



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>

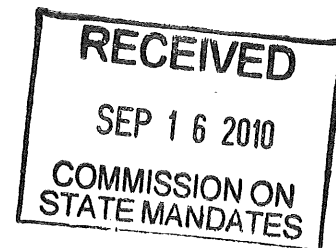


Arnold Schwarzenegger
Governor

VIA HAND DELIVERY

September 13, 2010

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

Re: **Proposed Parameters and Guidelines**

Discharge of Stormwater Runoff, 07-TC-09

California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-001, (NPDES No. CAS0108758) Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, adopted on January 24, 2007

Comments of the State Water Resources Control Board and the California Regional Water Quality Control Board, San Diego Region, on Proposed Parameters and Guidelines

By letter dated July 6, 2010, the Commission on State Mandates (Commission) notified the Claimants in the above proceeding that the proposed parameters and guidelines filed June 28, 2010, are complete and timely filed. The Commission's notice invited state agencies to submit comments on or before August 5, 2010. The Commission granted the State Water Resources Control Board's (State Water Board) and San Diego Regional Water Quality Control Board's (San Diego Water Board) request for an extension of time in which to file comments until September 13, 2010. Please accept for filing an original and two copies of the joint comments of the State Water Board and San Diego Water Board on the proposed parameters and guidelines in the above-referenced Test Claim proceeding. As required by the Commission's regulations, the Water Boards enclose a proof of service indicating that the parties included on the Commission's mailing list for this proceeding have been provided with copies of this letter via either United States mail or electronic mail, as appropriate.

Sincerely,

Catherine George Hagan
Senior Staff Counsel

cc: Service List for 07-TC-09
Enclosure



Linda S. Adams
Secretary for
Environmental Protection

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Comments of the State Water Resources Control Board and the California Regional Water Quality Control Board, San Diego Region, on Proposed Parameters and Guidelines.

The State Water Resources Control Board (State Water Board) and San Diego Regional Water Quality Control Board (San Diego Water Board) (collectively Water Boards) hereby submit the following joint comments on the Test Claimants' Proposed Parameters and Guidelines in the above-referenced Test Claim proceeding.

I. INTRODUCTION

In its Statement of Decision, issued in Test Claim 07-TC-09 on March 30, 2010, the Commission on State Mandates (Commission) determined that numerous provisions of the San Diego Water Board's municipal storm sewer system (MS4) discharge permit (Order No. R9-2007-0001 (NPDES Permit No. CAS0108758)) (San Diego Permit), are state mandates subject to reimbursement by the State of California. In their Test Claim, the Claimants¹ estimated the cost of permit compliance at over \$50 million during the five year permit term. The Water Boards have reviewed the Proposed Parameters and Guidelines, focusing in particular on section IV, Reimbursable Activities, and offer the following comments for Commission consideration.

¹ The Claimants are 19 of 21 San Diego Permit copermittees, including the County of San Diego and 18 cities within the county. The Water Boards use the terms "Claimants" and "copermittees" interchangeably in these comments.

II. GENERAL COMMENTS

A. Claimants Have Not Established The Activities and Costs Associated with the Existing Level of Service in the Prior Permit.

The Water Boards generally are concerned that the Claimants have not made it clear that they will limit their requests for reimbursement to only that level of activities required to implement reimbursable permit provisions² that exceeds the level of activities required to comply with the prior permit the San Diego Water Board issued to the Claimants (2001 Permit or Prior Permit). "Costs mandated by the state" are defined as "any increased costs which a local agency or school district is required to incur after July 1, 1980 as a result of . . . any executive order implemented which mandates a new program or higher level of service. . . ." (Gov. Code § 17514.) "To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[fn] A 'higher level of service' occurs when the new 'requirements were intended to provide an enhanced service to the public.' [Citation omitted.]" (Statement of Decision, p. 32.) Therefore, "[t]o determine whether the permit is a new program or higher level of service, the permit is compared to the legal requirements in effect immediately before its adoption, in this case, the 2001 permit.[fn]" (Id., p. 37.) In their Proposed Parameters and Guidelines, the Claimants have not adequately described the activities and associated increased costs required to perform the higher level of service compared to the 2001 permit and should be required to do so.

B. Need for Clarification Regarding Personnel Costs.

The Claimants identify personnel costs as those costs associated with carrying out various reimbursable functions and note that "[u]nless otherwise stated in these Parameters and Guidelines, 'Personnel Costs' will be determined using the claimant's loaded hourly rates; all other costs will be actual and will include only that part of the cost that is related to the reimbursable mandate." (Proposed Parameters and Guidelines, p. 15, fn. 12.) First, this phrase fails to adequately describe what is meant by the term "loaded personnel costs." Under section V., Claim Preparation and Submission (Proposed Parameters and Guidelines, p. 26), it appears that Claimants intend to factor only salary and benefits into Personnel Costs. The Claimants should clarify whether "loaded hourly rates" is limited to a calculation of salaries and benefits or whether instead Claimants are factoring in some amount of overhead and administrative costs. Second, Claimants must clarify the reference in footnote 12, mentioned above, so that it is clear that in addition to pro-rating "all other costs" to carry out reimbursable provisions, they will also similarly pro-rate "loaded personnel costs." The adopted Parameters and Guidelines must be clear that to the extent an employee or vendor is performing work associated with non-permit related activities, or unreimbursable permit-related provisions, those costs are not reimbursable and must be excluded in a transparent manner.

