

May 18, 2023

Mr. David Burhenn
Burhenn & Gest, LLP
12401 Wilshire Blvd., Suite 200
Los Angeles, CA 90025

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

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

Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009, 09-TC-03

Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030, adopted May 22, 2009

County of Orange, Orange County Flood Control District; and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants

Dear Mr. Burhenn and Ms. Sidarous:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines by **June 8, 2023**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for

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

Mr. Burhenn and Ms. Sidarous
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electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

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

Hearing

This matter is set for hearing on **Friday, July 28, 2023** at 10:00 a.m. The Proposed Decision will be issued on or about July 14, 2023.

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM __

DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7,
XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009*

09-TC-03

Period of reimbursement from June 1, 2009, through December 31, 2017

EXECUTIVE SUMMARY

I. Summary of the Mandate

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R8-2009-0030, adopted by the Santa Ana Regional Water Quality Control Board on May 22, 2009.

On March 24, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from June 1, 2009, through December 31, 2017 only. The Commission partially approved the test claim for the following reimbursable activities only:

- Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL, whichever is later. (Order No. R8-2009-0030, Section XVIII.B.8.)
- Develop a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Order No. R8-2009-0030, Section XVIII.B.9.)
- Public education program:
 - By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. (Order No. R8-2009-0030, Section XIII.1.)

- Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Order No. R8-2009-0030, Section XIII.4.)
- The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Order No. R8-2009-0030, Section XIII.7.)
- Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. (Order No. R8-2009-0030, Section XI.4.)

Reimbursement is denied for all activities beginning January 1, 2018 based on the *Paradise Irrigation District* case and Government Code sections 57350 and 57351 (which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351).¹ Beginning January 1, 2018, there are *no* costs mandated by the state because claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover the costs of the mandated activities pursuant to Government Code section 17556(d).²

In addition, reimbursement for the mandated activities 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.

All other sections, activities, and costs pled in the Test Claim were denied.³

¹ *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

² *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

³ Exhibit A, Test Claim Decision, adopted March 24, 2023, pages 246-247.

II. Procedural History

On March 24, 2023, the Commission adopted the Test Claim Decision.⁴ On March 24, 2023, the Commission issued the Draft Expedited Parameters and Guidelines.⁵ On April 14, 2023, the claimants filed comments on the Draft Expedited Parameters and Guidelines.⁶ Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 18, 2023.

III. Discussion

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

The following permittees are required to comply with Order No. R8-2009-0030 and 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 Orange, Orange County Flood Control District (OCFCD) and the incorporated cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Hills, Laguna Woods, La Habra, La Palma, Lake Forest, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda.⁷

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 30, 2010, establishing eligibility for reimbursement for the 2008-2009 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the permit's effective date, June 1, 2009. Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, costs incurred from June 1, 2009, through December 31, 2017 are reimbursable.

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

Section IV. of the proposed Parameters and Guidelines identifies the mandated activities approved by the Commission. The claimants also request that the boilerplate language in Section IV. of the Parameters and Guidelines, which require that actual

⁴ Exhibit A, Test Claim Decision, adopted March 24, 2023.

⁵ Exhibit B, Draft Expedited Parameters and Guidelines, issued March 24, 2023.

⁶ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023.

⁷ Exhibit A, Test Claim Decision, adopted March 24, 2023, page 3.

costs claimed be supported by contemporaneous source documents, be amended to specifically reference accounting records and emails as additional examples of "source documents" that can be used to support the existence of an "actual cost."⁸

Staff recommends that the Commission deny the claimants' request. The *non-exclusive* list of possible documents identified in the boilerplate language are examples of the types of documents considered source documents and those considered corroborating evidence that might be maintained by a claimant. Therefore, additional examples of those documents are not necessary. Moreover, the documentation maintained to support a reimbursement claim will vary depending on the program, the mandated activities, and the claimant. The documentation is subject to the Controller's review and audit to determine whether the documentation supports the actual costs claimed.

