

Fiscal Year	LTEA Costs	Location of Data
FY 2010/2011 (FRA Workgroup Costs)	\$132,212 ^[fn. omitted]	Vol. 13, p 11,665
FY 2010/2011 (Monitoring Workgroup Costs)	\$212,327	Vol. 13, p 11,719
Total Contractor Costs	\$344,539	

The documents identified in the table above are Regional Workgroup Expenditure Records from fiscal year 2010-2011, reporting costs for “Subtask 2.F. Long Term Effectiveness Assessment” of \$132,212 and “Task 3.C. 5-Year Regional Monitoring Program Assessment and Updating for ROWD and LTEA” at \$212,327 (based on hourly, contract, and contract management expenses).⁶⁷⁹

⁶⁷⁵ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 10, 45-46 (Quenzer Declaration); Exhibit M, Claimants’ Rebuttal Comments, pages 14, 80 (Quenzer Declaration).

⁶⁷⁶ Exhibit M, Claimants’ Rebuttal Comments, page 14.

⁶⁷⁷ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 55.

⁶⁷⁸ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 79.

⁶⁷⁹ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 11,665 and 11,720.

The Water Boards oppose the proposed RRM on the following grounds:

- Section I.5 of the 2007 permit was not implemented until 210 days before the permit expired. So, the claimant's statement that reimbursement is "*halfway through FY 2006/2007 through FY 2012/2013*" is incorrect.⁶⁸⁰ The claimants do not explain the costs incurred three years prior to the required mandated activity date.⁶⁸¹
- The claimants do not provide supporting documentation to explain their "yearly contractor costs for Long-term Effectiveness Assessment" of \$344,539.⁶⁸²
- The claimants do not explain their methodology to determine reimbursement for the Regional Work Group MOUs for the claimants and the contractors, and do not prorate reimbursement to include only the increased higher level of service compared to costs implementing the 2001 permit.⁶⁸³

The Commission finds that the proposed formula to reimburse claimants their percentage of the total actual costs (based on the share of costs identified in the MOU) to develop the LTEA and assess the effectiveness of the Receiving Waters Monitoring Program and the jurisdictional, watershed, and regional programs with an emphasis on watershed assessment, satisfies the definition of the RRM and provides reimbursement for the actual costs mandated by the state for all eligible claimants. The formula is identified in Section IV.A.2., under the Long Term Effectiveness Assessment activities.

However, there is not substantial evidence in the record to support the total alleged costs of \$344,539.21. The documents relied on by the claimants are Regional Workgroup Expenditure Records, which are hearsay records that are not signed, dated, or certified under penalty of perjury and it is not clear where the information is coming from or who prepared the records. Thus, the total proposed unit cost is not supported by substantial evidence in the record and is denied. As stated above, Section IV.A.2. of the Parameters and Guidelines states the following:

Reimbursement for the activities required by Part I.5 and the first sentence of Part L.1. may be based on the actual annual shared consultant and contract management costs to develop the LTEA to assess the effectiveness of the Receiving Waters Monitoring Program and to address

⁶⁸⁰ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 67 (Technical Analysis).

⁶⁸¹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 68 (Technical Analysis).

⁶⁸² Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, pages 67-68 (Technical Analysis).

⁶⁸³ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRMs, page 68 (Technical Analysis).

the jurisdictional, watershed, and regional programs with an emphasis on watershed assessment, times the claimant's proportional share of costs indicated in the claimants' MOU.

h. The proposed RRM's for all co-permittee collaboration.

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

Reimbursement for collaboration is limited to what the Commission approved in its Decision. Reimbursement is not required for activities or requirements not pled in the Test Claim, imposed by the prior (2001) permit, or expressly denied by the Commission.⁶⁸⁴ The Commission also found the prior permit required the parties to enter into a Memorandum of Understanding (MOU) and expressly limited reimbursement for collaboration to the new activities found to mandate a new program or higher level of service.⁶⁸⁵ Thus, only the pro-rata costs to collaborate on the activities and costs approved by the Commission are eligible for reimbursement.

Based on information in the record, the copermittees entered into a new MOU dated November 16, 2007.⁶⁸⁶ 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.⁶⁸⁷

⁶⁸⁴ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112, 118-126.