² The Water Boards refer to mandated, reimbursable provisions as "reimbursable provisions" or "reimbursable activities," or with similar terminology, and evaluate the Proposed Parameters and Guidelines according to the Commission's Statement of Decision. The Water Boards' use of that phrase or similar phrases should not be construed as Water Board agreement with the Commission's Statement of Decision finding that the provisions are reimbursable and are not in fact federal mandates.

C. Unspecified Activities and Associated, Unspecified Costs.

Throughout their discussion of reimbursable activities, the Claimants identify general categories of activities but qualify the general descriptions with phrases such as "including but not limited to" or "costs, *including* personnel costs." (See Proposed Parameters and Guidelines, e.g., Street Sweeping Operations and Reporting, pp. 15-16, Conveyance System Cleaning and Reporting, pp. 17-18, Education Component, p. 18, and Watershed Urban Runoff Management Programs, pp. 19-22 (emphasis added).) The Claimants make these vague references in an apparent effort to retain flexibility to later claim as yet unidentified activities for reimbursement.

The Water Boards are not able to comment on unspecified activities and their related costs, and as a result, are not able to evaluate whether the Claimants have indeed identified the most reasonable method of complying with reimbursable permit provisions. Instead of reliance upon phrases such as "including but not limited to," or "costs, including Personnel Costs," without further specifying these costs, the Claimants must be required to describe those actual activities or categories of costs necessary to carry out the reimbursable provisions for which they expect to be reimbursed.

The purpose of the adopted Parameters and Guidelines is to establish the framework for identification of activities for which associated costs will be reimbursed. The Adopted Parameters and Guidelines are required to include: "A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. 'The most reasonable methods of complying with the mandate' are those methods not specified in statute or executive order that are necessary to carry out the mandated program." (Cal. Code Regs., tit. 2, § 1183(a)(4).) The San Diego Permit was adopted on January 24, 2007. The Claimants were required to submit estimated costs of complying with the provisions challenged in the Test Claim over the permit term, and were also required to submit actual cost information for Fiscal Year 2008-2009 when they commented on the Final Staff Analysis of the Test Claim. The Claimants submitted declarations attesting to costs incurred for personnel, contracts and equipment for many if not most of the reimbursable provisions. In this case, not only have the Claimants had over three and one-half years of experience implementing activities they believe are necessary to comply with the reimbursable provisions, they should by now be in a position to adequately describe anticipated changes to those activities over the remainder of the five year term.

Despite the underlying purpose of the Adopted Parameters and Guidelines, the Claimants have not adequately described the specific costs or categories of costs for which they will seek reimbursement to allow the Water Boards to comment fully on the Proposed Parameters and Guidelines. The State should not be expected to reimburse the Claimants for unspecified or vague activities that the Claimants will later claim were necessary and represent the most reasonable method of implementing the reimbursable permit provisions. The Commission should require the Claimants to provide greater specificity in the activities they propose for reimbursement.

D. Vendor Costs.

Vendor training is a common cost category in the Claimants' description of activities they assert are necessary to carry out reimbursable provisions. The Water Boards understand that some or all of the Claimants may contract out to vendors some of their reimbursable activities. And while the Water Boards agree that to the extent a vendor is carrying out a reimbursable activity the associated costs are appropriately recoverable, the Water Boards disagree that training costs for the vendors are appropriate for recovery. To the extent contractors bid on and are successfully selected to perform reimbursable, permit-related work, the Claimants should expect that the vendors are sufficiently well-versed, and perhaps even more expert than the Claimants in some cases, in what is required to carry out the services they were hired to provide. Typically, a vendor bids on a Scope of Work in which the copermittee has outlined the time, place, and manner by which they expect the contracted activity, such as street sweeping, to be performed. Unless Claimants demonstrate otherwise, the Commission should assume that the vendors' costs to perform reimbursable activities already include the vendors' costs to educate themselves so that they are meeting the Claimants' needs and expectations. Similarly, to the extent that a vendor's costs include costs such as for fuel, vehicles or materials storage, for example, the Claimants must accurately account for and pro-rate those costs in their reimbursement requests.

