Hearing Date: March 24, 2011
J:mandates/2003/tc/03tc04/psgs/toc

ITEM 8

FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES
AND STATEMENT OF DECISION

Los Angeles Regional Quality Control Board Order No. 01-182

Permit CAS004001, Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04);
Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20);
Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

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Exhibit A

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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September 3, 2009

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And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Adopted Statement of Decision and Timeline for Submission of Proposed Parameters and Guidelines or Reasonable Reimbursement Methodology
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Parts 4C2a., 4C2b, 4E & 4F5c3
County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-claimants

Dear Mr. Kaye and Mr. Gest:

The Commission on State Mandates adopted the enclosed Statement of Decision on July 31, 2009. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq., the claimant is responsible for submitting proposed parameters and guidelines to the Commission by **October 5, 2009**. For guidance in preparing and filing a timely submission see Government Code section 17557 and California Code of Regulations, title 2, sections 1183.1 et seq. Also, the claimant may include a "reasonable reimbursement methodology," a formula for reimbursing local agency costs mandated by the state in the Proposed Parameters and Guidelines. (See Gov. Code, § 17518.5 and Cal. Code Regs., tit.2, 1183.13.)

- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, Commission staff will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. Interested parties may propose a "reasonable reimbursement methodology" pursuant to Government Code section

- 17518.5. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)
- **State Agencies and Interested Parties Comments.** State agencies and interested parties may submit recommendations and comments on staff's draft proposal and the claimant's modifications and/or comments within 15 days of service. State agencies and interested parties are required to submit an original and two (2) copies of written responses or rebuttals to the Commission and to simultaneously serve copies on the test claimant, state agencies, and interested parties on the mailing list. The claimant and other interested parties may submit written rebuttals. (See Cal. Code Regs., tit. 2, § 1183.11.)
- **Adoption of Parameters and Guidelines.** After review of the draft parameters and guidelines and all comments, Commission staff will recommend the adoption of an amended, modified, or supplemented version of staff's draft parameters and guidelines. (See Cal. Code Regs., tit. 2, § 1183.14.)
- **Review of Statewide Cost Estimate.** Commission staff may develop the statewide cost estimate based on initial reimbursement claims filed with the Office of the State Controller, application of a reasonable reimbursement methodology, or use a different methodology based on recommendations from the test claimant, the Department of Finance, or other interested parties. Before presenting a statewide cost estimate to the Commission for adoption, Commission staff shall disclose to the parties and interested parties the methodology, basis for any assumptions made, and sources of any data used to develop the estimate. (See Cal. Code Regs., tit. 2, § 1183.3.)
- **Adoption of Statewide Cost Estimate.** At least ten days prior to the next hearing, Commission staff shall issue a final staff analysis and a staff recommendation for adoption of the statewide cost estimate.

Reasonable Reimbursement Methodology and Statewide Estimate of Costs

- **Test Claimant and Department of Finance Submission of Letter of Intent.** Within 30 days of the Commission's adoption of a Statement of Decision on a test claim, the test claimant(s) and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1—17557.2 and section 1183.30 of the Commission's regulations to develop a *reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible claimants are considered in the development of a reasonable reimbursement methodology.

- **Test Claimant and Department of Finance Submission of Plan.** Pursuant to the letter of intent, the test claimant and the Department of Finance shall submit an original and two copies of the *jointly developed plan* for development of a reasonable reimbursement methodology and statewide estimate of costs to the Commission.

- **Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Pursuant to the plan, the test claimant and the Department of Finance shall submit an original and two copies of the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission. Any filings made pursuant to Government Code section 17557.1 shall be simultaneously served on the other parties and interested parties on the mailing list.

- **Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within fifteen (15) days of service. Claimants, state agencies, and interested parties shall submit an original and two copies of any written responses to Commission staff and shall simultaneously serve a copy on the other parties and interested parties. The test claimant and Department of Finance may submit written rebuttals to Commission staff and simultaneously serve a copy on the other parties and interested parties.

- **Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** At least ten days prior to the next hearing, Commission staff shall issue review comments and a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

Please contact Heidi Palchik at (916) 323-8218 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure
J:mandates/2003/tc/03tc04/sod/sodtrans

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001 Parts 4C2a., 4C2b, 4E & 4F5c3 Filed September 2, 2003, (03-TC-04) September 26, 2003 (03-TC-19) by the County of Los Angeles, Claimant Filed September 30, 2003 (03-TC-20 & 03-TC-21) by the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants	Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 *Municipal Stormwater and Urban Runoff Discharges* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. *(Adopted July 31, 2009)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 31, 2009. Leonard Kaye and Judith Fries appeared on behalf of the County of Los Angeles. Howard Gest appeared on behalf of the cities. Michael Lauffer appeared on behalf of the State Water Resources Control Board and the Regional Water Quality Control Board. Carla Castaneda and Susan Geanacou appeared on behalf of the Department of Finance. Geoffrey Brosseau appeared on behalf of the Bay Area Stormwater Management Agencies Association.

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 section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 4-2.

Summary of Findings

The consolidated test claim, filed by the County of Los Angeles and several cities, allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board.

The Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total

maximum daily load:[1] "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

BACKGROUND

The claimants allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board (LA Regional Board), a state agency.

History of the test claims

The test claims were filed in September 2003,[2] by the County of Los Angeles and several cities within it (the permit covers the Los Angeles County Flood Control District and 84 cities in Los Angeles County, all except Long Beach). The Commission originally refused jurisdiction over the permits based on Government Code section 17516's definition of "executive order" that excludes permits issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (regional boards). After litigation, the Second District Court of Appeal held that the exclusion of permits and orders of the State and Regional Water Boards from the definition of "executive order" is unconstitutional. The court issued a writ commanding the Commission to set aside the decision "affirming your Executive Director's rejection of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21" and to fully consider those claims.[3]

The County of Los Angeles and the cities re-filed their claims in October and November 2007. The claims were consolidated by the Executive Director in December 2008. Thus, the

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[1] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

[2] Originally, test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities)* were filed by the County of Los Angeles on September 5, 2003. Test claim 03-TC-21 (*Stormwater Pollution Requirements*) was filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina on September 30, 2003. Test claim 03-TC-20 (*Waste Discharge Requirements*) was filed by Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village on September 30, 2003.

[3] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898.

reimbursement period is as though the claims were filed in September 2003, i.e., beginning July 1, 2002.[4]

Before discussing the specifics of the permit, an overview of municipal stormwater pollution puts the permit in context.

Municipal stormwater

One of the main objectives of the permit is "to assure that stormwater discharges from the MS4 [Municipal Separate Storm Sewer Systems][5] shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-stormwater to the MS4 has been effectively prohibited." (Permit, p. 13.)

Stormwater runoff flows untreated from urban streets directly into streams, lakes and the ocean. To illustrate the effect of stormwater[6] on water pollution, the Ninth Circuit Court of Appeal has stated the following:

> Storm water runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources." [Citation omitted.] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States. [Citation omitted.] In 1985, three-quarters of the States cited urban storm water runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment. Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters. Among the sources of storm water contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[7]

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[4] Government Code section 17557, subdivision (e).

[5] Municipal separate storm sewer means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (40 C.F.R. § 122.26 (b)(8).)

[6] Storm water means "storm water runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.26 (b)(13).)

[7] *Environmental Defense Center, Inc. v. U.S. E.P.A.* (2003) 344 F.3d 832, 840-841.

Because of the stormwater pollution problems described by the Ninth Circuit above, California and the federal government regulate stormwater runoff as described below.

California law

The California Supreme Court summarized the state statutory scheme and regulatory agencies applicable to this test claim as follows:

> In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat. Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).
>
> Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240).[8]

Much of what the regional board does, especially as pertaining to permits like the one in this claim, is based in federal law as described below.

Federal law

The Federal Clean Water Act (CWA) was amended in 1972 to implement a permitting system for all discharges of pollutants[9] from point sources[10] to waters of the United States, since

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[8] *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.

[9] According to the federal regulations, "Discharge of a pollutant" means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 C.F.R. § 122.2.)

[10] A point source is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

discharges of pollutants are illegal except under a permit.[11] The permits, issued under the national pollutant discharge elimination system, are called NPDES permits. Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations[12] are not "less stringent" than those set out in the CWA (33 USCA 1370). The California Supreme Court described NPDES permits as follows:

> Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)[13]

In the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13370 et seq.), the Legislature found that the state should implement the federal law in order to avoid direct regulation by the federal government. The Legislature requires the permit program to be consistent with federal law, and charges the State and Regional Water Boards with implementing the federal program (Wat. Code, §§ 13372 & 13370). The State Water Resources Control Board (State Board) incorporates the regulations from the U.S. EPA for implementing the federal permit program, so both the Clean Water Act and U.S. EPA regulations apply to California's permit program (Cal.Code Regs., tit. 23, § 2235.2).

When a regional board adopts an NPDES permit, it must adopt as stringent a permit as U.S. EPA would have (federal Clean Water Act, § 402 (b)). As the California Supreme Court stated:

> The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not " *less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit a state-when imposing effluent limitations that are *more stringent*

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[11] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[12] *Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean. (40 C.F.R. § 122.2.)

[13] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 621. Actually, State and regional board permits allowing discharges into state waters are called "waste discharge requirements" (Wat. Code, § 13263).

than required by federal law-from taking into account the economic effects of doing so.[14]

Actions that dischargers must implement as prescribed in permits are commonly called "best management practices" or BMPs.[15]

Stormwater was not regulated by U.S. EPA in 1973 because of the difficulty of doing so. This exemption from regulation was overturned in *Natural Resources Defense Council v. Costle* (1977) 568 F.2d 1369, which ordered U.S. EPA to require NPDES permits for stormwater runoff. By 1987, U.S. EPA still had not adopted regulations to implement a permitting system for stormwater runoff. The Ninth Circuit Court of Appeals explained the next step as follows:

> In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a two-phase overall program of stormwater regulation.[16]

NPDES permits are required for "A discharge from a municipal separate storm sewer system serving a population of 250,000 or more."[17] The federal Clean Water Act specifies the following criteria for municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.[18]

In 1990, U.S. EPA adopted regulations to implement Clean Water Act section 402(p), defining which entities need to apply for permits and the information to include in the permit application.

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[14] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 627-628.

[15] Best management practices, or BMPs, means "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 CFR § 122.2.)

[16] *Environmental Defense Center, Inc. v. U.S. E.P.A., supra,* 344 F.3d 832, 841-842.

[17] 33 USCA 1342 (p)(2)(C).

[18] 33 USCA 1342 (p)(3)(B).

The permit application must propose management programs that the permitting authority will consider in adopting the permit. The management programs must include the following:

> [A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate.[19]

General state-wide permits

In addition to the regional stormwater permit at issue in this claim, the State Board has issued two general statewide permits,[20] as described in the permit as follows:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. ... Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations. (Permit, p. 11.)

The State Board has statutory fee authority to conduct inspections to enforce the general state-wide permits.[21] The statewide permits are discussed in further detail in the analysis.

The Los Angeles Regional Board permit (Order No. 01-182, Permit CAS004001)

To obtain the permit, the County of Los Angeles, on behalf of all permittees, submitted on January 31, 2001 a Report of Waste Discharge, which constitutes a permit application, and a Stormwater Quality Management Program, which constituted the permittees' proposal for best management practices that would be required in the permit.[22]

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[19] 40 Code of Federal Regulations section 122.26 (d)(2)(iv).

[20] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA within a geographical area." (40 CFR § 122.2.)

[21] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii).

[22] State Water Resources Control Board, comments submitted April 18, 2008, page 8 and attachment 36.

The permit states that its objective is: "to protect the beneficial uses of receiving waters in Los Angeles County."[23] The permit was upheld by the Second District Court of Appeal in 2006, which described it as follows:

> The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees.[24]

After finding that "the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems)" and that the discharges were the subject of regional board permits in 1990 and 1996, the regional board found that the storm drain systems in the county discharged a host of specified pollutants into local waters. The permit summed up by stating: "Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region."[25]

The permit also specifies prohibited and allowable discharges, receiving water limitations, the implementation of the Storm Water Quality Management Program "requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible."[26] As the court described the permit:

> In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-stormwater discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-stormwater emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the

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[23] Permit page 13. The permit also says: "This permit is intended to develop, achieve, and implement a timely comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the US subject to the Permittees' jurisdiction."

[24] *County of Los Angeles v. California State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 990.

[25] *County of Los Angeles v. California State Water Resources Control Board , supra,* 143 Cal.App.4th 985, 990

[26] *County of Los Angeles v. California State Water Resources Control Board,, supra,* 143 Cal.App.4th 985, 994.

regional board; "uncontaminated ground water infiltrations" ... and waters from emergency fire-fighting flows.[27]

There is also a list of permissible discharges that are incidental to urban activity, as specified (e.g., landscape irrigation runoff, etc.). In the part on receiving water limitations, the permit prohibits discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans. Storm or non-stormwater discharges from storm sewer systems which constitute a nuisance are also prohibited.[28]

To comply with the receiving water limitations, the permittees must implement control measures in accordance with the permit.[29]

The permittees are also to implement the Storm Water Quality Management Program (SQMP) that meets the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduces the pollutants in stormwaters to the maximum extent possible with the use of best management practices. And the permittees must revise the SQMP to comply with specified total maximum daily load (TMDL) allocations.[30] If a permittee modified the countywide SQMP, it must implement a local management program. Each permittee is required by November 1, 2002, to adopt a stormwater and urban runoff ordinance. By December 2, 2002, each permittee must certify that it had the legal authority to comply with the permit through adoption of ordinances or municipal code modifications.[31]

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[27] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985, 991-992.

[28] "'Nuisance' means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes." *Id.* at 992.

[29] If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee must immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that describes the best management practices currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes these changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board. *Id.* at 993.

[30] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

[31] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

The permit gives the County of Los Angeles additional responsibilities as principal permittee, such as coordination of the SQMP and convening watershed management committees. In addition, the permit contains a development construction program under which permittees are to implement programs to control runoff from construction sites, with additional requirements imposed on sites one acre or larger, and more on those five acres or larger. Permittees are to eliminate all illicit connections and discharges to the storm drain system, and must document, track and report all cases.

In this claim, however, claimants only allege activities in parts 4C2a, 4C2b, 4E and 4F5c3 of the permit. These parts concern placement and maintenance of trash receptacles at transit stops, and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites, as quoted below.

Co-Claimants' Position

Co-claimants assert that parts 4C2a, 4C2b, 4E and 4F5c3 of the LA Regional Board's permit constitute a reimbursable state-mandate within the meaning of article XIII B, section 6, and Government Code section 17514.

Transit Trash Receptacles: Los Angeles County ("County") filed test claims 03-TC-04 and 03-TC-19. In 03-TC-04, *Transit Trash Receptacles*, filed by the County, and 03-TC-20, *Waste Discharge Requirements,* filed by the cities, the claimants allege the following activities as stated in the permit part 4F5c3 (Part 4, Special Provisions, F. Public Agency Activities Program, 5. Storm Drain Operation and Management):

> c. Permittees not subject to a trash TMDL[32] shall: [¶]...[¶]
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Claimant County asserts that this permit condition requires the following:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Inspection of Industrial and Commercial Facilities: In claim 03-TC-19, *Inspection of Industrial/ Commercial Facilities*, filed by the County, and 03-TC-20, *Waste Discharge Requirements,* filed by the cities, claimants allege the following activities as stated in the permit parts 4C2a and 4C2b (Part 4, Special Provisions, C. Industrial/Commercial Facilities Control Program):

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[32] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections-: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP [Storm Water Quality Management Program]. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on stormwater pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;

- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO [Retail Gasoline Outlet] and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices.

b) Phase I Facilities[33]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:[34] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[35] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[36] to stormwater. For those facilities that do

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[33] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[34] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap, auto dismantling)...;* Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations ...; *Primary Metals.*"

[35] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

[36] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Inspection of Construction Sites: In claims 03-TC-20 and 03-TC-21, *Waste Discharge Requirements*, the cities allege the activities in permit parts 4C2a, 4C2b, and 4F5c3, as listed in the test claims cited above, in addition to the following activities as stated in part 4E of the permit (Part 4, Special Provisions, E. Development Construction Program):

- For construction sites one acre or greater, each Permittee shall comply with all conditions in section E1 above and shall: ...

  (b) Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP [Storm Water Pollution Prevention Plan] shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

  Part 4E3 of the Order provides, in relevant part, as follows:

  3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E1 and E2 and shall:

  a) require, prior to issuing a grading permit for all projects requiring coverage under the state general permit,[37] proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction

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except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;" [40 CFR §122.26 (b)(14), Emphasis added.]

[37] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA [Clean Water Act] within a geographical area." (40 CFR § 122.2.) California has issued one general permit for construction activity and one for industrial activity.

Activity Storm Water Permit][38] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

Both county and city claimants allege more than $1000 in costs in each test claim to comply with the permit activities.

In comments submitted June 4, 2009 on the draft staff analysis, the County of Los Angeles asserts that local agencies do not have fee authority to collect trash from trash receptacles that must be placed at transit stops, and that voter approval under Proposition 218 would be required to do so. The County also argues that voter approval under Proposition 218 would be required for stormwater inspection costs, and cites as evidence the City of Santa Clarita's stormwater pollution prevention fee, as well as legislative proposals now in the legislature that would, if enacted, provide fee authority.

In comments submitted June 8, 2009 on the draft staff analysis, the cities disagree with the conclusion that they have fee authority to recoup the costs of the transit-stop trash receptacles, and disagree that they have fee authority to inspect facilities covered by the state-issued general stormwater permits, as discussed in more detail below.

State Agency Positions

Department of Finance: Finance, in comments filed March 27, 2008 on all four test claims, alleges that the permit does not impose a reimbursable mandate within the meaning of section 6 of article XIII B of the California Constitution because "The permit conditions imposed on the local agencies are required by federal laws" so they are not reimbursable pursuant to Government Code section 17556, subdivision (c). Finance asserts that "requirements of the permit are federally required to comply with the NPDES [National Pollutant Discharge Elimination System] program ... [and] is enforceable under the federal CWA [Clean Water Act]."

Finance also argues that the claimants had discretion over the activities and conditions to include in the permit application. The permittees submitted a Storm Water Quality Management Program prevention report with their applications, in which they had the option to use "best management practices" to identify alternative practices to reduce water pollution. Since the local agencies prescribed the activities to be included in the permit, the requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Finance cites the *Kern* case,[39] which held that if participation in the underlying program is voluntary, the resulting new consequential requirements are not reimbursable mandates.

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[38] See page 11, paragraph 22 of the permit for a description of the statewide permits.

[39] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727

Finally, Finance states that some local agencies are using fees for funding the claimed permit activities, so should the Commission find that the permit constitutes a reimbursable mandate, the fees should be considered as offsetting revenues.

Finance submitted comments on the draft staff analysis on June 19, 2009, agreeing that the local agencies have fee authority sufficient to pay for the mandated activities. Finance disagrees, however, with the portion of the analysis that finds that the activities are not federal mandates.

State Water Resources Control Board: The State Board filed comments on the four test claims on April 18, 2008, noting that the federal CWA mandates that municipalities apply for and receive permits regulating discharges of pollutants from their municipal separate storm sewer system (MS4) to waters of the United States. "Pursuant to federal regulations, the Permit contains numerous requirements for the cities and County to take actions to reduce the flow of pollutants into the rivers and the Bay, known as Best Management practices (BMPs)."

The State Board asserts that the permit is mandated on the local governments by federal law, and applies to many dischargers of stormwater, both public and private, so it is not unique to local governments. The federal mandate requires that the permit be issued to the local governments, and the specific requirements challenged are consistent with the minimum requirements of federal law. According to the State Board, even if the permit were interpreted as going beyond federal law, any additional state requirements are de minimis. And the costs are not subject to reimbursement because the programs were proposed by the cities and County themselves, and because they have the ability to fund these requirements through charges and fees and are not required to raise taxes.

In comments filed with the State Board on April 10, 2008 (attached to the State Board comments on the test claim), the United States Environmental Protection Agency (U.S. EPA) asserts that the permit conditions reduce pollutants to the "maximum extent practicable." The transit trash receptacle and inspection programs, according to U.S. EPA, are founded in section 402 (p) of the Clean Water Act, and are well within the scope of the federal regulations (40 CFR § 122.26 (d)(2)(iv)(A)(3)).

In its comments on the draft staff analysis submitted June 5, 2009, the State Board agrees with the conclusion and staff recommendation to deny the test claim, but disagrees with parts of the analysis. The State Board asserts that federal law: (1) requires local agencies to obtain NPDES permits from California Water Boards, and (2) mandates the permit, which is less stringent than permits for private industry. The State Board also states that the permit does not exceed the minimum federal mandate, as found by a court of appeal. Finally, the State Board argues that the federal stormwater law is one of general application, and therefore does not impose a state mandate.

Interested Party Positions

Bay Area Stormwater Management Agencies Association: In comments on the draft staff analysis received June 3, 2009 (although the letter is dated April 29, 2009) the Bay Area Stormwater Management Agencies Association (BASMAA) states that this matter is of statewide importance with broad implications, and fundamentally a matter of public finance. BASMAA also urges keeping the voters' objectives paramount. BASMAA agrees that the permit requirements are a new program or higher level of service and that the requirements go beyond the federal Clean Water Act's mandates. As for the portion of the draft staff analysis that

discusses local agency fee authority, BASMAA calls it "myopic" saying it "falls short in its consideration of all potentially relevant issues and appellate court precedents that need to be presented to the Commission to serve the interest of the public." (Comments p. 3.) BASMAA contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the Proposition 218 voting requirement or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

League of California Cities and California State Association of Counties (CSAC): In joint comments on the draft staff analysis received June 4, 2009, the League of Cities and CSAC agree with the draft staff analysis that the permit is a mandate, but question whether the *Connell* and *County of Fresno* decisions are still valid as applied to Government Code section 17556, subdivision (d), which prohibit the Commission from finding costs mandated by the state if the local agency has fee authority. This is because of the voters' approval of Proposition 218 in 1996. The League and CSAC urge the Commission not to find that fee authority exists for local agencies (1) to the extent there may be doubt about whether a local agency has it, and (2) to the extent that there is no person upon which the local agency can impose the fee.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[40] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[41] "Its purpose is to preclude 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."[42] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[40] Article XIII B, section 6, subdivision (a), provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

[42] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

task.[43] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[44]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[45] 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.[46] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[47]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[48]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[49] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[50]

The permit provisions in the consolidated test claim are discussed separately to determine whether they are reimbursable state-mandates.

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[43] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[44] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[45] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[48] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[49] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[50] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) subject to article XIII B, section 6, of the California Constitution?

The issues discussed here are whether the permit provisions are an executive order within the meaning of Government Code section 17516, whether they are discretionary, and whether they constitute a federal mandate.

A. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) an executive order within the meaning of Government Code section 17516?

The Commission has jurisdiction over test claims involving statutes and executive orders as defined by Government Code section 17516, which defines an "executive order" for purposes of state mandates, as "any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.
(b) Any officer or official serving at the pleasure of the Governor.
(c) Any agency, department, board, or commission of state government."[51]

The LA Regional Water Board is a state agency.[52] The permit it issued is both a plan for reducing water pollution, and contains requirements for local agencies toward that end. Therefore, the Commission finds that the permit is an executive order within the meaning of article XIII B, section 6 and Government Code section 17516.

B. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) the result of claimants' discretion?

The permit provisions require placing and maintaining trash receptacles at transit stops and inspecting specified facilities and construction sites.

The Department of Finance, in comments submitted March 27, 2008, asserts that the claimants had discretion over what activities and conditions to include in the permit application, so that any resulting costs are downstream of the claimant's decision to include those provisions in the permit. Thus, Finance argues that the costs are not mandated by the state.

Similarly, the State Board, in its April 18, 2008 comments, cites the Stormwater Quality Management Program (SQMP) submitted by the county that constituted the claimants' proposal for the BMPs required under the permit. The State Water Board refers to (on p. 28 of the SQMP) the county's proposal to "collect trash along open channels and encourage voluntary trash collection in natural stream channels." The State Water Board further states that the SQMP (pp. 22-23) contains the municipalities' proposal for (1) site visits to industrial and commercial facilities, including automotive service businesses and restaurants to verify evidence of BMP

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[51] Section 17516 also states: ""Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code." The Second District Court of Appeal has held that this statutory language is unconstitutional. *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 904.

[52] Water Code section 13200 et seq.

implementation, and (2) maintaining a database of automotive and food service facilities including whether they have NPDES stormwater permit coverage.

Claimant County of Los Angeles, in its June 23, 2008 rebuttal comments (pp.3-4), stated whether or not most jurisdictions place transit receptacles at transit stops is not relevant to the existence of a state mandate because Government Code section 17565 provides that if a local agency has been incurring costs for activities that are subsequently mandated by the state, the activities are still subject to reimbursement. The County also states that the permit application only proposed an industrial/commercial *educational* site visit program, not an inspection program. The claimants allege that the inspection program was previously the state's duty, but that the permit shifted it to the local agencies.

Claimant cities in their June 28, 2008 comments also construe the SQMP proposal as involving only educational site visits, which they characterize as very different from compliance inspections. And cities assert that "nowhere in the Report of Waste Discharge do the applicants propose compliance inspections of facilities that hold general industrial and general construction stormwater permits for compliance with those permits." According to the cities, the city and county objected orally and in writing to the inspection permit provision.

In determining whether the permit provisions at issue are a downstream activity resulting from the discretionary decision by the local agencies, the following rule stated by the Supreme Court in the *Kern High School Dist.* case applies:

> [A]ctivities undertaken at the option or discretion of a local government entity … do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.[53]

The Commission finds that the permit activities at issue were not undertaken at the option or discretion of the claimants. The claimants were required by state and federal law to submit the NPDES permit application in the form of a Report of Waste Discharge and SQMP. Submitting them was not discretionary. According to the record,[54] the county on behalf of all claimants, submitted on January 31, 2001 a Report of Waste Discharge (ROWD), which constitutes a permit application, and a SQMP, which constitutes the claimants' proposal for best management practices that would be required in the permit.

The duty to apply for an NPDES permit is not within the claimants' discretion. According to the federal regulation:

> a) *Duty to apply.* (1) Any person[55] who discharges or proposes to discharge pollutants … and who does not have an effective permit … must submit a

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[53] *Kern High School Dist., supra,* 30 Cal.4th 727, 742.

[54] State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

[55] *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof (40 CFR § 122.2).

complete application to the Director in accordance with this section and part 124 of this chapter.[56]

Moreover, the ROWD (tantamount to an NPDES permit application) is required by California law, as follows: "Any person discharging pollutants or proposing to discharge pollutants to the navigable water of the United States within the jurisdiction of this state ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260 ..."[57] Thus, submitting the ROWD is not discretionary.

Federal regulations also anticipate the filing of an application for a stormwater permit, which contains the information in the SQMP. The regulation states in part:

> (d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application.[58]

According to the permit, section 122.26, subdivision (d), of the federal regulations contains the essential components of the SQMP (p. 32), which is an enforceable element of the permit (p. 45). Section 122.26, subdivision (d)(2)(iv)(C), in the federal regulations is interpreted in the permit to "require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4." (p. 35.) In short, the claimants were required by law to submit the ROWD and SQMP, with specified contents.

Because the claimants do not voluntarily participate in the NPDES program, the Commission finds that the *Kern High School Dist.* case does not apply to the permit, the contents of which were not the result of the claimants' discretion.

C. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b)?

The next issue is whether the parts of the permit at issue are federally mandated, as asserted by the State Board and the Department of Finance (whose comments are detailed below). If so, the parts of the permit would not constitute a state mandate.

In *County of Los Angeles v. Commission on State Mandates,* the court stated as follows regarding this permit: "We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances."[59] But after

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[56] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[57] Water Code section 13376.

[58] 40 Code of Federal Regulations, section 122.26 (d).

[59] *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 914.

summarizing the arguments on both sides, the court declined to decide the issue, stating: "Resolution of the federal or state nature of these [permit] obligations therefore is premature and, thus, not properly before this court."[60] The court agreed with the Commission (calling it an "inescapable conclusion") that the federal versus state issues in the test claims must be addressed in the first instance by the Commission.[61]

The California Supreme Court has stated that "article XIII B, section 6, and the implementing statutes ... by their terms, provide for reimbursement only of *state-* mandated costs, not *federally* mandated costs."[62]

When analyzing federal law in the context of a test claim under article XII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[63] When federal law imposes a mandate on the state, however, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[64]

Similarly, Government Code section 17556, subdivision (c), states that the Commission shall not find "costs mandated by the state" if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *Long Beach Unified School Dist. v. State of California,*[65] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[66] The *Long Beach* court stated that unlike the federal law at issue, "the executive

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[60] *Id.* at page 918.

[61] *Id.* at page 917. The court cited *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal. 3d 830, 837, in support.

[62] *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 879-880, emphasis in original.

[63] *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593, citing *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 76; see also, Government Code sections 17513 and 17556, subdivision (c).

[64] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1594.

[65] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[66] *Id.* at page 173.

Order and guidelines require specific actions ... [that were] required acts. These requirements constitute a higher level of service."[67]

In analyzing the permit under the federal Clean Water Act, we keep the following in mind. First, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act.[68] Second, the California Supreme Court has acknowledged that an NPDES permit may contain terms that are federally mandated and terms that exceed federal law.[69] The federal Clean Water Act also allows for more stringent measures, as follows:[70]

> Permits for discharges from municipal storm sewers [¶]...[¶] (iii) shall require controls to reduce the discharges of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the ... State determines appropriate for the control of such pollutants. (33 U.S.C.A. 1342 (p)(3)(B)(iii).)

As discussed further below, the Commission finds that the permit activities are not federally mandated because federal law does not require the permittees to install and maintain trash receptacles at transit stops, or require inspections of restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships. As to inspecting phase I facilities or construction sites, the federal regulatory scheme authorizes states to perform the inspections under a general statewide permit, making it possible to avoid imposing a mandate on the local agencies to do so.

In its June 2009 comments on the draft staff analysis, the State Board disagrees that specific mandates in the permit exceed the federal requirements, the State Board argues:

> This approach fails to recognize that NPDES storm water permits, whether issued by U.S. EPA or California's Water Boards, are designed to translate the general federal mandate into specific programs and enforceable requirements. Whether issued by U.S. EPA or the California's Water Boards, the federal NPDES permit will identify specific requirements for municipalities to reduce pollutants in their storm water to the maximum extent practicable. The federally required pollutant reduction is a federal mandate. ... The fact that state agencies have responsibility for specifying the federal permit requirements for municipalities does not convert the federal mandate into a state mandate.[71]

The Commission disagrees. Based on the *Long Beach Unified School Dist.* case discussed above and applied in the analysis below, the specific requirements in the permit may constitute a state mandate even though they are imposed in order to comply with the federal Clean Water Act.

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[67] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

[68] 33 U.S.C. § 1370.

[69] *City of Burbank v. State Water Resources Control Board, supra,* 35 Cal.4th 613, 618, 628.

[70] 33 USCA section 1370.

[71] State Board comments submitted June 2009, page 6.

Finance, in its June 2009 comments on the draft staff analysis, distinguishes this permit from the issue in the *Long Beach Unified School Dist.* case. According to Finance, in *Long Beach,* the courts had suggested certain steps and approaches that might help alleviate racial discrimination, although the state's executive order and guidelines required specific actions. But in this claim, federal law requires NPDES permits to include specific requirements.

The Commission agrees that NPDES permits are required to include specific measures. But as discussed in more detail below, those measures are not the same as the specific requirements at issue in this permit (in Parts 4C2a, 4C2b, 4E, and 4F5c3).

The State Board's June 2009 comments also discuss *County of Los Angeles v. State Water Resources Control Board,*[72] which involved the same permit as in this test claim. The State Board asserts that this case holds, in an unpublished part, that "the permit did not exceed the federal minimum requirements for the MS4 program."[73] (Comments, p. 5.) The State Board asserts that the Commission is bound by this decision.

The Commission reads the *County of Los Angeles* case differently than the State Board. The plaintiffs (permittees and others) in that case challenged the permit on a variety of issues, including that the regional board did not have jurisdiction to issue it, and that it violated the California Environmental Quality Act. The court did not, however, discuss the permit conditions at issue in this test claim. In the portion cited by the State Board, the court was addressing the consideration of the permit's economic effects. One of the plaintiffs' challenges to the permit was that the regional board was required to consider the economic effects in issuing the permit. By alleging the regional board had not done so, the plaintiffs argued that the permit imposed conditions more stringent than required by the federal Clean Water Act. The court held that the plaintiff's contentions were waived for failure to set forth all the documents received by the regional board, and that the regional board had considered the costs and benefits of implementation of the permit. In other parts of the opinion, however, the court acknowledged the regional board's authority to impose permit restrictions beyond the "maximum extent feasible"[74]

The *County of Los Angeles* case is silent on the permit provisions at issue in this claim[75] (Parts 4C2a, 4C2b, 4E, and 4F5c3) except when it said: "we need no [sic] address the parties'

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[72] *County of Los Angeles v. State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

[73] The court's opinion, including the unpublished parts, are in attachment 26 of the State Board's comments submitted April 18, 2008.

[74] See page 18 of attachment 26 of the State Board's comments submitted April 18, 2008.

[75] In *County of Los Angeles,* the plaintiffs also challenged the following parts of the permit: (1) part 2.1 that deals with receiving water restrictions and that prohibits all water discharges that violate water quality standards or objectives regardless of whether the best management practices are reasonable; (2) part 3.C, which requires the permittees to revise their storm water quality management programs in order to implement the total maximum daily loads for impaired water bodies, and (3) parts 3.G and 4., which authorize the regional board to require strict requirements with numeric limits on pollutants which are incorporated into the total maximum daily load restrictions. The court held that these contentions were waived for failure to set forth all the

remaining contentions concerning trash receptacles."[76] The court also said inspections under the permit were not unlawful. Nonetheless, the case is not binding on the Commission in deciding the issues in this claim.

California in the NPDES program: By way of background, under the federal statutory scheme, a stormwater permit may be administered by the Administrator of U.S. EPA or by a state-designated agency, but states are not required to have an NPDES program. Subdivision (b) of section 1324 of the federal Clean Water Act, the section that describes the NPDES program (and which, in subdivision (p), describes the requirements for the municipal stormwater system permits) states in part:

> At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator [of U.S. EPA] a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. [Emphasis added.]

And the federal stormwater statute states that the permits:

> [S]hall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)(iii). [Emphasis added].)

The federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits. According to section 1342 (p) quoted above, the Administrator of U.S. EPA would do so if California had no program. The California Legislature, when adopting the NPDES program[77] to comply with the Federal Water Pollution Control Act of 1972 stated the following findings and declaration in Water Code section 13370:

(a) The Federal Water Pollution Control Act [citation omitted] as amended, provides for permit systems to regulate the discharge of pollutants ... to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government, of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the

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applicable evidence, and that the regional board has authority to impose restrictions beyond the maximum extent feasible.

[76] See page 22, attachment 26 of the State Board's comments submitted April 18, 2008.

[77] Water Code section 13374 states: "The term 'waste discharge requirements' as referred to in this division is the equivalent of the term 'permits' as used in the Federal water Pollution Control Act, as amended."

provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Act for the purpose of carrying out its responsibilities under this program.

Based on this Water Code section 13370, in which California voluntarily adopts the permitting program, and on the federal statutes quoted above that authorize but do not expressly require states to have this program, the state has freely chosen[78] to effect the stormwater permit program.