⁶⁸⁵ Exhibit A, Amended Test Claim Decision on Remand, pages 111-112. The Decision states: "Part L.1. of the 2007 permit, the first paragraph in L requiring collaboration, is identical to part N of the 2001 permit. The Commission finds, however, that the collaboration is a new program or higher level of service because it now applies to all the activities that are found to be a new program or higher level of service in the analysis above (i.e, not in the 2001 permit) including the Regional Urban Runoff Management Program."

⁶⁸⁶ Exhibit U (13), Test Claim, pages 495 -579 (MOU).

⁶⁸⁷ Exhibit U (13), Test Claim, pages 517-525, 535. The MOU's nine regional workgroups or sub-workgroups include: fiscal, reporting, and assessment workgroup; education and residential sources workgroup; regional monitoring workgroup and two sub-workgroups for dry weather and coastal monitoring; regional watershed URMP workgroup; land development workgroup; municipal activities workgroup; and industrial and commercial sources workgroup.

The claimants propose RRM formulas and unit costs to reimburse eligible claimants for the ongoing requirement to collaborate pursuant to Part L.1.⁶⁸⁸

The Water Boards opposed the original RRM proposals for collaboration on several grounds, including that the costs alleged in the RRM duplicated the costs alleged for other sections of the Parameters and Guidelines and were not clear.⁶⁸⁹

In response to the Revised Draft Proposed Decision and Parameters and Guidelines, the claimants state that the proposed RRM here do not include collaboration costs related to the WURMP, RURMP, or LTEA because those costs were included in the RRM for those activities.⁶⁹⁰ Thus, that leaves only the collaboration required for the Educational Component of the JURMP. The 2025 Quenzer Declaration states the following:

The Co-Permittees' RRM for all Co-Permittee collaboration did not include collaboration costs related to the WURMP, RURMP, or the LTEA because those are included in other RRM. In response to the Commission's direction, the Co-Permittees propose limiting the scope of the RRM related to all Co-Permittee collaboration to the educational component of the JURMP, which was carried out through the Educational and Residential Sources Workgroup.⁶⁹¹

The revised RRM proposals are explained below.

i. RRM Proposals.

Support for Regional Workgroup Meetings

The proposed RRM for "Support for Regional Workgroup Meetings" is the proportional share of costs based on applicable MOUs to the actual costs of \$5,886.02 to support the Educational and Residential Sources Workgroup from January 24, 2007, through

⁶⁸⁸ Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRM, page 46 (Quenzer declaration); Exhibit M, Claimants' Rebuttal Comments, pages 14-15; Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 59.

⁶⁸⁹ Exhibit L, Water Boards' Comments on the Draft Proposed Decision and Parameters and Guidelines and Opposition to Proposed RRM, pages 68-80 (Technical Analysis); Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines, pages 183-189.

⁶⁹⁰ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 19, 55 (2025 Quenzer Declaration).

⁶⁹¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 55 (2025 Quenzer Declaration).

June 26, 2013.⁶⁹² The total costs are identified in Table 18, with a citation to the supporting documents as follows:

Table 18: Supporting Data for Regional Workgroup Meeting Support⁶⁹³

Fiscal Year	Reported Meeting Support Costs for ERS Workgroup	Data Location
FY08-09	\$232.20	Vol 13 – p 10,985
FY09-10	\$256.70	Vol 13 – p 11,160
FY10-11	\$231.00	Vol 13 – p 11,940
FY11-12	\$2,849.00	Vol 13 – p 12,305
FY12-13	\$2,317.12	Vol 13 – p 12,374
Total:	\$5,886.02	

The supporting documents identified in the table are “Educational and Residential Sources Workgroup” Expenditure Summaries identifying the costs in the table for “meeting support.”⁶⁹⁴

Regional Workgroup Meeting Participation

The proposed RRM for “Regional Workgroup Meetings” equals the number of employees from a “municipal claimant” that attended a meeting of the Educational and Residential Sources Workgroup, times the average costs to attend one meeting of \$262.88, times the number of meetings attended.⁶⁹⁵ The claimants explain that,

The formula sets a unit cost for attending a meeting. When submitting a claim, each Co-Permittee will supply the number of meetings its staff

⁶⁹² Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 56, 86 (Table 18).

⁶⁹³ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 86 (Table 18).

⁶⁹⁴ Exhibit I (13), Claimants' Supporting Documentation for Proposed RRMs, Volume 13 (WURMP Reports, County Records, MOUs), pages 10986, 11161, 11941, 12306, and 12375.