E. Computer, Hardware and Software Purchases and Upgrades.

Throughout their Proposed Parameters and Guidelines, Claimants have identified 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." (Proposed Parameters and Guidelines, e.g., Street Sweeping Reporting, p. 16, Conveyance System Cleaning - Reporting, p. 18, Education Component, pp. 18-19, Watershed Implementation of Programs and Activities, p. 21, Regional Collaboration, RURMP and Long Term Effectiveness Assessment, pp. 24-25, and Program Effectiveness Assessment, p. 25.) Adopted Parameters and Guidelines must limit Claimants to reimbursement for costs of equipment, hardware and software purchased after January 24, 2007. And Claimants must be required to demonstrate why the purchases and upgrades are necessary to comply with the reimbursable provisions but were not necessary to comply with the prior permit. Claimants must also be required to demonstrate how they intend to exclude, in a transparent manner, the percentage of costs of equipment and upgrades used for unreimbursable purposes. It is insufficient for the Claimants merely to promise they will only include reimbursable costs in their reimbursement requests; they must establish how they will demonstrate this commitment to the Commission and the State in a verifiable manner.

III. SPECIFIC COMMENTS

The Water Boards' specific comments, below, follow the order of reimbursable provisions and activities set forth in the Proposed Parameters and Guidelines. In an effort to avoid undue repetition of comments, the Water Boards' refer to General Comments, above, and cross-reference to other specific comments, as applicable.

A. Street Sweeping (part D.3.a.(5)) (Proposed Parameters and Guidelines, pp. 15-16).

- Street Sweeping Operations. See General Comment B.
- Equipment/Equipment Maintenance. Claimants identify for reimbursement "[t]he actual cost of purchasing, leasing, or contracting for equipment to perform street sweeping and related functions. This includes one-time costs for equipment purchases and corresponding equipment depreciation costs." Similarly, Claimants identify "[a]nnual equipment maintenance costs, including parts, supplies (e.g., water), and Personnel Costs. This also includes the cost of operating, renting, leasing, or contracting for facilities to store and maintain equipment and supplies." (Proposed Parameters and Guidelines, p. 15.) To the extent copermittees contract with vendors to perform street sweeping, the Water Boards would expect equipment and equipment maintenance costs to be included in the contract costs. (See General Comment D.) Moreover, to the extent Claimants already owned street sweeping equipment prior to issuance of the San Diego Permit, any cost to purchase that equipment is not reimbursable. (See General Comment A.) Finally, Claimants identify as reimbursable actual costs of equipment and maintenance "to perform street sweeping *and related functions*." (Proposed Parameters and Guidelines, p.15, emphasis added.) Claimants are not entitled to reimbursement for unspecified "related" functions and must identify what those functions are so that the Water Boards may evaluate whether the related functions are necessary to carry out the mandated provisions in the permit. (See General Comment C.)
- Materials Disposal. To the extent copermittees contract with vendors to perform street sweeping, the Water Boards would expect materials disposal costs to be included in the contract costs. Claimants may not recover duplicate costs for materials disposal or storage. (See General Comment D.)
- Fuel. To the extent copermittees contract with vendors to perform street sweeping, the Water Boards would expect fuel costs to be included in the contract cost. (See General Comment D.)
- Program Development. It is unclear what the Claimants mean by "the costs, *including* Personnel Costs, to develop and update the claimant's *internal* street sweeping program, including specific criteria, policies, procedures, manuals, and forms." (Proposed Parameters and Guidelines, p. 15, (emphasis added).) In addition, the Water Boards do not understand what the Claimants mean by "internal" street sweeping program and so cannot evaluate whether it is a necessary activity in order to carry out mandated permit provisions. (See General Comment C.)
- Employee and Vendor Training. As previously mentioned, (see General Comment D, above) the Commission should assume that vendors are adequately trained prior to bidding for the contracted work. In addition, the Claimants assert it is reasonable to recover costs including "training of all claimant and vendor employees who perform tasks necessary to implement street sweeping and related functions during the life of the permit." As with equipment/equipment maintenance categories, the Claimants should

clarify what they mean by "related functions" before such terminology is incorporated into Adopted Parameters and Guidelines.

- Parking Signage and Enforcement. It is unclear what Claimants mean by "costs," where they say "costs, including Personnel Costs, to purchase and install street sweeping signage and to enforce parking prohibitions in areas where street sweeping is scheduled. This includes the purchase, installation, or replacement of signage to inform the public of applicable parking restrictions, as well as their surveillance and enforcement." (Proposed Parameters and Guidelines, p. 16.) The Water Boards are left to guess what the costs in addition to personnel costs and costs for purchase, installation or replacement of signs the Claimants believe they may incur and for which they expect to be reimbursed. (See General Comment C.) The Water Boards also would expect the Claimants to specify costs for the number of signs that have been purchased and installed to date in order to comply with the requirements of the San Diego Permit beyond what was purchased or replaced in compliance with the prior permit. The State should not be expected to reimburse the Claimants for previously purchased signs or to replace signs that may have been inadequately maintained under the prior permit. (See General Comment A.) Moreover, to the extent that a portion of the street sweeping signage and enforcement is not directly associated with storm water pollution prevention but is instead performed for health and safety or aesthetic reasons, the Claimants should not receive reimbursement for those costs.