Any further discussion in this analysis of federal "requirements" should be construed in the context of California's choice to participate in the federal regulatory NPDES program.

In its June 2009 comments on the draft staff analysis, the State Board argues as follows:

> [T]he ... analysis treats the state's decision to *administer* the NPDES permit program in 1972 as the 'choice' referred to in *Hayes*. ... The state's 'choice' to administer the program in lieu of the federal government does not alter the federal requirement on municipalities to reduce pollutants in these discharges to the maximum extent practicable.[79]

Finance, in its June 2009 comments, also disagrees with this part of the draft staff analysis, asserting that the duty to apply for a NPDES permit is required by federal law on public and private dischargers, which in this case are local agencies.

Even though California opted into the NPDES program, further analysis is needed to determine whether the federal regulations impose a mandate on the local agencies. To the extent that state requirements go beyond the federal requirements, there would be a state mandate.[80] Thus, the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) are discussed below in context of the following federal law governing stormwater permits: Clean Water Act section 402(p) (33 USCA 1342 (p)(3)(B)) and Code of Federal Regulations, title 40, section 122.26.

Placing and maintaining trash receptacles at transit stops (part 4F5c3): This part of the permit states:

> c. Permittees not subject to a trash TMDL[81] shall: [¶]...[¶]
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The comments of the State Water Board and U.S. EPA assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations. The U.S.

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[78] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[79] State Board comments submitted June 2009, page 4.

[80] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173. Government Code section 17556, subdivision (b).

[81] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

EPA submitted a letter to the State Water Board regarding the permit conditions in April 2008, which the State Water Board attached to its comments. Regarding the trash receptacles, the letter states:

> [M]aintaining trash receptacles at all public transit stops is well within the scope of these [Federal] regulations. Among the minimum controls required to reduce pollutants from runoff from commercial and residential areas are practices for "operating and maintaining public streets, roads, and highways ... [40 CFR] § 122.26(d)(2)(iv)(A)(3).[82]

U.S. EPA also cites EPA's national menu of BMPs for stormwater management programs, "which recommends a number of BMPs to reduce trash discharges." Among the recommendations is 'improved infrastructure' for trash management when necessary, which includes the placement of trash receptacles at appropriate locations based on expected need."[83]

The State Water Board, in comments filed April 18, 2008, states that part 4F of the permit (regarding trash receptacles) concerns "the municipalities' own activities, as opposed to its regulation of discharges into its system by others." The State Water Board cites the same section 122.26 regulation as U.S. EPA, and states that the requirements "reflect the federal requirement to reduce pollutants from the MS4 to the maximum extent practicable. It is federal law that animates the requirement and federal law that mandates specificity in describing the BMPs." The State Water Board alleges that two appellate courts[84] have determined that the permit provisions constitute the "maximum extent practicable" standard, which is the minimum requirement under federal law.

The Department of Finance also asserts that the permit requirements are a federal mandate.

The County of Los Angeles, in comments filed June 23, 2008, states that "Nothing in the federal Clean Water Act requires the County to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation." The county states that the U.S.EPA's citation to BMPs for stormwater management programs "may be permitted under federal law ... and even encouraged as 'reasonable expectations.' But such requirements are not mandated on the County by federal law." The County admits the existence of "an abundance of federal guidance and encouragement to have the County install and maintain trash receptacles at all public transit stops. But these are merely federal suggestions, not mandates."

The city claimants, in comments filed June 25, 2008, also argue that the requirement for transit trash receptacles is not a federal mandate, stating that nothing in the Clean Water Act or the federal regulations requires cities to install trash receptacles at transit stops. City claimants also submit a survey of other municipal stormwater permits, finding that none of those issued by U.S. EPA required installation of trash receptacles at transit stops.

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[82] Letter from Alexis Strauss, Director, Water Division, U.S. EPA, to Tam M. Doduc, Chair, and Dorothy Rice, Executive Director, State Water Resources Control Board, April 10, 2008, page 3.

[83] *Id.* at page 3.

[84] The State Water Board cites: *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377; *County of Los Angeles v. California State Water Resources Control Board* (2006) 148 Cal.App.4th 985.

The federal law applicable to this issue is section 402 of the Clean Water Act, which states:

> Permits for discharges from municipal storm sewers--
>
> (i) may be issued on a system- or jurisdiction-wide basis;
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> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator[85] or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator[86] of a discharge[87] from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]
>
> (2) Part 2 of the application shall consist of: [¶]...[¶]
>
> (iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design

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[85] Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative. (40 CFR § 122.2.)

[86] "*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program." (40 CFR § 122.2.)

[87] "*Discharge* when used without qualification means the "discharge of a pollutant. *Discharge of a pollutant* means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 CFR § 122.2.)

and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures[88] to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: [¶]...[¶]

(3) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities. (40 CFR § 122.26(d)(2)(iv)(A)(3).) [Emphasis added.]

The Commission finds that the plain language of the federal statute (33 USCA § 1342 (p)(3)(B)) and regulation (40 CFR § 122.26 (d)(2)(iv)(A)(3)) does not require the permitees to install and maintain trash receptacles at transit stops.

Specifically, the state freely chose[89] to impose the transit trash receptacle requirement on the permittees because neither the federal statute nor the regulations require it. Nor do they require the permittees to implement "practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems"[90] although the regulation requires a description of practices for doing so. Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that "mandate costs that exceed the mandate in the federal law or regulation."[91]

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[88] Minimum control measures are defined in 40 CFR § 122.34 to include: 1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination. (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment.; (6) Pollution prevention/good housekeeping for municipal operations.

[89] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[90] 40 CFR § 122.26(d)(2)(iv)(A)(3).

[91] Government Code section 17556, subdivision (c).

In *Long Beach Unified School Dist. v. State of California*,[92] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[93] The *Long Beach Unified School District* court stated:

> Where courts have suggested that certain steps and approaches may be helpful [in meeting constitutional and case law requirements] the executive Order and guidelines require *specific actions.* ...[T]he point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service.[94] [Emphasis added.]

The reasoning of *Long Beach Unified School Dist.* is applicable to this claim. Although "operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems..."[95] is a federal requirement on municipalities, the permit requirement to place trash receptacles at all transit stops and maintain them is an activity, like in *Long Beach Unified School Dist.,* that is a *specified action* going beyond federal law.[96]

Neither of the cases cited by the State Water Board demonstrate that placing trash receptacles at transit stops is required by federal law. In *City of Rancho Cucamonga v. Regional Water Quality Control Board –Santa Ana Region*[97] the court upheld a stormwater permit similar to the one at issue in this claim. The City of Rancho Cucamonga challenged the permit on a variety of grounds, including that it exceeded the federal requirements for stormwater dischargers to "reduce the discharge of pollutants to the maximum extent practicable"[98] and that it was overly prescriptive. The court concluded that the permit did not exceed the maximum extent practicable standard and upheld the permit in all respects. There is no indication in that case, however, that the permit at issue required trash receptacles at transit stops. Similarly, in a suit regarding the same permit at issue in this case, the *Los Angeles County*[99] court dismissed various challenges to the permit, but made no mention of the permit's transit trash receptacle provision.

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[92] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[93] *Id.* at page 173.

[94] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

[95] 40 Code of Federal Regulations, section 122.26 (d)(2)(iv)(A)(3).

[96] *Ibid.*

[97] *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region, supra,* 135 Cal.App.4th 1377.

[98] 33 USCA section 1342 (p)(3(B)(iii).

[99] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

Therefore, the Commission finds that placing and maintaining trash receptacles at all transit stops within the jurisdiction of each permittee, as specified, is not a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b).

Part 4F5c3 of the permit states as follows:

> c. Permittees not subject to a trash TMDL shall: (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Based on the mandatory language (i.e., "shall") in part 4F5c3 of the permit, the Commission finds it is a state mandate for the claimants that are not subject to a trash TMDL to place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003, and to maintain all trash receptacles as necessary.

Inspecting commercial facilities (part 4C2a): Section 4C2a of the permit requires inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships as follows:

> 2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:
>
> (a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with Statw law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:
>
> - has received educational materials on stormwater pollution prevention practices;
> - does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
> - keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
> - does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;

- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;

- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices. [¶]...[¶]

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The state asserts that these inspection requirements in permit part 4C2a are a federal mandate.

In comments filed April 18, 2008, the State Water Board quotes from the MS4 Program Evaluation Guide issued by U.S. EPA, asserting that it requires inspections of businesses. The State Water Board also states:

> The federal regulations also specifically require local stormwater agencies, as part of their responsibilities under NPDES permits, to conduct inspections. [citing 40 CFR § 122.26(d)(2)(iv)(C).] Throughout the federal law, there are numerous requirements for entities that discharge pollutants to waters of the United States to monitor and inspect their facilities and their effluent. [citing Clean Water Act §402(b)(2)(B); 40 CFR § 122.44(i)).] The claimants are the dischargers of pollutants into surface waters; as part of their permit allowing these dischargers they must conduct inspections.

Similarly, the April 10, 2008 letter from U.S. EPA to the State Water Board and attached to the Board's comments submitted April 18, 2008, states:

> A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practicable and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants and that there are no non-stormwater discharges or illicit connections. Thus these programs are founded in both 402 (p)(3)(B)(ii) and (iii) and are well within the scope of 40 CFR § 122.26(d)(2)(iv)(A) and (B).

The County of Los Angeles, in its June 23, 2008 rebuttal comments, asserts that federal law requires prohibiting non-stormwater discharges into the storm sewers, and reducing the discharge of pollutants in stormwater to the maximum extent practicable (33 USC 1342(p)) but not inspecting restaurants, automotive service facilities, retail gas outlets, or automotive dealerships.

Only municipal landfills, hazardous waste treatment, disposal and recovery facilities and related facilities are required to be inspected (40 CFR § 122.26(d)(2)(iv)(C)).

In comments received June 25, 2008, the city claimants argue that the LA Regional Board freely chose to impose the permit requirements on the permittees, and make the following arguments: (1) The inspection obligations were not contained in two prior permits issued to the cities and the County—thus, the requirements are not federal mandates; (2) No federal statute or regulation requires the cities or the County to inspect restaurants, automotive service facilities, retail gas outlets, automotive dealerships or facilities that hold general industrial permits; (3) Stormwater NPDES permits issued by the U.S. EPA do not contain the requirement to inspect restaurants, auto service facilities, retail gas outlets and automotive dealerships, or require the extensive inspection of facilities that hold general industrial stormwater permits as contained in the Order [i.e. permit]; (4) The Administrator of U.S. EPA, as well as the head of the water division for U.S. EPA Region IX, have specifically stated that a municipality has an obligation under a stormwater permit only to assure compliance with local ordinances; the state retains responsibility to inspect for compliance with state law, including state-issued permits.

The city claimants dispute the State Board's contention that the court in *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377 held that federal law required inspections like those at issue in the permit. The cities quote part of the *City of Rancho Cucamonga* case with the following emphasis:

> Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. *But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.* The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

In discussing the federal mandate issue, the applicable federal law is section 402 of the Clean Water Act, which states that municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations (40 CFR § 122.26 (d)(2)(iv)(B)&(C)) state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such

operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, <u>including inspections</u>, to implement and enforce an ordinance, orders or similar means <u>to prevent illicit discharges to the municipal separate storm sewer system</u>; this program description shall address all types of illicit discharges, however the following category of non-stormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States [¶]...[¶]

(C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures <u>for inspections</u> and establishing and implementing control measures for such discharges. (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

There is a requirement in subdivision (d)(2)(iv)(B)(1) for implementing and enforcing "an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm system." There is no express requirement in federal law, however, to inspect restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. Nor does the

portion of the MS4 Program Evaluation Guide quoted by the State Water Board contain mandatory language to conduct inspections for these facilities.

In its April 2008 comments, the State Water Board argues that this reading of the regulations is not reasonable, and that U.S. EPA acknowledged that the initial selection by MS4s was only a starting point. In its comments (p.15), the State Water Board also states:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. ... Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.

The State Water Board would have the Commission read requirements into the federal law that are not there. The Commission, however, cannot read a requirement into a statute or regulation that is not on its face or its legislative history.[100]

Based on the plain language of the federal regulations that are silent on the types of facilities at issue in the permit, the Commission finds that performing inspections at restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships, as specified in the permit, is not a federal mandate.

Moreover, the requirement to inspect the facilities listed in the permit is an activity, as in the *Long Beach Unified School Dist.* case discussed above,[101] that is a specified action going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, the inspections are not federally mandated.

The permit states in part: "Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified ..." Based on the mandatory language in part 4C2a of the permit, the Commission finds that this part is a state mandate on the claimants to perform the inspections at restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships at the frequency and levels specified in the permit.

Inspecting phase I industrial facilities (part 4C2b): Part 4C2b of the permit regarding phase I industrial facilities requires the following:

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[100] *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 219-220. "Rules governing the interpretation of statutes also apply to interpretation of regulations." *Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1037.

[101] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

b) Phase I Facilities[102]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:[103] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[104] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

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[102] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[103] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap, auto dismantling)...;* Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations ...; *Primary Metals.*"

[104] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The issue is whether these inspection requirements for phase I industrial facilities is a federal mandate. The governing federal regulation is 40 CFR section 122.26 (d)(2)(iv)(B)&(C), which is cited above. Specifically on point is subpart (C), which states that the proposed management program must include the following:

> (C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:
>
> (1) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

The phase I facilities in the permit are defined to include.

> (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities. (Permit, p. 62)

And the Tier 1 facilities in the permit include municipal landfills, hazardous waste treatment, disposal and recovery facilities and facilities subject to SARA Title III (see permit attachment B, pp. B-1 to B-2). Thus, there is a federal requirement to inspect these phase I and tier 1 facilities in the permit. The issue is whether this requirement constitutes a federal mandate on local agencies. The Commission finds that it does not.

It is the state that mandates the phase I inspection and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[105] This is because the federal regulatory scheme provides an alternative means of regulating and inspecting these industrial facilities under the state-enforced, statewide permit, as follows:

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[105] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

(c) Application requirements for stormwater discharges associated with industrial activity[106] and stormwater discharges associated with small construction activity -

(1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of stormwater which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph. [Emphasis added.]

The state has issued a statewide general activity industrial permit (GIASP) that is enforced through the regional boards.[107] This, along with the statewide construction permit, is described in the permit itself:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and

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[106] According to 40 CFR § 122.26, (b)(14): "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶](x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."

[107] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

> non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.[108]

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspections of industrial facilities (specified in part 4C2b of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4C2b of the permit. In fact, the State Board collects fees for the regional boards for performing inspections under the GIASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

In its April 18, 2008 comments, the State Water Board asserts:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. ... Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.[109]

The Commission disagrees. Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the "owner or operator of the discharge") the Commission finds that the state has freely chosen[110] to impose these activities on the permittees. Therefore, the Commission finds that there is no federal mandate on the claimants to perform inspections of phase I facilities as specified in part 4C2b of the permit.

As to whether the permit is a state mandate, part 4C2b contains the following mandatory language:

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[108] Permit, page 11, paragraph 22.

[109] State Water Board comments, submitted April 18, 2008, page 15.

[110] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

b) Phase I Facilities[111]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below. [Emphasis added.]

Frequency of Inspection

Facilities in Tier 1 Categories:[112] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[113] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[114] to stormwater. For those facilities that do

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[111] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[112] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills ...; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III ...;* Restaurants; *Wholesale trade (scrap, auto dismantling)...;* Automotive service facilities; *Fabricated metal products ...; Motor freight ...; Chemical/allied products ...;* Automotive Dealers/Gas Stations ...; *Primary Metals.*"

[113] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary...; Air Transportation ...; Rubbers/Miscellaneous Plastics ...; Local/Suburban Transit ...; Railroad Transportation ...; Oil & Gas Extraction ...; Lumber/Wood Products...; Machinery Manufacturing ...; Transportation Equipment ...; Stone, Clay, Glass, Concrete ...; Leather/Leather Products...; Miscellaneous Manufacturing ...; Food and kindred Products...; Mining of Nonmetallic Minerals ...; Printing and Publishing ...; Electric/Electronics ...; Paper and Allied Products ...; Furniture and Fixtures ...;* Laundries ...; *Instruments...; Textile Mills Products ...; Apparel ...*"

[114] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]...[¶] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Based on this mandatory language to perform the inspections of phase I facilities as specified, the Commission finds that part 4C2b of the permit is a state-mandate.

Inspecting construction sites (part 4E): Part 4E of the permit contains the following requirements:

- Implement a program to control runoff from construction activity at all construction sites within each permittees jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater, each permittee shall:

- Require the preparation and submittal of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
  - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
  - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
  - If non-compliance continues the Regional Board shall be notified for further joint enforcement actions. (Permit, 4E2b.)

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except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more." [40 CFR §122.26 (b)(14), Emphasis added.]

- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP (Permit, 4E2c.)
- For sites five acres and greater:
    - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
    - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
    - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

The applicable federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) on the issue of whether the inspection of construction sites is a federal mandate is as follows:

> (d) Application requirements for large[115] and medium[116] municipal separate storm sewer discharges. The operator[117] of a discharge from a large or medium

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[115] "(4) Large municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 250,000 or more as

municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. ... Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]...[¶]

(2) Part 2 of the application shall consist of: [¶]...[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]...[¶]

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff

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determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or (ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. ..." (40 CFR § 122.26 (b)(4).)

[116] "(7) Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or (ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or (iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. ..." (40 CFR § 122.26 (b)(7).)

[117] "*Owner or operator* means the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." (40 CFR § 122.2.)

> from construction sites to the municipal storm sewer system, which shall include: [¶]...[¶]
>
> (3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ... [Emphasis added.]

The language of the federal regulation indicates a duty to inspect construction sites and enforce control measures as specified in part 4E of the permit. The *Rancho Cucamonga* case cited by the State Board also states that federal law requires NPDES permittees to inspect construction sites.[118]

The issue, however, is whether the federal requirements to inspect construction sites and enforce control measures amounts to a federal mandate on the local agencies. The Commission finds that it does not. First, the federal regulations quoted above do not specify the frequency or other specifics of the inspection program as the permit does. These are activities, as in the *Long Beach Unified School Dist.* case discussed above,[119] that are specified actions going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, it is not a federal mandate for the local agency permittees to inspect construction sites.

Moreover, it is the state that mandates the inspections of construction sites and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[120] The federal regulations do not require: (1) a municipality to have a separate permit for construction activity or enforcement; or (2) that the inspections and related activities in part 4E of the permit be conducted by the owner or operator of the discharge. Rather, these activities may be conducted by the state under a state-wide, state-enforced, general permit, as stated in the federal stormwater regulation (40 CFR § 122.26 (c)), which states in part:

> (c) Application requirements for stormwater discharges associated with industrial activity [includes construction activity of five or more acres] and stormwater discharges associated with small construction activity[121] [construction activity from one to less than five acres]--

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[118] *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region, supra,* 135 Cal.App.4th 1377, 1390.

[119] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[120] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[121] According to 40 CFR § 122.26, (b)(15): "Storm water discharge associated with small construction activity means the discharge of storm water from: (i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The

(1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. [Emphasis added.]

The state has issued a statewide general construction permit, as described on page 11 of the permit as quoted above, which is enforced through the regional boards.[122] In fact, the State Board collects fees for the regional board for performing inspections under the GCASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspection of construction sites and related activities (in part 4E of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4E of the permit. Therefore, the Commission finds that the requirement for local-agency permittees to inspect construction sites in section 4E of the permit is not a federal mandate.

The Commission finds that, based on the permit's mandatory language, the following activities in part 4E are state mandates on the permittees within the meaning of article XIII B, section 6:

- Implement a program to control runoff from construction activity at all construction sites within each permittee's jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater:

- Require the preparation of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
  - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).

Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where: ..."

[122] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

- If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
- If non-compliance continues, notify the Regional Board for further joint enforcement actions. (Permit, 4E2b.)

- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP. (Permit, 4E2c.)
- For sites five acres and greater:
  - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
  - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
  - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

One of the requirements in part 4E3c of the permit is to: "Use an effective system to track grading permits issued by each permittee. To satisfy this requirement, the use of a database or

GIS system is encouraged, but not required." The Commission finds that, based on the plain language of this provision, using an effective system to track grading permits is a state mandate, although use of a database or GIS system is not.

Overall, the Commission finds that the permit provisions (parts 4C2a, 4C2b, 4E & 4F5c3) are subject to article XIII B, section 6, of the California Constitution.

Issue 2: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) impose a new program or higher level of service?

The next issue is whether the permit provisions at issue, i.e., found above to be state-mandated, are a program, and whether they are a new program or higher level of service.

First, courts have defined a "program" for purposes of article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[123]

The State Water Board, in its April 2008 comments, argues that the NPDES program is not a program because "the NPDES permit program, and the stormwater requirements specifically, are not peculiar to local government. Industrial and construction facilities must also obtain NPDES stormwater permits."

In comments submitted June 25, 2008, the cities call the State Board's argument inapposite, and cite the *Carmel Valley Fire Protection District* case[124] regarding whether the permit constitutes a "program." According to claimant, "[t]he test is not whether the general program applies to both governmental and non-governmental entities. The test is whether the specific executive orders at issue apply to both government and non-governmental entities."

The Commission finds that the permit activities constitute a program within the meaning of article XIII B, section 6. The permit activities are limited to local governmental entities. The permit defines the "permittees" as the County of Los Angeles and 84 incorporated cities within the Los Angeles County Flood Control District (Permit, p. 1 & attachment A). The permit lists no private entities as "permittees." Moreover, the permit provides a service to the public by preventing or abating pollution in waterways and beaches in Los Angeles County. (Or as stated on page 13 of the permit: "The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County.") Therefore, the Commission finds that the permit is a program within the meaning of article XIII B, section 6.

In its comments on the draft staff analysis submitted June 5, 2009, the State Board disagrees with this conclusion because NPDES permits may also apply to private entities.

The State Board made this same argument in *County of Los Angeles v. Commission on State Mandates*, which the court addressed by stating: "[T]he applicability of permits to public and private dischargers does not inform us about whether a particular permit or an obligation

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[123] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[124] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6."[125]

In other words, the issue is not whether NPDES permits generally constitute a "program" within the meaning of article XIII B, section 6. The only issue before the Commission is whether the permit in this test claim (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitutes a program because this permit is the only one over which the Commission has jurisdiction. Because they apply exclusively to local agencies, the Commission finds that the activities (parts 4C2a, 4C2b, 4E & 4F5c3) in this permit (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitute a program within the meaning of article XIII B, section 6.

The next step to 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.[126]

The Commission finds that local agencies were not required by state or federal law to place and maintain trash receptacles at transit stops before the permit was adopted. Whether or not most cities or counties do so, as argued by the State Water Board in its April 2008 comments, is not relevant to finding a state-mandated new program or higher level of service because even if they do, Government Code section 17565 states: "If a local agency ... at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency ... for those costs incurred after the operative date of the mandate."

Because the transit trash receptacle requirement is newly mandated by the permit, and based on the plain language of part 4F5c3 of the permit, the Commission finds that it is a new program or higher level of service to place trash receptacles at transit stops and maintain them as specified in the permit.

For the same reason, the Commission finds that the inspections and enforcement activities at industrial and commercial facilities, including restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, and phase I facilities (in parts 4C2a & 4C2b of the permit) as well as inspection and enforcement at construction sites (in part 4E of the permit) are a new program or higher level of service. These were not required activities of the permittees prior to the permit's adoption.

In sum, the Commission finds that all the permit provisions at issue in this test claim impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Issue 3: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E & 4F5c3) impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

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[125] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919.

[126] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

The final issue is whether the permit provisions impose costs mandated by the state,[127] and whether any statutory exceptions listed in Government Code section 17556 apply to the test claims. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 requires reimbursement claims to exceed $1000 to be eligible for reimbursement.

In test claims 03-TC-20 and 03-TC-21, the cities' claimant representative declares (p. 24) that the cities will incur costs estimated to exceed $1000 to implement the permit conditions.

In test claim 03-TC-04, the County of Los Angeles states (p. 18) that the costs in providing the services claimed "far exceed the minimum reimbursement amount of $1000 per annum." In the attached declaration for *Transit Trash Receptacles*, the County declares (pp. 22-23) the following itemization of costs from December 13, 2001 to October 31, 2002:

> (1) Identify all transit stops in the jurisdiction: $19,989.17;
>
> (2) Select proper trash receptacle design, evaluate proper placement, specification and drawing preparation: $38,461.87;
>
> (3) Preliminary engineering works (construction contract preparation, specification reviewing process, bid advertising and awarding): $19,662.02;
>
> (4) Construct and install trash receptacle units: $230,755.58, construction management $34,628.31;
>
> (5) Trash collection and receptacle maintenance in FY 2002-03, $3,513.94, maintenance contractor costs for maintaining and collecting trash in FY 2002-03, $93,982.50;
>
> (6) Projected costs for on-going maintenance in FY 2003-04, $375,570.00.

Similarly, attached to claim 03-TC-19 (pp. 20-21) are declarations that itemize the County of Los Angeles' costs for *Inspection of Industrial/Commercial Facilities* program, from December 13, 2001 to September 15, 2003, as follows:

> (1) inspect 1744 restaurants: $234,931.83;
>
> (2) inspect 1110 automotive service facilities: $149,526.36;
>
> (3) inspect 249 retail gasoline outlets and automotive dealerships: $33,542.45;
>
> (4) Identify and inspect all Phase I (387 Tier 1 and 543 Tier 2) facilities within the jurisdiction: $125,155.31;
>
> (5) Total $543,155.95.

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[127] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

These declarations illustrate that the costs associated with the permit activities exceed $1,000. The Commission, however, cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556 apply, which is discussed below.

A. Did the claimants request the activities in the permit within the meaning of Government Code section 17556, subdivision (a)?

The first issue is whether the claimants requested the activities in the permit. The Department of Finance and the State Water Board both asserted that they did. As discussed above, the claimants were required to submit a Report of Waste Discharge and Stormwater Quality Management Plan before the permit was issued.

Government Code section 17556, subdivision (a), provides that the Commission shall not find costs mandated by the state if:

> (a) The claim is submitted by a local agency ... that requested legislative authority for that local agency ... to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency ... that requests authorization for that local agency ... to implement a given program shall constitute a request within the meaning of this subdivision.

Based on the language of the statute, section 17556, subdivision (a), does not apply because the permit is not a statute, the claimants did not request "legislative authority" to implement the permit, and the record lacks any resolutions adopted by the claimants. Therefore, the Commission finds that the claimants did not request the activities in the permit within the meaning of Government Code section 17556, subdivision (a).

B. Do the claimants have fee authority for the permit activities within the meaning of Government Code section 17556, subdivision (d)?

Government Code section 17556, subdivision (d), states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ... if, after a hearing, the commission finds any one of the following: [¶]...[¶] (d) The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The constitutionality of Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in *County of Fresno v. State of California*,[128] in which the court held that the term "costs" in article XIII B, section 6, excludes expenses recoverable from sources other than taxes. The court stated:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to

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[128] *County of Fresno v. State of California , supra,* 53 Cal.3d 482.

> preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," 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.*
>
> In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.[129]

In *Connell v. Superior Court,*[130] the dispute was whether local agencies had sufficient fee authority for a mandate involving increased purity of reclaimed wastewater used for certain types of irrigation. The court cited statutory fee authority for the reclaimed wastewater, and noted that the water districts did not dispute their fee authority. Rather, the water districts argued that they lacked "sufficient" fee authority in that it was not economically feasible to levy fees sufficient to pay the mandated costs. In finding the fee authority issue is a question of law, the court stated that Government Code section 17556, subdivision (d), is clear and unambiguous, in that its plain language precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." The court rejected the districts' argument that "authority" as used in the statute should be construed as a "practical ability in light of surrounding economic circumstances" because that construction cannot be reconciled with the plain language of section 17556, and would create a vague standard not capable of reasonable adjudication. The court also said that nothing in the fee authority statute (Wat. Code, § 35470) limited the authority of the Districts to levy fees "sufficient" to cover their costs. Thus, the court concluded that the plain language of section

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[129] *County of Fresno v. State of California, supra,* 53 Cal.3d 482, 487.

[130] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

17556 made the fee authority issue solely a question of law, and that the water districts could not be reimbursed due to that fee authority.[131]

In its April 18, 2008 comments (p. 19), the State Board asserted that the claimants have fee authority to pay for the trash receptacle and inspection programs in the permit. Likewise, the Department of Finance, in its March 2008 comments, states that "some local agencies have set fees to be used toward funding the claimed permit activities" that should be considered offsetting revenues.

Los Angeles County, in its comments submitted in June 2008, states (p. 2) that it is "without sufficient fee authority to recover its costs." The County points out that the state or regional board has fee authority in Water Code section 13260, subdivision (d)(2)(B)(iii) for inspections of industrial and commercial facilities, but those fees are not shared with the County or the cities.[132] The County also states that the inspections are to determine compliance with the general industrial permit that is enforced by the regional boards.[133]

In their comments received June 25, 2008, the city claimants assert that they do not have fee authority. The cities first note that, for facilities that hold state-issued general industrial or general construction stormwater permits, the state already imposes an annual fee and therefore has occupied the field (Wat. Code, § 13260, subd. (d)(2)(B)(iii)). The cities also relate the difficulty of imposing a fee for inspecting restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships because, although the cities could enact a general businesses license on all businesses, "the cities could not charge other businesses for the cost of inspecting this subgroup without again running the risk of charging fees on the other businesses for services not related to regulation of them." The cities also dispute the State Water Board's assertion that transit users could be charged a fee for the transit trash receptacles because the County and cities do not operate the transit system.

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[131] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 398-402.

[132] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii) states:

> (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund. (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

[133] Page 3 of the General Industrial Permit states in part: "Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions."

In comments on the draft staff analysis submitted in June 2009, the League of California Cities and California State Association of Counties (CSAC) question whether the decisions in *Connell* (1997), and *County of Fresno* (1991), can any longer be cited as good authority for the constitutionality of Government Code section 17556, subdivision (d), given the voter-approval requirement of Proposition 218 (discussed below) added to the state Constitution in 1996. Proposition 218 requires, among other things, that new or increased property-related fees be approved by a majority of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners, except for property-related fees for sewer, water, or refuse collection services (Cal. Const., art. XIII D, § 6, subd. (c)).

The League and CSAC also urge the Commission, to the extent there may be legal doubt whether a local agency has the authority to impose a fee, to not find that the fee authority exception to reimbursement in Government Code section 17556, subdivision (d), applies.

The Commission disagrees with the League and CSAC. The Commission cannot ignore the precedents of *Connell* or *County of Fresno*, or find that they conflict with article XIII D of the California Constitution (Proposition 218), until the issue is decided by a court of law. With regards to Government Code section 17556, subdivision (d), article III, section 3.5 of the California Constitution forbids the Commission or any state agency from declaring a statute unenforceable or refusing to enforce it on the basis of its unconstitutionality unless an appellate court declares that it is unconstitutional. Since no appellate court has so declared, the Commission is bound to uphold and analyze the application of Government Code section 17556, subdivision (d), to this test claim.

The issue of local fee authority for the municipal stormwater permit activities, however, is one of first impression for the Commission. Although there are no authorities directly on point, some legal principles emerge that guide the analysis, as discussed below.

1. Local fee authority to inspect commercial and industrial and construction sites (parts 4C2a, 4C2b & 4E)

Fee authority to inspect under the police power: The law on local government fee authority begins with article XI, section 7, of the California Constitution, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The Third District Court of Appeal has stated that article XI, section 7, includes the authority to impose fees. In *Mills v. Trinity County*,[134] a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors. In upholding the fees, the court stated:

> [S]o long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees does not depend on legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution.[135]

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[134] *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656.

[135] *Mills v. County of Trinity, supra,* 108 Cal.App.3d 656, 662.

In addition to the *Mills* case, courts have held that water pollution prevention is a valid exercise of government police power.[136] And municipal inspections in furtherance of sanitary regulations have been upheld as "an exercise of that branch of the police power which pertains to the public health."[137]

In *Sinclair Paint v. State Board of Equalization,* [138] the California Supreme Court upheld a fee imposed on manufacturers of paint that funded a child lead-poisoning program, ruling it was a regulatory fee and not a special tax requiring a two-thirds vote under article XIII A, section 4, of the California Constitution (Proposition 13). The court recognized that determining under Proposition 13 whether impositions were fees or taxes is a question of law. In holding that the fee on paint manufacturers was "regulatory" and not a special tax, the court stated:

> From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate.
>
> Viewed as a mitigating effects measure, [the fee] is comparable in character to several police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.[139] [Emphasis added.]

The *Sinclair Paint* court also recognized that regulatory fees help to prevent pollution when it stated: "imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products."[140]

Although the court's holding in *Sinclair Paint* applied to a state-wide fee, the language it used (putting "ordinances" in the same category as "statutes") recognizes that local agencies also have the police power to impose regulatory fees. Moreover, the court relied on local government police power cases in its analysis.[141]

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[136] *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.

[137] *Sullivan v. City of Los Angeles Dept. of Bldg. & Safety* (1953) 116 Cal.App.2d 807, 811.

[138] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866.

[139] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[140] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[141] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 873. The Court stated: "Because of the close, 'interlocking' relationship between the various sections of article XIII A (Citation omitted) we believe these "special tax" cases [under article XIII A, § 3, state taxes] may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, [local government taxes] may apply equally to section 3 cases."

A regulatory fee is an imposition that funds a regulatory program[142] and is "enacted for purposes broader than the privilege to use a service or to obtain a permit. ...the regulatory program is for the protection of the health and safety of the public."[143] Courts will uphold regulatory fees if they comply with the following principles:

> Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A section 4 analysis if the "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." [Citations omitted] "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." [Citations omitted] "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." [Citations omitted] Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. [Citations omitted] Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee."[144] [Emphasis added.]

Local fees for inspections of commercial and industrial facilities, and construction sites, would be preventative and could be imposed to comply with the criteria the courts have used to uphold regulatory fees, articulated above. And the regulatory fees fall within the local police power to prevent, clean up, or mitigate pollution.

Therefore, pursuant to article XI, section 7, the Commission finds that the claimants have fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to carry out the mandated activities in parts 4C2a, 4C2b and 4E of the permit. Therefore, the Commission finds that there are no "costs mandated by the state" within the meaning of Government Code section 17514 and 17556 to perform the activities in those parts of the permit (commercial, phase I, and construction site inspections and related activities).

In fact, in June 2005, claimant Covina adopted stormwater inspection fees on restaurants, retail gasoline outlets, automotive service facilities, etc., as part of its business license fee, expressly for the purpose of complying with the permit at issue in this test claim.[145]

Statutory fee authority to operate and maintain storm drains: Health and Safety Code section 5471 expressly authorizes cities and counties to charge fees for storm drainage maintenance and operation services:

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[142] *California Assn. of Prof. Scientists v. Dept. of Fish and Game* (2000) 79 Cal.App.4th 935, 950.

[143] *Ibid.*

[144] *California Assn. of Prof. Scientists v. Dept. of Fish and Game, supra,* 79 Cal.App.4th 935, 945.

[145] City of Covina, Resolution No. 05-6455.

> [A]any entity[146] shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. ... Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities ....