⁶⁹⁵ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 57. See prior proposal in Exhibit H, Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47; and Exhibit M, Claimants' Rebuttal Comments, page 82.

attended and supporting documentation to demonstrate the meetings were in fact attended.⁶⁹⁶

The claimants further state that the same unit cost of \$262.88 is proposed here as was proposed for the Watershed Workgroup Meetings, because “in my experience the group of Co-Permittee staff that attended regional meetings was comparable to the group of Co-Permittee staff that attended watershed meetings.”⁶⁹⁷

Regional Workgroup Expenditures

The RRM for the “Workgroup Expenditures” that was initially proposed was the proportional share of costs based on applicable MOUs to the actual costs of activities performed by the workgroup in fiscal years 2006-2007 through 2012-2013.⁶⁹⁸ Based on a review of the Regional Cost Sharing Documentation (Volume 13, pages 10917-13074), the actual costs in fiscal years 2008-2009 and 2009-2010 for these activities is \$418.10.⁶⁹⁹

The claimants now say they are *not* proposing an RRM for the Regional Workgroup Expenditures as follows: “Given that the Commission had directed that only certain collaboration among workgroups is reimbursable, and this RRM was developed to include collaboration among all workgroups, the Co-Permittees no longer propose an RRM for this category.”⁷⁰⁰

- ii. *There is not substantial evidence in the record to support the proposed RRM unit costs.*

As indicated above, the test claim permit in Part L.1. requires the permittees to “collaborate with the other copermittees to address common issues” and to “plan and coordinate activities required under the permit.” Collaboration is required to comply with the Educational Component of the JURMP, which requires the permittees to collaboratively develop and implement a plan for educating residential, the general public, and school children in accordance with Part D.5.b.3. The plan for educating residential, the general public, and school children is required to evaluate the use of

⁶⁹⁶ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 57.

⁶⁹⁷ Exhibit M, Claimants’ Rebuttal Comments, page 82; Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 57.

⁶⁹⁸ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, pages 11, 47.

⁶⁹⁹ Exhibit H, Claimants’ Comments on the Draft Proposed Decision and Parameters and Guidelines and Proposed RRMs, page 48; Exhibit M, Claimants’ Rebuttal Comments, page 83.

⁷⁰⁰ Exhibit T, Claimants’ Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, page 59.

mass media, mailers, door hangers, booths at public events, classroom education, field trips, hands-on experiences, or other educational methods. As described in the sections above, the claimants propose an RRM to develop and implement the residential education program and claim they limited costs for that proposal to the costs of educating the general public (i.e., costs for Materials Development and Distribution, Partnership Development, Regional Branding, Market Research and Assessment, Regional Website, Underserved Target Audience, Mass Media, and Regional Events).⁷⁰¹ The costs to conduct the meetings of that workgroup are identified separately under this proposal. Since the test claim permit required the permittees to collaborate and meet on the residential education program, the costs of attendance at those meetings and the direct costs of the group meetings are reimbursable. However, only the pro-rata costs incurred for attendance and other meeting support costs relating directly to educating residential, the general public, and school children are eligible for reimbursement. Any costs incurred for other meeting purposes are not reimbursable.

Here, there is no evidence in the record that the meetings were limited to the mandated activity to develop and implement a plan for educating residents, the general public, and school children in accordance with Part D.5.b.3. Moreover, the proposed unit cost of \$262.88 per person to attend the meetings of the Educational and Residential Sources Workgroup is not supported by any evidence in the record.

In addition, while it is reasonable to provide reimbursement for meeting support costs based on the proportional share of costs identified in the MOU to the actual costs to support the Workgroup, the total costs alleged to support the meetings of \$5,886.02 is based only on expenditure summaries of the workgroup, which are not signed, dated, or certified under penalty of perjury and are considered hearsay, and it is not clear where the information is coming from or who prepared the records.

Accordingly, the Commission denies the proposed unit cost RRMs.

F. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)

In the Test Claim Decision, the Commission identified the following potential offsetting revenues:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including those authorized by Public Resources Code section 40059 for reporting on street sweeping, and those authorized by Health and Safety Code section 5471, for conveyance-system cleaning, or reporting on conveyance-system cleaning;
- Effective January 1, 2010, fees imposed pursuant to Water Code section 16103 only to the extent that a local agency voluntarily complies with Water Code

⁷⁰¹ Exhibit T, Claimants' Comments on the Revised Draft Proposed Decision and Parameters and Guidelines, pages 42-43.