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

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

E. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)

The claimants request that the share of cost funds received by the County as the principal permittee from the city permittees under their cost sharing agreement not be identified as offsetting revenues, and that the County should be able to claim all costs jointly funded by all permittees, proposing the following additional language to Section VII. Offsetting Revenues and Reimbursements:

However, with respect to reimbursement claims filed by the County of Orange, any portions thereof reflecting funds received from the County's co-permittees under the Test Claim Permit, pursuant to cost-share arrangements in their stormwater program Implementation Agreement, shall not be deemed offsetting revenues or reimbursements. The County of Orange, on behalf of itself and the other claimants (e.g., Test Claim Permit co-permittees) may claim costs jointly funded by the County and the other claimants through their Implementation Agreement. In such a case, any funds received by the County of Orange on behalf of any other claimant should be paid or credited to the other claimant.⁹

Staff recommends that the Commission deny this request. The request conflicts with the Test Claim Decision, which found that funds received by the County "from the other copermitees under an agreement . . . are *not* the County's proceeds of taxes" and,

⁸ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, pages 1-2.

⁹ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, page 2.

therefore, cannot be claimed by the County.¹⁰ Commission decisions on test claims, including the Decision issued in this case, are binding.¹¹

Staff further finds that the request for the County, as the principal permittee, to file a joint reimbursement claim on behalf of all permittees conflicts with Government Code sections 17561(d)(1)(A) and 17564, which require that each eligible local agency claimant file their own reimbursement claim. Under Section VII. of the proposed Parameters and Guidelines, any share of costs paid by an eligible city to the principal permittee (County) under the permittees' implementation agreement to comply with the state-mandated activities may be claimed by the city pursuant to Government Code section 17561(d)(1)(A) and Section V. of the Parameters and Guidelines (Direct Costs for Contracted Services). The city is required to identify and deduct from its claim any portion of those funds that are not the city's proceeds of taxes. Likewise, the County is authorized to claim only those costs it incurred on behalf of its own jurisdiction to comply with the mandated activities, and must identify and deduct as offsetting revenues any funds received for those state-mandated expenses that are *not* the County's proceeds of taxes. Language has been added to Section VII. to clarify this point.

F. Remaining Sections of the Parameters and Guidelines

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

IV. Staff Recommendation

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

¹⁰ Exhibit A, Test Claim Decision, issued March 24, 2023, pages 197-198.

¹¹ Government Code section 17559; *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009

Period of reimbursement from June 1, 2009, through December 31, 2017

Case No.: 09-TC-03

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009

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

(Adopted July 28, 2023)

DECISION

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on July 28, 2023. [Witness list will be included in the adopted Decision.]

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

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

Member	Vote
Lee Adams, County Supervisor	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	
Lynn Paquin, Representative of the State Controller, Vice Chairperson	
Spencer Walker, Representative of the State Treasurer	

I. Summary of the Mandate

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R8-2009-0030, adopted by the Santa Ana Regional Water Quality Control Board on May 22, 2009.

On March 24, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from June 1, 2009, through December 31, 2017 only. The Commission partially approved this test claim for the following reimbursable activities only:

- Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL, whichever is later. (Order No. R8-2009-0030, Section XVIII.B.8.)
- Develop a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Order No. R8-2009-0030, Section XVIII.B.9.)
- Public education program:
 - By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. (Order No. R8-2009-0030, Section XIII.1.)
 - Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Order No. R8-2009-0030, Section XIII.4.)
 - The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Order No. R8-2009-0030, Section XIII.7.)
- Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner

associations or management companies. (Order No. R8-2009-0030, Section XI.4.)

Reimbursement for these activities is denied beginning January 1, 2018, 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) and, thus, there are no costs mandated by the state.

In addition, reimbursement for these mandated activities 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.

All other sections, activities, and costs pled in the Test Claim were denied.¹²

II. Procedural History

On March 24, 2023, the Commission adopted the Test Claim Decision.¹³ On March 24, 2023, the Commission issued the Draft Expedited Parameters and Guidelines.¹⁴ On April 14, 2023, the claimants filed comments on the Draft Expedited Parameters and Guidelines requesting changes to Sections IV. and VII.¹⁵ Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 18, 2023.