The statute makes no mention of "inspecting" commercial or industrial facilities or construction sites. Rather, the fee revenues are used for "maintenance and operation" of storm drainage facilities. Thus, for the types of businesses regulated by the permit (restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites) the Commission cannot find that pursuant to Health and Safety Code section 5471, the claimants have fee authority "sufficient" to pay for the mandated inspection program within the meaning of Government Code section 17556. The statute's "operation and maintenance" of storm drainage facilities does not encompass the state-mandated inspections of the facilities or construction sites specified in the permit.

2. Local fee authority under the police power and the Public Resources Code to place and maintain trash receptacles at transit stops (Permit, 4F5c3)

As discussed above, part 4F5c3 of the permit requires the County and cities to place and maintain trash receptacles at transit stops in their jurisdictions. Public Resources Code section 40059, subdivision (a), suggests that the County and cities have fee authority to perform this activity as follows:

> (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

The statute gives local governments the authority over the "nature, location and extent of providing solid waste handling services" and is broad enough to encompass "placing and maintaining" receptacles at transit stops. The statute also provides local governments with broad authority over the "level of services, charges and fees."

The draft staff analysis determined that the claimants had fee authority under Public Resources Code section 40059 and the police power (Cal. Const. art. XI, § 7) to install and maintain trash receptacles at transit stops and recommended that the Commission deny the test claim with respect to part 4F5c3 of the permit.

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[146] Entity is defined to include "counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." Health and Safety Code section 5470, subdivision (e).

The city claimants, in June 2009 comments on the draft staff analysis, argue that section 40059, subdivision (a), does not apply here because it was adopted as a "savings provision" in legislation establishing the Integrated Waste Management Board (IWMB) in order to ensure that local trash collection agreements would not be affected by the IWMB legislation. The cities also cite *Waste Resources Technologies v. Department of Public Health* (1994) 23 Cal.app.4th 299, which held that the statute reflected the Legislature's intent to allow for local regulation of waste collection. According to the cities, the statute "was not intended as an *imprimatur* for local agencies to assess fees on their residents or on businesses to pay for the costs of trash generated by transit users when that requirement was established not as a matter of local choice but rather state mandate." (Comments, p. 7.)

The cities also argue that a valid fee must have a causal connection or nexus between the person or entity paying the fee, and the benefit or burden being addressed. Claimants assert that there is no group on which the claimants can assess a fee that has a relationship with the trash receptacles because the burden is created by the transit riders but benefits the public at large. City claimants also argue that they cannot assess fees on transit agencies or increase transit fares to recoup the cost of installing and maintaining trash receptacles because they have no authority to do so. As an example, the claimants cite the Metropolitan Transit Authority's (the largest public transit operator in Los Angeles County) authority to set fares (Pub. Util. Code, § 30638) that rests exclusively with the MTA's board.

As to the police power, City claimants argue that they cannot use it to assess fees on property owners or businesses for the cost of transit trash receptacles because doing so would collect more than the actual cost of the collection and thereby create a special tax that would require a two-thirds vote (Cal. Const. art. XIII A, § 4). And according to the claimants, they do not have statutory fee authority to assess property owners for the cost of installing and maintaining trash receptacles. Finally, claimants assert that a fee on property owners for transit stop trash receptacles, even if it were not a special tax, would require a vote under Proposition 218 (Cal. Const., art. XIII D).

The County of Los Angeles, in its June 2009 comments on the draft staff analysis, argues that local agencies do not have fee authority over bus operators, and for support cites *Biber Electric Co. v. City of San Carlos* (1960) 181 Cal.App.2d 342, which held that a local fee would conflict with a general state Vehicle Code provision. The County also asserts that no fee could be imposed on bus riders because the pollution prevention would benefit all county residents, not only those riding buses, and that such a fee would require a vote under Proposition 218 because the fee's purpose would be excluding trash from storm drains rather than routine collection.

The League of California Cities and CSAC, in their June 2009 comments on the draft staff analysis, criticize the conclusion that fee authority exists for transit trash receptacles because the analysis does not discuss upon whom the fee would be imposed. They also dispute the application of the *Connell* case because the issue is not whether the fee is economically feasible, but whether it is legally feasible. The League and CSAC point out that local agencies have no authority to impose the fee on transit agencies or their ridership, and that Proposition 218 imposes procedural and substantive requirements on adjacent business owners and residences, so that the local agency could not impose the fee or assessment on them without their consent. Thus, the League and CSAC argue that the local agencies do not have fee authority pursuant to

Government Code section 17556, subdivision (d): "sufficient to pay for the mandated program or increased level of service."

After considering these arguments, the Commission agrees that Government Code section 17556, subdivision (d), does not apply to the placement and maintenance of transit trash receptacles as specified in the permit because the claimants do not have the authority to impose fees.

Michael Lauffer was asked at the Commission hearing on July 31, 2009, why the transit trash requirement in the permit was not imposed on transit agencies. Mr. Lauffer testified that transit agencies were not named historically on the permits, and that the Board, at the time it established the requirements, thought it was appropriate to place them on municipalities. He also testified that nothing would prevent the municipalities under the permit from working with Metropolitan Transit Authority (MTA) to cooperatively implement the transit trash requirement, or to have the MTA carry out the primary obligation for meeting it. He added that the transit stops were public facilities, the language used in the federal regulations, which is why the permit included the requirement to place the trash receptacles there.[147]

Because the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks)[148] or transit district property (for bus or metro or subway stations), there are no entities on which the claimants would have authority to impose the fees. The plain language of Public Resources Code section 40059 provides no fee authority over transit districts or transit riders, and the Metropolitan Transit Authority's fee statutes grant fee authority exclusively to its board (Pub. Util. Code, §§ 30638 & 130051.12).

Additionally, the claimants do not have fee authority under the police power because they do not provide the "services necessary to the activity for which the fee is charged."[149]

Thus, the Commission finds that part 4F5c3 of the permit imposes costs mandated by the state within the meaning of Government Code section 17514 and 17556.

The remainder of this analysis addresses the arguments raised by the claimants that their local fee authority for inspections would be preempted by a statute granting the state fee authority, and that a local fee would be a special tax. The application of Proposition 218 on the fee authority for inspection is also discussed.

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[147] Commission on State Mandates, Public Hearing, Reporter's Transcript of Proceedings, July 31, 2009, pages 52-53.

[148] "The general rule views the sidewalk as part of the street; it ... holds the city liable for pedestrian injuries caused by the dangerous condition of the sidewalk." *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 832.

[149] *California Assn. of Prof. Scientists v. Dept of Fish and Game, supra,* 79 Cal.App.4th, 935, 945.

3. Local fee authority to inspect industrial or construction sites (parts 4C2a, 4C2b & 4E) performed under the statewide general permits would not be preempted by state fee authority in Water Code section 13260, subdivision (b)(2)(B)

In their comments submitted in June 2008 (p. 14), the city claimants argue that the permittees cannot impose fees for inspections of industrial or commercial or construction sites as follows:

> [W]ith respect to facilities that hold state-issued general industrial or general construction stormwater permits, the state had occupied the field. ...[T]he state already imposes an annual fee on general industrial and general construction stormwater permittees. That fee is explicitly designated, in part, to cover inspections of these facilities and regulatory compliance. Water Code § 13260(d)(2)(B).
>
> This state fee thus preempts any fee that the Cities or County could charge for inspection of these facilities.

The cities also assert that in 2001, the regional board initiated negotiation of a contract with the County whereby the regional board would pay the County to perform inspections of facilities that held general industrial stormwater permits (the 'Phase I facilities') on the regional board's behalf. Immediately after the permit was issued, the regional board terminated those negotiations.

In comments submitted in June 2009 on the draft staff analysis, city claimants clarify that their comments "are not directed towards the claimants' ability to assess fees for inspections of the other commercial establishments, i.e., restaurants and automotive service facilities, retail gasoline outlets and automobile dealerships, or Phase I facilities or construction sites that are not required to hold a state-issued general industrial or general construction stormwater permit."

According to the city claimants, fees for inspecting the phase I industrial facilities and construction sites under the statewide permits (the GIASP and GCASP) would be preempted by state fee authority in Water Code section 13260, under which the State Board collects fees for inspecting those sites. The city claimants state the fact that the specific destination of the funds from the fees in Water Code section 13260, subdivision (d)(2)(iii) is spelled out is evidence of intent that the Legislature fully occupied the field for inspections of GIASP and GCASP permit holders.

Because the fee authority to inspect commercial facilities (identified in the permit as restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships) is not contested by the city claimants, the discussion below is limited to industrial and construction site inspections performed under the statewide permits concurrently with the permit at issue in this claim.

The California Supreme Court has outlined the following rules as to when a statute preempts a local ordinance by fully occupying the field:

> A local ordinance *enters a field fully occupied* by state law in either of two situations-when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534; see also 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p.

551["[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost."].)

When the Legislature has not expressly stated its intent to occupy an area of law, we look to whether it has *impliedly* done so. This occurs in three situations: when " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)[150]

The state statute at issue, the stormwater fee statute, in subdivision (d) of section 13260 of the Water Code, reads in pertinent part:

(d)(1)(A) Each person who is subject to subdivision (a) [who discharges waste that affects the quality of waters of the state] or (c) shall submit an annual fee according to a fee schedule established by the state board.

(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.

(C) Recoverable costs include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out those actions. [¶]...[¶]

(2) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

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[150] *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068. Emphasis in original.

> (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in that region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. (Wat. Code, § 13260, subds. (d)(1) & (d)(2).) [Emphasis added.]

The State Water Board has adopted regulations to implement the stormwater fee that include fee schedules based on the threat to water quality and a complexity rating.[151] At the hearing on July 31, 2009, Michael Lauffer of the State Water Board testified that the fee is established annually by the State Board, based on the legislative appropriation for the boards to carry out their responsibilities. Mr. Lauffer testified that the annual fee for industrial facilities under this Water Code statute is $833, and the fee for construction facilities is variable, starting at $238, plus $24 per acre, with a cap of $2,600. [152]

The issue is whether Water Code section 13260, subdivision (d)(1) and (d)(2), preempts local fee authority. In resolving this, we look for express or implied preemption or intent to occupy the field.[153]

First, there is no express intent on the face of the Water Code statute to preempt any local fee ordinance because the statute is silent on local fees. As to implied intent to occupy the field of law, the Supreme Court has stated that it may be found if:

> (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.[154]

The city claimants, in their comments on the draft staff analysis submitted in June 2009, argue as follows with regard to Water Code section 13260:

> Here, the Legislature adopted a statute that specifically established a mechanism for fees to be assessed on GIASP and GCASP holders, for those funds to be

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[151] Fees for NPDES permits for municipal separate stormwater sewer systems are in subdivision (b) of section 2200 of title 23 of the California Code of Regulations.

[152] Commission on State Mandates, Public Hearing, Reporter's Transcript of Proceedings, July 31, 2009, page 111.

[153] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

[154] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

> segregated and sent to the regional boards, and for a specified amount of those funds ("not less than 50 percent of the money") to be used by the regional boards "solely" on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. Water Code section 13260(d)(2)(iii). Such a specific determination as to the destination of the funds for the purposes of inspection and compliance evidences the intent of the Legislature that the issue of funding for GIASP and GCASP inspections be "fully occupied."

The Commission disagrees. Specific determination of funds is not a factor the courts use to determine whether a state statute fully occupies the field. Applying the Supreme Court's factors from the *O'Connell v. City of Stockton* case, the subject matter of stormwater fees has not been "so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern."[155] The Water Code's single fee statute for state permit holders does not rise to that level. Second, the Commission cannot find that "the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action."[156] No clear indication of a paramount state concern can be found on the face of the Water Code fee statute. And the third instance does not apply because the subject is not "of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality."

The legislative history of the Water Code provision does not indicate any intent to occupy the field. The legislative history of the amendment to require 50 percent of the fees to be used for stormwater inspection and regulatory compliance issues indicated as follows:

> ...California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program.[157]

The Legislature acknowledged that the state inspections at the time the statute was enacted were inadequate to prevent the pollution that the statewide permits were intended to prevent.

And the regional board, via the permit, acknowledges the role of both local regulation and state regulation under the general permits. Page 11 of the permit states:

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[155] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

[156] *Ibid.*

[157] Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Assem. Bill No. 1186 (1997-1998 Reg. Sess.) as amended August 6, 1997.

> The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

As to inspection of construction sites, section 4E of the permit states:

> If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Moreover, the Water Code statute provides broader fee authority than a local inspection fee. The statute requires the regional board to "spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs." (Wat. Code, § 13260, subd. (d)(2)(iii). Emphasis added.) Because the fees for GIASP and GCASP permit holders may also be spent on "regulatory compliance issues" in addition to the inspections, the Commission cannot find that a local fee ordinance would duplicate or be "coextensive" with state fee authority, and therefore cannot find that the state fee statute occupies the field. A local fee would merely partially overlap with the state fee.

As for the phase I facilities[158] subject to inspection, the inspections do not occupy the field because the permit specifies that these need not be inspected if the regional board has inspected them within the past 24 months.

According to the State Board's April 2008 comments, the overlapping fees were envisioned by U.S./EPA.

> In addition to the requirements for permits issued to municipalities, the Water Boards are also mandated to issue permits to entities that discharge stormwater "associated with industrial activity." (fn. CWA § 402(p)(2)(B)). As part of its responsibilities for its in lieu program, the State Boards must administer and enforce all of its permits. (fn. CWA § 402(p).) The State Water Board has issued

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[158] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

> permits for industrial and construction discharges of stormwater, and the Los Angeles Water Board administers those permits within its jurisdiction. Therefore, the Los Angeles Water Board does conduct inspections at businesses in Los Angeles County to ensure compliance with the state permits. In addition, the MS4 Permit requires the permittees also to conduct inspections. This approach, which may result in two different entities inspecting the same businesses to review stormwater practices, was specifically envisioned and required by U.S. EPA in adopting its stormwater regulations.

U.S./EPA, in its "MS4 Program Evaluation Guidance" document, acknowledged regulation at both the local and state levels as follows:[159]

> In addition to regulation of construction site stormwater at the local level, EPA regulations also require construction sites disturbing greater than one acre to obtain an NPDES permit. This permit can be issued by the state permitting authority or EPA, depending on whether the state has been delegated the NPDES authority. This dual regulation of construction sites at both the local and state or federal level can be confusing to permittees and construction operators.[160]

In fact, as to inspection duties and costs under two permit systems, one court has stated regarding a permit similar to the one in this claim:

> Rancho Cucamonga and the other permittees are responsible for inspection construction and industrial sites and commercial facilities within their jurisdiction for compliance with the enforcement of local municipal ordinance and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.[161]

The reasoning of the *City of Rancho Cucamonga* case is instructive because a local regulatory fee could be used for local-government inspections, and the state fee is for state or regional inspections under the general statewide permits.

The state permit program and local inspection program under the regional board's permit can be viewed as two programs with similar, overlapping goals. Viewed in this way, the fees for two sets of inspections for construction sites (or for phase I facilities not inspected by the regional board within the past two years) would not necessarily exceed the costs of both sets of inspections.

In short, a local regulatory fee ordinance that provided for inspections of the industrial facilities and construction sites specified in the permit (parts 4C2a, 4C2b & 4E) would not be preempted

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[159] State Water Resources Control Board, comments submitted April 18, 2008, attachment 33.

[160] *Ibid.*

[161] *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th 1377. The test claim record is silent as to the number of facilities within the permit area that are subject to the General Industrial Activity Storm Water Permit, or how many construction sites within the permit area are subject to the General Construction Activity Storm Water Permit.

by the state fee authority in Water Code section 13260 or in title 23 of the California Code of Regulations.

4. Local fee authority to inspect industrial or construction sites covered under the state permits would not be a "special tax" under article XIII A, section 4, of the California Constitution

In their June 2008 rebuttal comments, the city claimants assert that they do not have sufficient fee authority under Government Code section 17556, subdivision (d). They focus on facilities that hold state-issued general industrial or construction stormwater permits and pay the state-imposed fees pursuant to Water Code section 13260, arguing that an additional local fee for inspecting these facilities would be considered a special tax. According to the city claimants:

> In order for a fee to be considered a "fee" as opposed to a "special tax," the fee cannot exceed the reasonable cost of providing the services necessary for which the fee is charged. See *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660. Any fee assessed by the Cities or the County for inspection of these facilities would be a double assessment, and thus run afoul of this rule.

The city claimants, in their June 2009 comments on the draft staff analysis, again assert that forcing claimants to recover their costs for inspecting the state-permitted GIASP and GCASP facilities and sites, the regional board is creating a special tax on holders of those state permits.

Special taxes are governed by article XIII A, section 4, of the California Constitution:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Government Code section 50076 states that a fee is not a special tax under article XIII A, section 4, if the fees are: (1) "charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged," and (2) "are not levied for unrelated revenue purposes." The California Supreme Court has reaffirmed this rule.[162]

The Commission finds that a local regulatory stormwater fee, if appropriately calculated and charged, would not be a special tax within the meaning of article XIII A, section 4. There is no evidence in the record that a local regulatory fee charged for the stormwater inspections would exceed the reasonable cost of providing the inspections and related services or would otherwise violate the criteria in section 50076.

As the court stated in the *Connell v. Superior Court* case discussed above:

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[162] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th at p. 876: "[T]he term "special taxes" in article XIII A, section 4, does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."

> The [Water] Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.[163]

Similarly, in this claim no one is suggesting that the local agencies levy regulatory fees that exceed their costs. Therefore, the Commission finds that a local regulatory fee for stormwater would not be a "special tax" under article XIII A, section 4, of the California Constitution for the activities at issue in the permit.

5. The local fee to inspect industrial and construction sites would not be subject to voter approval under article XIII D (Proposition 218) of the California Constitution

Some local government fees are subject to voter approval under article XIII D of the California Constitution, as added by Proposition 218 (1996). Article XIII D defines a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency on a parcel or a person as an incident of property ownership, including a user fee or charge for a property-related service. Among other things, new or increased property-related fees require a majority-vote of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners (article XIII D, § 6, subd. (c)). Exempt from voter approval, however, are property-related fees for sewer, water, or refuse collection services (*Ibid*).

In 2002, an appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. This means that an election would be required to impose storm water fees if they are imposed "as an incident of property ownership."

The Commission finds that local fees for inspections of phase I facilities, restaurants, retail gasoline outlets, automotive dealerships, etc., would not be subject to the vote requirement of Proposition 218. In a case involving inspections of apartments in the City of Los Angeles in which a fee was charged to landlords, the California Supreme Court ruled that the regulatory fee for inspecting apartments was not a "levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service" [164] within the meaning of Proposition 218. The court interpreted the phrase "incident of property ownership" as follows:

> The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge

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[163] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 402.

[164] That is the definition of "fee" or "charge" in article XIII D, section 2, subdivision (e).

against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.[165]

[¶]...[¶] In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners.* The [City of Los Angeles'] ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords.[166]

Following the reasoning of the *Apartment Assoc.* case, the inspection fees on restaurants, retail gasoline outlets, automotive dealerships, phase I facilities, etc., like the fee in *Apartment Assoc.*, would not be imposed on landowners as landowners, nor as an incident of property ownership, but by virtue of business ownership. Thus, the inspection fee would fall outside the voter requirement of Proposition 218.

As to the fees for inspecting construction sites, the Commission finds that they too would not be subject to Proposition 218's voter requirement. Article XIII D of the California Constitution states that it shall not be construed to "affect existing laws relating to the imposition of fees or charges as a condition of property development."[167]

Moreover, the California Supreme Court, in determining whether water connection fees are within the purview of Proposition 218, reasoned that "water service" fees were within the meaning of "property-related services" but "water connection" fees were not.

> Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.[168]

The Supreme Court's reasoning applies to local stormwater fees for inspecting construction sites. That is, the fee would not be an incident of property ownership because it results from the owner's voluntary decision to build on or develop the property. Therefore, the Commission finds that local inspection fees for stormwater compliance at construction sites would not be within the purview of the election requirement of Proposition 218. A recent report by the Office of the Legislative Analyst concurs with this conclusion.[169]

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[165] *Apartment Assoc. of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 839-840.

[166] *Id.* at 842 [Emphasis in original.]

[167] Article XIII D, section 1, subdivision (b).

[168] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 427.

[169] "Local governments finance stormwater clean–up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two–thirds of the voters, or a majority of property owners.

In its June 2009 comments, the County disagrees that stormwater pollution fees would not be subject to the voter requirement in Proposition 218, or that fee authority exists. In support, the County points to unadopted legislation pending in the current or in past legislative sessions that would provide fee authority or expressly exempt stormwater fees from the Proposition 218 voting requirement. For example SCA 18 (2009) would add "stormwater and urban runoff management" fees to those expressly exempted from the vote requirement in article XIII D, putting them in the same category as trash and sewer fees. SB 2058 (2002) would have required the regional water boards to share their fees with counties and cities. And SB 210 (2009) would provide cities and counties with stormwater regulatory or user-based fee authority.

The Commission finds that the unadopted legislative proposals cited by the County are unconvincing to show a lack of regulatory fee authority for business inspections as discussed above. First, courts have said that "As evidence of legislative intent, unadopted proposals have been held to have little value."[170] Second, if they were enacted, the legislative proposals would grant broader fee authority than is found in this analysis. For example, SCA 18, by adding a stormwater exception from the vote requirement in Proposition 218, would authorize *user* fees on residential property for stormwater and urban runoff programs, whereas this analysis addresses the much narrower issue of *regulatory* fees on businesses for inspections. Likewise, SB 2058 would have required the State Board's permit fees to be shared with "counties and cities" for the broad purpose of carrying out stormwater programs rather than for the narrower purpose of inspecting businesses. And SB 210 would likewise provide fee authority that is broader than regulatory fees; as the May 28, 2009 version expressly states in proposed section 16103, subdivision (c), of the Water Code: "The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter." In short, the legislative proposals cited by the County do not indicate that fee authority does not exist. Rather, the proposals would, if enacted, provide broader fee authority than now exists.

In comments received June 3, 2009, the Bay Area Stormwater Management Agencies Association (BASMAA) contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the voting requirements of Proposition 218 or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two–thirds of the electorate." Office of the Legislative Analyst. *California's Water: An LAO Primer* (October 22, 2008) page 56.

[170] *County of Sacramento v. State Water Resources Control Board* (2007) 153 Cal.App.4th 1579, 1590.

The Commission disagrees. BASMAA raises issues that are outside the scope of the portions of the Los Angeles stormwater permit (parts 4C2a, 4C2b, 4E & 4Fc3) that were pled by the test claimants. Because the Commission's jurisdiction is limited by those parts of the permit pled in the test claim, it cannot opine on other issues outside the pleadings, even if it would raise issues closely related to other NPDES permits (or even other parts of this NPDES permit).

In sum, the Commission finds that the inspections and related activities at issue in the Los Angeles stormwater permit are not subject to voter approval in article XIII D of the California Constitution (Proposition 218), so a regulatory fee ordinance for stormwater inspections would not be subject to voter approval.

Given the existence of local regulatory fee authority under the police power (Cal. Const, art. XI, § 7), and lacking any evidence or information to the contrary, the Commission finds that the claimants' authority to adopt a regulatory fee is sufficient (pursuant to Gov. Code, § 17556, subd. (d)) to pay for the inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites, and related activities specified in the permit. Therefore, for the inspections and related activities at issue, the Commission finds that there are no "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

For the reasons discussed above, the Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate within the meaning of Government Code sections 17514 and 17556: For local agencies subject to the permit that are not subject to a trash TMDL[171] to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

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[171] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Abbreviations

BMP - Best management practice

CWA – Clean Water Act

GCASP - General Construction Activity Storm Water Permit

GIASP - General Industrial Activity Storm Water Permit

MS4 - Municipal Separate Storm Sewer Systems

NOI - Notice of Intent for coverage under the GCASP

NPDES - national pollutant discharge elimination system

RGO - Retail Gasoline Outlet

ROWD – Report of Waste Discharge

SQMP - Storm Water Quality Management Program

SWPPP - Storm Water Pollution Prevention Plan

TMDL - Total Maximum Daily Load

U.S. EPA – United States Environmental Protection Agency

WDID - Waste Discharger Identification

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August 26, 2009

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

Dear Ms. Higashi:

LOS ANGELES COUNTY'S DRAFT PARAMETERS & GUIDELINES (Ps&Gs)
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

The County of Los Angeles respectfully submits its draft Ps&Gs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program which the Commission approved on July 31, 2009.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

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Enclosure

Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

Narrative

The draft parameters and guidelines (Ps&Gs) proposed by the County of Los Angeles (County) are found on pages 5-14. These Ps&Gs provide the basis for reimbursing local agencies for their costs in implementing the Municipal Storm Water and Urban Runoff Discharges program.

The proposed Ps&Gs closely follow the July 31, 2009 decision of the Commission on State Mandates [Commission]. This decision provides reimbursement only for the "Transit Trash Receptacles" component of the program.

Specifically, the Commission found the costs of placement and maintenance of transit trash receptacles (as specified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3) to be reimbursable. Consequently, reimbursement only for the costs of placing and maintaining transit trash receptacles is provided for in the County's draft Ps&Gs.

Only certain local agencies are eligible to obtain reimbursement under this program. The draft Ps&Gs adhere to the Commission's limitation that only those local agencies specified in Permit (CAS004001), that are not subject to a trash TMDL[1], are eligible claimants. These local agencies include the County of Los Angeles, the Los Angeles County Flood Control District and various cities in Los Angeles County[2].

The County's draft Ps&Gs provide that eligible claimants are entitled to reimbursement for costs incurred in placing and maintaining transit trash receptacles on or after July 1, 2002, a date set in Commission's July 31, 2009 Statement of Decision.

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[1] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

[2] These eligible city claimants include Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina.

Reimbursable Activities

The reimbursable activities proposed by the County are reasonably necessary in implementing the State mandates identified by the Commission on page 3 of their Statement of Decision. These mandates require eligible claimants to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The County's proposed Ps&Gs expands upon the (above) State mandates. Only activities which are reasonably necessary in performing mandated duties are proposed. These activities were initially formulated in a declaration of Aras Ahmed[3], Associate Civil Engineer, in the Program Development Division of Los Angeles County's Department of Public Works, as follows:

> "1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed management areas.
>
> 2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
>
> 3. Designing receptacle pad improvement, if needed.
>
> 4. Constructing and installing trash receptacle units.
>
> 5. Collecting trash and maintaining receptacles."

Subsequently, after the Commission's Statement of Decision was adopted on July 31, 2009, County staff met and conferred with representatives of city co-claimants. As a result, those activities reasonably necessary in performing mandated duties were developed further.

For example, regarding the placement of trash receptacles at transit stops, the draft Ps&Gs provide that eligible claimants may satisfy this requirement using their own staff and materials or by letting construction contracts. Guidance is provided

[3] Mr. Aras's declaration was attached as an exhibit to Los Angeles County's "Transit Trash Receptacle" test claim (03-TC-04) filed with the Commission on September 2, 2003.

that reimbursement is available for: planning (including identifying transit stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); and, preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); and, construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management).

Regarding trash collection and maintenance, claimants indicated that those activities reasonably necessary to perform State mandated duties should include repairing, replacing, removing and installing trash receptacles and/or pads, as needed. They explained that as new transit stops are added, new pads and receptacles must be added. As old transit stops are discontinued, pads and receptacles must be removed. Also, when receptacles and pads are damaged or missing, replacement or repair is required. Accordingly, language to this effect was added to the Ps&Gs.

Time Study Method

The County's draft Ps&Gs allow claimants to use the time study method of reimbursement to recover their costs in performing the repetitive tasks of trash collection and related receptacle maintenance.

The proposed time study protocol requires that all reimbursable time for an employee or contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff, at least two staff should be time surveyed. If ten or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

A claimant may use the time study method to obtain reimbursement for employee, not contract labor, costs. Use of the time study method requires that a representative sample of the hours to be devoted to the maintenance of the trash receptacles over at least a two month period shall be taken. Time records used to support the time study shall:

i. Reflect an after-the-fact distribution of each employee's actual activity;

ii. Account for the total activity for which each employee is compensated;

iii. Account for the total labor hours of the month;

iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and

v. Document, by signature or initials and date, supervisor approval.

Reasonable Reimbursement Methodology

It should be noted that the County's draft Ps&Gs do not currently allow claimants to use a 'reasonable reimbursement methodology' (RRM), as there was not sufficient time to develop a RRM. However, it is anticipated that these Ps&Gs will be revised in the coming months in order to provide an RRM unit cost reimbursement rate option. This RRM option will meet pertinent requirements in Government Code Section 17518.5:

> "(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
>
> (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
>
> (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years."

Accordingly, the County's draft Ps&Gs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program is presented on the following pages.

Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

I. SUMMARY OF THE MANDATE

On July 31, 2009 the Commission on State Mandates (Commission) issued a Statement of Decision finding, on page 3, that the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This program requires the County of Los Angeles and various cities to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission found that the inspection activities, also required under Permit CAS004001, in Parts 4C2a, 4C2b and 4E, mandate inspections of various facilities. The Commission determined that while these requirements were imposed by the State, and not the federal government, these activities were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

II. ELIGIBLE CLAIMANTS

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies were not subject to coverage under a trash 'Total Maximum Daily Load', or TMDL requirement.

III. PERIOD OF REIMBURSEMENT

The test claim executive order (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3) took effect on December 13, 2001, the same date as the Permit.

The requirements to initially install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Therefore, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

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, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

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.

Time Study Method

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein.

The proposed time study protocol requires that all reimbursable time for an employee or contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff, at least two staff should be time surveyed. If ten or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

A claimant may use the time study method to obtain reimbursement for employee, not contract labor, costs. Use of the time study method requires that a representative sample of the hours to be devoted to the maintenance of the trash receptacles over at least a two month period shall be taken. Time records used to support the time study shall:

i. Reflect an after-the-fact distribution of each employee's actual activity;

ii. Account for the total activity for which each employee is compensated;

iii. Account for the total labor hours of the month;

iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and

v. Document, by signature or initials and date, supervisor approval.

Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

A. Installation of Trash Receptacles. These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:

1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid ,

advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles and install receptacles.

B. Maintenance of Trash Receptacles. These activities include repairing, removing and installing trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

2. Inspection of receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.

4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles.

5. Replacement or repair of receptacle pads as needed.

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 and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the

reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

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

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

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 utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87, Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87, Attachments A and B) 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 which 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 OMB Circular A-87, Attachments A and B) 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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State 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.

X. PARAMETERS AND GUIDELINES AMENDMENTS

Requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached draft parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program as adopted by the Commission on July 31, 2009.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs in implementing the test claim legislation, and find that such costs as set forth in the subject test claims, are, in my opinion, are reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/26/09; Los Angeles, CA
Date and Place

Signature

BURHENN & GEST LLP
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LOS ANGELES, CALIFORNIA 90017-3321
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WRITER'S DIRECT NUMBER
(213) 629-8788

WRITER'S E-MAIL ADDRESS
dburhenn@burhenngest.com

August 27, 2009

VIA FEDEX

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814 -

Re: Draft Parameters and Guidelines Submitted by Cities Regarding Transit Trash Receptacles Required by Los Angeles Regional Water Quality Control Board Executive Order

Dear Ms. Higashi:

Enclosed please find the original plus seven copies of the draft Parameters and Guidelines submitted by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village concerning the state mandate found by the Commission in its Statement of Decision dated July 31, 2009 regarding trash receptacles required under the Los Angeles Regional Board municipal stormwater permit.

Please contact the undersigned if you have any questions.

Very truly yours,

David W. Burhenn

Encl.
cc: Mailing List (w/encl.)

Original List Date:
Last Updated:
List Print Date: 08/04/2009
Claim Number: 03-TC-04, 19, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Mailing Information: Notice of Adopted SCE

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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STATE MANDATES

Narrative in Support of Parameters and Guidelines submitted by Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village

The draft Parameters and Guidelines ("Ps & Gs") proposed by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, Signal Hill, Vernon and Westlake Village ("Claimants") can be found on pages 2-11. These Ps & Gs provide the basis for reimbursing local agencies for certain costs incurred in implementing the municipal storm permit issued for the County of Los Angeles and cities therein, California Regional Water Quality Control Board, Los Angeles Region, Executive Order Number 01-182, Permit Number CAS004001, December 13, 2001 ("Permit").

The proposed Ps and Gs follow and reference the July 31, 2009 decision of the Commission on State Mandates ("Commission"), which found that the costs of various activities relating to the placement and maintenance of trash receptacles at transit stops, mandated by the Permit, to be reimbursable.

The proposed Ps & Gs set forth that those local agencies specified in the Permit that are not covered by a trash Total Maximum Daily Load ("TMDL") program are eligible claimants. The proposed Ps & Gs provide that eligible claimants are entitled to reimbursement for costs incurred on and after July 1, 2002, the date set in the Commission's Statement of Decision.

Reimbursable Activities

The reimbursable activities set forth in the proposed Ps & Gs relate to the requirement in the Permit to

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Among the activities reasonably necessary to accomplish the above mandate are planning (including identifying trans stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management); and trash collection and receptacle maintenance (including repair and replacement of receptacles as required, changes of receptacle locations to match changes in transit stops and fees associated with waste disposal).

Reimbursement Options

In the proposed Ps & Gs, Claimants propose two alternatives for reimbursement: actual cost method (for trash receptacle installation and maintenance) and time study method (for trash receptacle maintenance).

The proposed time study protocol requires that all reimbursable time for an employee on contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office Annual Claiming Instruction Manual, found at www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff members, at least two staff members should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken. Appropriate time records, as set forth in the proposed Ps & Gs, shall be used to support the time study.

In addition, while not included in the proposed Ps & Gs, Claimants plan to revise the Ps & Gs to provide a "reasonable reimbursement methodology" ("RRM") unit cost reimbursement rate option. This RRM option would meet pertinent requirements of Government Code section 17518.5.

Claimants' proposed Ps & Gs are presented on the following pages:

PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board,
Los Angeles Region, Executive Order Number 01-182,
December 13, 2001, Permit Number CAS004001,
Part 4, Section F.5.c. 3.

Transit Trash Receptacles

I. Summary of the Mandate

The consolidated test claim, filed by the County of Los Angeles and several cities, alleged various activities related to the placement and maintenance of trash receptacles and inspection of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board ("LARWQCB"). The Commission found on July 31, 2009 that the activity called for in Part 4F5c3 of the permit was a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total maximum daily load ("TMDL"): "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." The Commission found that this requirement was not a federal mandate under the Clean Water Act and that it was a state mandate requiring a new program or higher level of service that could not

be funded through fee authority within the meaning of Government Code section 17556, subdivision (d).

The Commission also found that the other issues raised by the consolidated test claim, relating to Parts 4C2a, 4C2b and 4E of the permit and requiring inspections of various facilities, while not federal mandates under the Clean Water Act, were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the inspections.

The Commission approved the consolidated test claim, pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514, for the *increased costs* in performing the following activities only:

1. Planning (including identifying transit stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management); and

2. Trash collection and receptacle maintenance (including repair and replacement of receptacles as required).

II. Eligible Claimants

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 ("Permit"), to the extent that the same are not or were not subject to coverage under a trash TMDL.

III. Period of Reimbursement

The test claim executive order took effect on December 13, 2001, the same date as the Permit. The requirement to install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program,

establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003. Thus, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, materials, supplies, fixed assets, contracted services, training and travel for the performance of the activities listed below are eligible for reimbursement.

Reimbursement claims for the performance listed below shall be based on actual or estimated costs as provided in Government Code section 17560.

A. Installation of Trash Receptacles

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid advertising, and review and award of bid.

4. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles/pads.

B. Maintenance of Trash Receptacles

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

2. Inspection of receptacles for wear, cleaning, emptying, and other maintenance needs.

3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and pads, replacement of liners, and cost of paints, cleaning supplies and liners.

4. Replacement of individual damaged or missing receptacles or pads, including costs of purchase and installation of replacement receptacles or pads and disposal/recycling of replaced receptacles or pads.

5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

6. General replacement of receptacles, including the steps identified in A(2-4) above.

Methods for Claiming Costs

Eligible claimants must use the actual cost method to claim costs for the initial installation of trash receptacles. Under this method, claimants will submit documentation for the actual reimbursable direct and indirect costs incurred for the mandate reflected in Section A(1-4) above.

Eligible claimants may use either the actual cost method and/or the time study method to claim costs for the maintenance of trash receptacles.

Actual Cost Method: Claimants will provide suitable documentation to reflect the actual reimbursable direct and indirect costs incurred for the mandated reflected in Section A and B above.

Time Study Method: A claimant may use the time study method to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein.

The time study protocol proposed here requires that all reimbursable time for an employee on contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office Annual Claiming

Instruction Manual, found at www.sco.ca.gov. If a time study sample is used to claim for four through nine staff, at least two staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken. If a claimant uses the time study method, a representative sample of the hours devoted to the maintenance of trash receptacles over at least a two-month period shall be taken.

Time records used to support the time study shall:

i. Reflect an after-the-fact distribution of each employee's actual activity;

ii. Account for the total activity for which each employee is compensated;

iii. Account for the total labor hours of the month;

iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and

v. Document, by signature or initials and date, supervisor approval.

V. Claim Preparation and Submission

Each claim for reimbursement must be timely filed and must identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of these Parameters and Guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, programs, activities or functions and shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed, specify the actual time devoted to each activity by each employee, the productive hourly rate, and related fringe benefits.

Reimbursement for personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable 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. Show the inclusive dates when services were performed and itemize all costs for these services. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Travel

Travel for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination point(s) and travel costs. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

5. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

6. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment 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 Costs

Compensation for indirect costs is eligible for reimbursement. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other incurred for the same purpose, in like circumstances, has been claimed as a direct costs.

Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out the mandated program and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87 Attachments A and B) 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 which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) 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 allowable indirect costs bears to the base selected.

VI. Supporting Data and Record Retention

For auditing purposes, all costs claimed shall be traceable to source documents (e.g. employee time records, cost allocation reports, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, time studies, etc.) that show evidence of the validity of such costs and their relationship to this mandate. All documentation in support of claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim was filed or last amended, which 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 Savings and Other Reimbursements

Any reimbursement for this mandated received from any source, including state or federal reimbursement, shall be identified and deducted from a claim.

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 60 days after receiving the adopted Parameters and Guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the Statement of Decision and the Parameters and Guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute notice of the right of the local agencies to file reimbursement claims, based upon the Parameters and Guidelines adopted by the Commission.

IX. Remedies Before the Commission

Upon request of a local agency, the Commission shall review the claiming instructions issued by the State 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.

X. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's office claiming instructions, for those costs mandated by the executive order contained herein.

XI. Parameters and Guidelines Amendments

Requests may be made to amend the Parameters and Guidelines pursuant to Government Code section 17557, subdivision (d) and California Code of Regulations, title 2, section 1183.2.

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as

specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

XII. Legal and Factual Basis for Parameters and Guidelines

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Exhibit C

California Regional Water Quality Control Board

Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.waterboards.ca.gov/losangeles

Linda S. Adams
Cal/EPA Secretary

Arnold Schwarzenegger
Governor

October 19, 2009

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

Dear Ms. Higashi:

RE: CSM-03-TC-04, 03-TC-20, 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges: Comments on Proposed Parameters and Guidelines"

The Los Angeles Regional Water Quality Control Board (Regional Board) has reviewed the Proposed Parameters and Guidelines, and makes the following observations:

1) The Claimants overstate the scope of the trash receptacle requirement

The requirement contained in Order 01-182 that the Commission determined constituted an unfunded mandate is as follows:

> "Place trash receptacles at all transit stops within its [Permittee's] jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The purpose of this provision is to effectively control litter from transit stops, which are known to be high trash generation areas, through the simple placement of trash cans, in order to prevent litter from being washed into the storm drains and, ultimately, into rivers, lakes, bays and beaches in the region. The claimants may fairly and adequately comply with the mandates of the order through the placement of any type of receptacle capable of containing the garbage that waiting passengers might throw into the gutter. Likewise, given the water quality context, the obligation to maintain the receptacles is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage.

The order does not, as the claimants suggest, require any construction or installation. Nor can the order fairly be viewed as requiring the expenditure of $20,000 to identify the location of transit stops that are well known by transit authorities and published on transit authority maps for the benefit of their riders. The order is directed to water quality; it only compels Permittees to provide a place for transit riders to put garbage instead of the gutter.

The Commission has already determined that this water quality permit provision, intended to compel claimants to do what every reasonable Californian already believes to be their own responsibility (to wit, throwing garbage in a garbage can), is a state obligation for which

subvention is required. While the claimants may elect to undertake additional design and construction to enhance the placement of trash receptacles at transit stops, they may only request reimbursement from the State for the basic requirements of the permit provision.

2) The trash receptacle requirement does not apply to the Claimants subject to Trash TMDLs

The permit provisions that the Commission found to require subvention contain an express exception – they do not apply to any Permittee that is implementing programs in conformance with Trash TMDLs.

> "Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule...."
>
> "If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented."

(Order No. 01-182, as amended September 14, 2006 by Order R4-2006-0074 and August 9, 2007 by Order R4-2007-0042, Part 4.F.5.b.)

Both the Los Angeles River and Ballona Creek Trash TMDLs were effective on August 28, 2002. Claimants Carson, Commerce, Downey, Monterey Park, Signal Hill, Vernon, and the County of Los Angeles are subject to the Los Angeles River Trash TMDL. Claimant Beverly Hills is subject to the Ballona Creek Trash TMDL. The order required Permittees to have placed trash receptacles at transit stops that have shelters not later than August 1, 2002, and to the extent the claimants demonstrate that they actually did so, the Commission's determination would warrant subvention for those. However, the order did not require receptacles at the other transit stops until February 3, 2003, after the effective date of the TMDLs. Those TMDLs allow a variety of flexible means for Permittees to comply, and while they may choose trash receptacles as part of their compliance efforts, none of the Permittees subject to those TMDLs are required to do so. As of August 28, 2002, those claimants would not have a valid subvention claim under the Commissions' decision, since the requirement to place receptacles no longer applied to them. In like regard, the permit requirement to maintain any previously placed receptacles also ceased as of that date for Permittees subject to the Trash TMDLs. As such, no subvention may be granted for either placement or maintenance of receptacles by claimants subject to the Trash TMDLs after that date.

In conclusion, the Los Angeles Regional Board maintains its position that the trash receptacle requirements in the permit are a component of the federally mandated program that requires the states to ensure that municipalities control storm water pollution to the maximum extent practicable. The Regional Board disagrees with the Commission's determination that particular program requirements that have been determined to be practicable are not federal mandates

merely because Congress chose to direct the states to determine what is practicable for their municipalities rather than codifying a nation-wide list of "practicable" activities. The mandate to perform storm water pollution controls to the maximum extent practicable remains a federal mandate of the municipalities, pursuant to 33 U.S.C. § 1342(p). Nevertheless, in view of the Commission's determination to the contrary, the Regional Board urges the Commission to consider the express language of the order, and the purpose of the order, which is fundamentally directed to storm water pollution control through the simple placement and maintenance of garbage cans. The Regional Board also urges the Commission to consider the inequity of forcing the taxpayers throughout the State to pay for elaborate trash receptacles at transit stops for cities in the Los Angeles Region that require state water quality regulations in order to responsibly dispose of trash generated within their jurisdictions.

Should you have any questions, you may direct them to me at (213) 576-6605, or to Renee Purdy, Chief, Regional Programs Section at (213) 576-6783.

Respectfully submitted,

Chief Deputy Executive Officer
for

Tracy J. Egoscue
Executive Officer

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(VIA U.S. MAIL)
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October 20, 2009

RECEIVED
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COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed versions of the proposed parameters and guidelines submitted by the claimants for Claim Nos. 03-TC-04, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges."

Finance believes both proposals are similar and recommends changes, as specified below, to the cities' proposal to be consistent with the approved mandate:

1. Section I – Scope of Mandate - should be corrected to reflect the Commission's adopted statement of decision.

2. Section II – Eligible Claimants - should be amended to list the eligible claimants that are not subject to a Total Maximum Daily Load requirement.

3. Section III – Period of Reimbursement - should be amended to read as follows:

   - Identify the reimbursement period, effective July 1, 2002, for the costs associated with placing trash receptacles at transit stops with shelters until August 1, 2002, and at remaining transit stops until February 3, 2003. The reimbursement period, however, for the ongoing maintenance of those trash receptacles continues until the test claim permit is no longer valid.
   - Delete the reference to estimated claims as they have been deleted pursuant to Chapter 6, Statutes of 2008, Third Extraordinary Session (ABX3 8).
   - Revise the minimum threshold to $1,000, pursuant to Government Code Section 17564.

4. Section IV - Reimbursable Activities - should be amended, as shown, in the following paragraphs including deletion of the activities that go beyond the scope of the approved mandate:

   A) One Time Activity – Placement of Trash Receptacles
      1) Purchase and place trash receptacles at all transit stops that have shelters within the jurisdiction no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003.

   Delete the proposed activities 1 through 4.

B) Ongoing Activity - Maintenance of Trash Receptacles
   1) Collection of and dispose of trash on a routine basis, including trash collection and disposal at disposal/recycling facility.
   2) Repair or replacement of individual damaged trash receptacles to prevent waste discharge into the waters or missing receptacles.

Delete the proposed activities 2, 3, 5, and 6.

Pursuant to the statement of decision, the local agencies are required to place trash receptacles at the transit stops and maintain them, as needed. Finance believes activities such as construction contract preparation, specification review, or fabrication and installation of pads are not necessary to implement the approved mandate.

5. Section V – Claim Preparation and Submission - should be amended to exclude the costs of training and purchasing computers as reimbursable direct costs, as these costs are not necessary to implement the mandate.

6. Section VII – Offsetting Savings and Other Reimbursements - should be amended to note that any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source; including, but not limited to, service fees collected, federal funds, and other state funds; shall be identified and deducted from this claim.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list, which accompanied your letters, have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosures

Enclosure A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-04; 03-TC-20; and 03-TC-21- "Municipal Storm Water and Urban Runoff Discharges"

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

October 20, 2009
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Municipal Storm Water and Urban Runoff Discharges
Test Claim Number: CSM—03-TC-04; 03-TC-20; 03-TC-21

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On 10-20-2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
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Sacramento, CA 95814
Facsimile No. 445-0278

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Los Angeles Regional Water Quality Control Board
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Ms. Juliana F. Gmur
MAXIMUS
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Clovis, CA 93611

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 10-20-2009 at Sacramento, California.

Kelly Montelongo

Kelly Montelongo

Exhibit D

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November 13, 2009

Via FedEx

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

Re: *Test Claim No.03-TC-04; 03-TC-20; 03-TC-21: Rebuttal to Comments of Department of Finance*

Dear Ms. Higashi:

This letter constitutes the rebuttal of Claimants the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Vernon, Westlake Village, Azusa, Commerce, Bellflower, Covina, Downey, Monterey Park and Signal Hill ("Cities") to the comments dated October 20, 2009 filed by the State Department of Finance ("DOF") to the proposed Parameters and Guidelines ("Ps&Gs") filed by the Cities and the County of Los Angeles.

Section I – Scope of Mandate: The DOF comments that this section should be "corrected to reflect the Commission's adopted statement of decision." The Cities believe that the Section accurately reflects the Statement of Decision and do not believe that any correction is required.

Section II – Eligible Claimants: The DOF comments that this section should be amended to "list the eligible claimants that are not subject to a Total Maximum Daily Load requirement." The Cities believe that this level of specificity is not required, as the Statement of Decision provides adequate clarity as to what cities are entitled to a subvention of funds. Thus, no amendment is required.

Section III – Period of Reimbursement: The DOF makes three comments, each of which will be addressed.

First, the DOF states that the reimbursement period for the placement of trash receptacles should commence July 1, 2002 and end, respectively, at August 1, 2002 for

the placement of receptacles at transit stops with shelters and February 3, 2003 for remaining transit stops. The DOF further requests that the reimbursement period for maintenance receptacles continue until the test claim Permit is no longer valid.

In response, the proposed Ps&Gs already identify July 1, 2002 as the commencement date. The Cities do not agree with end dates of August 1, 2002 and February 3, 2003, as costs may have been incurred after those dates. For example, after those dates, municipalities may be required to place trash receptacles at new transit stops as the result of changes in transit routes. With respect to the reimbursement period for maintenance, the Cities do not object to a limitation to the period during which the executive order remains valid. The Cities note that the Order in question has remained valid beyond its official expiration date of December 13, 2006,

Second, the DOF requests deletion of the reference to estimated claims for the succeeding year. The Cities do not object to this comment.

Third, the DOF requests revising the minimum threshold to $1,000. The Cities do not object to this comment.

Section IV – Reimbursable Activities: The DOF requests amendment of item (1) under Section IV(A) and deletion of the existing items (1) through (4). The DOF also requests modification of items 1 and 2 under Section IV(B) and deletion of existing items (2), (3), (5) and (6).

The Cities object to these comments. First, with respect to the items under Section IV(A), all are reasonably required by the mandate in question, as set forth in the expert Declaration of Aras Ahmed of the County of Los Angeles Department of Public Works, attached as an exhibit to the County's test claim 03-TC-04 filed with the Commission on September 2, 2003. While not all Claimants may have incurred all of the costs set forth in Section IV(A), the Ps&Gs must provide for the subvention of such costs if they have been incurred. Given the need to install trash receptacles that were durable and theft-proof, prior planning and design was required, including relating to the construction and installation of pads.

Second, with respect to the comments on Section IV(B), all of the items in the proposed Ps&Gs are reasonably related to the effort required to respond to the mandate. In particular, the deletion of maintenance items relating to inspections, liner replacement and repair of receptacle pads (if present), would result in a failure adequately to compensate the Claimants for the reasonable costs of complying with the mandate. Obviously, if such costs are not incurred, no subvention of funds is required. In particular, as noted in the rebuttal to comments made by the Los Angeles Regional Water Quality Control Board filed concurrently herewith, the value of routine inspections of the condition of the receptacles, as opposed to the greater expense and poorer performance of random surveys, is essential to economical and thorough compliance with the

maintenance aspects of the mandate. The Ps&Gs must be sufficiently inclusive to cover such costs if they incurred by Claimants.

Section V – Claim Preparation and Submission: The DOF comments that the Ps&Gs should exclude the costs of training and purchasing computers as reimbursable direct costs. The Cities disagree. Such costs, if reasonably related to the efforts required to comply with the mandate, must be included.

Section VII – Offsetting Savings and Other Reimbursements: The DOF comments that this section should be amended to deduct from the claim any offsets experienced by Claimants in the same program as a result of the same statutes or executive orders found to contain the mandate, and also from any reimbursement for the mandate from any source, including service fees, federal funds and other state funds.

The Cities do not object in principle to this comment, but believe that the wording of Section VII should read as follows (with new language in **bold** type), to ensure that only an "identical" mandate would create a deduction:

> "Any **offsets the Claimant experiences in the same program as a result of the same statutes or executive orders found to contain the identical mandate shall be deducted from the costs claimed.** In addition, reimbursement for this mandate from any source, including, **but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from a claim.**

The Cities appreciate this opportunity to provide this rebuttal to the comments of the Department of Finance. Should you have further questions regarding the matters discussed in this letter, please contact us at the address noted above.

Very truly yours,

David W. Burhenn

cc: Mailing List

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On November 13, 2009 I served the foregoing document, described as

REBUTTAL OF CLAIMANT CITIES TO COMMENTS OF DEPARTMENT OF FINANCE ON DRAFT PARAMATERS AND GUIDANCE

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 13, 2009 at Los Angeles, California.

David W. Burhenn

Original List Date: 9/29/2003
Last Updated: 9/14/2009
List Print Date: 09/14/2009
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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November 13, 2009

Via FedEx

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

Re: *Test Claim No.03-TC-04; 03-TC-20; 03-TC-21: Rebuttal to Comments of Los Angeles Regional Water Quality Control Board Staff*

Dear Ms. Higashi:

This letter constitutes the rebuttal of Claimants the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Vernon, Westlake Village, Azusa, Commerce, Bellflower, Covina, Downey, Monterey Park and Signal Hill ("Cities") to the comments dated October 19, 2009 filed by the staff of the Los Angeles Regional Water Quality Control Board ("RWQCB") to the proposed Parameters and Guidelines ("Ps&Gs") filed by the Cities and the County of Los Angeles.

The Cities first would observe that the RWQCB staff's letter attempts, improperly, to re-argue the merits of the Test Claim. For example, the letter asserts in its final paragraph that the trash receptacle requirements which the Commission found to be a state mandate "are a component of the federally mandated program that requires the states to ensure that municipalities control storm water pollution to the maximum extent practicable." This issue was extensively briefed and argued in the Test Claim, and the Commission decisively rejected the contention that the trash receptacle requirement was a "component of the federally mandated program." That contention was and is incorrect on the law and the facts, as the Commission determined.

RWQCB staff also urges the Commission to consider "the inequity of forcing the taxpayers throughout the State" to pay for trash receptacles in the Los Angeles Region. As the Commission and its staff know, the citizens of California amended the California

Constitution specifically to avoid the inequity of forcing the residents of cities and counties to pay for the unfunded mandates of state agencies.

The Cities next turn to the comments of RWQCB staff on the draft Ps&Gs.

A. *The Claimants Did Not "Overstate" the Scope of the Trash Receptacle Requirement*

RWQCB staff argues, without citing to any evidence, that the trash receptacle requirement "does not . . . require any construction or installation." RWQCB staff contends that the Permittees under Order No. 01-182 are required merely to place "any type of receptacle" at the transit stops. This contention ignores the fact that for the requirement to be effective in an urban environment, the receptacles must be durable and theft-proof. "Any type of receptacle" will not meet those requirements. Proper design requires a permanent installation, in many cases a concrete pad to which the receptacle can be bolted, that will resist thieves and vandals. A missing receptacle will, of course, receive no trash and the purpose of the mandate, to "prevent litter from being washed into the storm drains," will not be met.

The requirement for construction and installation is intrinsic to the trash receptacle mandate, as set forth in the draft Ps&Gs. The fact that the Order does not on its face require construction or installation is irrelevant. To ensure that the Order's requirements were carried out, construction and installation was required. *See, e.g.*, Expert Declaration of Aras Ahmed of the County of Los Angeles Department of Public Works, attached as an exhibit to the County of Los Angeles' original Test Claim (03-TC-04) filed on September 2, 2003. Whatever steps are reasonably required to ensure the performance of the mandate, to place and maintain trash receptacles at transit stops, are subject to a subvention of state funds.

RWQCB staff further contends that maintenance should be limited "simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage." While maintenance clearly includes these steps, such activities cannot be done on a hit or miss basis. It makes no economic sense for city crews to wander the streets at random, looking for full or damaged receptacles. It is far less expensive, and more appropriate to achieve the mandate's purpose of reducing trash disposal to the gutters, for the receptacles to be routinely emptied, inspected and maintained.

Similarly, the RWQCB staff objection to "the expenditure of $20,000" to identify the location of transit stops is, again, without merit. The exact cost of such an effort will, of course, vary from Claimant to Claimant. But, more importantly, transit stops are not located on "transit authority maps" (and RWQCB staff produced none to support its argument). These stops must be identified and updated, as bus routes change over time.

Simply because the Order is directed to "water quality" does not change the fact that it specifically required the Claimants to install and maintain trash receptacles at each transit stop. The subvention of funds to cover the cost to comply with this mandate must include all those costs reasonably necessary to ensure compliance.

B. *The Trash Receptacle Requirement Applies to Claimants*

RWQCB staff argues that "Claimants Carson, Commerce, Downey, Monterey Park, Signal Hill, Vernon, and the County of Los Angeles are subject to the Los Angeles River Trash TMDL" while Beverly Hills is subject to the Ballona Creek Trash TMDL. RWQCB staff argues that because the trash receptacle requirement did not compel cities subject to these TMDLs, which took effect on August 28, 2002, they would not be subject to a subvention of funds unless they installed the receptacles prior to the TMDL effective date.

RWQCB staff, however, does not disclose the fact that for several of these Claimants, a portion (and in some cases, a substantial portion) of their jurisdictional areas is located *outside* of the watersheds subject to the TMDL requirements. This is true, for example, for the Cities of Carson, Downey and Signal Hill and for the County of Los Angeles. Since these portions would not be subject to the Los Angeles River or Ballona Creek Trash TMDLs, those Claimants were subject to the mandate found by the Commission in the Test Claim. RWQCB staff's argument to the contrary, that "the requirement to place receptacles no longer applied to them," is wrong as a matter of fact. (We note that the cities subject to the Trash TMDLs still might qualify if, as suggested by RWQCB staff, they installed and maintained trash receptacles prior to the effective date of the TMDLs or installed and maintained trash receptacles during the period of time that the Los Angeles River Trash TMDL was ineffective due to a legal challenge to the TMDL.)

In any event, the draft Ps&Gs seek a subvention of state funds for those Claimants that are completely or partially located within the watersheds not covered by the trash TMDLs. *See* Section II of the Ps&Gs ("The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 ("Permit"), to the extent that the same are not or were not subject to coverage under a trash TMDL"). Thus, the comments of RWQCB staff, to the extent that they refer to portions of the Cities that *are* covered by the trash TMDLs, are not relevant to the draft Ps&Gs and may be disregarded by the Commission.

The Cities appreciate this opportunity to provide this rebuttal. Should you or Commission staff have further questions regarding the matters discussed in this letter, please contact us at the address noted above.

Very truly yours,

David W. Burhenn

cc: Mailing List

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On November 13, 2009 I served the foregoing document, described as

REBUTTAL OF CLAIMANT CITIES TO COMMENTS OF LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD ON DRAFT PARAMATERS AND GUIDANCE

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 3, 2009 at Los Angeles, California.

David W. Burhenn

Original List Date: 9/29/2003
Last Updated: 9/14/2009
List Print Date: 09/14/2009
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 893-0792 (213) 617-8106
Mr. Michael Lauffer State Water Resources Control Board	Tel: Fax:	(916) 341-5183 (916) 641-5199
Ms. Tracy Egoscue Los Angeles Regional Water Quality Control Board 320 West 4th Street, Suite 200 Los Angeles, CA 90013-2343	Tel: Fax:	(213) 576-6600 (213) 576-6840
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
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Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Mr. Howard Gest David W. Burhenn & Gest, LLP 624 S. Grand Ave., Suite 2200 Los Angeles, California 90017	Tel: Fax:	(213) 688-7715 (213) 688-7716
Ms. Emmerline Foote City of Inglewood One Manchester Blvd., Suite 860 Inglewood, CA 90301	Tel: Fax:	(310) 412-5111
Mr. Clark Moseley City of El Monte 11333 Valley Boulevard El Monte, CA 91731-3293	Tel: Fax:	(626) 580-2001 626-580-2274

Mr. Scott Nichols Albarez-Glasman & Clovin 13181 Crossroads Parkway North Suite 400 City of Industry, CA 91746	Tel: Fax:	(562) 699-5500 (562) 692-2244
Ms. Dorothy Rice State Water Resources Control Board P.O. Box 2815 Sacramento, CA 95812-2815	Tel: Fax:	(916) 341-5615 (916) 341-5621
Mr. Richard Montevideo Rutan & Tucker, LLP P.O. Box 1950 Costa Mesa, CA 92626-1950	Tel: Fax:	(714) 662-4642
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: Fax:	(916) 368-9244 (916) 368-5723
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: Fax:	(916) 471-5538 (916) 366-4838
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: Fax:	(916) 485-8102 (916) 485-0111
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
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Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: Fax:	(916) 712-4490 (916) 290-0121

Ms. Elizabeth Miller Jennings State Water Resources Control Board	Tel:	(916) 341-5161
P.O. Box 100 Sacramento, CA 95812-0100	Fax:	(916) 341-5199
Ms. Lisa Bond Richards, Watson & Gershon, LLP	Tel:	(213) 626-8484
355 South Grand Avenue, 40th Floor Los Angeles, CA 90071	Fax:	
Mr. Leonard Kaye	Tel:	(213) 974-9791
Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Fax:	(213) 617-8106
Mr. Sergio Ramirez City of Foster City/Estero Municipal Improvement District	Tel:	(650) 286-3544
100 Lincoln Centre Drive Foster City, CA 94404	Fax:	

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
CRAMENTO, CA 95814
ONE: (916) 323-3562
AX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

January 7, 2010

Tracy J. Egoscue
Executive Officer
California Regional Water Quality Control
Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

And Affected State Agencies and Interested Parties (See Attached Mailing List)

Re: Request for Information
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Part 4, Section F.5.c.3.
County of Los Angeles, Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce Norwalk, Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, and Signal Hill, Co-claimants

Dear Ms. Egoscue:

The Commission on State Mandates is working on the parameters and guidelines for this test claim.

On July 31, 2009, the Commission determined that it is a state mandate for the permittees that are not subject to a trash TMDL to place trash receptacles at all transit stops within their jurisdictions as specified. Permittees subject to a trash TMDL are those in the (1) Los Angeles River and (2) Ballona Creek and Urban Santa Monica Watershed Management Areas (WMAs). Local agencies within those WMAs are listed in Attachment A (p. A-1) of the permit: 15 local agencies within the Ballona Creek and Urban Santa Monica WMA, and 34 local agencies within the Los Angeles River WMA.

Any local agency, as defined in Government Code section 17518, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Given the information in the 2001 permit regarding the two WMAs, please explain why the Regional Board comments submitted October 29, 2009, list only Beverly Hills as subject to the Ballona Creek and Urban Santa Monica trash TMDL. Please further explain why your comments included Carson and Downey as local agencies subject to the Los Angeles River trash TMDL, but they are not in the definition of the Los Angeles River WMA in Attachment 1 (p. A-1) of the permit. Of the 34 local agencies in the Los Angeles River WMA listed in attachment 1, please explain why only seven are mentioned in your comments.

Comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.)

Please contact Eric Feller at (916) 323-8221 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Attachment: Mailing list

Exhibit F

California Regional Water Quality Control Board
Los Angeles Region

Linda S. Adams
Secretary for
Environmental Protection

320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
http://www.waterboards.ca.gov/losangeles

Arnold Schwarzenegger
Governor

January 26, 2010

RECEIVED
JAN 27 2010
COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

REQUEST FOR INFORMATION; MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES 03-TC-04, 03-TC-20; 03-TC-21; LOS ANGELES REGIONAL QUALITY CONTROL BOARD ORDER NO. 01-182 PERMIT CAS004001; PART 4, SECTION F.5C.3. COUNTY OF LOS ANGELES, CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, WESTLAKE VILLAGE, VERNON, BELLFLOWER, COVINA, DOWNEY, MONTEREY PARK, SIGNAL HILL, CO-CLAIMANTS

Responding to your letter dated January 7, 2010, our letter of October 19, 2009 only made reference to the claimants whose test claims are pending before the Commission. We did not identify each jurisdiction subject to a trash TMDL.

Responding to your second inquiry, Attachment A to the permit generally identified the municipalities in the relevant Watershed Management Areas (WMAs) by land area. The purpose of Attachment A was not to determine jurisdictional reach or responsibility of any agency, but to assist in facilitating watershed coordination efforts among all the permittees. (See Permit: Finding 21; Part 3. Storm Water Quality Management Program (SQMP) Implementation, ¶ F; Part 4. Special Provisions, ¶ F.5.b).) Obviously, geography (and not the permit attachments) determines which cities are within which drainages. Geographically, both Carson and Downey are within the Los Angeles River Watershed, even though they are not identified in Attachment A to the 2001 permit as such.

Subsequent regulations, including both the LA River Watershed Trash TMDL and the recent amendments to Order No. 01-182 (Order No. R4-2009-0130, adopted December 10, 2009) implementing it, supersede the list of cities identified in December of 2001 in Attachment A (which has no direct regulatory effect in any event). The most recent versions of the Los Angeles River Watershed Trash TMDL and the Ballona Creek Trash TMDL regulations can be found on our website at:
http://63.199.216.6/larwqcb_new/bpa/docs/2007-012/2007-012_RB_BPA.pdf (LA River

Paula Higashi

Watershed Trash TMDL), and http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.shtml (Ballona Creek Watershed Trash TMDL). The former expressly identifies Carson and Downey as subject to the Los Angeles River Watershed Trash TMDL. The latter was adopted several years earlier. The responsible jurisdictions are identified in the Staff Report, Appendix I, at: http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/2004-023/04_0116/Revised%20Staff%20Report.pdf. The final version of Order No. 01-182, as revised by Order No. R4-2009-0130 on December 10, 2009, is not yet available, but the draft permit revisions can be found on our website at http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml (see in particular, Permit Provisions, Appendix 7-1).

Please let us know if you require additional information.

Sincerely,

Tracy Egoscue
Executive Officer

cc: Service List, Exhibit A to Proof of Service

Enclosure

MJL/jlg
01-25-10
i:\levym\support staff\m. levy\letters rwqcbs [rb4]\ltr to p. higashi re mandates [1-25-10] reg4_140l.doc

PROOF OF SERVICE

I, Ronji R. Harris, declare that I am over 18 years of age and not a party to the within action. I am employed in Los Angeles County at 320 W. 4th Street, Suite 200, Los Angeles, California 90013.

On this date, I served the within documents:

REQUEST FOR INFORMATION; MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES 03-TC-04, 03-TC-20; 03-TC-21; LOS ANGELES REGIONAL QUALITY CONTROL BOARD ORDER NO. 01-182 PERMIT CAS004001; PART 4, SECTION F.5C.3. COUNTY OF LOS ANGELES, CITIES OF ARTESIA, AZUSA, BEVERLY HILLS, CARSON, COMMERCE, NORWALK, RANCHO PALOS VERDES, WESTLAKE VILLAGE, VERNON, BELLFLOWER, COVINA, DOWNEY, MONTEREY PARK, SIGNAL HILL, CO-CLAIMANTS

	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 ALL PARTIES LISTED:** 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 separate, sealed envelopes addressed to:

See Exhibit A attached hereto and made a part hereof.

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 January 26, 2010 at Los Angeles, California.

EXHIBIT A

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

Ms. Tracy Egoscue
Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
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State Water Resources Control Board
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City of Foster City/Estero
Municipal Improvement District
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Foster City, CA 94404

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MGT of America
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Harmeet Barkschat
Mandate Resource Services, LLC
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Rancho Cordova, CA 95670

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Clark Moseley
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County of Los Angeles
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Ginny Brummels
State Controller's Office (B-08)
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Albarez-Glasman & Clovin
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City of Industry, CA 91746

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Clovis, CA 93611

Richard Montevideo, Esq.
Rutan & Tucker, LLP
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Costa Mesa, CA 92628-1950

BURHENN & GEST LLP
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SUITE 2200
LOS ANGELES, CALIFORNIA 90017-3321
(213) 688-7715
FACSIMILE (213) 688-7716

RECEIVED
FEB 18 2010
COMMISSION ON STATE MANDATES

WRITER'S DIRECT NUMBER
(213) 629-8788

WRITER'S E-MAIL ADDRESS
dburhenn@burhenngest.com

February 12, 2010

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

Re: Request for Information; Municipal Storm Water and Urban Runoff Discharges 03-TC-04; 03-TC-20; 03-TC-21; Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001; Part 4, Section F.5C.3, County of Los Angeles, Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-Claimants

Dear Ms. Higashi:

This office represents Co-Claimants Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill with respect to the above-referenced test claims. We have reviewed a letter from Los Angeles Regional Water Quality Control Board Executive Officer Tracy Egoscue to you dated January 26, 2010, responding to a letter from you dated January 7, 2010, asking her, in part, to explain why the Cities of Carson and Downey were listed as "local agencies subject to the Los Angeles River trash TMDL."

In her letter, Ms. Egoscue states that "[g]eographically, both Carson and Downey are within the Los Angeles River Watershed" and that Carson and Downey have been identified in trash TMDL regulations "as subject to the Los Angeles River Watershed Trash TMDL."

In fact, only *portions* of the Cities of Carson and Downey are located within the Los Angeles River Watershed and thus subject to the trash TMDL for the Los Angeles River watershed. For example, all but a very small portion of the City of Carson is located within the Dominguez Channel Watershed, which is not subject to a trash TMDL. More than half of the City of Downey is located within the San Gabriel River and Los

Cerritos Channel Watersheds, which also are not subject to a trash TMDL. Please also see our letter of November 13, 2009 addressing similar arguments made on behalf of the Los Angeles Regional Board.

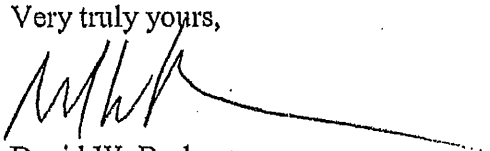
As Ms. Egoscue's letter states, whether a city lies within a particular watershed is determined by geography and not permit attachments. If a city lies in part within a watershed without a trash TMDL, it still is entitled, under the Commission's decision, for a subvention of funds.

The proposed Parameters and Guidance submitted on behalf of our clients and by the County of Los Angeles make clear that the subvention of state funds is being sought on behalf of "all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 ("Permit"), to the extent that the same are not or were not subject to coverage under a trash TMDL."

The Commission should use this language as its standard for subvention, as this language addresses the circumstance where a city is partially in a watershed subject to a trash TMDL and partially in a watershed not subject to a trash TMDL. In such a circumstance, the city would be entitled to apply for subvention for those receptacles in the watershed not subject to a trash TMDL. The Commission should not use attachments to permit documents as the determinative factor as to whether a claimant is entitled to a subvention of funds, as those attachments do not address cities that are located in multiple watersheds.

Please call me at the number noted above if you have any questions regarding the matters discussed in this letter.

Very truly yours,



David W. Burhenn

cc: Service List

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On February 12, 2010 I served the foregoing document, described as

Request for Information; Municipal Storm Water and Urban Runoff Discharges 03-TC-04; 03-TC-20; 03-TC-21; Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001; Part 4, Section F.5C.3, County of Los Angeles, Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-Claimants

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

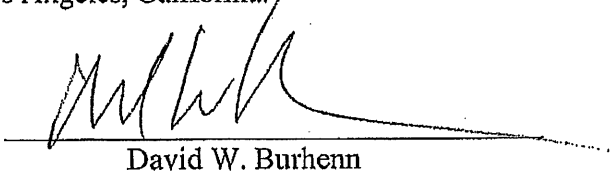
☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 12, 2010 at Los Angeles, California.