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.⁷⁰²

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 stormwater fees and 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.

Based on the record and documents publicly available, some of the eligible claimants have imposed property-related stormwater fees, which if used on the reimbursable activities, are not the claimant's proceeds of taxes and shall be identified as offsetting revenues. For example,

- City of Coronado adopted a storm drain fee of \$3.80, or \$45.80 per year, by Ordinance 1847 (Chapter 60.16.020), which is collected with the property taxes.⁷⁰³
- City of Del Mar utilizes a "Clean Water Fee" to offset a portion of the costs associated with the implementation of the Clean Water Program and in fiscal year 2008-2009, the City brought the Clean Water Service Fee before the voters,

⁷⁰² Exhibit A, Amended Test Claim Decision on Remand, pages 139, 151.

⁷⁰³ Exhibit U (1), City of Coronado 2007-2008 Storm Drain Fee, <https://www.coronado.ca.us/DocumentCenter/View/1375/2007-and-2008-Soild-Waste-Storm-Drain-and-Sewer-Rates-PDF?bidId=> (accessed on June 13, 2025).

following the requirements of Proposition 218, which passed and ensured “that a substantial portion of the program will continue to be funded into the future.”⁷⁰⁴

- City of Escondido adopted a stormwater fee ordinance in 1994 (§ 17-287), which states the following:
 - (a) There is established a fee on all properties in the city which shall be used to fund a stormwater management program. The fee shall be established by resolution of the city council from time to time and shall be included as part of each city sewer and water bill, or in the case of properties which do not receive city sewer or water service, on the trash collection bill.
 - (b) The fee shall be considered part of the bill, shall be separately identified on such bill, and shall be due and payable at the same time and on the same terms as the bill. Failure to pay the fee shall be treated and subject to the same penalties as failure to pay the bill.⁷⁰⁵
- City of Poway “has a storm water fee to offset a portion of the costs of the program.”⁷⁰⁶
- City of San Diego has a storm drain fee, which is the “main source of dedicated funding for stormwater activities” and has remained unchanged since the passage of Proposition 218 in 1996. The stormwater fee is 95 cents per month per single family home, or \$0.0647 per hundred cubic feet of water use for multi-family and commercial water users.⁷⁰⁷

⁷⁰⁴ Exhibit I (1) Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 465 (Declaration Joseph M. DeStefano II, City of Del Mar Clean Water Manager); Exhibit I (2) Claimants’ Supporting Documentation for Proposed RRM, Volume 2 (Copermittee 2010 Declarations, JURMP Reports), page 6166 (Del Mar 2008-2009 JURMP Annual Report, “During the Reporting Period, the City took steps to bring the Clean Water Service Fee before the voters, following the requirements of Proposition 218. With the successful passage of the fee the City has ensured that a substantial portion of the program will continue to be funded into the future.”).

⁷⁰⁵ Exhibit U (2), City of Escondido Stormwater Fee, <https://ecode360.com/43260177> (accessed on June 13, 2025).

⁷⁰⁶ Exhibit I (1) Claimants’ Supporting Documentation for Proposed RRM, Volume 1 (2011 Permittee Survey), page 717 (Declaration of Danis Bechter, NPDES Coordinator for the City of Poway).

⁷⁰⁷ Exhibit U (3), City of San Diego Analysis of the Stormwater Division Funding Strategy Report, https://www.sandiego.gov/sites/default/files/21-04_funding_strategy_report.pdf (accessed on June 16, 2025), page 2.

V. Staff Recommendation

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

PARAMETERS AND GUIDELINES⁷⁰⁸

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.⁷⁰⁹ The Commission partially approved the Test Claim, finding that the test claim permit imposes a reimbursable state-mandated program on 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);

⁷⁰⁸ 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.

⁷⁰⁹ Exhibit A, Amended Test Claim Decision on Remand.

- 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)).⁷¹⁰

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

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

II. ELIGIBLE CLAIMANTS

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

The County of San Diego and the Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, and Vista.

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

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 20, 2008, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, costs incurred would be reimbursable on or after July 1, 2006; but because the permit did not become effective until January 24, 2007, costs are reimbursable beginning January 24, 2007.

⁷¹⁰ Exhibit A, Amended Test Claim Decision on Remand, pages 5-6.