It is equally important that the Claimants make clear how they will keep track of and exclude costs for parking enforcement related to the street sweeping requirements to ensure that the State is not reimbursing them for unrelated parking enforcement such as for illegal parking in construction zones or violations of time-restricted parking. It is unlikely, although possible, that the Claimants would have personnel monitoring and surveilling only cars parked in violation of street sweeping restrictions while ignoring all other types of parking violations. Allowing personnel to perform multiple functions is likely the more efficient use of the Claimants', and thereby the State's funds, than to have personnel devoted exclusively to enforcement of street sweeping parking restrictions, but it remains unclear how the costs will be accounted for and segregated so that it is transparent that the Claimants are only reimbursed for permit-related, mandated, functions.

Finally, Claimants should be required to offset any reimbursement for street sweeping parking signage enforcement with revenues received from that enforcement.

- Employee Supervision and Management. The Water Boards do not dispute that supervisory and management time spent overseeing personnel directly responsible for performing mandated work is appropriately recoverable. The Water Boards do, however, think the Commission should require the Claimants to clearly demonstrate how their supervisors' and managers' time is spent supervising employees' work on only mandated provisions. To the extent the supervisors' or managers' work is not directly related to overseeing mandated work, or serves dual or multiple purposes, the Claimants must make transparent how they will determine the amount of supervisors' and managers' time directly related to mandated work.

- Contracted Services. See General Comment D, above. Further, Claimants should only be allowed to include costs of preparing requests for bids, negotiating and drafting third party contracts, and subsequently administering the service contracts if the Claimants can demonstrate that these costs, together with the costs for the contracted services, are the most cost-effective and reasonable manner of complying with the street sweeping requirements in lieu of performing the services with employees. The proposed parameters and guidelines fail to mention any cost-benefit analysis on the part of the Claimants in deciding whether to contract for or perform services in-house.

B. Street Sweeping - Reporting (part J.3.a.(3)-(c)x-xv) (Proposed Parameters and Guidelines, p. 16).

- Reporting and Tracking Policies and Procedures. See General Comment C, discussing insufficient detail provided for types of costs other than Personnel Costs.
- Data Tracking and Analysis. See General Comment C, discussing insufficient detail provided for types of costs other than Personnel Costs. See also General Comment E, above, expressing the Water Boards' concern that the costs of purchases and upgrades of equipment, hardware and software must be limited to that necessary to comply with the San Diego Permit, and must be transparently segregated into use for reimbursable and unreimbursable activities.
- Report Writing. See General Comments B and E.
- Employee Supervision and Management. See Specific Comment, III.A.
- Contracted Services. See Specific Comment, III.A.

C. Conveyance System Cleaning (D.3.a.(3)) (Proposed Parameters and Guidelines, pp. 17-18).

In general, the copermitees were required by the prior permit to clean and maintain the conveyance systems. In fact, the Commission's Statement of Decision finds that several provisions related to conveyance system cleaning are not new programs or higher levels of service, and are therefore not state mandates subject to reimbursement. Specifically, the Commission finds that the following provisions are the same as in the prior permit: (1) Annual inspection of MS4 facilities (D.2.a(3)(b)(i)); (2) Record keeping of the maintenance and cleaning activities including the overall quantity of waste removed (D.3.a(3)(b)(iv)); (3) Proper disposal of waste removed pursuant to applicable laws (D.3.a(3)(b)(v)); and (4) Measures to eliminate waste discharges during MS4 maintenance and cleaning activities (D.3.a(3)(b)(vi)). (Statement of Decision, p. 61.) The Commission also found that part D.3.a.(3)(b)(ii), which allows less frequent inspection and cleaning after two years of inspections, is not a new program or higher level of service and in fact provides Claimants with flexibility to do less intensive work than under the prior permit. (Ibid.) In contrast, the Commission found that part D.3.a.(3)(b)(iii) is a new program or higher level of service because it requires claimants to clean in a timely manner "[a]ny catch basin or storm drain inlet that has accumulated trash and debris greater than 33% of design capacity 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.' This part contains specificity, e.g., a standard of accumulation greater than 33% of design capacity, which was not in the 2001 permit." (Statement of Decision, pp. 61-62.) Further, the Commission finds that the reporting in part J.3.a.(3)(c)(iv)-(viii) is a new program or higher level of service." (Id., p. 62.)

While most of the conveyance system cleaning requirements were present in the prior permit, and therefore were not found to be reimbursable mandates, the Claimants appear to be including costs associated with these activities in their Proposed Parameters and Guidelines. To the extent costs are incurred to comply with the 2001 permit standard, those costs are not reimbursable and must not be included in the Proposed Parameters and Guidelines. Only to the extent that the Copermittees incur costs beyond those they incurred to comply with the 2001 permit should they be reimbursed by the State.