David W. Burhenn

Original List Date: 9/29/2003
Last Updated: 9/14/2009
List Print Date: 09/14/2009
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 893-0792 (213) 617-8106
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Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Fax:	(916) 939-7901 (916) 939-7801
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 324-0256 (916) 323-6527
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: Fax:	(916) 712-4490 (916) 290-0121

Ms. Elizabeth Miller Jennings State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	Tel: Fax:	(916) 341-5161 (916) 341-5199
Ms. Lisa Bond Richards, Watson & Gershon, LLP 355 South Grand Avenue, 40th Floor Los Angeles, CA 90071	Tel: Fax:	(213) 626-8484
Mr. Leonard Kaye Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 974-9791 (213) 617-8106
Mr. Sergio Ramirez City of Foster City/Estero Municipal Improvement District 100 Lincoln Centre Drive Foster City, CA 94404	Tel: Fax:	(650) 286-3544

Exhibit G

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

May 27, 2010

RECEIVED
JUN 0 1 2010
COMMISSION ON
STATE MANDATES

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

Dear Ms. Higashi:

LOS ANGELES COUNTY
REVISED PARAMETERS AND GUIDELINES AND PROPOSED STANDARD COSTS
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

The County of Los Angeles respectfully submits its revised parameters and guidelines and proposed standard costs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
H:\SB90\Storm Water Ps&Gs 06 01 10 cover letter.doc

Enclosure

Los Angeles County
Revised Parameters and Guidelines and Proposed Standard Costs
Municipal Storm Water and Urban Runoff Discharges Test Claims

Executive Summary

On July 31, 2009, the Commission on State Mandates (Commission) adopted a landmark decision. For the first time in California, municipalities could receive State reimbursement for storm water mandates that are not found in the federal Clean Water Act and related legislation. The State mandates that were found to be reimbursable are part of the municipal storm water permit issued to the County of Los Angeles (County), the Los Angeles County Flood Control District and 84 cities. Specifically, eligible claimants are required to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [1]

On August 28, 2009, the County filed parameters and guidelines (Ps&Gs) to specify terms and conditions of reimbursement for activities that are reasonably necessary in placing and maintaining transit trash receptacles at designated bus stops. Under this initial version of the Ps&Gs, claimants were permitted to conduct time studies to determine their unit costs in performing repetitive trash collection activities.

This revised version of the Ps&Gs permits reimbursement for repetitive trash collection activities using either the time study methodology or the 'reasonable reimbursement methodology' (RRM). If an RRM is used, claimants would simply multiply the standard unit cost for a trash collection by the number of such collections to obtain reimbursement for this activity. The proposed standard unit costs are based on survey responses from a representative sample of eligible claimants.

In addition, the revised Ps&Gs underscores the necessity of constructing concrete pads at unimproved bus stop locations in order to bolt down receptacles and prevent frequent loss.

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[1] These mandates are found in Part 4F5c3 of Order No. 01-182, Permit CAS004001 (Permit) which was issued by the Los Angeles Regional Water Quality Control Board on December 13, 2001.

Standard Unit Costs

The RRM's standard unit costs included in this revised version of the Ps&Gs were developed from a survey of a representative sample of eligible claimants in accordance with the RRM requirement found in Government Code Section 17518.5(b):

> "(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

Under the auspices of the California State Association of Counties (CSAC) and the California League of Cities (League), eleven jurisdictions were surveyed[2]. The sample was representative as it included large, mid-sized and small jurisdictions.

It should be noted that the cities of Beverly Hills and Commerce were removed from the sample when it was noted that they were located in watersheds where a trash TMDL[3] had been adopted. Only jurisdictions under the Permit that are not subject to a trash TMDL are eligible claimants.

Accordingly, the standard unit cost survey's results are based on a representative sample of eligible claimants[4].

In addition, the survey results reflect the variation in costs among local agencies to implement the mandate in a cost-efficient manner, an RRM requirement in Government Code Section 17518.5(c). Here, some agencies found that using in-house staff and resources to perform the trash collection mandate was cost-efficient while other agencies concluded otherwise and awarded new or amended contracts to perform the mandate to vendors. Moreover, some agencies used both in-house and contract performance methods during the survey period.

---

[2] See page 1 of Exhibit 1 for a list of claimants included in the sample.

[3] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

[4] These eligible claimants include the County of Los Angeles, the County of Los Angeles Flood Control District and the cities of Artesia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina.

Accordingly, the standard unit cost survey's results reflect the variation in costs among local agencies to implement the mandate in a cost-efficient manner.

It should be noted that survey response from the city of Norwalk was not used in computing the survey results. In Norwalk's case, the contractor billed the city for the combined costs of trash collection and bus stop cleaning and it was not possible to determine the portion of costs that should be allocated to their trash collection activities.

The survey also meets the RRM requirements found in Government Code Section 17518.5(d):

> "Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years." (Emphasis added.)

Here, the County's RRM provides a uniform cost allowance. Further, this allowance is based on local costs incurred over a seven year period (July 1, 2002 through June 30, 2009), which does not exceed the ten-year limitation.

Therefore, pertinent RRM requirements found in Government Code Section 17518.5 have been met and reimbursement is required as specified herein.

RRM Survey Results

The RRM survey, summarized on page 1 of Exhibit 1, provide several results, including a weighted average cost of $6.75 per trash collection over the survey period. This average was weighted to reflect the percentage of the total surveyed trash collections performed by a specific respondent. A respondent's percentage was then multiplied by that respondent's unit cost to obtain the amount of unit cost attributable to that respondent. The sum of all respondents' unit costs was then computed to obtain a weighted mean average cost. This process was used so that the unit costs of respondents performing more trash collection were given greater weight than respondents performing fewer trash collections. Otherwise, the unit

cost of a respondent performing 2,513 trash collections would be given the same weight as the unit cost of a respondent performing 39 collections.

It is proposed that the weighted mean average rate of $6.75 per collection be assigned to the 2005-06 year. This designation is reasonable and proper considering that the $6.75 rate is an average rate over the entire reimbursement period and 2005-06 is the middle year in the seven-year reimbursement period.

It is further proposed that the $6.75 rate for 2006-07 and future years be increased by the cost of living adjustments used by the State Controller's Office (SCO) in promulgating annual claiming instructions. It is also proposed that the $6.75 rate for 2004-05 and prior years be decreased by SCO's cost of living adjustments. Commission adopt the (above) RRM

Accordingly, for all of the above reasons, the County proposes that the RRM rates in these revised Ps&Gs be adopted by the Commission as a third reimbursement option for the repetitive task of trash collection activities. In the original proposed Ps&Gs, claimants were permitted two alternatives for reimbursement. The time study method was allowed for repetitive trash collection activities as was the actual cost method.

State Associations' Support

On May 24, 2010, Mr. Daniel Carrigg, Legislative Director of the League of California Cities (League) and Ms. Jean Kinney Hurst, Legislative Representative from the California State Association of Counties (CSAC), wrote to Ms. Nancy Patton, Commission's Assistant Executive Director, to express their joint support for the reasonable reimbursement methodology (RRM) devised for the Municipal Storm Water and Urban Runoff Discharges mandate[5]. They indicate that:

> "The RRM was developed following a survey of six cities (Azusa, Artesia, Bellflower, Carson, Downey and Signal Hill) and Los Angeles County regarding the actual costs of this program. Through the responses, it was determined that the per unit cost per trash pickup was approximately $6.75. The League and CSAC are in full support of this calculation."

[5] Their joint letter is found in Exhibit 4.

It should be noted that the survey result of $6.75 per trash pickup also reflected a response from the city of Covina[6]. This response was received late and inadvertently omitted from the survey responses provided to the League and CSAC.

The importance of adopting an RRM is explained by League and CSAC staff. They indicate that:

> "If approved, it will ease the administrative burden of filing and processing mandate claims for both the state and local agencies.
>
> The process for devising RRMs was created for just that reason. Some mandates lend themselves to a per-unit reimbursement that fairly approximates each agency's cost, though it might not reflect the full actual cost in a specific year. Using this methodology has the potential to reduce the cost to process mandate claims for both locals and the state. We are pleased that the state and local agencies have been able to navigate the new process and hope that this success will smooth the way for future mandate reimbursements as well."

Therefore, the RRM requirement found in Government Code Section 17518.5(b), that an RRM be based on "cost information from a representative sample of eligible claimants ... provided by associations of local agencies", has been met.

Receptacle Installations

The County's revised Ps&Gs also clarify the activities that are reasonably necessary in installing transit trash receptacles at designated bus stops. The necessity for performing these activities is explained in a declaration by Mr. William Yan, attached in Exhibit 2. Mr. Yan, an Associate Civil Engineer, in the Program Development Division of Los Angeles County's Department of Public Works, indicates that the following types of activities are reasonably necessary in installing trash receptacles:

> "Planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and

[6] The Covina survey response is found on page 9 of Exhibit 1.

installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:

1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles install receptacles.".

Mr. Yan, continues to explain the necessity for the installation activities, on pages 2-3 of his declaration, as follows:

" ... to prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be fitted with a concrete pad.

... proper selection of receptacle and pad types, evaluations of appropriate placements of receptacles and preparation of engineering specifications and/or drawings are necessary for installation of concrete pads.

... securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles.

... securing transit trash receptacles would reduce the time the receptacle would be out of service and not available to collect trash.

... concrete pads would provide adequate bolting surface for large-capacity transit trash receptacles which require less collection frequency.

... transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement costs.

... dome covers and solid trash receptacle liners prevent rain water from going into the receptacles , thereby causing trash to spill out and flow into the storm drains.

... the use of dome covers and the solid trash receptacle liners meet the intent of the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CASoo4001, Part 4, Section F.5.c.3.) by preventing pollutants from entering the storm drains."

Therefore, the above listed installation activities are reasonably necessary to place transit trash receptacles at the designated bus stop locations and are included as reimbursable activities in this revision of the County's Ps&Gs.

The County's revised Ps&Gs are attached in the pages that follow.

Los Angeles County's Revised Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

I. SUMMARY OF THE MANDATE

On July 31, 2009 the Commission on State Mandates (Commission) issued a Statement of Decision finding, on page 3, that the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This program requires the County of Los Angeles and various cities to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission found that the inspection activities, also required under Permit CAS004001, in Parts 4C2a, 4C2b and 4E, mandate inspections of various facilities. The Commission determined that while these requirements were imposed by the State, and not the federal government, these activities were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

II. ELIGIBLE CLAIMANTS

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies are not or were not subject to coverage under a trash 'Total Maximum Daily Load', or TMDL requirement.

III. PERIOD OF REIMBURSEMENT

The test claim executive order (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3 took effect on December 13, 2001, the same date as the Permit.

The requirements to initially install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Therefore, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where reasonable reimbursement methodology (RRM) rates are adopted as set forth in Section IV.B. To claim repetitive trash collection activities, claimants may elect to use RRM rates, their own time study or actual costs.

IV.A. Actual Costs

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, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

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.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employees reimbursable time is totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for 4 through 9 staff, at least 2 staff should be time surveyed. If 10 or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

IV.B. Reasonable Reimbursement Methodology

Claimants may elect to be reimbursed for their transit trash collection costs using a reasonable reimbursement methodology (RRM) as set fourth below. Under this RRM, the annual standard or unit cost for each trash collection or 'pick-up' is multiplied by the annual number of trash collections to compute reimbursement for trash collection activities.

The annual standard costs for a transit trash collection or 'pick-up' are:

2008-09	$6.75	plus three annual cost of living adjustments[7]
2007-08	$6.75	plus two annual cost of living adjustments
2006-07	$6.75	plus one annual cost of living adjustment
2005-06	$6.75	
2004-05	$6.75	less one annual cost of living adjustment
2003-04	$6.75	less two annual cost of living adjustments
2002-03	$6.75	less three annual cost of living adjustments

IV.C. Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

1. Installation of Trash Receptacles. These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The five transit trash installation claiming categories are:

    a. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

[7] The cost of living adjustments to be used are proposed to be the cost of living adjustments used by the State Controller's Office in promulgating annual claiming instructions.

b. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

c. Contract preparation, specification review process, bid advertising, and review and award of bid.

d. Purchase of receptacles and/or construct receptacles and install receptacles.

e. Repeat steps (IV.C.1. c-d) when necessary for replacement of receptacles/pads.

2. Maintenance of Trash Receptacles. These activities include repairing, removing and installing trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

a. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

b. Inspection of receptacles and pads for wear, cleaning, and other maintenance needs.

c. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.

d. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

e. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

IV.D. Methods for Claiming Costs

Eligible claimants must use the actual cost method to claim costs for the tasks reflected in Section IV.C(1)(a-e) above.

Eligible claimants must use the actual cost method to claim costs for the maintenance of trash receptacles reflected in Section IV.C(2)(b-e) above.

Eligible claimants may use the actual cost, time study or RRM method to claim costs for the collection of trash reflected in Section IV.(C)(2)(a) above.

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. Capital Assets and Equipment

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

5. Travel

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

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

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 utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87 Attachments A and B) 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 which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) 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 allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Transit Trash Collection Unit [Per Pickup] Costs Survey Results (Note a)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

	Respondent Survey	Fiscal Years 2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	(X) Average (Note b)	(Y) # Pickups @ year	(X/Y=Z) Unit Cost @ Pickup	M // Weighted # Units (Note d)	M/Total=D Ave. Adjustment % of Total	DxZ Result
1	Los Angeles County Beverly Hills [in watershed] Norwalk [e]	$893	$1,241	$1,152	$1,122	$1,127	$1,132	(Note c)	$1,111	156	$7.12	2,513	31.09%	$2.21
2	Downey	$347	$321	$320	$290	$272	$581	$602	$390	52	$7.51	1,497	18.52%	$1.39
3	Carson [2.57x52 wks=134]	$311	$299	$708	$144	$144	$144	$144	$271	134	$2.02	1,434	17.74%	$0.36
4	Bellflower	$526	$522	$528	$530	$504	$486	$448	$506	52	$9.74	1,323	16.37%	$1.59
5	Azusa	$1,504	$1,504	$1,504 [f]					$1,504	104	$14.46	39	0.48%	$0.07
6	Artesia Commerce [in watershed]	$1,299	$1,299	$1,271	$1,271	$1,361	$1,224	$1,180	$1,272	104	$12.23	63	0.78%	$0.10
7	Covina	$422	$396	$395	$310	$318	$310	$310	$352	52	$6.76	865	10.70%	$0.72
8	Signal Hill	$398	$384	$374	$374	$374	$353	$343	$371	52	$7.14	350	4.33%	$0.31
	Average by Respondent								**$825**		**Totals**	8,084	100.00%	
	Average by Year	$814	$852	$893	$674	$683	$705	$605	$747		**Weighted Ave**			$6.75

Notes

[a] This survey table presents data by fiscal year and by respondent. A weighted mean average per pickup cost of $6.75 was found.

[b] Average annual unit cost per trash receptacle over the reimbursement period. Totals were divided by the number of nonzero years.

[c] During FY 02-03, trash receptacles were installed over a 3-month period. During the installation period, the cleaning and trash pick-up service was first handled in-house and later by contract. Because the number of trash receptacles was not a fixed number during this period and the maintenance service was handled in-house and by contract, it is difficult to accuractely annualize the unit cost for FY 02-03.

[d] The number of units is the sum of all trash receptacles reported by respondents in each average annual cost year [above].

[e] Survey result was inconclusive as contractor billed city for the combined costs of trash collection and bus stop cleaning.

[f] $6,517 was incurred during four months of 2006-07. Annualized cost was $19,551 for 13 receptacles or 1,504 per receptacle.

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : LA County unincorporated area

Contact Person : Wendy Bui
Phone : (626) 458-3968
E-Mail : wbui@dpw.lacounty.gov

Please Send Survey Response to:

Jean Hurst, California State Association of Counties jhurst@counties.org
and cc: Howard Gest , City Representative hgest@burhenngest.com
Leonard Kaye, County Representative lkaye@auditor.lacounty.gov

Cost Survey

	[A]	Annual Transit Trash Collection Costs (Note 2)					[B]	[B] ÷ [A]
Fiscal Year	Ave. # Trash Receptacles	$ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	$ Total	Unit Cost
2008-09	470	$319,411	$100,233				$419,645	$892.54
2007-08	429	$426,584	$106,312				$532,896	$1,241.20
2006-07	418	$407,240	$73,811				$481,051	$1,151.99
2005-06	404	$386,988	$66,536				$453,524	$1,121.89
2004-05	406	$386,263	$71,211				$457,474	$1,127.48
2003-04	386	$370,224	$66,346				$436,569	$1,131.74
2002-03	324	$86,151	$15,779				$101,930	$314.92
		$2,382,861	$500,227				$2,883,088	

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

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Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Downey, CA

Contact Person : Gerald Greene
Phone : 562-904-7112
E-Mail : ggreene@downeyca.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	239	$82,900	$0	$0	$0	$0	$82,900	346.86192
2007-08	239	$76,800	$0	$0	$0	$0	$76,800	321.33891
2006-07	239	$76,500	$0	$0	$0	$0	$76,500	320.08368
2005-06	239	$69,400	$0	$0	$0	$0	$69,400	290.37657
2004-05	239	$64,900	$0	$0	$0	$0	$64,900	271.54812
2003-04	151	$87,700	$0	$0	$0	$0	$87,700	580.7947
2002-03	151	$71,200	$0	$0	$19,663	$0	$90,863	601.74172

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Carson

Contact Person : Patricia Elkins
Phone : (310) 847-3529
E-Mail : pelkins@carson.ca.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

	[A]	[B]						
	Ave. # Trash	Annual Transit Trash Collection Costs (Note 2)						[B] ÷ [A]
Fiscal Year	Receptacles	$ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	$ Total	Unit Cost
2008-09	198	$61,640					$61,640	$311.31
2007-08	198	$59,240					$59,240	$299.19
2006-07	198	$27,240			$113,010		$140,250	$708.34
2005-06	210	$30,240					$30,240	$144.00
2004-05	210	$30,240					$30,240	$144.00
2003-04	210	$30,240					$30,240	$144.00
2002-03	210	$30,240					$30,240	$144.00

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Bellflower

Contact Person : Bernardo Iniguez
Phone : 562-804-1424, ext. 2233
E-Mail : biniguez@bellflower.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	189	$96,876	$2,519				$99,395	525.89947
2007-08	189	$96,876	$1,794				$98,670	522.06349
2006-07	189	$96,876	$1,490		$1,383		$99,749	527.77249
2005-06	189	$96,876	$2,187		$1,146		$100,209	530.20635
2004-05	189	$93,497	$1,801				$95,298	504.22222
2003-04	189	$89,925	$1,901				$91,826	485.85185
2002-03	189	$81,047	$267			$3,421	$84,735	448.33333

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : Azusa

Contact Person : Cary Kalscheuer/Donna Abbott
Phone : 626-812-5174/626-812-5206
E-Mail : ckalscheuer@ci.azusa.ca.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year		[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09		13	$8,977	$5,179	$5,395			$19,551	1503.9231
2007-08		13	$8,977	$5,179	$5,395			$19,551	1503.9231
2006-07	4 Mos.	13	$2,992	$1,726	$1,799			$6,517	501.30769
2005-06								$0	#DIV/0!
2004-05								$0	#DIV/0!
2003-04								$0	#DIV/0!
2002-03								$0	#DIV/0!

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Artesia

Contact Person : Maria Dadian
Phone : (562) 865-6262
E-Mail : mdadian@cityofartesia.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	9	$8,352	$0	$0	$0	$3,343	$11,695	1,299.49
2007-08	9	$8,352				$3,343	$11,695	1,299.44
2006-07	9	$8,352				$3,091	$11,443	1,271.41
2005-06	9	$8,352				$3,091	$11,443	1,271.41
2004-05	9	$8,352				$3,893	$12,245	1,360.53
2003-04	9	$8,352				$2,664	$11,016	1,224.00
2002-03	9	$8,352				$2,264	$10,616	1,179.56
						$21,689	$80,153	

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: Consolidated Disposal

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : Covina

Contact Person : Vivian Castro
Phone : 626-384-5484
E-Mail : vcastro@covinaca.gov

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	124	$38,628	$5,280		$8,415		$52,323	421.95968
2007-08	124	$38,628	$10,416				$49,044	395.51613
2006-07	120	$37,350	$10,080				$47,430	395.25
2005-06	124	$38,500					$38,500	310.48387
2004-05	124	$38,450		$1,032			$39,482	318.40218
2003-04	126	$39,075					$39,075	310.11905
2002-03	123	$38,150					$38,150	310.1626

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Signal Hill

Contact Person : Josh Rosenbaum
Phone : (562) 989 - 7355
E-Mail : jrosenbaum@cityofsignalhill.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	50	$600	$19,323	$0	$0		$19,923	398.46
2007-08	50	$600	$18,083	$0	$0	$540	$19,223	384.46
2006-07	50	$600	$18,083	$0	$0		$18,683	373.66
2005-06	50	$600	$18,083	$0	$0		$18,683	373.66
2004-05	50	$600	$18,083	$0	$0		$18,683	373.66
2003-04	50	$600	$16,526	$0	$0	$540	$17,666	353.32
2002-03	50	$600	$16,526	$0	$0		$17,126	342.52

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: **The Pick-Up costs include $50 per month for trash bag liners.**
Other cots include city attorney fees associated with contract review for the transit stop collection services.

County of Los Angeles
Transit Trash Receptacle Installation Requirements
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.

Declaration of William Yan

William Yan makes the following declaration and statement under oath:

I, William Yan, Associate Civil Engineer, in the Programs Development Division of Los Angeles County Department of Public Works, declare that I have examined the Commission on State Mandates' Municipal Storm Water and Urban Runoff Discharges test claim decision which provides reimbursement for compliance with the State mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

I declare that it is my information or belief that in order to comply with the placement requirements [above], the following types of transit trash receptacle installation activities are reasonably necessary:

> Planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:
>
> 1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid, advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles and install receptacles.

I declare that it is my information or belief that to prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be constructed with a concrete pad.

I declare that it is my information or belief that proper selection of receptacle and pad types, evaluation of appropriate placement of receptacles and preparation of engineering specifications and/or drawings are necessary for installation of trash receptacles.

I declare that it is my information or belief that securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles.

I declare that it is my information or belief that securing transit trash receptacles would reduce the time the receptacle would be out of service and not available to collect trash.

I declare that it is my information or belief that the concrete pads would provide adequate bolting surface for large-capacity transit trash receptacles which require less collection frequency.

I declare that it is my information or belief that the transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement cost.

I declare that it is my information or belief that the dome covers and the solid trash receptacle liners prevent rain water from going into the receptacles, thereby causing trash to spill out and flow into the storm drains.

I declare that it is my information or belief that the use of dome covers and the solid trash receptacle liners meets the intent of the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) by preventing pollutants from entering the storm drains.

I declare that it is my information or belief that, for all of the above reasons, transit trash receptacle installation activities as specified herein are reasonably necessary to comply with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) and, accordingly, are reimbursable.

I am personally conversant with the foregoing facts and, if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

4/26/10 ALHAMBRA, CA.
Date and Place

Signature

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Exhibit 3

Los Angeles County
Revised Parameters and Guidelines and Proposed Standard Costs
Municipal Storm Water and Urban Runoff Discharges Test Claims

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached revised parameters and guidelines [Ps&Gs] and proposed standard costs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program. This version of the (above captioned) Ps&Gs updates the draft which was timely filed by the County on August 28, 2009 and includes reasonable reimbursement methodology [RRM] provisions to simplify claiming repetitive tasks.

I declare that I have met and conferred with eligible claimants and their representatives in developing the County's revised (above captioned) Ps&Gs and proposed standard costs. .

I declare that it is my information and belief that the activities set forth in the revised (above captioned) Ps&Gs are reasonably necessary in providing municipal storm water services which were found to be reimbursable in the Commission on State Mandates statement of decision, adopted on July 31, 2009.

I declare that it is my information and belief that costs incurred in performing the specified activities which are set forth in the County's revised (above captioned) Ps&Gs are reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

5/25/10; Los Angeles, CA
Date and Place

Signature

Exhibit 4

LEAGUE OF CALIFORNIA CITIES

CSAC

May 24, 2010

Commission on State Mandates
Attn: Nancy Patton, Assistant Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Support for Reasonable Reimbursement Methodology (RRM) for Transit Trash Collection Program (SB 90 Stormwater Trash Reimbursement)
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CA S004001; Part 4, Section F.5.c.3

Dear Ms. Patton:

On behalf of the League of California Cities (League) and the California State Association of Counties (CSAC), we write to express our joint support for the reasonable reimbursement methodology (RRM) devised for the Municipal Storm Water and Urban Runoff Discharges mandate. The RRM was developed following a survey of six cities (Azusa, Artesia, Bellflower, Carson, Downey and Signal Hill) and Los Angeles County regarding the actual costs of this program. Through the responses, it was determined that the per unit cost per trash pickup was approximately $6.75. The League and CSAC are in full support of this calculation. If approved, it will ease the administrative burden of filing and processing mandate claims for both the state and local agencies.

The process for devising RRMs was created for just that reason. Some mandates lend themselves to a per-unit reimbursement that fairly approximates each agency's cost, though it might not reflect the full actual cost in a specific year. Using this methodology has the potential to reduce the cost to process mandate claims for both locals and the state. We are pleased that the state and local agencies have been able to navigate the new process and hope that this success will smooth the way for future mandate reimbursements as well.

If you have any questions about our position, please contact either Dan Carrigg (916/658-8200 or dcarrigg@cacities.org) or Jean Kinney Hurst (916/327-7500 ext. 515 or jhurst@counties.org).

Sincerely,

Daniel Carrigg
Legislative Director
League of California Cities

Jean Kinney Hurst
Legislative Representative
California State Association of Counties

cc: City Managers, City of Azusa, Artesia, Bellflower, Carson, Downey and Signal Hill
William T Fujioka, CEO, County of Los Angeles
Allan Burdick, Staff Director, SB 90 Service
Regional Managers, League of California Cities, Los Angeles Region

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 27th day of May 2010, I served the attached:

Documents: Los Angeles County's revised Parameters and Guidelines (Ps&Gs) and proposed standard costs for the Municipal Storm Water and Urban Runoff Discharges test claims, including *a 1 page cover letter of Wendy L. Watanabe, a 17 page Ps&Gs document and 4 exhibits, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by e-mailing a PDF copy of the document(s) listed above to the Commission on State Mandates and mailing the original-signed set to the Commission.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of May 2010 at Los Angeles, California.

Lorraine Hadden

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of May 2010 at Los Angeles, California.

Lorraine Hadden

Commission on State Mandates

Original List Date:
Last Updated: 3/22/2010
List Print Date: 05/17/2010
Claim Number: 03-TC-04, 19, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Mr. Clark Moseley City of El Monte 11333 Valley Boulevard El Monte, CA 91731-3293	Tel: Fax:	(626) 580-2001 626-580-2274
Ms. Dorothy Rice State Water Resources Control Board P.O. Box 2815 Sacramento, CA 95812-2815	Tel: Fax:	(916) 341-5615 (916) 341-5621

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Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	**Claimant Representative** Tel: Fax:	(916) 471-5538 (916) 366-4838
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	**Claimant Representative** Tel: Fax:	(916) 485-8102 (916) 485-0111
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: Fax:	(916) 727-1350 (916) 727-1734
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: Fax:	(949) 644-3127 (949) 644-3339
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: Fax:	(916) 939-7901 (916) 939-7801
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Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

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original signed set

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June 1, 2010

RECEIVED
JUN 04 2010
COMMISSION ON
STATE MANDATES

VIA E-MAIL AND FIRST-CLASS MAIL

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

Re: Revised Parameters and Guidelines Submitted by Cities Regarding Transit Trash Receptacles Required by Los Angeles Regional Water Quality Control Board Executive Order

Dear Ms. Higashi:

Enclosed with the mailed copy please find the original plus seven copies of the Revised Parameters and Guidelines submitted by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill concerning the state mandate found by the Commission in its Statement of Decision dated July 31, 2009 regarding trash receptacles required under the Los Angeles Regional Board municipal stormwater permit. These revised parameters and guidelines include a Reasonable Reimbursement Methodology.

Please contact the undersigned if you have any questions.

Very truly yours,

David W. Burhenn

Encl.
cc: Mailing List (w/encl.)

ORIGINAL

Narrative in Support of Revised Parameters and Guidelines submitted by Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill

The Revised Parameters and Guidelines ("Revised Ps & Gs") proposed by the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill ("Claimants") can be found on pages 4-12. These Ps & Gs provide the basis for reimbursing local agencies for certain costs incurred in implementing the municipal storm permit issued to the County of Los Angeles and cities therein, California Regional Water Quality Control Board, Los Angeles Region, Executive Order Number 01-182, Permit Number CAS004001, December 13, 2001 ("Permit"). The Revised Ps & Gs have been revised from the Ps & Gs submitted to Commission on State Mandates ("Commission") staff on August 27, 2009 to include a Reasonable Reimbursement Methodology ("RRM") consistent with the requirements of Government Code section 17518.5.

As set forth below and in the Revised Parameters and Guidelines and Proposed Standard Costs document filed under separate cover by the County of Los Angeles ("County Ps & Gs"), a survey was conducted of various municipalities affected by the Permit's requirement to place and maintain trash receptacles at transit stops, a mandate found to be reimbursable by the Commission on July 31, 2009. The survey was conducted among both the County and various city claimants.

That survey, which included responses from large, medium-sized and smaller municipalities, determined that for repetitive trash collection activities, it was appropriate to use a standard unit cost figure of $6.75 per receptacle per collection, adjusted upwards and downwards to reflect cost of living adjustments during the 2002-2009 period covered by the test claim.

Standard Unit Costs

The standard unit costs included in the Revised Ps & Gs were developed from a survey of a representative sample of eligible claimants in accordance with the RRM requirements found in Government Code section 17518.5(b):

> (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

Under the auspices of the California State Association of Counties and the California League of Cities, several jurisdictions were surveyed.[1] The sample was representative of the eligible claimants, as it included large, mid-sized and small jurisdictions.

It should be noted that the cities of Beverly Hills and Commerce were removed from the sample when it was noted that they were located in watersheds where a trash total

[1] *See* page 1 of Exhibit 1, attached hereto, for a list of claimants included in the sample.

maximum daily load ("TMDL")[2] had been adopted. Jurisdictions covered under the Permit to the extent that they are not subject to a trash TMDL are eligible claimants.

In addition, the survey results reflect the variation in costs among local agencies in implementing the mandate in a cost-efficient manner, as required by Government Code section 17518.5(c). For example, some agencies found that using in-house staff and resources to perform the trash collection mandate was cost-efficient, while other agencies awarded contracts to vendors to perform the mandate. Some agencies used both in-house and contract performance methods during the survey period. Accordingly, the standard unit cost survey results reflect the variation in costs among local agencies to implement the mandate in a cost-efficient manner.

It should be noted that survey responses from an eligible claimant, the city of Norwalk, were not used in computing the survey results. There, the contractor billed the city for the combined costs of trash collection and bus stop cleaning and it was not possible to determine the portion of costs that should be allocated to trash collection activities.

The survey also meets the requirements in Government Code section 17518.5(d):

> "Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, *uniform cost allowances*, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider *local costs* and state reimbursements *over a period* of greater than one fiscal year, but *not exceeding 10 years*." (emphasis added.)

Here, Claimants' proposed RRM provides a uniform cost allowance. Further, this allowance is based on local costs incurred over a seven year period (July 1, 2002 through June 30, 2009), which does not exceed the ten-year limitation.

Therefore, pertinent RRM requirements found in Government Code section 17518.5 have been met and reimbursement is required as specified herein.

RRM Survey Results

The RRM survey, summarized on page 1 of Exhibit A attached hereto, provide several results, including a weighted average cost of $6.75 per trash collection over the survey period. This average was weighted to reflect the percentage of the total surveyed trash collections performed by a specific survey respondent. A respondent's percentage was then multiplied by that respondent's unit cost to obtain the amount of unit cost

[2] A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive, plus a margin of safety, and still meet water quality standards. Trash TMDLs have been established for the Los Angeles River and Ballona Creek; thus, to the extent that agencies were located in these watersheds, they were not covered by the mandate.

attributable to that respondent. The sum of all respondents' unit costs was then computed to obtain a weighted mean average cost. This process was used so that the unit costs of respondents performing more trash collection were given greater weight than respondents performing fewer trash collections. Otherwise, the unit cost of a respondent performing 2,513 trash collection would be given the same weight as the unit cost of a respondent performing 39 collections.

It is proposed that the weighted mean average rate of $6.75 per collection be assigned to the 2005-06 year. This designation is reasonable and proper considering that the $6.75 rate is an average rate over the entire reimbursement period and 2005-06 is the middle year in the seven-year reimbursement period.

It is further proposed that the $6.75 rate for 2006-07 and future years be increased by the cost of living adjustments used by the State Controller's Office ("SCO") in promulgating annual claiming instructions. It is also proposed that the $6.75 rate for 2004-05 and prior years be decreased by SCO's cost of living adjustments.

Accordingly, for all of the above reasons, Claimants propose that the Commission adopt the RRM as submitted herein.

Declaration Supporting Receptacle Installation Requirements

In addition, Claimants have attached as Exhibit 2 a declaration from William Yan of the County of Los Angeles Department of Public Works (which is also attached as Exhibit 2 to the County Ps & Gs) regarding the steps that are reasonably necessary to install trash receptacles. The Claimants adopt and incorporate Mr. Yan's declaration, which supports Claimants' claim for costs associated with the installation of receptacles.

Support from Statewide Municipality Organizations

Claimants hereby acknowledge the support of the League of California Cities and the California State Associates of Counties, who wrote to the Commission on May 24, 2010, supporting the RRM methodology and calculation of $6.75 for the standard unit cost.

Reimbursement Options

The proposed Ps & Gs submitted last August proposed two alternatives of the actual method for reimbursement, actual costs method and time study method. In these Revised Ps & Gs, as noted above, the RRM option is set forth as a third reimbursement option for the repetitive task of trash collection activities. Claimants request that the RRM option be authorized for use as a reimbursement option for the repetitive task of trash collection, as further described in the Ps & Gs.

Claimants' Revised Ps & Gs are presented on the following pages:

PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board,
Los Angeles Region, Executive Order Number 01-182,
December 13, 2001, Permit Number CAS004001,
Part 4, Section F.5.c. 3.

Transit Trash Receptacles

I. Summary of the Mandate

The consolidated test claim, filed by the County of Los Angeles and several cities, alleged various activities related to the placement and maintenance of trash receptacles and inspection of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, Permit No. 01-182, CAS004001 ("Permit").

The Commission found on July 31, 2009 that the activity called for in Part 4.F.5.c.3. of the Permit was a reimbursable state mandate on local agencies subject to the Permit but not subject to a trash total maximum daily load ("TMDL"):

"Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission found that this requirement was not a federal mandate under the Clean Water Act and that it was a state mandate requiring a new program or higher level of service that could not be funded through fee authority within the meaning of Government Code section 17556, subdivision (d).

The Commission also found that the other issues raised by the consolidated test claim, relating to Parts 4.C.2.a., 4.C.2.b. and 4.E. of the Permit and requiring inspections of various facilities, while not federal mandates under the Clean Water Act, were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556(d), sufficient to pay for the inspections.

II. Eligible Claimants

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the Permit, to the extent that the same are not or were not subject to coverage under a trash TMDL requirement.

III. Period of Reimbursement

The Permit and the test claim executive order took effect on December 13, 2001. The requirement to install trash receptacles commenced with the effective date of the Permit and required installation of trash receptacles by February 3, 2003. The Permit imposes a continuing requirement to maintain the trash receptacles.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Government Code section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Thus, the reimbursement period is considered to have begun on July 1, 2002.

Costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561(d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed, except where reasonable reimbursement methodology ("RRM") rates are adopted for the repetitive task of trash collection set forth in Section IV.C(2)(a) below. Claimants may elect to use either actual costs or RRM rates for the trash collection task.