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).⁷¹¹ 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

⁷¹¹ Government Code sections 57350 and 57351 (SB 231, Stats. 2017, ch. 536).

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 (Part L.1.a.(3)-(6)) that:
 - a. Establishes a management structure to promote consistency and develop and implement regional activities;
 - b. Establishes standards for conducting meetings, decisions-making, and cost-sharing.
 - c. Provides guidelines for committee and workgroup structure and responsibilities;
 - d. Lays out a process for addressing Copermittee non-compliance with the formal agreement.

*Reimbursement is limited to the pro rata costs to execute and submit an MOU or formal agreement on only the four topics identified above. Executing and submitting a full MOU, JPA, or other formal agreement is **not** reimbursable.*⁷¹²

2. Long Term Effectiveness Assessment (Part I.5 and the first sentence in Part L.1.):
 - a. Collaborate with the other Copermittees to develop a Long Term Effectiveness Assessment (LTEA), which shall build on the results of the Copermittees' August 2005 Baseline LTEA. The LTEA shall be submitted by the Principal Permittee to the Regional Board no later than 210 days in advance of the expiration of the test claim permit.
 - b. The LTEA shall be designed to address each of the objectives listed below, and to serve as a basis for the Copermittees' Report of Waste Discharge for the next permit cycle:

⁷¹² Exhibit A, Amended Test Claim Decision on Remand, page 111.

- 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 1-6,⁷¹³ and shall specifically include an evaluation of program implementation to changes in water quality (outcome levels 5 and 6).

⁷¹³ 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

- 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.

Reimbursement for the activities required by Part I.5 and the first sentence in Part L.1 may be based on the actual annual shared consultant and contract management costs to develop the LTEA to assess the effectiveness of the Receiving Waters Monitoring Program and to address the jurisdictional, watershed, and regional programs with an emphasis on watershed assessment, times the claimant's proportional share of costs indicated in the claimants' MOU.

B. Ongoing Activities

1. Jurisdictional Urban Runoff Management Program

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

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 U (13), Test Claim, pages 188-189 (Order No. R9-2007-0001, Attachment C).

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.⁷¹⁴
- 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.

⁷¹⁴ The requirements for street sweeping were delayed until no later than March 24, 2008. (Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.)

- Identification of any MS4 facility found to require inspection less than annually following two years of inspection, including justification for the finding.⁷¹⁵
- iii. Reimbursement for the reporting activities identified in Section IV.B.1.a.i. and ii. of these Parameters and Guidelines includes the following:
- The *one-time* activity of developing policies and procedures and a data tracking and analysis system for gathering and reporting only the new data identified above.
 - *One-time* training per employee assigned to track the information identified above to ensure the staff responsible for tracking the information understand and properly implement the procedures.
 - The *ongoing* activity of recording the new data identified above in the data tracking system to prepare the annual street sweeping and conveyance systems report.
- b. Conveyance System Cleaning (Part D.3.a.(3)(b)(iii)). No later than March 24, 2008, the claimants shall comply with the following activities:⁷¹⁶
- i. Implement a schedule of maintenance activities for the MS4 and MS4 facilities (catch basins, storm drain inlets, open channels, etc.).
 - ii. The maintenance activities shall, at a minimum, include the following:
 - Any catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity, which shall be cleaned in a timely manner.
 - Any MS4 facility that is designed to be self-cleaning shall be cleaned of any accumulated trash and debris immediately.
 - Cleaning observed anthropogenic litter in open channels annually, which may be reduced to every other year after two years of inspections (which at the earliest would be in fiscal year 2010-2011) if the open channel requires less than annual cleaning.

The following conveyance system activities are not reimbursable:

⁷¹⁵ The requirements for conveyance system cleaning were delayed until no later than March 24, 2008. (Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.)

⁷¹⁶ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

- Implementing a schedule of inspection activities (Part D.3.a.(3)(a));
 - Inspections of MS4 facilities (Part D.3.a.(3)(b)(i), D.3.a.(3)(b)(ii));
 - Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (Part D.3.a.(3)(b)(iv));
 - Proper disposal of waste removed pursuant to applicable laws (Part D.3.a.(3)(b)(v));
 - Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (Part D.3.a.(3)(b)(vi)).⁷¹⁷
- c. Educational Component (Parts D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following mandated activities:⁷¹⁸
- 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).)
- 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

⁷¹⁷ Exhibit A, Amended Test Claim Decision on Remand, pages 57-62.