III. Party Positions

A. Claimants' Position

The claimants filed comments on the Draft Expedited Parameters and Guidelines, requesting that the boilerplate language in Section IV. of the Parameters and Guidelines, which require that actual costs claimed be supported by contemporaneous source documents, be amended to specifically reference accounting records and emails as additional examples of "source documents" that can be used to support the existence of an "actual cost."¹⁶

The claimants also request that the share of cost funds received by the County as the principal permittee from the city permittees under their cost sharing agreement not be identified as offsetting revenues, and that the County should be able to claim all costs

¹² Exhibit A, Test Claim Decision, adopted March 24, 2023, pages 246-247.

¹³ Exhibit A, Test Claim Decision, adopted March 24, 2023.

¹⁴ Exhibit B, Draft Expedited Parameters and Guidelines, issued March 24, 2023.

¹⁵ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023.

¹⁶ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, pages 1-2.

jointly funded by all permittees, proposing the following additional language to Section VII. Offsetting Revenues and Reimbursements:

However, with respect to reimbursement claims filed by the County of Orange, any portions thereof reflecting funds received from the County's co-permittees under the Test Claim Permit, pursuant to cost-share arrangements in their stormwater program Implementation Agreement, shall not be deemed offsetting revenues or reimbursements. The County of Orange, on behalf of itself and the other claimants (e.g., Test Claim Permit co-permittees) may claim costs jointly funded by the County and the other claimants through their Implementation Agreement. In such a case, any funds received by the County of Orange on behalf of any other claimant should be paid or credited to the other claimant.¹⁷

No other comments were received.

IV. Discussion

The Parameters and Guidelines contain the following information:

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

The following permittees are required to comply with Order No. R8-2009-0030 and 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 Orange, Orange County Flood Control District (OCFCD) and the incorporated cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Hills, Laguna Woods, La Habra, La Palma, Lake Forest, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda.¹⁸

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 30, 2010, establishing eligibility for reimbursement for the 2008-2009 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the permit's effective date, June 1, 2009. 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

¹⁷ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, page 2.

¹⁸ Exhibit A, Test Claim Decision, adopted March 24, 2023, page 3.

the costs of these activities pursuant to Government Code section 17556(d). Therefore, costs incurred are reimbursable from June 1, 2009, through December 31, 2017.

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

The Commission partially approved the Test Claim, authorizing reimbursement for the following mandated activities from June 1, 2009 through December 31, 2017:

- Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL, whichever is later. (Order No. R8-2009-0030, Section XVIII.B.8.)
- Develop a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Order No. R8-2009-0030, Section XVIII.B.9.)
- Public education program:
 - By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. (Order No. R8-2009-0030, Section XIII.1.)
 - Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Order No. R8-2009-0030, Section XIII.4.)
 - The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Order No. R8-2009-0030, Section XIII.7.)
- Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. (Order No. R8-2009-0030, Section XI.4.)

These activities are identified in the Parameters and Guidelines.

The claimants also request that the boilerplate language in Section IV. of the Parameters and Guidelines, which require that actual costs claimed be supported by contemporaneous source documents, be amended to specifically reference accounting records and emails as additional examples of "source documents" that can be used to support the existence of an "actual cost," as follows (proposed changes in ~~strikeout~~ and underline):

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, including electronic records (such as emails or accounting records). Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, ~~and~~ receipts, accounting records generated in a claimants' normal course of business (including, but not limited to, general ledger details) and/or emails evidencing work being performed or completed, among other potential records.

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.¹⁹

The boilerplate language was developed in 2003 with the Controller's Office and interested parties and persons, after the Bureau of State Audits recommended and the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in the *School Bus Safety II* program to detail the documentation necessary to support reimbursement claims. The boilerplate language has generally remained the same since 2003.²⁰

¹⁹ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, pages 1-2.