A. Actual Costs

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, including time survey forms, time logs, sign-in sheets, and invoices, receipts and unit cost studies using source documents.

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.

Claimants also may use time studies to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office ("SCO"). The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. An employee's reimbursable time is totaled and then multiplied by his/her productive hourly rate, as that term is defined in the SCO's annual claiming instruction manual, found at www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff members, at least two staff members should be time surveyed. If 10 or more staff members are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

B. Reasonable Reimbursement Methodology

With respect to costs incurred as identified in Section IV.C(2)(a) below, Claimants may elect to be reimbursed using a RRM methodology. Under this RRM, the annual standard or unit cost for each trash collection or "pick-up" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle) to compute reimbursement for trash collection activities.

The annual standard costs for a transit trash collection are:

2008-09	$6.75	plus three annual cost of living adjustments[3]
2007-08	$6.75	plus two annual cost of living adjustments
2006-07	$6.75	plus one annual cost of living adjustment
2005-06	$6.75	
2004-05	$6.75	less one annual cost of living adjustment
2003-04	$6.75	less two annual cost of living adjustments
2002-03	$6.75	less three annual cost of living adjustments

[3] The cost of living adjustments to be used are proposed to be the cost of living adjustments used by the SCO in promulgating annual claiming instructions.

C. Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

1. Installation of Trash Receptacles These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management); and, construction and installation of replacement trash receptacles/pads on a non-individual basis. The five transit trash installation claiming categories are:

a. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

b. Evaluate and select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

c. Contract preparation, specification review process, bid advertising, and review and award of bid.

d. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles/pads.

e. Repeat steps (c-d) when necessary for replacement of receptacles/pads on non-individual basis.

2. Maintenance of Trash Receptacles These activities include collection of trash, inspection of receptacles, maintenance (repairing, painting, etc.) and replacing or moving individual trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

a. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

b. Inspection of receptacles for wear, cleaning, and other maintenance needs.

c. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and pads, replacement of liners, and cost of paints, cleaning supplies and liners.

d. Replacement of individual damaged or missing receptacles or pads, including costs of purchase and installation of replacement receptacles or pads and disposal/recycling of replaced receptacles or pads.

e. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

D. Methods for Claiming Costs

Eligible claimants must use the actual cost method to claim costs for the tasks reflected in Sections IV.C(1)(a-e) and IV.C(2)(b-e) above.

Eligible claimants may use either the actual cost or RRM methods to claim costs for the collection of trash reflected in Section IV.(C)(2)(a) above.

V. Claim Preparation and Submission

Each claim for reimbursement must be timely filed and must identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of these Parameters and Guidelines.

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. Reimbursement for personnel services includes compensation paid for employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

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. Capital Assets and Equipment

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

5. Travel

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

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

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 utilizing the procedure provided in the Office of Management and Budget ("OMB") Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal ("ICRP") if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87 Attachments A and B) 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 which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) 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 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 by a local agency is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim was filed or last amended, which 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 Savings and Other Reimbursements

Any offsetting savings 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. Any reimbursement for this mandated received from any source, including state or federal reimbursement, shall be identified and deducted from a claim.

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 60 days after receiving the adopted Parameters and Guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the Statement of Decision and the Parameters and Guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute notice of the right of the local agencies to file reimbursement claims based upon the Parameters and Guidelines adopted by the Commission.

IX. Remedies Before the Commission

Upon request of a local agency, the Commission shall review the claiming instructions issued by the State 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.

Requests may be made to amend the Parameters and Guidelines pursuant to Government Code section 17557(d) and title 2, California Code of Regulations, section 1183.2.

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

X. Legal and Factual Basis for Parameters and Guidelines

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

EXHIBIT 1

Transit Trash Collection Unit [Per Pickup] Costs Survey Results (Note a)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Respondent Survey	Fiscal Years 2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	(X) Average (Note b)	(Y) # Pickups @ year	(X/Y=Z) Unit Cost @ Pickup	M // Weighted # Units (Note d)	M/Total=D Ave. Adjustment % of Total	DxZ Result
1 Los Angeles County Beverly Hills [in watershed] Norwalk [e]	$893	$1,241	$1,152	$1,122	$1,127	$1,132	(Note c)	$1,111	156	$7.12	2,513	31.09%	$2.21
2 Downey	$347	$321	$320	$290	$272	$581	$602	$390	52	$7.51	1,497	18.52%	$1.39
3 Carson [2.57x52 wks=134]	$311	$299	$708	$144	$144	$144	$144	$271	134	$2.02	1,434	17.74%	$0.36
4 Bellflower	$526	$522	$528	$530	$504	$486	$448	$506	52	$9.74	1,323	16.37%	$1.59
5 Azusa	$1,504	$1,504	$1,504 [f]					$1,504	104	$14.46	39	0.48%	$0.07
6 Artesia Commerce [in watershed]	$1,299	$1,299	$1,271	$1,271	$1,361	$1,224	$1,180	$1,272	104	$12.23	63	0.78%	$0.10
7 Covina	$422	$396	$395	$310	$318	$310	$310	$352	52	$6.76	865	10.70%	$0.72
8 Signal Hill	$398	$384	$374	$374	$374	$353	$343	$371	52	$7.14	350	4.33%	$0.31
Average by Respondent								**$825**		**Totals**	8,084	100.00%	
Average by Year	$814	$852	$893	$674	$683	$705	$605	**$747**		**Weighted Ave**			**$6.75**

Notes

[a] This survey table presents data by fiscal year and by respondent. A weighted mean average per pickup cost of $6.75 was found.

[b] Average annual unit cost per trash receptacle over the reimbursement period. Totals were divided by the number of nonzero years.

[c] During FY 02-03, trash receptacles were installed over a 3-month period. During the installation period, the cleaning and trash pick-up service was first handled in-house and later by contract. Because the number of trash receptacles was not a fixed number during this period and the maintenance service was handled in-house and by contract, it is difficult to accuractely annualize the unit cost for FY 02-03.

[d] The number of units is the sum of all trash receptacles reported by respondents in each average annual cost year [above].

[e] Survey result was inconclusive as contractor billed city for the combined costs of trash collection and bus stop cleaning.

[f] $6,517 was incurred during four months of 2006-07. Annualized cost was $19,551 for 13 receptacles or 1,504 per receptacle.

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : LA County unincorporated area

Contact Person : Wendy Bui
Phone : (626) 458-3968
E-Mail : wbui@dpw.lacounty.gov

Please Send Survey Response to:

Jean Hurst, California State Association of Counties jhurst@counties.org
and cc: Howard Gest , City Representative hgest@burhenngest.com
Leonard Kaye, County Representative lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	470	$319,411	$100,233				$419,645	$892.54
2007-08	429	$426,584	$106,312				$532,896	$1,241.20
2006-07	418	$407,240	$73,811				$481,051	$1,151.99
2005-06	404	$386,988	$66,536				$453,524	$1,121.89
2004-05	406	$386,263	$71,211				$457,474	$1,127.48
2003-04	386	$370,224	$66,346				$436,569	$1,131.74
2002-03	324	$86,151	$15,779				$101,930	$314.92
		$2,382,861	$500,227				$2,883,088	

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

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Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction: City of Downey, CA

Contact Person: Gerald Greene
Phone: 562-904-7112
E-Mail: ggreene@downeyca.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	239	$82,900	$0	$0	$0	$0	$82,900	346.86192
2007-08	239	$76,800	$0	$0	$0	$0	$76,800	321.33891
2006-07	239	$76,500	$0	$0	$0	$0	$76,500	320.08368
2005-06	239	$69,400	$0	$0	$0	$0	$69,400	290.37657
2004-05	239	$64,900	$0	$0	$0	$0	$64,900	271.54812
2003-04	151	$87,700	$0	$0	$0	$0	$87,700	580.7947
2002-03	151	$71,200	$0	$0	$19,663	$0	$90,863	601.74172

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Carson

Contact Person : Patricia Elkins
Phone : (310) 847-3529
E-Mail : pelkins@carson.ca.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	198	$61,640					$61,640	$311.31
2007-08	198	$59,240					$59,240	$299.19
2006-07	198	$27,240			$113,010		$140,250	$708.34
2005-06	210	$30,240					$30,240	$144.00
2004-05	210	$30,240					$30,240	$144.00
2003-04	210	$30,240					$30,240	$144.00
2002-03	210	$30,240					$30,240	$144.00

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Bellflower

Contact Person : Bernardo Iniguez
Phone : 562-804-1424, ext. 2233
E-Mail : biniguez@bellflower.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	189	$96,876	$2,519				$99,395	525.89947
2007-08	189	$96,876	$1,794				$98,670	522.06349
2006-07	189	$96,876	$1,490		$1,383		$99,749	527.77249
2005-06	189	$96,876	$2,187		$1,146		$100,209	530.20635
2004-05	189	$93,497	$1,801				$95,298	504.22222
2003-04	189	$89,925	$1,901				$91,826	485.85185
2002-03	189	$81,047	$267			$3,421	$84,735	448.33333

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : Azusa

Contact Person : Cary Kalscheuer/Donna Abbott
Phone : 626-812-5174/626-812-5206
E-Mail : ckalscheuer@ci.azusa.ca.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year		[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09		13	$8,977	$5,179	$5,395			$19,551	1503.9231
2007-08		13	$8,977	$5,179	$5,395			$19,551	1503.9231
2006-07	4 Mos.	13	$2,992	$1,726	$1,799			$6,517	501.30769
2005-06								$0	#DIV/0!
2004-05								$0	#DIV/0!
2003-04								$0	#DIV/0!
2002-03								$0	#DIV/0!

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Artesia

Contact Person : Maria Dadian
Phone : (562) 865-6262
E-Mail : mdadian@cityofartesia.us

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	9	$8,352	$0	$0	$0	$3,343	$11,695	1,299.49
2007-08	9	$8,352				$3,343	$11,695	1,299.44
2006-07	9	$8,352				$3,091	$11,443	1,271.41
2005-06	9	$8,352				$3,091	$11,443	1,271.41
2004-05	9	$8,352				$3,893	$12,245	1,360.53
2003-04	9	$8,352				$2,664	$11,016	1,224.00
2002-03	9	$8,352				$2,264	$10,616	1,179.56
						$21,689	$80,153	

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: Consolidated Disposal

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : Covina

Contact Person : Vivian Castro
Phone : 626-384-5484
E-Mail : vcastro@covinaca.gov

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	124	$38,628	$5,280		$8,415		$52,323	421.95968
2007-08	124	$38,628	$10,416				$49,044	395.51613
2006-07	120	$37,350	$10,080				$47,430	395.25
2005-06	124	$38,500					$38,500	310.48387
2004-05	124	$38,450		$1,032			$39,482	318.40218
2003-04	126	$39,075					$39,075	310.11905
2002-03	123	$38,150					$38,150	310.1626

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: _____

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Signal Hill

Contact Person : Josh Rosenbaum
Phone : (562) 989 - 7355
E-Mail : jrosenbaum@cityofsignalhill.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	50	$600	$19,323	$0	$0		$19,923	398.46
2007-08	50	$600	$18,083	$0	$0	$540	$19,223	384.46
2006-07	50	$600	$18,083	$0	$0		$18,683	373.66
2005-06	50	$600	$18,083	$0	$0		$18,683	373.66
2004-05	50	$600	$18,083	$0	$0		$18,683	373.66
2003-04	50	$600	$16,526	$0	$0	$540	$17,666	353.32
2002-03	50	$600	$16,526	$0	$0		$17,126	342.52

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here: **The Pick-Up costs include $50 per month for trash bag liners.**
Other cots include city attorney fees associated with contract review for the transit stop collection services.

EXHIBIT 2

County of Los Angeles
Transit Trash Receptacle Installation Requirements
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.

Declaration of William Yan

William Yan makes the following declaration and statement under oath:

I, William Yan, Associate Civil Engineer, in the Programs Development Division of Los Angeles County Department of Public Works, declare that I have examined the Commission on State Mandates' Municipal Storm Water and Urban Runoff Discharges test claim decision which provides reimbursement for compliance with the State mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

I declare that it is my information or belief that in order to comply with the placement requirements [above], the following types of transit trash receptacle installation activities are reasonably necessary:

> Planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:
>
> 1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid, advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles and install receptacles.

I declare that it is my information or belief that to prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be constructed with a concrete pad.

I declare that it is my information or belief that proper selection of receptacle and pad types, evaluation of appropriate placement of receptacles and preparation of engineering specifications and/or drawings are necessary for installation of trash receptacles.

I declare that it is my information or belief that securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles.

I declare that it is my information or belief that securing transit trash receptacles would reduce the time the receptacle would be out of service and not available to collect trash.

I declare that it is my information or belief that the concrete pads would provide adequate bolting surface for large-capacity transit trash receptacles which require less collection frequency.

I declare that it is my information or belief that the transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement cost.

I declare that it is my information or belief that the dome covers and the solid trash receptacle liners prevent rain water from going into the receptacles, thereby causing trash to spill out and flow into the storm drains.

I declare that it is my information or belief that the use of dome covers and the solid trash receptacle liners meets the intent of the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) by preventing pollutants from entering the storm drains.

I declare that it is my information or belief that, for all of the above reasons, transit trash receptacle installation activities as specified herein are reasonably necessary to comply with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) and, accordingly, are reimbursable.

I am personally conversant with the foregoing facts and, if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

4/26/10 ALHAMBRA, CA.
Date and Place

Signature

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On June 1, 2010 I served the foregoing document, described as

Narrative in Support of and Revised Parameters and Guidelines submitted by Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 1, 2010 at Los Angeles, California.

Danette Armstead

Commission on State Mandates

Original List Date:
Last Updated: 3/22/2010
List Print Date: 05/17/2010
Claim Number: 03-TC-04, 19, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

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Mr. Michael Lauffer
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621 Capitol Mall, 18th Floor
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Ms. Tracy Egoscue Los Angeles Regional Water Quality Control Board 320 West 4th Street, Suite 200 Los Angeles, CA 90013-2343	Tel: Fax:	(213) 576-6600 (213) 576-6840
Mr. Leonard Kaye Los Angeles County Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 974-9791 (213) 617-8106
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913
Mr. Sergio Ramirez City of Foster City/Estero Municipal Improvement District 100 Lincoln Centre Drive Foster City, CA 94404	Tel: Fax:	(650) 286-3544
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
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~~Mr. Howard Gest~~ David W. Burhenn & Gest, LLP 624 S. Grand Ave., Suite 2200 ~~Los Angeles, California 90017~~	**Claimant** Tel: Fax:	(213) 688-7715 (213) 688-7716
Ms. Emmerline Foote City of Inglewood One Manchester Blvd., Suite 860 Inglewood, CA 90301	Tel: Fax:	(310) 412-5111
Mr. Clark Moseley City of El Monte 11333 Valley Boulevard El Monte, CA 91731-3293	Tel: Fax:	(626) 580-2001 626-580-2274
Ms. Dorothy Rice State Water Resources Control Board P.O. Box 2815 Sacramento, CA 95812-2815	Tel: Fax:	(916) 341-5615 (916) 341-5621

Mr. Richard Montevideo Rutan & Tucker, LLP P.O. Box 1950 Costa Mesa, CA 92626-1950	Tel: (714) 662-4642 Fax:	
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723	
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5538 Fax: (916) 366-4838	**Claimant Representative**
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: (916) 485-8102 Fax: (916) 485-0111	**Claimant Representative**
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734	
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339	
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801	
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527	
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: (916) 443-9136 Fax: (916) 443-1766	
Ms. Elizabeth Miller Jennings State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	Tel: (916) 341-5161 Fax: (916) 341-5199	

Exhibit H

JOHN CHIANG
California State Controller

July 23, 2010

Ms. Nancy Patton
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
JUL 26 2010
COMMISSION ON
STATE MANDATES

RE: **Revised Proposed Parameters and Guidelines and Reasonable Reimbursement Methodology**
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Part 4, Section F.5.c.3.
County of Los Angeles, Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce Norwalk, Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, and Signal Hill, Co-claimants

Dear Ms. Patton:

We have reviewed the revised proposed parameters and guidelines submitted by the County of Los Angeles and the various cities, respectively. Below are our comments and recommendations; proposed additions are underlined and deletions are indicated with strikethrough as follows:

III. PERIOD OF REIMBURSEMENT

"Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs for the subsequent year may be included on the same claim, if applicable~~. Pursuant to section 17561, subdivision (d)(1)(A) of the Government Code, all claims for reimbursement of initial ~~years'~~ fiscal year costs shall be submitted to the State Controller within 120 days ~~of notification by the State Controller~~ of the issuance date of claiming instructions."

" If the total costs for a given year do not exceed ~~$200~~ 1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564."

COMMENTS: The County of Los Angeles' proposed revised parameters and guidelines on June 1, 2010.

Paragraph 6, Page 9

a. *Delete 2nd sentence on Estimated Costs.* Chapter 6, Statutes of 2008 (effective February 16, 2008), eliminates the option of filing an estimated reimbursement claim.

b. *Change 3rd sentence on language for minimum claim.* The language needs to be specific as to the initial fiscal year costs and the time frame 120 days from the issuance date, instead of the date of notification by SCO.

2. *7th Paragraph:*

Change minimum amount from $200 to $1,000. GC section17564 (a) provides that no claim may be filed pursuant to Section 17551 and 17561, unless such a claim exceeds one thousand dollars ($1,000).

IV. REIMBURSABLE ACTIVITIES

Paragraph 1, Page 9

"To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed, ~~except where reasonable reimbursement methodology (RRM) rates are adopted as set forth in Section IV.B. To claim repetitive trash collection activities, claimants may elect to use RRM rates, their own time study or actual costs.~~"

IV. A. Actual Costs

Paragraph 3, Page 10

"Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to ~~the~~ review and audit ~~conducted~~ by the State Controller's Office. A time study plan is necessary before conducting a time study. The claimant must retain the time study plan for audit purposes. The plan needs to identify the following:

- Time period(s) to be studied – The plan must show that all time periods selected are representative of the fiscal year, and the results can be reasonably projected to approximate actual costs;

- Activities and/or programs to be studied – For each mandated program included, the time study must separately identify each reimbursable activity defined in the mandated program's parameters and guidelines, which are derived from the program's Statement of

Decision. If a reimbursable activity in the parameters and guidelines identifies separate and distinct sub-activities, these sub-activities must also be treated as individual activities;
The reimbursable time recorded on each time survey…"

~~IV.B. Reasonable Reimbursement Methodology~~

~~"Claimants may elect to be reimbursed for their transit trash collection costs using a reasonable reimbursement methodology (RRM) as set fourth below. Under this RRM, the annual standard or unit cost for each trash collection or 'pick-up' is multiplied by the annual number of trash collections to compute reimbursement for trash collection activities."~~

~~"The annual standard costs for a transit trash collection or 'pick-up' are:"~~

~~2008-09~~	~~$6.75~~	~~plus three annual cost of living adjustments~~
~~2007-08~~	~~$6.75~~	~~plus two annual cost of living adjustments~~
~~2006-07~~	~~$6.75~~	~~plus one annual cost of living adjustment~~
~~2005-06~~	~~$6.75~~	
~~2004-05~~	~~$6.75~~	~~less one annual cost of living adjustment~~
~~2003-04~~	~~$6.75~~	~~less two annual cost of living adjustments~~
~~2002-03~~	~~$6.75~~	~~less three annual cost of living adjustments"~~

COMMENT:

Page 10, Part IV.B, Paragraph 1:

To be eligible for mandated cost reimbursement, the claimant should be used only One-time Activity for claiming. The claimants should use the "Actual Costs" method to claim costs for Installation of Trash Receptacles (subsections 1.a. to 1.e, pp. 11-12) and Maintenance of trash receptacles (subsections 2.b to 2.e), except for subsection 2.a. For uniformity and consistency, we recommend "Actual Costs" method to claim costs for the Collection of trash, Section IV. (C)(2)(a). Consequently, we propose to delete "Reasonable Reimbursement Methodology" (RRM) method and RRM table as set forth in Section IV.B.

IV.~~C~~ B. Scope of Reimbursable Activities

COMMENT: This would have to be "B" now … we're eliminating "B" above.

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

~~For each eligible claimant, the following activities are reimbursable:~~

1. ~~Installation of Trash Receptacles. The activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary~~

~~engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The five transit trash installation claiming categories are:~~

~~a. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.~~

~~b. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.~~

~~c. Contract preparation, specification review process, bid advertising, and review and award of bid.~~

~~d. Purchase of receptacles and/or construct receptacles and install receptacles.~~

~~e. Repeat steps (IV.C.1.c-d) when necessary for replacement of receptacles/pads.~~

COMMENT:

Paragraphs 3-10, Pages 11& 12

We propose to delete the activities of "Installation of Trash Receptacles" as set forth in Section IV.C of subsections 1.a to 1.e, pp 11-12 because they are outside the scope of the state mandated reimbursable costs. "On September 3, 2009, the Commission adopted a Statement of Decision... (Part4F5c3 and GC section 17514 and 17556)".

IV.~~D.~~ C. Methods for Claiming Costs

COMMENT:

Page 11-12:

We propose to delete Section IV.B. Reasonable Reimbursement Methodology above. Therefore, we recommend changing the distribution of and Section IV.C. Methods for Claiming Costs.

V. CLAIM PREPARATION AND SUBMISSION

4. ~~Capital~~ Fixed Assets and Equipment

"Report the purchase price paid for ~~capital~~ fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the ~~capital~~ fixed asset or equipment 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."

COMMENT:

Page 13, Part V:

We propose to change "Capital" to "Fixed" because "Capital" pertains to both Fixed Assets and Equipment.

Should you have any questions regarding the above, please contact Tiffany Hoang at (916) 323-1127, e-mail thoang@sco.ca.gov or Angie Lowi-Teng at (916) 323-0706, e-mail ateng@sco.ca.gov.

Sincerely,

JAY LAL, Manager
Local Reimbursement Sections

JL/ATL/th

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

RECEIVED
JUL 27 2010
COMMISSION ON STATE MANDATES

July 23, 2010

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

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the proposed revised parameters and guidelines (Ps&Gs) and reasonable reimbursement methodology (RRM) submitted by the County of Los Angeles and various municipalities (claimants) for Claim No. 03-TC-04, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges."

Finance believes the proposed RRM rate does not accurately reflect the costs incurred to implement the mandate because, as noted in our prior comments on the original proposed Ps&Gs, some of the claimants' alleged activities, e.g., cleaning costs, are not reasonably necessary to implement the mandate. This belief is based on the survey responses for the following reasons:

1. The survey responses do not clearly explain the costs associated with maintenance of the trash receptacles, e.g., cleaning. The survey of the unincorporated area of Los Angeles County shows increased cleaning costs in the amount of $7,275 from fiscal year 2005-06 to 2006-07 and $32,501 from fiscal year 2006-07 to 2007-08. The increased cleaning costs appear to be based on an increase in the average number of trash receptacles. From 2005-06 to 2006-07, the average number of trash receptacles increased by 14 and from 2006-07 to 2007-08, it increased by 11. The concern is that the ratio of increased cleaning costs to increased number of trash receptacles is not proportionate or consistent between the fiscal years. The calculation shows that increased cleaning costs were estimated at $519 ($7,275/14) per trash receptacle from 2005-06 to 2006-07, and $2,955 ($32,501/11) per trash receptacle from 2006-07 to 2007-08. Finance, however, is unclear how the increase in cleaning costs grew by $25,226 ($32,501 - $7,275) because the average number of trash receptacles decreased by three (14-11) between the fiscal years. Finance notes that the claimants have not clearly identified any proposed activities driving these cleaning cost increases. As noted on page 12 of the Ps&Gs, the claimants propose repetitive activities associated with cleaning costs, e.g., replacing trash receptacle liners. Activities such as these should have consistent costs associated with them and would not explain the significant increase identified above. Therefore, Finance asserts that, in the absence of clearly-identified activities for cleaning, we are unable to support

the inclusion of the costs of these activities in the RRM rate and suggest that they may not be reasonably necessary to carry out the mandate.

2. Some survey responses do not clearly identify the activities associated with "other" costs. For example, the survey of the City of Signal Hill reported an activity related to city attorney fees for reviewing contracts for the trash receptacle collection services at transit stops as included in "other" costs. Finance believes, however, that this activity is not reasonably necessary to implement the mandate and should be disallowed.

Unlike the claimants' proposal to increase the RRM rate by an annual cost of living adjustment (COLA) starting in 2006-07, Finance would recommend that the usage of any proposed RRM rate start from fiscal year 2002-03, and remain constant until the end of the initial reimbursement period in 2008-09. A proposed RRM rate would then increase in 2009-10 and subsequent years by the implicit price deflator for that respective year. As noted in the claimants' Ps&Gs on pages 4 and 11, the proposed RRM rate provides a uniform cost allowance that is based on local costs incurred over a seven year period (2002-03 through 2008-09). Therefore, Finance believes the RRM rate should be applied to the entire initial reimbursement period without a COLA.

Finance concludes that a fair and accurate RRM rate, if agreed upon by all relevant parties, would be an efficient way to streamline the reimbursement process. However, we would not support an RRM that is based on costs for activities that are not clearly identified or reasonably necessary to carry out the mandate.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list, which accompanied your June 9, 2010 letter, have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM—03-TC-04; 03-TC-20; and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges"

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7-28-10
at Sacramento, CA

Carla Shelton

PROOF OF SERVICE

Test Claim Name: Municipal Storm Water and Urban Runoff Discharges
Test Claim Number: CSM—03-TC-04; 03-TC-20; and 03-TC-21

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On July 23, 2010, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, as addressed on the attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 23, 2010 at Sacramento, California.

Tamara D. Johnson

Commission on State Mandates

Original List Date:
Last Updated: 3/22/2010
List Print Date: 07/08/2010
Claim Number: 03-TC-04, 19, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

03-TC-04	Transit Trash Receptacles
03-TC-19	Inspection of Industrial/Commercial Facilities
03-TC-20	Waste Discharge Requirements
03-TC-21	Stormwater Pollution Control Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

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Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: Fax:	(916) 368-9244 (916) 368-5723
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	**Claimant Representative** Tel: Fax:	(916) 471-5538 (916) 366-4838
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Exhibit I

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ROBERT A. DAVIS
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August 19, 2010

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

Dear Ms. Higashi:

LOS ANGELES COUNTY'S REVIEW OF STATE AGENCY COMMENTS REVISED PARAMETERS & GUIDELINES AND PROPOSED STANDARD COSTS MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

The County of Los Angeles respectfully submits its review of state agency comments on its parameters and guidelines (Ps&Gs) and standard costs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program which was filed with the Commission on May 27, 2010. A revised set of Ps&Gs and standard costs is also enclosed.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
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Enclosure

Los Angeles County's Review of State Agency Comments
Revised Parameters and Guidelines and Proposed Standard Costs
Municipal Storm Water and Urban Runoff Discharges Test Claims

Executive Summary

On July 31, 2009, the Commission on State Mandates (Commission) adopted a landmark decision which, for the first time in California, allowed municipalities to receive State reimbursement for storm water mandates, including the mandate to place and maintain trash receptacles at designated bus stops.

On August 28, 2009, the County filed parameters and guidelines (Ps&Gs) which permitted claiming repetitive trash collection activities using time studies. On May 27, 2010, the County filed revised Ps&Gs which added a 'reasonable reimbursement methodology' (RRM) or standard unit cost option for claiming these repetitive activities. Based on a survey of eligible claimants, a standard unit cost of $6.75 for each trash receptacle collection was found. This finding was then endorsed by the League of California Cities and the California State Association of Counties in a joint letter filed with the Commission on May 24, 2010.

On July 23, 2010, the State Department of Finance (Finance) filed comments with the Commission and concluded that the $6.75 RRM rate should apply to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment because the rate "... is based on local costs incurred over a seven year period". Finance also concluded that "... the proposed RRM rate ... increase in 2009-2010 and subsequent years by the implicit price deflator for that respective year". The County agrees with both of Finance's conclusions and has modified its Ps&Gs accordingly.

Finance staff express concerns over cleaning activity costs which were used in developing the $6.75 RRM rate. In this regard, the County addresses Finance's concerns and explains the necessity for cleaning activities and as well as annual cleaning cost increases.

On July 23, 2010, the State Controller's Office (SCO) commented that "... for uniformity and consistency" only the actual cost claiming option should be used. However, the County finds no prohibition in using the actual cost claiming option and the standard cost RRM claiming option in the same set of PS&Gs. Accordingly, the County continues to include a $6.75 standard cost RRM claiming option as well as an actual cost claiming option in its Ps&Gs.

Finance

Ms. Nona Martinez with the State Department of Finance (Finance) filed comments approving the use of a 'reasonable reimbursement methodology' (RRM) or standard unit cost claiming option under specified conditions. In this regard, she concludes that:

> "... a fair and accurate RRM rate, if agreed upon by all relevant parties, would be an efficient way to streamline the reimbursement process. However, we would not support an RRM that is based on costs for activities that are not clearly identified or reasonably necessary to carry out the mandate."

In particular, Ms. Martinez is concerned that "... the proposed ($6.75) RRM rate does not accurately reflect the costs incurred to implement the mandate because ... some of the claimants' alleged activities, e.g. cleaning costs, are not reasonably necessary to implement the mandate".

The County respectfully disagrees. Cleaning is reasonably necessary.

According to the Commission's Statement of Decision adopted on July 31, 2009, on page 71:

> "All trash receptacles shall be maintained as necessary."

Cleaning trash receptacles is necessary. In this regard, Mr. William Yan, associate civil engineer with the County's Department of Public Works, in a declaration attached as Exhibit 1, describes the routine cleaning activities that are reasonably necessary in maintaining trash receptacles. He indicates that:

> " ... routine cleaning of trash receptacles and the 10-foot area around each trash receptacle is reasonably necessary to implement the mandate
>
> ... trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any residue in order to prevent the flow of any waste to enter the storm drain and/or street gutters.
>
> ... the County provides 48 to 52 visits per year to clean trash receptacles and the 10-foot area around each trash receptacle.

> ... during each cleaning visit the County routinely cleans, washes and removes all graffiti, stickers, posters, litter, dust, dirt and weeds from each trash receptacle and immediate 10-foot area around each trash receptacle. The trash receptacle is to be maintained in a continual like new condition.
>
> ... during each cleaning visit the County shall carry an adequate supply of clean aluminum liners during the cleaning visits to ensure that liners are kept in a clean condition. County shall not allow any waste or liquid from trash receptacles or liners to enter the storm drains and/or street gutters during the cleaning of trash receptacles and liners."

Clearly, then, cleaning activities are reasonably necessary in maintaining trash receptacles at designated bus stops. Without cleaning, waste or liquid from trash receptacles or liners could enter the storm drains and/or street gutters --- precisely the result the Permit was designed to prevent.

Cleaning Costs

Regarding the RRM cost survey, Finance's commentary focuses on the County's cleaning cost component. Specifically, Ms. Martinez notes that:

> "The (RRM) survey responses do not clearly explain the costs associated with the maintenance of the trash receptacles, e.g. cleaning. The survey of the unincorporated area of Los Angeles County shows increased cleaning costs in the amount of $7,275 from fiscal year 2005-06 to 2006-07 and $32,501 from fiscal year 2006-07 to 2007-08. ... The concern is that the ratio of increased cleaning costs to increased number of trash receptacles is not proportionate or consistent between fiscal years."

In researching the cleaning cost increases noted by Finance, it was found that more than one variable (the number of trash receptacles) should be examined when studying year to year cleaning cost changes. The County found that at least three variables are related to these changes. Mr. William Yan, County's engineer, in his declaration attached as Exhibit 1, reports that:

> "... the costs of providing the (above) cleaning activities were calculated from two separate Bus Stop Amenities Maintenance contracts (North

and South County) using three variables: (1) the average number of trash receptacles, (2) the unit cleaning cost per visit, and (3) the frequency of cleanings per month."

Regarding the specific year-to-year cleaning cost increases questioned by Finance, Mr. Yan's examination finds:

" FY 2005-06 to FY 2006-07: $7,275 increase

- North County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit. We were also charged for 48 cleaning visits per receptacle in FY2005-06 versus 52 cleaning visits in FY 2006-07.

- South County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit and an increase in the number of number of trash receptacles. We were also charged for 48 cleaning visits per receptacle versus in FY2005-06 versus 52 cleaning visits in FY 2006-07.

FY 2006-07 to FY 2007-08: $32,501 increase

- North County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.59 per visit. With the award of a new contract, the unit cost increased again from $4.59 to $8.00 per visit.

- South County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.43 per visit."

Mr. Yan, provides an in-depth analysis of the major cause of the (above) increases in per visit costs and indicates that:

"Both the North County and the South County maintenance contracts included a clause which allowed for a Living Wage Adjustment for the first (April 2006- March 2007) and second (April 2007- March 2008) option years of the contract. The increases were 2.5% and 1.87% respectively. In addition, the rates were increased again. Prior to the end of the second option year, the County Board of Supervisors adopted a revised Living

Wage Program (Los Angeles County Code Sections 2.201.010-2.201.100); this further increased the price by about 30% effective July 1, 2007.

In addition, on March 2008, the County awarded a new contract for the North County Maintenance Program, which included an increase in the unit cleaning cost from $4.59 to $8.00."

Accordingly, as Finance has requested, the factors "driving ... cleaning cost increases" have been identified and explained.

Further analysis demonstrates that annual cleaning cost increases are modest when viewed over an extended reimbursement period (July 1, 2003 through June 30, 2009). Here, the year-to-year increase averages only 5.91%[1], significantly different than the isolated 40.34% (2007-08) increase discussed in Finance's commentary.

Finance comments on the cost of living adjustments to the RRM rate proposed by the County and recommends that the $6.75 rate apply to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment because the rate "... is based on local costs incurred over a seven year period". In addition, Finance recommends that "... the proposed RRM rate ... [should] increase in 2009-2010 and subsequent years by the implicit price deflator for that respective year". Here, the County agrees with both of Finance's recommendations and has modified its Ps&Gs accordingly.

State Controller's Office

The State Controller's Office (SCO) comments were filed by Mr. Jay Lal, Local Reimbursement Section Manager. In discussing the County's proposed use of an actual claiming option as well as an RRM claiming option in the same reimbursement program, Mr. Lal concludes that "... for uniformity and consistency" only the actual cost claiming option can be used. The RRM claiming option is not available.

The County respectfully disagrees. The RRM claiming option is also available here. And it is available because the County has met the requirements in Government Code Section 17518.5.

[1] The computation of the 5.91% average annual increase in (per receptacle) cleaning costs is found in Exhibit 3.

In particular, the RRM claiming option rate of $6.75 for each trash collection was developed from a survey of a representative sample of eligible claimants in accordance with Section 17518.5(b):

> "(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

Under the auspices of the California State Association of Counties (CSAC) and the California League of Cities (League), eleven jurisdictions were surveyed. The sample was representative as it included large, mid-sized and small jurisdictions. And on May 24, 2010, the League and CSAC endorsed the RRM rate of $6.75 per trash collection in a joint letter filed with the Commission.

Accordingly, the RRM claiming option and rate met the representative sample requirements in Section 17518.5(b).

In addition, the RRM survey results reflect the variation in costs among local agencies to implement the mandate in a cost-efficient manner, an RRM requirement in Government Code Section 17518.5(c). Here, some agencies found that using in-house staff and resources to perform the trash collection mandate was cost-efficient while other agencies concluded otherwise and awarded new or amended contracts to perform the mandate to vendors. Moreover, some agencies used both in-house and contract performance methods during the survey period.