⁷¹⁸ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

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).⁷¹⁹*

- 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 on those topics listed in Table 3 of the test claim permit. 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.)

Reimbursement for the activities required by Part D.5.b.(3) may be based on the actual annual shared costs of developing and implementing the program, times the claimant's proportional share of costs indicated in the claimants' MOU.

2. Watershed Urban Runoff Management Program (WURMP, Parts E.2.f, E.2.g, and the first sentence in Part L.1.). No later than March 24, 2008, the claimants shall comply with the following activities:⁷²⁰
- a. Each Copermittee shall collaborate with other Copermittees within its Watershed Management Area (WMA) identified in Table 4 of the test claim permit, with frequent regularly scheduled meetings, to develop and implement an **updated** WURMP for each watershed to reduce the discharge of pollutants from the MS4 to the MEP (maximum extent practicable) and prevent urban runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, as specified below. (Part E.2.g. and the first sentence in Part L.1.)
 - b. Update the WURMP to include and implement *only* the following elements:
 - i. Watershed Activities that address the high priority water quality problems in the WMA. Watershed Activities shall include both Watershed Water Quality Activities and Watershed Education

⁷¹⁹ Exhibit A, Amended Test Claim Decision on Remand, page 82.

⁷²⁰ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

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.
- iv. Reimbursement for the Watershed Activities List identified in Section IV.B.2.b.ii. and iii. of these Parameters and Guidelines includes the following:
 - The *one-time* activity and pro-rata share of costs to develop a data tracking and analysis system for gathering and reporting the new data required to be included in the

Watershed Activities List identified above. Reimbursement is **not** required to the extent that the data tracking and analysis system was developed for the purpose of submitting the WURMP annual report as a whole.

- The *ongoing* activity of recording the data identified above in the data tracking system to prepare the Watershed Activities List.

The claimants may claim these costs based on their proportional share of costs under the MOU for the Regional WURMP Working Group to develop and maintain the Regional Watershed Activities Database.

- c. Each Watershed copermittee shall implement identified Watershed Activities pursuant to established schedules. For each Permit year, no less than two Watershed Water Quality Activities and two Watershed Education Activities shall be in an active implementation phase. A Watershed Water Quality Activity is in an active implementation phase when significant pollutant load reductions, source abatement, or other quantifiable benefits to discharge or receiving water quality can reasonably be established in relation to the watershed's high priority water quality problem(s). Watershed Water Quality Activities that are capital projects are in active implementation for the first year of implementation only. A Watershed Education Activity is in an active implementation phase when changes in attitudes, knowledge, awareness, or behavior can reasonably be established in target audiences. (Part E.2.f.)
3. Regional Urban Runoff Management Program (Parts F.1-F.3, and the first sentence in Part L.1.)

No later than March 24, 2008,⁷²¹ 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

⁷²¹ Exhibit U (9), Regional Board Addendum to Test Claim Permit, December 12, 2007.

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. This includes facilitating consistency in the assessment programs and developing, annually reviewing, and updating as necessary subject-specific standards for the assessments. (Part F.3.)
4. Program Effectiveness Assessments (Parts I.1, I.2., I.5.)
- a. Annual Effectiveness Assessment of Jurisdictional Urban Runoff Management Program (Part I.1.)
 - 1. Each Copermittee shall annually assess the effectiveness of its Jurisdictional Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
 - (i) Specifically assess the effectiveness of each of the following:
 - Each significant jurisdictional activity/BMP or type of jurisdictional activity/BMP implemented;
 - Implementation of each major component of the Jurisdictional Urban Runoff Management Program (Development Planning, Construction, Municipal, Industrial/Commercial, Residential, Illicit Discharge Detection and Elimination, and Education); and
 - Implementation of the Jurisdictional Urban Runoff Management Program as a whole.
 - (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items listed above.

- (iii) Utilize outcome levels 1-6, as defined in Attachment C to Order No. R9-2007-0001, to assess the effectiveness of each of the bulleted items listed above, where applicable and feasible.⁷²²
- (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.⁷²³

⁷²² 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 U (13), Test Claim, pages 345-346 (Order No. R9-2007-0001, Attachment C).)

⁷²³ 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 measurable targeted outcomes, and in determining whether priority sources of water quality problems are being effectively addressed.” (Exhibit U (13), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).)