- Conveyance System Inspection. Claimants were already required to inspect conveyance systems annually under the prior permit. To the extent Claimants inspect MS4 facilities only annually under the San Diego Permit, the costs of the annual inspection, personnel and associated costs, are not reimbursable. Similarly, for facilities that are inspected more frequently than annually, the costs of one inspection of each facility occurring within each 12 month period are not reimbursable. See also General Comment C, regarding lack of specificity in identification of costs in addition to Personnel Costs.
- Conveyance System Cleaning Operations. See General Comment C, regarding lack of specificity in identification of costs in addition to Personnel Costs.
- Vehicles and Equipment. To the extent that vehicles or other equipment is purchased for materials disposal, these costs are not reimbursable because materials disposal in compliance with applicable laws was required by the prior permit. See discussion under "Materials Disposal," below. In addition, see General Comment A, above, indicating that any allowed costs must clearly be incurred in this permit term, and not already included in the cost of contracts to the extent conveyance system cleaning and inspection operations are contracted out. It is unclear what types of equipment (for example, shovels, rakes or power washers) the Claimants would need to purchase to clean their conveyance systems that they did not already own prior to adoption of the San Diego Permit. Moreover, the Claimants have not made clear that the cost of vehicles, equipment and maintenance and storage thereof will be transparently pro-rated to the extent some or all of it is used for dual or multiple purposes. It is questionable how the Claimants will be able to specify the exact amount of maintenance of a piece of equipment attributable to compliance with reimbursable permit provisions as opposed to maintenance costs for unreimbursable uses. Yet, to be reimbursed, the Claimants must make this demonstration or forfeit reimbursement for equipment maintenance. If the equipment, vehicles and supplies are solely dedicated to conveyance system cleaning, it is likewise questionable whether this single purpose use is the most reasonable method of complying with the mandate. (See Cal. Code Regs, tit. 2, § 1183.1(a)(4).)
- Vehicle and Equipment Maintenance. See immediately preceding comment.

- Materials Disposal. Claimants were required to properly dispose of wastes removed from conveyance systems under the 2001 permit. Therefore, costs for materials disposal identified in the Proposed Parameters and Guidelines are not reimbursable. (See General Comment A.) In the event that the Commission disagrees and allows some portion of materials removal to be reimbursable, the Claimants must describe these costs with greater specificity. (See General Comment C.) In addition, if costs of operating, renting, leasing, or contracting for facilities to store or dispose of collected materials are claimed, the Water Boards question whether the rented facilities to store material from the Conveyance System Cleaning Operations also serve a unreimbursable purpose or serve a duplicative purpose (i.e., it is possible that materials from street sweeping operations also are stored in these same facilities.) If so, the Claimants must ensure they avoid seeking duplicate reimbursement if the Commission allows some or all of these costs.
- Fuel. To the extent copermittees contract with vendors to perform conveyance system inspections and cleaning and those costs are allowed by the Commission, the Water Boards would expect fuel costs to be included in the contract cost. (See General Comment D.)
- Program Development. In this category, Claimants identify "[t]he costs, including Personnel Costs, to develop and update the claimant's internal conveyance system cleaning program" See General Comment C, above, regarding lack of specificity in identification of what costs, other than personnel costs, Claimants may seek to recover to comply with this permit requirement. Second, it is unclear what "internal conveyance system cleaning program" means. The Claimants should be required to provide specificity to this term to allow meaningful evaluation by the Water Boards.
- Employee and Vendor Training. See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel costs, Claimants may seek to recover to comply with this activity. See also General Comment D in which the Water Boards believe vendor training costs are not recoverable.
- Parking Signage and Enforcement. It is unclear what type of parking signage is needed for conveyance system cleaning. Claimants do not specify whether the conveyance system inspection and cleaning parking signage is the same or different from the street sweeping signage. If one sign communicates two messages, the cost of the sign should be reimbursed only once. To the extent that enforcement of parking signage overlaps with enforcement of other forms of parking restrictions unrelated to the San Diego Permit, the Claimants should be required to provide transparent segregation of costs so that the State can confirm that it is not improperly compensating the Claimants for unreimbursable costs. Finally, as with Street Sweeping enforcement, Claimants should be required to offset any reimbursement for street sweeping parking signage enforcement with revenues received from that enforcement.
- Employee Supervision and Management. See Specific Comment, III.A., Employee Supervision and Management and see also General Comment B.

- Contracted Services. See Specific Comment III.A., Contracted Services and see also General Comment D.