²⁰ See also, *Clovis Unified School Dist. v. John Chiang as State Controller* (2010) 188 Cal.App.4th 794, 802-807 where the Controller revised its claiming instructions in 2003 to include the boilerplate language requiring contemporaneous source documents on

The Commission denies the claimants' request. The *non-exclusive* list of possible documents identified in the boilerplate language are examples of the types of documents considered source documents and those considered corroborating evidence that might be maintained by a claimant. Therefore, additional examples are not necessary. Moreover, the documentation maintained to support a reimbursement claim will vary depending on the program, the mandated activities, and the claimant. The documentation is subject to the Controller's review and audit to determine whether the documentation supports the actual costs claimed. Accordingly, the request is denied.

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

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

E. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant's proceeds of taxes), which are required to be identified and deducted from the costs claimed.

In the Test Claim Decision, the Commission determined that the County of Orange is the principal permittee under the test claim permit, and to the extent the County receives funds from other sources, including from fees, grant funding, and from the other copermittees under a cost-sharing agreement, those funds are *not* the County's proceeds of taxes.

The County of Orange, in a declaration signed by the Chief of the Orange County Stormwater Program, further states that "in addition to its General Fund, [the County] had sources other than County funding, including landfill gate fees and special district funding, for certain Permit obligations. To the extent such fees were employed and/or such funds were appropriated for such obligations, they would not be available for other County obligations." [Citation omitted.] In a second declaration filed by Orange County with the Test Claim, it is declared that the County was designated the principal permittee and the County and the City permittees have a cost-sharing agreement for compliance with the test claim permit. [Citation omitted.] To the extent the County receives funds from other sources, including from fees, grant funding, and from the other copermittees under an agreement, those funds are *not* the County's proceeds of taxes. These funds received by the County are not taxes

older state-mandated programs for fiscal years when the parameters and guidelines did not yet contain the requirement. The court found that since the parameters and guidelines did not contain the requirement for the earlier fiscal years in question, the requirement in the claiming instructions constituted an invalid, underground regulation.

levied by or for the County, and are not counted against the County's appropriations limit.²¹

The Commission also recognized that "the claimants have a number of different revenue streams with which to fund stormwater pollution control activities, and the record indicates a mix of different revenues being applied throughout the County to pay for the activities required by the prior permit and the test claim permit."²² The record also showed that the claimants' reliance on General Fund revenues decreased after the test claim permit was adopted.²³

Thus, the Commission concluded that "reimbursement for these mandated activities 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."²⁴

This language was included in Section VII. of the Draft Expedited Parameters and Guidelines.²⁵ The claimants now request the following additional language (in underline) be added to Section VII.:

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,

²¹ Exhibit A, Test Claim Decision, issued March 24, 2023, pages 197-198, citing to California Constitution, article XIII B, section 8; *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32. See also, *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 ("read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*"); *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (articles XIII A and XIII B work "in tandem," for the purpose of precluding "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"); and *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 (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.*").

²² Exhibit A, Test Claim Decision, adopted March 24, 2023, page 198.

²³ Exhibit A, Test Claim Decision, adopted March 24, 2023, page 202.

²⁴ Exhibit A, Test Claim Decision, adopted March 24, 2023, page 247.

²⁵ Exhibit B, Draft Expedited Parameters and Guidelines, issued March 24, 2023, page 11.

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. However, with respect to reimbursement claims filed by the County of Orange, any portions thereof reflecting funds received from the County's co-permittees under the Test Claim Permit, pursuant to cost-share arrangements in their stormwater program Implementation Agreement, shall not be deemed offsetting revenues or reimbursements. The County of Orange, on behalf of itself and the other claimants (e.g., Test Claim Permit co-permittees) may claim costs jointly funded by the County and the other claimants through their Implementation Agreement. In such a case, any funds received by the County of Orange on behalf of any other claimant should be paid or credited to the other claimant.²⁶

The claimants explain that the County, as the principal permittee,

. . . is charged with responsibility for overall program management, including the submission of unified reports, plans and programs required by the permit. Permit, Section I.A. The County coordinates permit activities, including implementation of areawide activities such as public education, and pollution prevention. Permit, Section I.B. The co-permittees participate on a Management Committee, but the County is charged with taking the lead in initiating and developing areawide programs and activities required by the Permit. Permit, Section II.B.1.²⁷

The claimants also state that their request

. . . is simply to reflect the County's role as Principal Permittee and the funding mechanism for shared costs set forth in the Implementation Agreement. For those activities for which the County has taken the lead, the County, rather than the other claimants, is the party that has the source documents required to support the claim. With this modification, the County, having collected and used funds from the other claimants for the development and implementation of these activities, could then file a claim on behalf of itself and the other claimants for those costs and then

²⁶ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, page 2.