Accordingly, the RRM cost survey's results reflect the variation in costs among local agencies to implement the mandate in a cost-efficient manner in Section 17518.5(c).

The RRM survey also meets the RRM requirements found in Government Code Section 17518.5(d):

> "Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a

period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years." (Emphasis added.)

Here, the County's RRM claiming option provides a uniform cost allowance. Further, this allowance is based on local costs incurred over a seven year period (July 1, 2002 through June 30, 2009), which does not exceed the ten-year limitation.

Therefore, pertinent RRM requirements found in Government Code Section 17518.5 have been met and use of the RRM claiming option is permitted.

In addition, the County finds no prohibition in using the RRM claiming option in its Ps&Gs under other sections of pertinent law (Government Code Section 17500 et seq.) . Also, the County finds no prohibition against including the actual cost claiming option and the RRM claiming option in the same set of PS&Gs.

In fact, combining the two claiming options in the same reimbursement program have been approved when proposed by claimants. For example, on April 1, 2010, Ms. Jill Kanemasu, SCO's Chief of the Bureau of Payments, filed comments with the Commission, attached as Exhibit 4, on a set of Ps&Gs proposed by the County for the Interagency and Child Abuse and Neglect (ICAN) reimbursement program. Theses Ps&Gs provided claimants with the actual cost claiming option as well as the RRM claiming option. On page 2 of her commentary she indicates that:

"To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where reasonable reimbursement methodology rates are adopted as set forth in Section IVB." (Emphasis added.)

Accordingly, the County's Ps&Gs use Ms. Kanemasu's language and provide that only actual costs may be claimed except where reasonable reimbursement methodology rates are adopted.

Installation Costs

Mr. Jay Lal, SCO's Local Reimbursement Section Manager, finds that installation costs are not reimbursable "because they are outside the scope of the state mandated reimbursable costs".

The County respectfully disagrees. There is no evidence provided or cited by Mr. Lal that installation costs are outside the scope of the state mandated reimbursable costs. Rather, substantial evidence in the record points in the other direction --- that installation costs are within the scope of state mandated reimbursable costs.

The County's evidence that installation costs are reimbursable was provided in a declaration of William Yan, associate civil engineer with the County's Department of Public Works, attached to the County's May 27, 2010 Ps&Gs filing. Mr. Yan, indicated the necessity for installation activities, on pages 2-3 of his declaration, as follows:

> " ... to prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be fitted with a concrete pad.
>
> ... proper selection of receptacle and pad types, evaluations of appropriate placements of receptacles and preparation of engineering specifications and/or drawings are necessary for installation of concrete pads.
>
> ... securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles.
>
> .... securing transit trash receptacles would reduce the time the receptacle would be out of service and not available to collect trash.
>
> ... concrete pads would provide adequate bolting surface for large-capacity transit trash receptacles which require less collection frequency.
>
> ... transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement costs.

... dome covers and solid trash receptacle liners prevent rain water from going into the receptacles , thereby causing trash to spill out and flow into the storm drains.

... the use of dome covers and the solid trash receptacle liners meet the intent of the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CASoo4001, Part 4, Section F.5.c.3.) by preventing pollutants from entering the storm drains."

In addition, it should be noted that a plain reading of the mandate the Commission found to be reimbursable imposes installation duties on claimants. This mandate addresses the placement as well as the maintenance of trash receptacles. It clearly directs claimants to:

"Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [2] (Emphasis added.)

Now, in order place trash receptacles at specified transit stops, the following activities found in the "Installation of Trash Receptacles" section (IVC.) of the attached Ps&Gs are reasonably necessary because:

1. In order to place trash receptacles one needs to know where to put them. So, "identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit" is reasonably necessary.

2. In order to place trash receptacles after a site has been determined, one needs to ensure that trash receptacle can be secured at the location to prevent frequent loss of service, overflow, and damage. So, "selection of receptacle and pad type, evaluate proper placement of receptacles and preparation of specifications and/or drawings" is reasonably necessary.

[2] These mandates are found in Part 4F5c3 of Order No. 01-182, Permit CAS004001 (Permit) which was issued by the Los Angeles Regional Water Quality Control Board on December 13, 2001.

3. In order to place the selected trash receptacles and pads one needs to design and configure them as effectively and efficiently as possible so as to minimize design defects and maximize the continuing collection of trash in the most efficient manner. So, "contract preparation, specification review process, bid, advertising, and review and award of bid" activities are reasonably necessary.

4. In order to complete the process of placing trash receptacles one needs to buy or construct them. So "purchase of receptacles and/or construction of receptacles and installing receptacles" is reasonably necessary.

5. And in order to place trash receptacles at transit stops, one must replace those that are lost or damaged. So, "repeat(ing) steps (IV.C.1. c-d) when necessary for replacement of receptacles/pads" is reasonable necessary.

Therefore, the (above) installation activities are reasonably necessary. Without them, the mandate to place trash receptacles at specified transit stops could not be performed. Accordingly, reimbursement is required for the installation activities claimed herein.

Technical Corrections

Mr. Lal offers technical corrections which have been modified and incorporated in the County's revised Ps&Gs.

The first paragraph of Section III. (Period of Reimbursement) has been modified to eliminate estimated cost claim language as such claims are no longer filed. The second paragraph of this section increases the minimum claim to $1,000 to conform with current law. The two paragraphs now read:

> "Actual costs for one fiscal year shall be included in each claim. Pursuant to section 17561, subdivision (d)(1)(A) of the Government Code, all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564."

The third paragraph of Section IV.A. (Actual Costs) has been modified to include some instruction as to the performance of time studies but not include the extensive requirements, such as developing a time study plan, detailed by Mr. Lal. This section now reads, in pertinent part:

"Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. Further time study guidance is available from the State Controller's Office web site www.sco.ca.gov."

Mr. Lal also suggests that in Section V.4. (Claim Preparation and Submission) that the old accounting term "fixed assets" replace the newer term "capital assets" now used in many accounting pronouncements. This has been done. This section now reads:

"4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment 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."

In sum, the County finds that reimbursement is required as claimed herein for trash receptacle and pad installation costs and for repetitive trash collection costs using either an RRM claiming option rate of $6.75 per collection or a time study claiming option.

Los Angeles County's Revised Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

I. SUMMARY OF THE MANDATE

On July 31, 2009 the Commission on State Mandates (Commission) issued a Statement of Decision finding, on page 3, that the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This program requires the County of Los Angeles and various cities to:

> "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission found that the inspection activities, also required under Permit CAS004001, in Parts 4C2a, 4C2b and 4E, mandate inspections of various facilities. The Commission determined that while these requirements were imposed by the State, and not the federal government, these activities were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

II. ELIGIBLE CLAIMANTS

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies are not or were not subject to coverage under a trash 'Total Maximum Daily Load', or TMDL requirement.

III. PERIOD OF REIMBURSEMENT

The test claim executive order (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3 took effect on December 13, 2001, the same date as the Permit.

The requirements to initially install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Therefore, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Pursuant to section 17561, subdivision (d)(1)(A) of the Government Code, all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where reasonable reimbursement methodology (RRM) rates are adopted as set forth in Section IV.B. To claim repetitive trash collection activities, claimants may elect to use RRM rates, their own time study or actual costs.

IV.A. Actual Costs

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, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

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.

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. Further time study guidance is available from the State Controller's Office web site www.sco.ca.gov.

IV.B. Reasonable Reimbursement Methodology

Claimants may elect to be reimbursed for their transit trash collection costs using a reasonable reimbursement methodology (RRM) as set fourth below. Under this RRM, the annual standard or unit cost for each trash collection or 'pick-up' is multiplied by the annual number of trash collections to compute reimbursement for trash collection activities.

The standard unit RRM rate per trash collection is $6.75 and applies to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment. The RRM rate will be increased in 2009-2010 and subsequent years by the implicit price deflator for that respective year.

Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

A. Installation of Trash Receptacles. These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:

1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

3. Contract preparation, specification review process, bid, advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles and in install receptacles.

B. Maintenance of Trash Receptacles. These activities include repairing, removing and installing trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

2. Inspection of receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.

4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

4. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

5. Replacement of receptacles, including the steps identified in IV.A (2-4) above.

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 and Equipment

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

5. Travel

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

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 utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87 Attachments A and B) 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 which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) 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 allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be

reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

County of Los Angeles
Transit Trash Receptacle Installation Requirements
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of William Yan

William Yan makes the following declaration and statement under oath:

I, William Yan, Associate Civil Engineer, in the Program Development Division of the Los Angeles County Department of Public Works, declare that I have examined the review prepared by Nona Martinez of the State Department of Finance (Finance) regarding the proposed revised parameters and guidelines (Ps&Gs) and reasonable reimbursement methodology (RRM) submitted by the County of Los Angeles (County) and various municipalities (claimants) for Claim no. 03-TC-04, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges".

I declare that it is my information or belief that Finance's conclusion, that "... a fair and accurate RRM rate, if agreed upon by all relevant parties, would be an efficient way to streamline the reimbursement process", supports the claimants' objective of developing an acceptable RRM rate.

I declare that the League of California Cities and the California State Association of Counties (CSAC) filed their joint endorsement of claimants' $6.75 unit cost RRM calculation with the Commission on State Mandates (Commission) on May 24, 2010 and indicated that "... the League and CSAC are in full support of this calculation".

I declare that it is my information or belief that Finance's recommendation to have the same $6.75 RRM rate apply to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment is reasonable and proper because the $6.75 RRM rate "... is based on local costs incurred over a seven year period".

I declare that it is my information or belief that Finance's recommendation to have "... the proposed RRM rate ... increase in 2009-2010 and subsequent years by the implicit price deflator for that respective year" is necessary to ensure that 2009-2010 and subsequent year RRM reimbursements are not diminished by inflation.

I declare that it is my information or belief that routine cleaning of trash receptacles and the 10-foot area around each trash receptacle is reasonably necessary to implement the mandate, contrary to the opinion of Finance's Nona Martinez that "... cleaning costs ... are not reasonably necessary to implement the mandate".

I declare that it is my information or belief that trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any residue in order to prevent the flow of any waste to enter the storm drain and/or street gutters.

I declare that it is my information or belief that the County provides 48 to 52 visits per year to clean trash receptacles and the 10-foot area around each trash receptacle.

I declare that it is my information and belief that during each cleaning visit the County routinely cleans, washes and removes all graffiti, stickers, posters, litter, dust, dirt and weeds from each trash receptacle and immediate 10-foot area around each trash receptacle. The trash receptacle is to be maintained in a continual like new condition.

I declare that it is my information and belief that during each cleaning visit the County shall carry an adequate supply of clean aluminum liners during the cleaning visits to ensure that liners are kept in a clean condition. County shall not allow any waste or liquid from trash receptacles or liners to enter the storm drains and/or street gutters during the cleaning of trash receptacles and liners.

I declare that it is my information or belief that the costs of providing the (above) cleaning activities were calculated from two separate Bus Stop Amenities Maintenance contracts (North and South County) using three variables: (1) the average number of trash receptacles, (2) the unit cleaning cost per visit, and (3) the frequency of cleanings per month.

I declare that I have analyzed the annual cleaning cost increases of $7,275 (from 2005-06 to 2006-07) and of $32,501 (from 2006-07 to 2007-08) that are questioned by Finance's Nona Martinez in her July 23, 2010 commentary.

I declare that it is my information or belief that the (above) increases were due to the following factors:

FY2005-06 to FY2006-07: $7,275 increase

- North County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit. We were also charged for 48 cleaning visits per receptacle in FY2005-06 versus 52 cleaning visits in FY 2006-07.

- South County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit and an increase in the number of number of trash receptacles. We were also charged for 48 cleaning visits per receptacle versus in FY2005-06 versus 52 cleaning visits in FY 2006-07.

FY2006-07 to FY2007/08: $32,501 increase

- North County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.59 per visit. With the award of a new contract, the unit cost increased again from $4.59 to $8.00 per visit.

- South County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.43 per visit.

I declare that it is my information or belief that the major cause of the (above) increases was a change in the unit cost for cleaning as noted below:

Both the North County and the South County maintenance contracts included a clause which allowed for a Living Wage Adjustment for the first (April 2006- March 2007) and second (April 2007- March 2008) option years of the contract. The increases were 2.5% and 1.87% respectively. In addition, the rates were increased again. Prior to the end of the second option year, the County Board of Supervisors adopted a revised Living Wage Program (Los Angeles County Code Sections 2.201.010-2.201.100); this further increased the price by about 30% effective July 1, 2007.

In addition, on March 2008, the County awarded a new contract for the North County Maintenance Program, which included an increase in the unit cleaning cost from $4.59 to $8.00.

Accordingly, I declare that it is my information or belief that the (above) cleaning activities are reasonably necessary in implementing the reimbursable Municipal Storm Water and Urban Runoff Discharges" mandate as defined in Commission's Statement of Decision on test claims 03-TC-04, 03-TC-20, 03-TC-21 and that associated cleaning costs are reasonable, proper and fairly stated.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/16/10 ALHAMBRA, CA
Date and Place

Signature

Exhibit 2

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review of State Agency Comments
Revised Parameters and Guidelines and Proposed Standard Costs
Municipal Storm Water and Urban Runoff Discharges Test Claims

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached revised parameters and guidelines and proposed standard costs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program as adopted by the Commission on July 31, 2009.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs in implementing the test claim legislation, and find that such costs as set forth in the attached revised parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/18/10, Los Angeles, CA
Date and Place

Signature

Exhibit 3

Los Angeles County's Average Annual Cleaning Cost Increases: July 1, 2003 - June 30, 2009

Fiscal Year (a)	[a] # Trash Receptacles	[b] Cleaning Cost	[b]/[a]=c Cost @ Receptacle	Annual $ change	Annual % change	Average % Change
2008-09	470	$100,233	$213.26	-$34.55	-13.94%	5.91%
2007-08	429	$106,312	$247.81	$71.23	40.34%	5.91%
2006-07	418	$73,811	$176.58	$11.89	7.22%	5.91%
2005-06	404	$66,536	$164.69	-$10.70	-6.10%	5.91%
2004-05	406	$71,211	$175.40	$3.52	2.05%	5.91%
2003-04	386	$66,346	$171.88			
Total % increase					29.56%	29.56%

(a) 2002-03 Fiscal Year for Los Angeles County was not used in above analysis or in computing RRM as during this period the cleaning was first handled in-house and later by contract. Also the number of trash receptacles was not a fixed number during this period. Therefore, it was difficult to accurately annualize the unit cost for 2002-03 and so none was used.

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

April 1, 2010

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

RE: **Revised Proposed Parameters and Guidelines**
Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22
Penal Code Sections 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11166, 11166.2, 11166.9, 11168 (Including Former Penal Code Section 11161.7), 11169, and 11170;
Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; and Subsequent Statutes Through Statutes 2000, Chapters 287 and 916;
California Code of Regulations, Title 11, Sections 901, 902, and 903;
Department of Justice Forms SS8572 and SS8583
County of Los Angeles, Claimant

Dear Ms. Higashi:

We have reviewed the revised proposed parameters and guidelines for the above named program as communicated by the Commission on February 10, 2010. Comments and recommendations follow; proposed additions are underlined and deletions are indicated with strikethrough:

I. SUMMARY OF THE MANDATE

Page 21 On December 19, 2007 the Commission on State Mandates (Commission) ~~issued~~ adopted a Statement of Decision [00-TC-22]

III. PERIOD OF REIMBURSEMENT

Page 22 Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs of the subsequent year may be included on the same claim, if applicable~~...

COMMENT: Chapter 6, Statutes of 2008 (effective February 16, 2008), eliminated

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the option of filing an estimated reimbursement claim.

IV. REIMBURSABLE ACTIVITIES –

Page 22 To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed except where ~~standard cost claiming~~ reasonable reimbursement methodology rates are adopted ~~is permitted~~ as set forth in Section IV B

COMMENT: The term "reasonable reimbursement methodology" means a formula for reimbursing local agency and school districts mandated by the state. (GC 17518.5)

Page 23 **IV B. ~~Standard Costs~~ Reasonable Reimbursement Methodology**

~~Specified~~ Reimbursable labor costs may be recovered for performing law enforcement and county welfare agency activities by using ~~standard times~~ reasonable reimbursement methodology set ~~fourth~~ forth below. These times would then be multiplied by the claimant's ~~blended~~ average productive hourly rate, computed in accordance with State Controller's Office claiming instructions to obtain a standard unit cost. The cost is then multiplied by the number of units to determine reimbursable costs.

GENERAL COMMENTS:

The activities specified in Section IV B do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007.

- SCO requests these activities with standard times be correlated to the reimbursable activities specified on the Statement of Decision
- The activities need to be segregated between One-time and On-going Activities
- Each activity may contain supervisory review and approval which should not be duplicated in the indirect cost rate
- All reimbursable and non-reimbursable activities should be clearly identified
- SCO is reserving the right to comment on the recommended Reasonable Reimbursement Methodology times established prior to approval

Page 24 **IV.C. Reimbursable Activities**

Claimants must use ~~a combination of actual cost and or standard cost methodologies~~ reasonable reimbursement methodology rates adopted by the Commission. ~~but should take care to ensure that the same reimbursable activity is not claimed under both methods.~~

COMMENT: We recommend that only RRM rate be used if adopted by the Commission.

Page 25 One-time Activities:

A. ~~Annually, update~~ Develop and establish ~~Departmental~~ policies and procedures necessary to comply with ICAN's requirements.

Ongoing Activities:

B. ~~Periodically,~~ Participation in meetings with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.

One-time Activities:

C. ~~Annually,~~ Develop and train ICAN staff in State Department of Justices' [DOJ] ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate ~~participants and~~ instructors for their time in participating in ~~an annual~~ training session and to provide necessary facilities, training materials and audio visual presentations. (One time per employee)

D. ~~Periodically, to~~ Develop, ~~update or obtain~~ or procure computer software and ~~obtain~~ equipment necessary for ICAN cross-reporting and reporting to DOJ. Prorate only the costs related to the mandate.

Ongoing Activities:

E. ~~Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary findings. Reimbursement is provided for the costs of tests and evaluations on suspects as well as victims. Victim costs include those incurred for medical exams for sexual assault and/or physical abuse, mental health exams, and, where the victim dies, for autopsies.~~ Gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims. Victim costs include medical exams for sexual assault and/or physical abuse, mental health exams, and autopsies. Suspect costs include those incurred for DNA and polygraph testing. Also included, when reasonably necessary to make an evidentiary finding, are the costs of video taping interviews of victims and suspects.

One-time Activities:

A. ~~Due process costs incurred by law enforcement and county welfare agencies to~~ Develop and ~~maintain~~ establish ICAN due process procedures reasonably necessary to comply with deferral due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].

COMMENT: We recommend that reimbursable activities be delineated between One-time and Ongoing Activities.

Page 26 ***Reporting Between Local Departments***

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

l. Report by telephone, fax or electronic transmission immediately, or as soon as practically possible to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section ~~1116.5~~ 11165.6 except acts or omissions coming within subdivision ~~9~~(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j).

Page 27 A county welfare department shall:

l. Report by telephone, fax or electronic transmission immediately, or as soon as practically possible to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section ~~1116.5~~ 11165.6 except acts or omissions coming within subdivision ~~9~~(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j).

'. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~nay~~ any agency...

Page 28 ***Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:***

A City or county law enforcement agency shall:

'. Report by telephone, fax or electronic transmission immediately, or as soon as practically possible Penal Code section ~~1116.5~~ 11165.6 except acts or omissions coming within subdivision ~~9~~(b) of section 11165.2,... (Penal Code section 11166 subdivision (h), now subdivision (j).

l. Send a written report thereof within 36 hours of receiving the information concerning the incident to ~~nay~~ any agency...

Page 28 ***Receipt of Cross-Reports by District Attorney's Office***

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse ~~repotted~~ reported to law enforcement

Page 29 ***Additional Cross-Reporting in Cases of Child Death:***

A city or county law enforcement agency shall:

- ~~Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen Code Sec. 11166.9, subd. (l), now section 11174.34, subd. (l).)~~

COMMENT: According to the Statement of Decision adopted on December 19, 2007, this activity is to be performed by the County Welfare Department.

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Penal Code section 11166.9, subdivision (k), now section 11174.34, subdivision (k).)

- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Penal Code Section 11166.9, subdivision (l), now section 11174.34, subdivision. (l).)

Page 30

- Enter information into the CWS upon notification that the death was subsequently determined not to ~~ne~~ be related to child abuse...

Page 30 ***Notifications following Reports to the Central Child Abuse Index***

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports or county welfare department shall:

- Notify in writing the known or suspected child abuser...filed with the Department of Justice. (Penal Code Section ~~11166.9~~ 11169 subdivision (b)).

Page 31

- Notify, in writing, the person listed in the Child Abuse Central Index... The notification shall include the name of the reporting agency and the date of the report. (Penal Code, Section 11170, subdivision (b) (5), now subdivision (b) ~~(6)~~ (7).

Page 31 ***Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports or county welfare department shall:***

- Obtain the original investigative report from the reporting agency… (Penal Code Section 11170, subdivision (b) (6) (A), now (b)~~(8)~~(10) (A)).

Any city or county law enforcement agency, county probation department, or county welfare shall: ~~(j).~~)

Page 32 ***Record Retention***

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, shall:

- Retain child abuse or neglect investigation reports…for a minimum of 8 years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to GC sectiuons 26202 (cities) and 34090 (counties).)

Please contact Ellen Solis at (916) 323-0698, or Ginny Brummels at (916) 324-0256, if you have any questions.

Sincerely,

Jill Kanemasu

JILL KANEMASU, Chief
Bureau of Payments

JK/GB/ecs

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 24th day of August, 2010 I served the attached:

Documents: Los Angeles County's review of State agency comments on its Revised Parameters and Guidelines (Ps&Gs) and Proposed Standard Costs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program, *including a 1 page letter of Wendy L. Watanabe, dated August 19, 2010, a 20 page narrative and attached Ps&Gs, a 4 page declaration of William Yan dated August 16, 2010 , a 1 page declaration of Leonard Kaye, dated August 18, 2010, a 1 page cost analysis table, and a 6 page letter of Jill Kanemasu, dated April 1, 2010, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via the internet the document(s) listed above to the e-mail address(s) set forth below on this date a PDF copy to the Commission on State Mandates and by mailing the original document(s) to the Commission at the address listed below.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of August, 2010 at Los Angeles, California.

Lorraine Hadden

Commission on State Mandates

Original List Date:
Last Updated: 8/6/2010
List Print Date: 08/23/2010
Claim Number: 03-TC-04, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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August 25, 2010

VIA E-Mail and FIRST-CLASS MAIL

RECEIVED
AUG 30 2010
COMMISSION ON
STATE MANDATES

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

Re: Response to Comments on Revised Parameters and Guidelines; Municipal Storm Water and Urban Runoff Discharges
Claim Nos. 03-TC-04, 03-TC-20, 03-TC-21
Los Angeles Regional Water Quality Control Board Order No. 01-182; Permit CAS004001

Dear Ms. Higashi:

This letter is the response of Claimants the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Azusa, Commerce, Bellflower, Covina, Downey, Monterey Park and Signal Hill ("Cities") to comments dated July 23, 2010 filed by the State Controller's Office ("SCO") and the Department of Finance ("DOF") to the Revised Parameters and Guidelines ("Ps&Gs") filed by the Cities. The SCO and DOF comments also relate to Ps&Gs filed by the County of Los Angeles ("County").

This letter addresses the comments of both the SCO and the DOF. Attached please find proposed Ps&Gs revised to address certain comments by the SCO and DOF, as well as a Declaration of William Yan of the County of Los Angeles Department of Public Works (which also has been separately submitted by the County).

Response to Comments of State Controller's Office

A. Response to Comments on Section III, Period of Reimbursement

This comment primarily is directed to the proposed Ps&Gs submitted by the County. However, to the extent such comments are relevant to the Cities' proposed Ps&Gs, the Cities do not object. The attached Ps&Gs have been revised to reflect this comment.

B. Response to Comments on Section IV, Reimbursable Activities

1. Comment on Section IV: The Cities object to the proposed changes on paragraph 1, page 9 of the Ps&Gs. As discussed further below, reasonable reimbursement methodology ("RRM") is appropriate for repetitive trash collection activities.

2. Comment on Section IV.A., Actual Costs: While the SCO's comments appear to be directed to the County's proposed Ps&Gs, the Cities' proposed Ps&Gs employ similar language. The Cities do not agree with the comment by the SCO with regard to a "time study plan." The attached Ps&Gs have, however, been revised to include a reference to the SCO website for instructions on a time study.

3. Comment on Section IV.B., Reasonable Reimbursement Methodology: Again, the SCO has made comments on the proposed County Ps&Gs. To the extent that the SCO intended its comments to apply also to the Cities' Ps&Gs, the Cities object to the SCO's proposed deletion of this section, which authorizes the use of RRM for repetitive trash collection activities. As set forth in the plain language on pages 6-7 of the proposed Ps&Gs, the Cities are not seeking RRM reimbursement for non-repetitive tasks. A RRM rate is being requested *only* for costs incurred under Section IV(C)(2)(a) of the Ps&Gs, for the "[c]ollection of trash on a routine basis, including trash collection and disposal at disposal/recycling facility."

The SCO comments: "For uniformity and consistency, we recommend 'Actual Costs' method to claim costs for the Collection of trash, Section IV(C)(2)(a). Consequently, we propose to delete 'Reasonable Reimbursement Methodology' (RRM) method and RRM table as set forth in Section IV.B."

This comment ignores the fact that a claim for a subvention of funds may be made on both a RRM and non-RRM basis. In fact, the SCO has so indicated in recent comments on proposed Ps&Gs for the County's claim on the Interagency and Child Abuse and Neglect reimbursement program. In those comments, dated April 1, 2010, Ms. Jill Kanemasu, Chief of the SCO Bureau of Payments, stated: "To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed *except where reasonable reimbursement methodology rates are adopted as set forth in Section IVB."* (emphasis added). Ms. Kanemasu's letter is attached as Exhibit 4 to the County's response to the SCO and DOF comments.

The RRM methodology is appropriate for repetitive tasks, which is why it has been proposed by the Cities. As noted below, the DOF agrees that "a fair and accurate RRM rate, if agreed upon by all relevant parties, would be an efficient way to streamline the reimbursement process." Moreover, both the League of California Cities and the California State Association of Counties have endorsed the RRM methodology and rate in

a joint letter to the Commission dated May 24, 2010, which was attached as Exhibit B to the Cities' June 2, 2010 submittal of the proposed Ps&Gs.

The SCO's only justification for its comment, that deletion is recommended "for uniformity and consistency," provides no basis for the deletion of the RRM methodology. The Cities request that the Commission reject this comment in its entirety.

4. Comment on Section IV.C, Scope of Reimbursable Activities: The SCO comments appear again to be directed to the County's proposed Ps&Gs. However, the Cities wish to respond.

The SCO comments that the Scope of Reimbursable Activities should not include the installation of trash receptacles. This comment should be rejected in its entirety. The mandate in question specifically required the Cities to "place trash receptacles." *See* Statement of Decision adopted July 31, 2009 at 70. Obviously, trash receptacles must be purchased, locations surveyed and the receptacles installed. Moreover, in an urban environment such as exists in the Cities, receptacles must be adequately secured.

Evidence regarding the scope of receptacle placement is before the Commission in the Declaration of William Yan of the County of Los Angeles Department of Public Works, which was attached as Exhibit B to the Cities' proposed Ps&Gs submitted on June 2, 2010. The SCO provides no evidence to support its comment, which also is contradicted by the plain language of the Statement of Decision. The Cities request that the Commission reject this comment in its entirety.

5. Comment on Section IV.D. Methods for Claiming Costs: The SCO's comment on this section appears to be directed toward the County's proposed Ps&Gs. However, as it refers to the deletion of the RRM section of the Ps&Gs, the Cities object to such comment and request that it be rejected by the Commission.

C. Response to Comments on Section V, Claim Preparation and Submission

The SCO's comment on Section V.A.4 is that the term "Capital" should be changed to "Fixed." The Cities do not object to this comment, and the attached Ps&Gs reflect this change.

Response to Comments of Department of Finance

A. Response to Comment on "Cleaning"

The DOF comments focus on the surveys prepared to support the RRM. While the bulk of the first numbered comment in the DOF letter refers only to the County's survey results, and thus is beyond the scope of this response, the DOF also commented

that "cleaning costs" not be included in the RRM rate and "suggest that they may not be reasonably necessary to carry out the mandate." The DOF noted in particular the task of replacing trash receptacle liners.

The Cities disagree with DOF's comment. Obviously, maintenance of the trash receptacles, which is part of the mandated activity (*see* Statement of Decision adopted on July 31, 2009 at 70: "All trash receptacles shall be maintained as necessary"), may include replacement of plastic liners, since such liners facilitate quick removal of trash. *See also* the attached Declaration of William Yan of the County of Los Angeles Department of Public Works, which sets forth further evidence regarding the need for "cleaning" as part of the mandate found by the Commission.

B. Response to Comment on "Other" Costs

The second numbered comment in the DOF letter states in part that "[s]ome survey responses do not clearly identify the activities associated with 'other' costs." Specific reference is made to two entries, for a total of $1,080, by the City of Signal Hill relating to time spent by the City Attorney in reviewing contracts for transit stop receptacle collection services. Such expenditures are an administrative cost arising naturally from the requirement to arrange for and facilitate the collection of trash from the receptacles. As such, they are appropriately included within the mandate.

C. Response to Comment on COLA Issue

The DOF comment letter also stated that the RRM rate should be applied to the entire initial reimbursement period without a COLA. The Cities do not object to this comment. Changes have been made to the attached proposed Ps&Gs to reflect the comment.

* * *

The Cities appreciate this opportunity to respond to the comments on the proposed Ps&Gs. If you or Commission staff has any questions regarding this response, please call or e-mail me at the number and e-mail address noted above.

Very truly yours,

David W. Burhenn

Encl.
cc: Mailing List (w/encl.)

PROPOSED PARAMETERS AND GUIDELINES REVISED TO INCORPORATE COMMENTS OF STATE CONTROLLER'S OFFICE AND DEPARTMENT OF FINANCE

PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board,
Los Angeles Region, Executive Order Number 01-182,
December 13, 2001, Permit Number CAS004001,
Part 4, Section F.5.c. 3.
(Revised to Address Comments of State Controller's Office and Department of Finance)

Transit Trash Receptacles

I. Summary of the Mandate

The consolidated test claim, filed by the County of Los Angeles and several cities, alleged various activities related to the placement and maintenance of trash receptacles and inspection of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, Permit No. 01-182, CAS004001 ("Permit").

The Commission found on July 31, 2009 that the activity called for in Part 4.F.5.c.3. of the Permit was a reimbursable state mandate on local agencies subject to the Permit but not subject to a trash total maximum daily load ("TMDL"):

"Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission found that this requirement was not a federal mandate under the Clean Water Act and that it was a state mandate requiring a new program or higher level of service that could not be funded through fee authority within the meaning of Government Code section 17556, subdivision (d).

The Commission also found that the other issues raised by the consolidated test claim, relating to Parts 4.C.2.a., 4.C.2.b. and 4.E. of the Permit and requiring inspections of various facilities, while not federal mandates under the Clean Water Act, were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556(d), sufficient to pay for the inspections.

II. Eligible Claimants

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the Permit, to the extent that the same are not or were not subject to coverage under a trash TMDL requirement.

III. Period of Reimbursement

The Permit and the test claim executive order took effect on December 13, 2001. The requirement to install trash receptacles commenced with the effective date of the Permit and required installation of trash receptacles by February 3, 2003. The Permit imposes a continuing requirement to maintain the trash receptacles.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Government Code section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Thus, the reimbursement period is considered to have begun on July 1, 2002.

Costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561(d)(1), all claims for reimbursement of initial fiscal years' costs shall be submitted to the State Controller within 120 days of the issuance date of claiming instructions.

If the total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed, except where reasonable reimbursement methodology ("RRM") rates are adopted for the repetitive task of trash collection set forth in Section IV.C(2)(a) below. Claimants may elect to use either actual costs or RRM rates for the trash collection task.

A. Actual Costs

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, including time survey forms, time logs, sign-in sheets, and invoices, receipts and unit cost studies using source documents.

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.

Claimants also may use time studies to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office ("SCO"). The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. Further time study guidance is available from the State Controller's Office web site at www.sco.ca.gov.

B. Reasonable Reimbursement Methodology

With respect to costs incurred as identified in Section IV.C(2)(a) below, Claimants may elect to be reimbursed using a RRM methodology. Under this RRM, the annual standard or unit cost for each trash collection or "pick-up" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle) to compute reimbursement for trash collection activities.

The standard unit RRM rate per trash collection is $6.75 and applies to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment. The RRM rate will be increased in 2009-2010 and subsequent years by the implicit price deflator for that respective year.

C. Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

1. Installation of Trash Receptacles These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process);

construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management); and, construction and installation of replacement trash receptacles/pads on a non-individual basis. The five transit trash installation claiming categories are:

a. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

b. Evaluate and select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.

c. Contract preparation, specification review process, bid advertising, and review and award of bid.

d. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles/pads.

e. Repeat steps (c-d) when necessary for replacement of receptacles/pads on non-individual basis.

2. Maintenance of Trash Receptacles These activities include collection of trash, inspection of receptacles, maintenance (repairing, painting, etc.) and replacing or moving individual trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

a. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

b. Inspection of receptacles for wear, cleaning, and other maintenance needs.

c. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and pads, replacement of liners, and cost of paints, cleaning supplies and liners.

d. Replacement of individual damaged or missing receptacles or pads, including costs of purchase and installation of replacement receptacles or pads and disposal/recycling of replaced receptacles or pads.

e. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

D. Methods for Claiming Costs

Eligible claimants must use the actual cost method to claim costs for the tasks reflected in Sections IV.C(1)(a-e) and IV.C(2)(b-e) above.

Eligible claimants may use either the actual cost or RRM methods to claim costs for the collection of trash reflected in Section IV.(C)(2)(a) above.

V. Claim Preparation and Submission

Each claim for reimbursement must be timely filed and must identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of these Parameters and Guidelines.

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. Reimbursement for personnel services includes compensation paid for employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

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 and Equipment

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

5. Travel

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

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

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 utilizing the procedure provided in the Office of Management and Budget ("OMB") Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal ("ICRP") if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs

shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). 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 OMB Circular A-87 Attachments A and B) 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 which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) 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 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 by a local agency is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim was filed or last amended, which 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 Savings and Other Reimbursements

Any offsetting savings 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. Any reimbursement for this mandated received from any source, including state or federal reimbursement, shall be identified and deducted from a claim.

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 60 days after receiving the adopted Parameters and Guidelines from the Commission, to assist local agencies in claiming costs to be reimbursed. The claiming instructions shall be derived from the Statement of Decision and the Parameters and Guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute notice of the right of the local agencies to file reimbursement claims based upon the Parameters and Guidelines adopted by the Commission.

IX. Remedies Before the Commission

Upon request of a local agency, the Commission shall review the claiming instructions issued by the State 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.

Requests may be made to amend the Parameters and Guidelines pursuant to Government Code section 17557(d) and title 2, California Code of Regulations, section 1183.2.