D. Conveyance System Cleaning- Reporting (J.3.a.(3)(c)(iv-viii) (Proposed Parameters and Guidelines, p. 18).

- Reporting and Tracking Policies and Procedures. See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel Costs, would be required to perform this activity. Claimants should also be required to show why 2001 permit requirements for tracking policies and procedures are no longer adequate to meet San Diego Permit requirements. (See General Comment A, above, regarding higher level of service.)
- Data Tracking and Analysis. See General Comment C, above, regarding lack of specificity in identification of what costs, other than Personnel Costs, would be required to perform this activity. Claimants have not identified types of upgrades or why they are necessary to perform reimbursable activities. In addition, see General Comment E, above, concerning documentation of the need for purchases and upgrades to equipment, hardware and software exclusively to support the San Diego Permit and General Comment E, concerning the need for Claimants to demonstrate in a transparent fashion how they will segregate costs of computer purchases and upgrades associated only with reimbursable activities. The Claimants are sophisticated municipal entities who the Water Boards would expect have computers that are used for many purposes. To the extent some computers or printers are used to comply with reimbursable permit provisions but also for other purposes, the Claimants should be required to demonstrate in a transparent fashion what percentage is used or attributable exclusively to reimbursable permit provision. The Claimants must also demonstrate what computer equipment and upgrades are necessary to comply with the San Diego Permit above and beyond the prior permit. (See General Comment A.)
- Report Writing. Claimants must pro-rate the costs of report writing to exclude unreimbursable activities. (See General Comments C and E.)
- Employee Supervision and Management. See Specific Comment III.A., Employee Supervision and Management and see also General Comment B.
- Contracted Services. See Specific Comment III.A., Contracted Services and see also General Comment D, above.

E. Educational Component (part D.5.) (Proposed Parameters and Guidelines, p. 18).

- Program Development. See General Comment C, above, regarding a lack of specificity in identification of activities and associated costs, other than Personnel Costs, to develop an educational program for target communities. Claimants must pro-rate personnel and "other costs" to ensure that they are reimbursed only for costs directly associated with implementation of reimbursable provisions. See also General Comment A regarding the need to determine what activities were already being performed and do

not represent a higher level of service. In addition, to the extent the Program Development incorporates hydromodification management plan or low impact development elements, the copermittees must transparently segregate those costs to avoid seeking improper reimbursement.

- Reporting and Tracking Policies and Procedures. See immediately preceding comment.
- Data Tracking and Analysis. See Specific Comment III.D, Data Tracking and Analysis.
- Educational Materials. See General Comment C, above, regarding a lack of specificity in identification of activities and associated costs, other than Personnel Costs, to develop educational materials for target communities. Claimants must pro-rate personnel and "other costs" to ensure that they are reimbursed only for costs directly associated with implementation of reimbursable provisions. To the extent the education materials incorporate hydromodification management plan or low impact development elements, the copermittees must transparently segregate those costs to avoid seeking improper reimbursement. (See also General Comment B.)
- Employee and Vendor Annual Training. See General Comments C and D, above.
- Education of Target Audiences. See General Comment C, above.
- Report Writing. Claimants must pro-rate the costs of report writing to exclude unreimbursable activities. (See General Comments C and E.)
- Employee Supervision and Management. See Specific Comment III.A., Employee Supervision and Management. See also General Comment B.
- Contracted Services. See Specific Comment III.A., Contracted Services. See also General Comment D.

F. Watershed Urban Runoff Management Program (parts E.2.f. and E.2.g.) (Proposed Parameters and Guidelines, pp. 19-22).

With regard to many of the categories under the heading Watershed Urban Runoff Management Program (WURMP), identified in the Proposed Parameters and Guidelines, the Claimants describe costs, including Personnel Costs, associated with organizing and administering the WURMP Working Bodies. In describing these costs, Claimants use vague phrases including, "such as telephone calls, emails, and video conferencing," and "[r]equired tasks typically also include, but are not limited to:" (See Proposed Parameters and Guidelines, e.g., pp. 19-20.) With regard to the Collaborative Watershed Work Product Development, Claimants again describe a variety of tasks comprising "WURMP Work Products" as "includes, but is not limited to" (Ibid.) The Claimants also set forth what appears to be a catch-all category of other watershed work products, described as "Any Watershed Working Body Work Product not specifically identified above, but required to achieve or maintain compliance with Permit Part E.2." (Id., p. 20.) Similarly, Claimants propose the catch-all phrase "Other programs and

activities required to implement the WURMP." (Ibid.) These are examples of similar phrasing that appears throughout the WURMP and other sections of the Proposed Parameters and Guidelines.

As discussed in General Comment C, above, the Water Boards are concerned with the lack of specificity in the Claimants' uses of the vague phrases concerning the WURMP. Claimants are nearing the end of the fourth year of San Diego Permit implementation and should be in a position to describe the tasks necessary to perform the WURMP requirements with greater specificity and to describe anticipated changes in these activities over the remainder of the permit term so that the Water Boards can evaluate whether the tasks are necessary to implement the permit provisions and whether the tasks represent the "most reasonable methods of complying with the mandate." (See Cal. Code Regs., tit. 2, § 1183.1(a)(4).) Moreover, for the categories and subcategories Claimants identify, see also General Comment D regarding vendor training and General Comment E, regarding computer, hardware and software upgrades.

In an effort to avoid repetition, the Water Boards identify below, as applicable, only those additional specific comments associated with some of the identified activities in the Proposed Parameters and Guidelines.