²⁷ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, page 3.

reimburse or credit the other claimants their respective share of the reimbursement.²⁸

The Commission denies the claimants' request. First, the proposed language in the first sentence ("with respect to reimbursement claims filed by the County of Orange, any portions thereof reflecting funds received from the County's co-permittees under the Test Claim Permit, pursuant to cost-share arrangements in their stormwater program Implementation Agreement, shall not be deemed offsetting revenues or reimbursements"), conflicts with the Commission's Test Claim Decision. As stated above, the Commission found that funds received by the County "from the other copermitees under an agreement . . . are *not* the County's proceeds of taxes" and cannot be claimed by the County.²⁹ Commission decisions on test claims, including the Decision issued in this case, are binding, unless set aside by the courts.³⁰

In addition, the claimants' proposed second sentence ("The County of Orange, on behalf of itself and the other claimants (e.g., Test Claim Permit co-permittees) may claim costs jointly funded by the County and the other claimants through their Implementation Agreement. In such a case, any funds received by the County of Orange on behalf of any other claimant should be paid or credited to the other claimant"), conflicts with the mandates process in the Government Code. Except for schools, direct service districts, or special districts whose costs may not reach the minimum \$1,000, the Government Code requires each eligible claimant to file its own reimbursement claim and does not allow one local agency to file a combined claim for the costs incurred by other eligible local agencies. Government Code 17564 states the following:

(a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars (\$1,000). *However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars (\$1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars (\$1,000).* The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. *These combined claims*

²⁸ Exhibit C, Claimants' Comments on the Draft Expedited Parameters and Guidelines, filed April 14, 2023, page 3.

²⁹ Exhibit A, Test Claim Decision, adopted March 24, 2023, pages 197-198.

³⁰ Government Code section 17559; *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200-1201.

may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines or reasonable reimbursement methodology and claiming instructions. (Emphasis added.)

Additionally, Government Code section 17561(d)(1)(A) then states that “When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17551 or 17573 that requires state reimbursement, *each* local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.” (Emphasis added.) Government Code section 17560(a) provides that “*A local agency or school district* may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.” (Emphasis added.) Thus, each agency is required to submit their own claim for their initial and annual costs.

In addition, Section V. of the Parameters and Guidelines clarifies that contracted services provided to comply with the state-mandated duties are direct costs that are eligible for reimbursement by the local agency claimant incurring those costs as follows:

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.

Thus, any share of costs paid by an eligible city to the principal permittee under the permittees’ implementation agreement to comply with the state-mandated activities may be claimed by the city pursuant to Government Code section 17561(d)(1)(A) and Section V. of the Parameters and Guidelines. The city is required to identify and deduct from its claim any portion of those funds that are not the city’s proceeds of taxes. Likewise, the County is authorized to claim only for its own costs incurred to comply with the mandated activities, may not claim the cities’ costs, and must identify and deduct as offsetting revenues any funds received for its own state-mandated expenses that are *not* the County’s proceeds of taxes. This language has been added to Section VII. for clarification.

F. The Remaining Sections of the Parameters and Guidelines

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

V. Conclusion

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

PARAMETERS AND GUIDELINES³¹

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7,
XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009*

09-TC-03

Period of reimbursement from June 1, 2009, through December 31, 2017

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R8-2009-0030, adopted by the Santa Ana Regional Water Quality Control Board on May 22, 2009.

On March 24, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from June 1, 2009, through December 31, 2017 only. The Commission partially approved this test claim for the following reimbursable activities only:

- Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL, whichever is later. (Section XVIII.B.8.)³²
- Develop a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, to ensure compliance” with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals

³¹ 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.

³² Exhibit A, Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 343 [Order No. R8-2009-0030, Section XVIII.B.8].

TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Section XVIII.B.9.)³³

- Public education program:
 - By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. (Section XIII.1.)³⁴
 - Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Section XIII.4.)³⁵
 - The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Section XIII.7.)³⁶
- Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. (Section XI.4.)³⁷

Reimbursement for these activities is denied beginning January 1, 2018, 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) and, thus, there are no costs mandated by the state.

In addition, reimbursement for these mandated activities from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority

³³ Exhibit A, Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 343 [Order No. R8-2009-0030, Section XVIII.B.9].

³⁴ Exhibit A, Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 332 [Order No. R8-2009-0030, Section XIII.1].

³⁵ Exhibit A, Joint Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 332 [Order No. R8-2009-0030, Section XIII.4].

³⁶ Exhibit A, Joint Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 333 [Order No. R8-2009-0030, Section XIII.7].

³⁷ Exhibit A, Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, pages 316-317 [Order No. R8-2009-0030, Section XI.4].

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.

All other sections, activities, and costs pled in the Test Claim were denied.

II. ELIGIBLE CLAIMANTS

The following permittees are required to comply with Order No. R8-2009-0030 and 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 Orange, Orange County Flood Control District (OCFCD) and the incorporated cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, Laguna Hills, Laguna Woods, La Habra, La Palma, Lake Forest, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda.³⁸

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 30, 2010, establishing eligibility for reimbursement for the 2008-2009 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the permit's effective date, June 1, 2009. Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, costs incurred are reimbursable from June 1, 2009, 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.

³⁸ Exhibit A, Test Claim filed June 30, 2010, and revised December 19, 2016, and January 3, 2017, page 273 [Order No. R8-2009-0030, Finding B].

4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- A. Submit a proposed Cooperative Watershed Program that will fulfill applicable requirements of the selenium TMDL implementation plan within 24 months of adoption of the test claim permit, or one month after approval of the Regional Board selenium TMDLs by OAL, whichever is later. (Order No. R8-2009-0030, Section XVIII.B.8.)
- B. Develop a "constituent-specific source control plan" for copper, lead, and zinc, including a monitoring program, to ensure compliance" with WLAs for dry and wet weather runoff, which were derived from the 2007 San Gabriel River Metals

TMDL jointly developed by the Los Angeles Water Board and U.S. EPA. (Order No. R8-2009-0030, Section XVIII.B.9.)

C. Public education program:

1. By July 1, 2012, the one-time activity to complete a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the findings of the survey and any proposed changes to the current program in the annual report for 2011-2012. (Order No. R8-2009-0030, Section XIII.1.)
2. Permittees shall administer individual or regional workshops for each of the specified sectors (manufacturing facilities; mobile service industry; commercial, distribution, and retail sales industry; residential/commercial landscape construction and service industry; residential and commercial construction industry; and residential and community activities) by July 1, 2010 and annually thereafter. (Order No. R8-2009-0030, Section XIII.4.)
3. The principal permittee, in collaboration with the co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of DAMPs, WQMP guidance, and Fact Sheets for “various activities.” The public shall be informed of the availability of these documents through public notices in local newspapers, County or city websites, local libraries, city halls, or courthouses. (Order No. R8-2009-0030, Section XIII.7.)

- D. Within 18 months of adoption, develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. (Order No. R8-2009-0030, Section XI.4.)

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.

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 chapter³⁹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source,

³⁹ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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.

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 May 18, 2023, I served the:

- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 18, 2023**

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, and, XVIII.B.8, and
XVIII.B.9, Adopted May 22, 2009, 09-TC-03*

Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,
adopted May 22, 2009

County of Orange, Orange County Flood Control District; and the Cities of
Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton,
Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach,
and Villa Park, 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 May 18, 2023 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/17/23

Claim Number: 09-TC-03

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, Adopted May 22, 2009

Claimants: City of Anaheim
City of Brea
City of Buena Park
City of Costa Mesa
City of Cypress
City of Fountain Valley
City of Fullerton
City of Huntington Beach
City of Irvine
City of Lake Forest
City of Newport Beach
City of Placentia
City of Seal Beach
City of Villa Park
County of Orange
Orange County Flood Control District

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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