2. Based on the results of the effectiveness assessment, each copermittee shall annually review its jurisdictional activities or BMPs to identify modifications and improvements needed to maximize Jurisdictional Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Jurisdictional activities/BMPs that are ineffective or less effective than other comparable jurisdictional activities/BMPs shall be replaced or improved upon by implementation of more effective jurisdictional activities/BMPs. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, jurisdictional activities or BMPs applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each copermittee shall *include* in the Jurisdictional Urban Runoff Management Program Annual Report, due September 30, 2008 and every September 30 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

b. Annual Effectiveness Assessment of the Watershed Urban Runoff Management Program Watershed (Part I.2.)

1. Each watershed group of Copermittees identified in Table 4 of the test claim permit shall annually assess the effectiveness of its Watershed Urban Runoff Management Program implementation. At a minimum, the annual effectiveness assessment shall:
 - (i) Specifically assess the effectiveness of each of the following:

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 U (13), Test Claim, page 352 (Order No. R9-2007-0001, Attachment C).)

Integrated Assessment is defined in Attachment C of the test claim permit as an "Assessment to be conducted to evaluate whether program implementation is properly targeted to and resulting in the protection and improvement of water quality." (Exhibit U (13), Test Claim, page 347 (Order No. R9-2007-0001, Attachment C).)

- Each Watershed Water Quality Activity implemented;
 - Each Watershed Education Activity implemented; and
 - Implementation of the Watershed Urban Runoff Management Program as a whole.
- (ii) Identify and utilize measurable targeted outcomes, assessment measures, and assessment methods for each of the bulleted items that are part of the WURMP listed above.
- (iii) Utilize outcome levels 1-6 to assess the effectiveness of each Watershed Water Quality Activity implemented and each Watershed Education Activity implemented, where applicable and feasible.
- (iv) Utilize outcome levels 1-4 to assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, where applicable and feasible.
- (v) Utilize outcome levels 5 and 6 to qualitatively assess the effectiveness of implementation of the Watershed Urban Runoff Management Program as a whole, focusing on the high priority water quality problem(s) of the watershed. These assessments shall attempt to exhibit the impact of Watershed Urban Runoff Management Program implementation on the high priority water quality problem(s) within the watershed.
- (vi) Utilize monitoring data and analysis from the Receiving Waters Monitoring Program to assess the effectiveness of each of the bulleted items that are part of the WURMP listed above, where applicable and feasible.
- (vii) Utilize Implementation Assessment, Water Quality Assessment, and Integrated Assessment, where applicable and feasible.
2. Based on the results of the effectiveness assessment, the watershed Copermittees shall annually review their Watershed Water Quality Activities, Watershed Education Activities, and other aspects of the Watershed Urban Runoff Management Program to identify modifications and improvements needed to maximize Watershed Urban Runoff Management Program effectiveness, as necessary to achieve compliance with section A of this Order (Prohibitions and Receiving Water Limitations).

The copermittees shall develop and implement a plan and schedule to address the identified modifications and improvements.

Watershed Water Quality Activities/Watershed Education Activities that are ineffective or less effective than other comparable Watershed Water Quality Activities/Watershed Education Activities shall be replaced or improved upon by implementation of more effective Watershed Water Quality Activities/Watershed Education Activities. Where monitoring data exhibits persistent water quality problems that are caused or contributed to by MS4 discharges, Watershed Water Quality Activities and Watershed Education Activities applicable to the water quality problems shall be modified and improved to correct the water quality problems.

3. Each watershed group of Copermittees shall *include* in the WURMP Annual Report, due by January 31, 2009 and every January 31 thereafter for the previous fiscal year, a report on the effectiveness assessment conducted the prior fiscal year as implemented under each of the requirements listed above.

*Reimbursement is **not** required to conduct the annual effectiveness assessment of the Regional Urban Runoff Management Program.*

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

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

4. Fixed Assets

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

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central

government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter⁷²⁴ is subject to the initiation of an audit by the

⁷²⁴ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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:

- Any fees or assessments approved by the voters or property owners for any activities in the permit, including stormwater fees and 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 December 10, 2025, I served the:

- **Current Mailing List dated December 3, 2025**
- **Decision and Parameters and Guidelines adopted December 5, 2025**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 10, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/3/25

Claim Number: 07-TC-09-R

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

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

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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