- Watershed Implementation of Programs and Activities. [¶] . . . [¶]
 - Vehicle and Equipment Maintenance. Among the specific implementation costs Claimants do identify for WURMP provisions are for the categories "Equipment" and "Vehicle and Equipment Maintenance." Claimants propose parameters and guidelines that will allow them to be reimbursed for the "actual cost of purchasing, renting, leasing, or contracting for vehicles and equipment to perform watershed activities mandated by the permit." (Proposed Parameters and Guidelines, p. 21.) They also will seek reimbursement for the costs of facilities to store and maintain the vehicles and/or equipment and supplies. (Ibid.) The activities Claimants describe under the WURMP provisions do not appear to require vehicles to implement, other than perhaps to attend meetings. It is unlikely that cars have been purchased and are used exclusively for WURMP activities. If they are dedicated to WURMP activities, it is questionable whether such single-use purchases are the most reasonable methods of complying with the mandate from a cost and efficiency standpoint. The Claimants must demonstrate with specificity what activities they undertake to implement WURMP activities that require vehicles and must also segregate costs associated with other uses of the vehicles so that it is transparent what percentage of vehicle purchase and maintenance costs are reasonably attributable to WURMP activities.

G. All Copermitttee [Regional] Collaboration (part L), Regional Urban Runoff Management Program (parts F.1., F.2., and F.3.), and Long Term Effectiveness Assessment (I.5.) (Proposed Parameters and Guidelines (pp. 22--25)).

Claimants use similar, if not identical, qualifying language as in the WURMP discussion to describe activities in the Regional Collaboration discussion. For example, they use the phrase

"costs, including Personnel Costs[,] and for Regional Work Product Development, costs "to develop and update any regional work product identified in an approved Regional Working Body Work Plan and Budget. This includes, but is not limited to, the following" (Proposed Parameters and Guidelines, p. 23.) They also identify as "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" (Id., p. 24.)

As with the Water Boards' comments on the WURMP activities and in General Comment C, above, the Water Boards are concerned with the lack of specificity in the Claimants' use of the vague phrases cited above for Regional Collaboration and the Regional Urban Runoff Management Program. Claimants are nearing the end of the fourth year of San Diego Permit implementation and should be in a position to describe the regional tasks they are performing with greater specificity and to describe anticipated changes to these activities for the remainder of the permit term so that the Water Boards can evaluate whether the tasks are necessary to implement the permit provision and whether the tasks represent the "most reasonable methods of complying with the mandate." (See Cal. Code Regs., tit. 2, § 1183.1(a)(4).) Moreover, for the additional categories and subcategories identified in the Proposed Parameters and Guidelines, see also General Comment D, regarding vendor costs and Comment E, regarding computer, hardware and software upgrades. The Water Boards' general comments on those topics are equally applicable to the Regional Collaboration discussion.

The Water Boards incorporate General Comments C, D., and E in the comments on the regional activities and in an effort to avoid repetition, the Water Boards identify below, as applicable, only those additional specific comments associated with some of the identified activities in the Proposed Parameters and Guidelines.

- Regional Work Product Development. [¶] . . . [¶]
 - Other Regional Work Products includes but is not limited to: [¶] . . . [¶]
 - A Report of Waste Discharge.

The Water Boards specifically object to identification of the Report of Waste Discharge (ROWD) as a Regional Work Product required by reimbursable provisions of the San Diego Permit. The requirement to submit a ROWD is set forth in the San Diego Permit at section J.2., but that requirement merely reflects the legal requirement that exists in federal law to submit an ROWD. The Claimants' obligation to prepare and submit a ROWD is imposed directly by federal mandate in the Clean Water Act and the Commission itself recognizes the Claimants' obligation to obtain a permit under the federal law in its Statement of Decision wherein the Commission states: "NPDES permits are required for 'A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.'" (Statement of Decision, p. 6, citing 33 USCA § 1342(p)(2)(C).) The obligation to submit a ROWD for permit renewal arises directly from the federal requirement that NPDES permits are limited to 5 year terms. (40 C.F.R. § 122.46(a) ("NPDES permits shall be effective for a fixed term not to exceed 5 years.")). The Commission's Statement of Decision did not determine otherwise. Therefore, the costs of preparing and submitting a ROWD are not reimbursable.

H. Program Effectiveness Assessment (I.1. and I.2) (Proposed Parameters and Guidelines, pp. 25-26).

Similar to other descriptions of activities and costs Claimants assert should be included in the Adopted Parameters and Guidelines, Claimants again use language and phrases to allow for the later identification of specific activities and associated costs. For example, as with other permit provisions, the Claimants identify "costs, including Personnel Costs," without describing what other "costs" they intend to reference. (Proposed Parameters and Guidelines, p. 25.) See Water Boards' General Comment C, above, applicable to these unspecified categories of activities. Similarly, the Claimants identify costs of purchases and upgrades to equipment, hardware and software necessary to support data tracking, analysis and reporting (Program Implementation) as costs associated with reimbursable requirements. The Water Boards are concerned that the Claimants have not adequately demonstrated why purchases and upgrades are necessary to support the Program Effectiveness Assessment functions and how they will distinguish activities and costs incurred to comply with the higher level of service identified by the Commission as compared to the prior permit. (See General Comments A and E and Specific Comment III.E.) In addition, the Claimants have not made clear how they will effectively exclude, in a transparent way, costs for computers and associated upgrades that are incurred in connection with unreimbursable provisions such as hydromodification management plan and low impact development elements. Finally, the Claimants assert that training of staff, including vendor employees, is necessary to comply with the mandated provisions and costs for such training should be reimbursed. The Water Boards disagree. (See Water Boards' General Comment D, above.) The Water Boards' General Comments are generally applicable as well to the categories and subcategories identified for Program Effectiveness Assessment listed in the Proposed Parameters and Guidelines, although the Water Boards do not have any additional specific comments applicable to these categories at this time.

IV. OTHER ISSUES**A. Offsetting Revenues.**

The Statement of Decision finds that certain types of fees "would be identified as offsetting revenue in the parameters and guidelines." (Statement of Decision, p. 2.) The Claimants' Proposed Parameters and Guidelines do not address whether there are or they anticipate there will be, any offsetting revenues for inclusion in the Parameters and Guidelines. Claimants should be required to identify offsetting revenues prior to the Commission's adoption of Parameters and Guidelines. Moreover, the Claimants have not, but should be to, identify and include offsetting revenues derived from street sweeping and conveyance system cleaning parking sign enforcement. Finally, the Claimants have not identified any general fund revenues available to apply to reimbursable provisions for purposes of offsetting reimbursement amounts.

B. Reasonable Reimbursement Methodology.

In their transmittal letter for the Proposed Parameters and Guidelines, Claimants state that they "believe it would be appropriate to include a reasonable reimbursement methodology, as defined in Government Code section 17518.5, for a number of the activities found to be reimbursable by the Commission" To the Water Boards' knowledge, neither Claimants nor any state agency has submitted a proposed reasonable reimbursement methodology. The

Ms. Paula Higashi

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September 13, 2010

Water Boards reserve the right to comment on any such methodology that may be proposed in the future in this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Catherine George Hagan". The signature is written in dark ink and is positioned above the printed name and title.

Catherine George Hagan
Senior Staff Counsel

cc: Service List for 07-TC-09

PROOF OF SERVICE

I, Joanne Griffin, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22nd Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On this date, September 13, 2010 I served the within documents:

Proposed Parameters and Guidelines, Discharge of Stormwater Runoff, 07-TC-09 California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-001, (NPDES No. CAS0108758) Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, adopted on January 24, 2007:

Comments of the State Water Resources Control Board and the California Regional Water Quality Control Board, San Diego Region, on Proposed Parameters and Guidelines

	BY FACSIMILE: I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
X	BY ELECTRONIC MAIL: I caused a true and correct copy of the document(s) to be transmitted by electronic mail compliant with section 1010.6 of the California Code of Civil Procedure to the person(s) as shown.
	BY HAND DELIVERY: I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	BY OVERNIGHT MAIL TO ALL PARTIES LISTED: I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
X	BY FIRST CLASS MAIL TO PARTIES NOT RECEIVING EMAIL: I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in first class mail and/or electronic mail addressed to:

cc: Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Susan Geanacou
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Angie Teng
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

Hasmik Yaghobyan
Auditor-Controller's Office
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

Jim Spano
Division of Audits
State Controllers Office
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Andy Nichols
Nichols Consulting
1857 44th Street
Sacramento, CA 95819

Courtney Covington
Downey Brand Attorneys LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Michael Lauffer, Chief Counsel
Office of Chief Counsel **[Via Email Only]**
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

(Continued next page)

Jolene Tollenaar
MGT of America
2001 P Street, Suite 200
Sacramento, CA 95811

Bonnie Ter Kaurst
Office of the Auditor/Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Timothy Barry
Office of County Counsel
County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101-2469

David W. Gibson, Executive Officer
San Diego Regional Water
Quality Control Board **[Via Email Only]**
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Ginny Brummels
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Jeff Carosone
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Thomas Howard, Executive Director
Executive Office **[Via Email Only]**
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814

Allan Burdick
MAXIMUS
3130 Kilgore Road, Suite 400
Rancho Cordova, CA 95670

cc: Leonard Kaye
Los Angeles County
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Glen Everroad
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

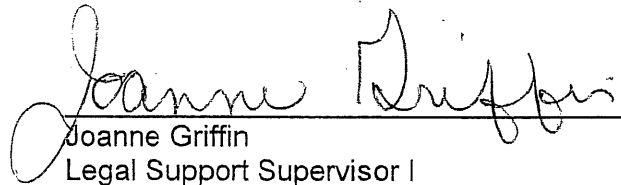
Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Juliana F. Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

Harmeet Barkschat
Mandate Resource Services, LLC
5325 Elkhorn Boulevard, #307
Sacramento, CA 95842

Catherine George Hagan, Staff Counsel
Office of Chief Counsel **[Via Email Only]**
San Diego Regional Water
Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on September 13, 2010 at Sacramento, California.


Joanne Griffin
Legal Support Supervisor I