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

X. Legal and Factual Basis for Parameters and Guidelines

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the Parameters and Guidelines. The support for the legal and

factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

DECLARATION OF WILLIAM YAN OF COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

(Also submitted as Exhibit 1 to Review of County of Los Angeles to State Agency Comments)

County of Los Angeles
Transit Trash Receptacle Installation Requirements
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of William Yan

William Yan makes the following declaration and statement under oath:

I, William Yan, Associate Civil Engineer, in the Program Development Division of the Los Angeles County Department of Public Works, declare that I have examined the review prepared by Nona Martinez of the State Department of Finance (Finance) regarding the proposed revised parameters and guidelines (Ps&Gs) and reasonable reimbursement methodology (RRM) submitted by the County of Los Angeles (County) and various municipalities (claimants) for Claim no. 03-TC-04, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges".

I declare that it is my information or belief that Finance's conclusion, that "... a fair and accurate RRM rate, if agreed upon by all relevant parties, would be an efficient way to streamline the reimbursement process", supports the claimants' objective of developing an acceptable RRM rate.

I declare that the League of California Cities and the California State Association of Counties (CSAC) filed their joint endorsement of claimants' $6.75 unit cost RRM calculation with the Commission on State Mandates (Commission) on May 24, 2010 and indicated that "... the League and CSAC are in full support of this calculation".

I declare that it is my information or belief that Finance's recommendation to have the same $6.75 RRM rate apply to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment is reasonable and proper because the $6.75 RRM rate "... is based on local costs incurred over a seven year period".

I declare that it is my information or belief that Finance's recommendation to have "... the proposed RRM rate ... increase in 2009-2010 and subsequent years by the implicit price deflator for that respective year" is necessary to ensure that 2009-2010 and subsequent year RRM reimbursements are not diminished by inflation.

I declare that it is my information or belief that routine cleaning of trash receptacles and the 10-foot area around each trash receptacle is reasonably necessary to implement the mandate, contrary to the opinion of Finance's Nona Martinez that "... cleaning costs ... are not reasonably necessary to implement the mandate".

I declare that it is my information or belief that trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any residue in order to prevent the flow of any waste to enter the storm drain and/or street gutters.

I declare that it is my information or belief that the County provides 48 to 52 visits per year to clean trash receptacles and the 10-foot area around each trash receptacle.

I declare that it is my information and belief that during each cleaning visit the County routinely cleans, washes and removes all graffiti, stickers, posters, litter, dust, dirt and weeds from each trash receptacle and immediate 10-foot area around each trash receptacle. The trash receptacle is to be maintained in a continual like new condition.

I declare that it is my information and belief that during each cleaning visit the County shall carry an adequate supply of clean aluminum liners during the cleaning visits to ensure that liners are kept in a clean condition. County shall not allow any waste or liquid from trash receptacles or liners to enter the storm drains and/or street gutters during the cleaning of trash receptacles and liners.

I declare that it is my information or belief that the costs of providing the (above) cleaning activities were calculated from two separate Bus Stop Amenities Maintenance contracts (North and South County) using three variables: (1) the average number of trash receptacles, (2) the unit cleaning cost per visit, and (3) the frequency of cleanings per month.

I declare that I have analyzed the annual cleaning cost increases of $7,275 (from 2005-06 to 2006-07) and of $32,501 (from 2006-07 to 2007-08) that are questioned by Finance's Nona Martinez in her July 23, 2010 commentary.

I declare that it is my information or belief that the (above) increases were due to the following factors:

FY2005-06 to FY2006-07: $7,275 increase

- North County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit. We were also charged for 48 cleaning visits per receptacle in FY2005-06 versus 52 cleaning visits in FY 2006-07.

- South County: The cost increase was due to the living wage adjustments which increased the unit cost from $3.25 to $3.38 per visit and an increase in the number of number of trash receptacles. We were also charged for 48 cleaning visits per receptacle versus in FY2005-06 versus 52 cleaning visits in FY 2006-07.

FY2006-07 to FY2007/08: $32,501 increase

- North County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.59 per visit. With the award of a new contract, the unit cost increased again from $4.59 to $8.00 per visit.

- South County: The cost increase was due to the revised Living Wage Program which increased the unit cost from $3.38 to $4.43 per visit.

I declare that it is my information or belief that the major cause of the (above) increases was a change in the unit cost for cleaning as noted below:

Both the North County and the South County maintenance contracts included a clause which allowed for a Living Wage Adjustment for the first (April 2006- March 2007) and second (April 2007- March 2008) option years of the contract. The increases were 2.5% and 1.87% respectively. In addition, the rates were increased again. Prior to the end of the second option year, the County Board of Supervisors adopted a revised Living Wage Program (Los Angeles County Code Sections 2.201.010-2.201.100); this further increased the price by about 30% effective July 1, 2007.

In addition, on March 2008, the County awarded a new contract for the North County Maintenance Program, which included an increase in the unit cleaning cost from $4.59 to $8.00.

Accordingly, I declare that it is my information or belief that the (above) cleaning activities are reasonably necessary in implementing the reimbursable Municipal Storm Water and Urban Runoff Discharges" mandate as defined in Commission's Statement of Decision on test claims 03-TC-04, 03-TC-20, 03-TC-21 and that associated cleaning costs are reasonable, proper and fairly stated.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/16/10 ALHAMBRA, CA

Date and Place

Signature

PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On August 26, 2010 I served the foregoing document, described as

RESPONSE TO COMMENTS ON REVISED PARAMETERS AND GUIDELINES; MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES; CLAIM NOS. 03-TC-04, 03-TC-20, 03-TC-21

☐ the original of the document
☒ true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

☒ **BY U.S. MAIL**: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

☐ **BY FEDERAL EXPRESS**: I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

☐ **BY FACSIMILE**: I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

☐ **BY PERSONAL SERVICE**: I personally delivered such envelope by hand to the office of the addressee(s).

☒ **STATE**: I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

☐ **FEDERAL**: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 26, 2010 at Los Angeles, California.

Danette Armstead

Commission on State Mandates

Original List Date:
Last Updated: 8/6/2010
List Print Date: 08/23/2010
Claim Number: 03-TC-04, 20, 21
Issue: Municipal Stormwater and Runoff Discharges

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Hearing Date: March 24, 2011
J:mandates/2003/tc/03tc04/psgs/dsa

ITEM __

DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04);
Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20);
Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

EXECUTIVE SUMMARY

I. Overview

The consolidated test claim was filed by the County of Los Angeles and several cities in the County of Los Angeles, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board ("LA Regional Water Board") constitute a reimbursable state-mandated program. Of the activities in the test claim, the Commission approved only Part 4F5c3 of the permit, which states:

> Permittees not subject to a trash TMDL [total maximum daily load[1]] shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The Department of Finance, the State Water Resources Control Board, the LA Regional Water Board, and the State Controller's Office contend that many of the activities identified by the claimants in their proposed parameters and guidelines go beyond the scope of the mandate and should not be reimbursable. In addition, the state agencies oppose the adoption of a reasonable reimbursement methodology (RRM) and, instead, request that the parameters and guidelines require eligible claimants

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[1] "Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards." See <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/index.cfm> as of February 2, 2011.

to claim actual costs incurred, supported by documentation of the costs. The state agencies also seek to clarify the eligible claimants under this mandate and the eligible period of reimbursement.

II. Procedural History

The test claims were filed in September 2003 (fiscal year 2003-2004) and, thus, the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit). The Commission adopted the Statement of Decision on July 31, 2009, and issued it on September 3, 2009. The county and cities submitted proposed parameters and guidelines in August 2009. Comments by the LA Regional Water Board and the Department of Finance were submitted in October 2009, and the claimants submitted rebuttal comments in November 2009. In January 2010, the Commission requested and received clarification from the LA Regional Water Board regarding local agencies that may be subject to a trash TMDL, and city claimants also responded in February 2010. An informal conference was held on March 25, 2010, regarding the parameters and guidelines and a proposed RRM. The county and city claimants submitted proposed revised parameters and guidelines and an RRM in June 2010. In July, the State Controller's Office and Finance submitted comments on the revised proposed parameters and guidelines and RRM, to which the county and city claimants submitted rebuttal comments in August 2010.

III. Commission Responsibilities

The Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any test claim it approves. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines include a summary of the mandate, a description of the eligible claimants, a description of the period of reimbursement, a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program. The parameters and guidelines also include instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of a reasonable reimbursement methodology, and any offsetting revenue or savings that may apply.

The Commission may adopt an RRM for inclusion in the parameters and guidelines. An RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. If local agencies are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years. RRMs shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies, or other projections of local costs. In addition, the RRM considers the variation in costs among local agencies to implement the mandate in a cost-efficient manner.

The Commission holds a hearing on the adoption of proposed parameters and guidelines pursuant to Article 7 of the Commission's regulations, under which the Commission's decision is based on evidence in the record, and oral or written testimony is offered under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence.

After adopting the parameters and guidelines, the Commission submits them to the State Controller's Office to issue claiming instructions to local government, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local government to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

IV. Claims

Subject	Issues	Staff Recommendation
Eligible Claimants	Finance requests that the eligible claimants not subject to a trash TMDL be listed. City claimants assert that listing the claimants is not necessary.	List the following categories of claimants: 1) those not subject to a trash TMDL; (2) those subject to the Ballona Creek trash TMDL are eligible only to the extent they have transit stops located in areas not covered by the trash TMDL requirements; (3) those subject to the LA River trash TMDL from August 28, 2002 to September 22, 2008; and (4) beginning September 23, 2008, those subject to the LA River trash TMDL are eligible only to the extent they have transit stops located in areas not covered by the trash TMDL.
Period of Reimbursement	Finance requests that the reimbursement period for the costs of placing trash receptacles at transit stops with shelters be until August 1, 2002, and at remaining transit stops until February 3, 2003. City claimants do not want specified deadlines because costs may have been incurred after the dates in the permit, e.g., due to new transit stops.	The test claims were filed in September 2003 so reimbursement begins July 1, 2002 (six months after the effective date of the permit). Allow reimbursement for receptacles installed at transit stops after the dates in the permit, but limit reimbursement for installation activities to one-time per transit stop. Allow reimbursement under the permit to continue until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim
Reimbursable Activities	Claimants propose activities related to installation and maintenance of trash receptacles at transit stops. Finance and the LA Regional Water Board request that identifying transit stops and installation be omitted.	Allow reimbursement for all installation and maintenance as proposed by claimants except: (1) graffiti removal is not reimbursable; (2) installation of receptacle and pad is limited to one-time per transit stop; and (3) limit pick up of trash to not more than three times per week per receptacle.
Reasonable	Claimants submitted survey data from	Do not support the proposed RRM

Reimbursement Methodology	eight cities and LA County indicating a weighted average of $6.75 per pick up per receptacle. Finance believes that the RRM does not accurately reflect the costs to implement the mandate. The State Controller's Office requests that actual costs be reimbursed.	because the costs surveyed for "cleaning" may include graffiti removal, which is not reimbursable, and because Bellflower's survey included unidentified costs for "other" making it impossible to tell whether the surveyed costs go beyond the scope of the mandate.

V. Staff Analysis

Eligible Claimants

The mandated activity (placing and maintaining trash receptacles at all transit stops within a local agency's jurisdiction) applies only to local agency permittees that are *not subject to a Trash TMDL.* Therefore, staff finds that local agency permittees identified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.

Identifying eligible claimants for local agencies that are subject to a trash TMDL is difficult due to events leading up to and following the adoption of the permit, which result in separate TMDL requirements for the Los Angeles River and Ballona Creek watersheds that have impaired water bodies within the jurisdictions of some of the eligible claimants. In addition, the TMDL requirements for the Los Angeles River watershed area was not operative and effective during the period from July 1, 2002 (when the period of reimbursement for the mandated activities begins) until late September 2008 due to legal challenges. Staff finds, however, that all local agency permittees are eligible to claim reimbursement for placing and maintaining trash receptacles to the extent they have transit stops located in areas within their jurisdictions that are *not* covered by an operative and effective trash TMDL.

Ballona Creek trash TMDL: The state's trash TMDL for the Ballona Creek area has been in effect since March 2002. Thus, the permittees identified as responsible jurisdictions in the Ballona Creek trash TMDL were "subject to a trash TMDL" in March 2002 for the water bodies in the area, before the beginning of the reimbursement period for the mandate in question (July 1, 2002). The local agencies identified in the Ballona Creek trash TMDL are:

> Beverly Hills, Culver City, Inglewood, Los Angeles, Los Angeles County, Santa Monica, West Hollywood.

Thus, local agency permittees in the Ballona Creek trash TMDLs are eligible for reimbursement only to the extent they have transit stops located in areas not subject to a trash TMDL.

Los Angeles River trash TMDL: This trash TMDL was not effective from August 28, 2002, until September 22, 2008 due to legal challenges. Thus, from August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.

Beginning September 23, 2008, the local agencies listed above that are subject to the Los Angeles trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the trash TMDL.

Period of Reimbursement

Government Code section 17557, subdivision (e), establishes eligibility to claim reimbursement for a reimbursable state-mandated program beginning in the fiscal year prior to the fiscal year the test claim was filed. In this case, the test claims were filed in September 2003, so the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit).

Finance requests that the reimbursement period for placement of the trash receptacles be up to August 1, 2002 for transit stops with shelters, and until February 3, 2003 for the remaining transit stops. The cities object to these deadlines because costs may be incurred to place receptacles at new transit stops due to changing transit routes.

Staff finds that the "Period of Reimbursement" section of the parameters and guidelines should not limit reimbursement to the costs of placing trash receptacles at transit stops to only those costs incurred before the deadlines. Staff also recommends, however, that the reimbursement for installation activities be limited to one-time per transit stop. Staff also finds that reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim (Permit CAS004001, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.)

Reimbursable Activities

Based on the evidence in the record, staff recommends that for each eligible local agency, the following activities should be reimbursable:

A. Installation of Trash Receptacles (one-time per transit stop):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintenance of Trash Receptacles and Pads (on-going as needed):

1. Collect trash on routine basis, including trash collection and disposal at disposal/recycling facility. This activity is limited to no more than three times per week.
2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners. Graffiti removal is not reimbursable.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

Reasonable Reimbursement Methodology

Staff does not recommend supporting the proposed RRM because the costs surveyed for "cleaning" may include graffiti removal, which is not reimbursable, and because survey data for Bellflower included unidentified costs in an "other" category, which may or may not be reimbursable. Therefore, staff recommends reimbursing actual costs.

VI. Conclusion & Recommendation

Staff recommends that the parameters and guidelines be adopted, with the changes to the proposed revised parameters and guidelines as noted.

STAFF ANALYSIS

Claimants

County of Los Angeles (03-TC-04); Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20); Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

Chronology

09/02/03	Test claim 03-TC-04 (*Transit Trash Receptacles*) filed by County of Los Angeles
09/26/03	Test claim 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) filed by County of Los Angeles[2]
09/30/03	Test Claim 03-TC-20 (*Waste Discharge Requirements*) filed by the Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village[3]
09/30/03	Test Claim 03-TC-21 (*Storm Water Pollution Requirements*) filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina[4]
07/31/09	Commission adopts Statement of Decision
08/04/09	Commission staff notifies parties and interested parties that issuance of the Statement of Decision would be delayed
08/26/09	County submits proposed parameters and guidelines
08/28/09	Cities submit proposed parameters and guidelines
09/03/09	Commission issues Statement of Decision
10/19/09	LA Regional Water Board submits comments on the draft parameters and guidelines
10/23/09	Department of Finance submits comments on the draft parameters and guidelines
11/13/09	County claimants submit rebuttal comments to the state agency comments
11/18/09	City claimants submit rebuttal comments to the state agency comments
01/07/10	Commission staff requests further information on the proposed parameters and guidelines
01/27/10	LA Regional Water Board submits requested information on the proposed parameters and guidelines
02/12/10	City claimants submit comments on the information from the LA Regional Water Board

[2] In adopting the Statement of Decision, the Commission found that the sections of the permit and activities pled in 03-TC-19 (*Inspection of Industrial/Commercial Facilities*) do not constitute a reimbursable state-mandated program.

[3] When the test claim was resubmitted in November 2007, the cities of La Mirada, Monrovia and San Marino were not included, and Azusa, Commerce and Vernon were added.

[4] When the test claim was resubmitted in July 2008, the cities of Baldwin Park, Cerritos, Pico Rivera, South Pasadena, and West Covina were not included.

03/25/10	Commission staff participates in an informal conference on the proposed parameters and guidelines
05/13/10	County claimants request extension of time to submit revised parameters and guidelines that includes a reasonable reimbursement methodology (RRM)
05/20/10	Commission staff grants County claimants extension of time to submit revised parameters and guidelines and RRM
06/01/10	County claimants submit proposed revised parameters and guidelines and RRM, with attached letter (dated 5/24/10) from the League of California Cities and California State Association of Counties supporting the RRM.
06/04/10	City claimants submit proposed revised parameters and guidelines and RRM.
06/09/10	Commission staff deems proposed revised parameters and guidelines to be complete.
07/09/10	Department of Finance requests an extension to respond to the proposed revised parameters and guidelines
07/26/10	State Controller's Office submits comments on the revised parameters and guidelines and RRM.
07/27/10	Department of Finance submits comments on the revised parameters and guidelines and RRM.
08/24/10	County claimants submit rebuttal comments to Controller's and Finance's comments
08/26/10	City claimants submit rebuttal comments to Controller's and Finance's comments

I. Background

The consolidated test claim was filed by the County of Los Angeles and several cities in the County of Los Angeles, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The permit covers the Los Angeles County Flood Control District, Los Angeles County, and 84 cities in Los Angeles County (all cities except Long Beach). On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. Part 4F5c3 states the following:

> Permittees not subject to a trash TMDL [total maximum daily load] shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[5]

The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL) is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All

[5] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

In August 2009, the County of Los Angeles and the city claimants submitted separate proposed parameters and guidelines in accordance with Government Code section 17557. The claimants' proposals request reimbursement for placing and maintaining trash receptacles as mandated by the permit. The claimants also request reimbursement pursuant to Government Code section 17557 and section 1183.1, subdivision (a)(4), of the Commission's regulations for activities the claimants assert to be "the most reasonable methods of complying with the mandate." The claimants have proposed that a reasonable reimbursement methodology (RRM) for reimbursing local agencies be included within the parameters and guidelines.

The revised proposed parameters and guidelines and proposed RRMs were submitted by the County of Los Angeles on June 1, 2010, and by the cities on June 4, 2010.

As indicated in the discussion below, the Department of Finance, the State Water Resources Control Board, the State Controller's Office, and the Los Angeles Regional Water Control Board contend that many of the activities identified by the claimants go beyond the scope of the mandate and should not be reimbursable. In addition, the state agencies oppose the adoption of an RRM and, instead, request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs. The state agencies also seek to clarify the eligible claimants under this mandate and the eligible period of reimbursement.

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of a RRM; and any offsetting revenue or savings that may apply.[6]

The Commission may adopt a RRM for inclusion in the parameters and guidelines.[7] A RRM may be proposed by the claimant, an interested party, the Department of Finance, the Controller's Office, or another affected state agency. A RRM is defined as "a formula for reimbursing local agencies and school districts for costs mandated by the state" and is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years. A RRM shall be based on cost information from a representative sample of

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[6] Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

[7] Government Code section 17557, subdivision (b); California Code of Regulations, Title 2, section 1183.131.

eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs. In addition, the RRM shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.[8]

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.[9] Under Article 7, the Commission's decision is based on evidence in the record. Oral or written testimony offered by any person shall be under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.[10]

After it adopts the parameters and guidelines, the Commission submits them to the State Controller's Office to issue claiming instructions to local government, and to pay and audit reimbursement claims.[11] Issuance of the claiming instructions constitutes the notice of the right of local government to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.[12]

III. Discussion

The analysis of the proposals and comments submitted by the parties, and a description of staff's proposed parameters and guidelines are explained below.

A. Summary of the Mandate

City claimants submitted the following language for the "Summary of the Mandate" in their proposed parameters and guidelines:

1. Planning (including indentifying transit stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management); and
2. Trash collection and receptacle maintenance (including repair and replacement of receptacles as required).

The Department of Finance requests that the "Summary of the Mandate" section simply identify what the Commission approved in the Statement of Decision and not contain other language or proposed reimbursable activities.[13]

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[8] Government Code section 17518.5.

[9] California Code of Regulations, Title 2, section 1187.

[10] California Code of Regulations, Title 2, section 1187.5.

[11] Government Code section 17558.

[12] Government Code section 17561, subdivision (d)(1).

[13] Department of Finance comments dated October 23, 2009.

Staff agrees with Department of Finance's comments. The "Summary of the Mandate" section of the parameters and guidelines is intended to summarize only the activities approved in the Statement of Decision that are mandated from the language of the permit. The summary does not include the detailed list of proposed activities that are reasonably necessary to comply with the mandate.

Thus, staff recommends that the "Summary of the Mandate" section of the parameters and guidelines state the following:

> This consolidated test claim was filed by the County of Los Angeles and several cities in the Los Angeles region, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. (California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.) Part 4F5c3 states the following:
>
> > Permittees not subject to a trash TMDL [total maximum daily load] shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[14]
>
> The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL), is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

B. Eligible Claimants

The mandated activity (placing and maintaining trash receptacles at all transit stops within a local agency's jurisdiction) applies only to local agency permittees[15] that are *not subject to a Trash TMDL*. Part 4F5c3 of the permit states:

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[14] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

[15] All of the local agencies subject to the permit are listed in the permit as follows: Los Angeles County, Los Angeles Flood Control District, Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada-Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling

> Permittees not subject to a trash TMDL shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[16]

Section II of the proposed parameters and guidelines submitted by the County of Los Angeles identifies the eligible claimants as follows:

> The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Water Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies are not or were not subject to coverage under a trash "Total Maximum Daily Load," or TMDL requirement.[17]

The city claimants propose similar language as follows:

> The County of Los Angeles, Los Angeles County Flood Control District, and all cities covered under the Permit, to the extent that the same are not or were not subject to coverage under a trash TMDL requirement.[18]

The Department of Finance requests that Section II of the proposed parameters and guidelines be amended to list the eligible claimants that are not subject to a TMDL requirement.[19]

As described below, the analysis of this issue is complicated by the various events leading up to and following the adoption of the permit at issue in this case that resulted in separate TMDL requirements for those watershed areas identified as having impaired water bodies within the jurisdictions of some of the eligible claimants. In addition, the TMDL requirements for the watershed area along the Los Angeles River was not operative and effective during the entire period from July 1, 2002 (when the period of reimbursement for the mandated activities begins) until late September 2008 due to legal challenges. Staff finds, however, that all local agency permittees are eligible to claim reimbursement for placing and maintaining trash receptacles to the extent they have transit stops located in areas within their jurisdictions that are *not* covered by an operative and effective trash TMDL.

Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier. California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 15-16.

[16] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

[17] County of Los Angeles' revised parameters and guidelines, filed June 1, 2010.

[18] Revised parameters and guidelines filed June 4, 2010, by Burhenn & Gest LLP on behalf of the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes, and Signal Hill.

[19] Department of Finance comments filed October 23, 2009.

1. Trash TMDLs

The plain language of part 4F5c3 of the permit states that the mandate to place and maintain trash receptacles at transit stops within the permittees' jurisdictions applies only to permittees that are "not subject to a trash TMDL." A "TMDL" stands for "total maximum daily load" and stems from federal law. Under the federal Clean Water Act, the states are required to identify polluted waters that have failed to meet the water quality standards under the National Pollution Discharge Elimination System (NPDES) permit system. These identified waters are classified as "impaired." [20] Once identified, the states are required to rank the impaired waters in order of priority, and based on the ranking, calculate levels of permissible pollution called "total maximum daily loads" or TMDLs, that can be discharged into the water bodies at issue.[21] The State Water Resources Control Board (hereafter "State Board") defines a TMDL as "a written plan that describes how an impaired water body will meet water quality standards, it [sic] contains a measurable feature to describe attainment of the water quality standard(s), a description of required actions to remove the impairment, an allocation of responsibility among dischargers to act in the form of actions or water quality conditions for which each discharger is responsible."[22]

TMDLs are developed in draft form by the staff of the regional water boards and then adopted as amendments to each regional board's water quality control plan, or Basin Plan. The Basin Plan amendments are then submitted to the State Board, and then subsequently to the Office of Administrative Law (OAL) for approval. After approval by the State Board and OAL, the amended Basin Plan that includes the TMDL is submitted for approval to the U.S. Environmental Protection Agency (EPA).[23] The TMDL is not effective until the U.S. EPA approves the TMDL. If the U.S. EPA disapproves the state's TMDL, EPA must establish its own TMDL within 30 days of the disapproval.[24]

Thus, a trash TMDL imposes separate requirements and goals on a local entity for reducing pollution specific to the area that is subject to the TMDL. A trash TMDL was not pled in the test claim and there has been no finding that requirements imposed by a trash TMDL are state-mandated within the meaning of article XIII B, section 6. The mandated program here only applies to those permittees that have trash receptacles in areas that are not subject to a trash TMDL.

a) Trash TMDLs adopted for the Los Angeles River and Ballona Creek Watershed Areas

With respect to the local agency permittees in this case, the LA Regional Board adopted two TMDLs for trash for the water bodies in the Los Angeles River and Ballona Creek watershed areas on September 19, 2001, three months before the adoption of the permit and mandate at issue here. The trash TMDLs require annual reductions in trash from an established baseline for each permittee

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[20] Section 303(d) of the Clean Water Act (codified as 33 U.S.C. § 1313).

[21] See summaries of the Clean Water Act and the TMDLs in *City of Arcadia v. U.S. Environmental Protection Agency* (2003) 265 F.Supp.2d 1142, 1143-1146, and *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1403-1407.

[22] "Total Maximum Daily Loads (TMDL), Questions & Answers," published by the State Water Resources Control Board.

[23] *Id.* See also, *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1147.

[24] 33 U.S.C. section 1313(d)(2); see also, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 10.

identified as a responsible jurisdiction in the TMDL, until the final target of zero trash discharge is attained over a period of several years.[25] On February 19, 2002, the State Board approved and adopted the two trash TMDLs. On July 16, 2002, OAL approved the TMDLs, and on August 1, 2002, U.S. EPA sent a letter to the State Board approving the TMDLs.[26] The Regional Board reports that these TMDLs became effective on August 28, 2002.[27]

Prior to the approval of the two TMDLs, however, U.S. EPA issued its own interim TMDLs for trash for the water bodies in the Los Angeles and Ballona Creek watershed areas pursuant to a consent decree signed in the *Heal the Bay, et al. v. Browner* lawsuit (No. C 98-4825). The *Heal the Bay* lawsuit challenged EPA's alleged failure to either approve or disapprove TMDLs for the State of California. Pursuant to the consent decree, EPA was required to either have approved a state-submitted TMDL for trash in Los Angeles region or to have established the TMDL itself by a March 24, 2002 deadline.[28] The State did not adopt and submit a final TMDL by the consent decree deadline and, thus, EPA adopted a trash TMDL for the water bodies in the Los Angeles River and Ballona Creek watershed areas in March 2002. EPA's TMDLs were based largely on the TMDLs for trash adopted by the Regional Board, but did not contain implementation measures.[29] When EPA approved the State's trash TMDLs on August 1, 2002, its letter announced that the State's TMDLs "supersede" the EPA trash TMDLs as follows: "The approved State TMDLs for trash for Los Angeles River Watershed and Ballona Creek and Wetland now supersede the TMDLs established by EPA in March; therefore, the State's TMDLs are now the applicable TMDLs for Clean Water Act purposes."[30] No further federal trash TMDLs have been issued by the EPA for the water bodies in the Ballona Creek and Los Angeles River watershed areas.[31]

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[25] 2001 TMDLs for trash adopted for Ballona Creek and Los Angeles River watershed areas.

[26] Letter dated August 1, 2002, from the U.S. EPA approving the TMDLs. See also, *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1147.

[27] See list of TMDLs adopted by the Regional Board in their document entitled "Basin Plan Amendments – TMDLs."

[28] *City of Arcadia, supra,* 265 F.Supp.2d 1142, 1146, fn. 5, where the court found the TMDL deadline date under the consent decree to be March 24, 2002, rather than March 22, 2002 as contended by the parties (and published by the Regional Board).

[29] See Staff Reports Supporting Approval of the Trash TMDLs for the Los Angeles River and Ballona Creek watershed areas, dated July 30, 2002; and letter dated August 1, 2002, from the U.S. EPA approving the TMDLs.

[30] *Ibid.*

[31] EPA's document entitled, "Monitoring, Assessment and TMDLs: EPA-established TMDLs/ Region 9," which lists the March 2002 trash TMDLs for the Los Angeles River and Ballona Creek areas adopted by EPA and indicates they were superceded by State TMDLs in August 2002. No further EPA TMDLs are listed.

b) The Ballona Creek Trash TMDL has been in effect since March 2002

The State's trash TMDL for the Ballona Creek area has been in effect since March 2002.[32] Thus, the permittees identified as responsible jurisdictions in the Ballona Creek trash TMDL were "subject to a trash TMDL" in March 2002 for the water bodies in the area, before the beginning of the reimbursement period for the mandate in question here (July 1, 2002). The local agencies identified in the Ballona Creek trash TMDL are:

> Beverly Hills, Culver City, Inglewood, Los Angeles, Los Angeles County, Santa Monica, West Hollywood.[33]

c) The Los Angeles River Trash TMDL was not effective or operative from August 28, 2002, until September 22, 2008 due to legal challenges

However, the State's trash TMDL for the water bodies in the Los Angeles River watershed area was challenged by 22 cities. The Court of Appeal in *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, found that the state did not adequately comply with CEQA when adopting the TMDL and in 2006, declared the trash TMDL for the Los Angeles River watershed area void. The court issued a writ of mandate directing the State and Regional Water Boards set aside the TMDL until it was brought into compliance with CEQA.[34]

In accordance with the court's order, the Regional Board set aside the 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) on June 8, 2006. The trash TMDL was subsequently approved by the State Board, OAL, and EPA, and became effective on September 23, 2008.[35]

Thus, the permittees identified as responsible jurisdictions in the Los Angeles River trash TMDL were subject to the federal trash TMDL from March 2002 (before the period of reimbursement began in this case on July 1, 2002) until August 27, 2002. On August 28, 2002, the state's trash TMDL initially became effective, but was later determined void by the court and set aside. As noted above, there is no evidence that the federal trash TMDL took effect or became operative during the period the state's TMDL was set aside. Thus, the permittees listed in the Los Angeles River trash TMDL were not subject to a trash TMDL and, thus, were required to comply with the mandate to place and maintain trash receptacles at all transit stops in their jurisdictions from August 28, 2002, until September 22, 2008, the day before the trash TMDL was finally approved. The following day, these permittees became subject

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[32] In 2003, the county and City of Los Angeles filed a lawsuit to challenge the Ballona Creek TMDL. The county, city, and the state entered into a settlement agreement that resulted in an amendment to the Ballona Creek TMDL. The amendment was adopted by the Regional and State Water Boards in 2004, approved by OAL in February 2005, and became effective on August 11, 2005. (See BPA Detail published by the Los Angeles Regional Water Quality Control Board for the Basin Plan amendment, Resolution No. 2004-023.)

[33] Regional Board's letter dated January 26, 2010, Appendix I to Regional Board's TMDL for the Ballona Creek and Wetland, dated September 19, 2001.

[34] *City of Arcadia, supra,* 135 Cal.App.4th at page 1436; see also the summary of the TMDL in the Regional Board's Fact Sheet supporting 2009 amendments to the Los Angeles River trash TMDL, pages 2-4.

[35] Regional Board's Fact Sheet supporting 2009 amendments to the Los Angeles River trash TMDL, pages 4.

to the State's trash TMDL for the Los Angeles River watershed area and, therefore, were no longer required to adhere to the permit's transit stop trash receptacle requirements that are the subject of these parameters and guidelines. According to the Regional Board, the following local agencies are subject to the Los Angeles River trash TMDL:

> Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles, Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.[36]

2. **Local agency permittees that are listed in the Los Angeles River or Ballona Creek trash TMDLs are eligible to claim reimbursement for the mandated program to the extent they have transit stops located in areas not subject to the trash TMDL.**

In comments submitted February 12, 2010, city claimants argue that only portions of the local agency jurisdictions listed in the TMDLs are subject to the trash TMDLs. Thus, the city claimants argue that if a portion of a local agency lies in an area *without* a trash TMDL, it still is entitled to reimbursement. The cities state the following:

> [O]nly *portions* of the Cities of Carson and Downey are located within the Los Angeles River Watershed and thus subject to the trash TMDL for the Los Angeles River watershed. For example, all but a very small portion of the City of Carson is located within the Dominguez Channel Watershed, which is not subject to a trash TMDL. More than half of the City of Downey is located within the San Gabriel River and Los Cerritos Channel Watersheds, which are also not subject to a trash TMDL. ... If a city lies in part within a watershed without a trash TMDL, it still is entitled, under the Commission's decision, for a subvention of funds. [Emphasis in original.]

The cities' position is supported by the Regional Board staff reports for the trash TMDLs. Page 3 of the staff report for the Ballona Creek trash TMDL states that "Cities on this small coastal watershed are Culver City, Beverly Hills, West Hollywood, *parts* of Santa Monica, *parts* of Ingelwood, *parts* of Los Angeles, and *some unincorporated areas* of Los Angeles County." (Emphasis added.) Page 23 of the staff report for the Los Angeles River TMDL (dated August 9, 2007) describes "cities that are only partially located in the watershed" under the description for the refined baseline waste load allocations.[37]

Thus, even when the TMDLs are valid and in effect, the local agency permittees that are listed in the Los Angeles River or Ballona Creek trash TMDLs are eligible to claim reimbursement for the mandated program to the extent these local agency permittees have transit stops located in areas not covered by the trash TMDL requirements.

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[36] Regional Board's letter dated January 26, 2010; Regional Board Order No. R4-2009-0130, Appendix 7-1.

[37] Exhibit ___.

3. Costs of carrying out the transit trash receptacle mandate until the trash TMDLs are in their implementation phase under Part 4F5b of the permit are beyond the scope of the mandate and are not reimbursable.

Finally, the parties have suggested that permittees subject to a trash TMDL are eligible for reimbursement to place and maintain trash receptacles at all transit stops in their jurisdiction pursuant to Part 4F5c3 of the permit until the trash TMDL is "implemented." Part 4F5b of the permit states that "if the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented." However, part 4F5b of the permit was not pled in this test claim and the Commission has made no mandate findings on that part of the permit. Any reimbursement stemming from Part 4F5b goes beyond the scope of the mandated program in Part 4F5c3.

4. Staff Recommendation on "Eligible Claimants"

Accordingly, staff recommends that Section II of the parameters and guidelines that describe the "Eligible Claimants" state the following:

The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:

- Local agency permittees identified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.
- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the trash TMDL requirements:

  Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County Santa Monica, West Hollywood

  These local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the trash TMDL requirements.
- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.
- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the trash TMDL requirements:

Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.

Beginning September 23, 2008, these local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the trash TMDL requirements.

C. Period of Reimbursement

Government Code section 17557, subdivision (e), establishes eligibility to claim reimbursement for a reimbursable state-mandated program beginning in the fiscal year prior to the fiscal year the test claim was filed.[38] In this case, the test claims were filed in September 2003 (fiscal year 2003-2004) and, thus, the period of reimbursement for this claim begins July 1, 2002 (six months after the operative and effective date of the permit: December 13, 2001).[39]

Part 4F5c3 of the permit establishes deadlines to perform the mandated activity to place trash receptacles at transit stops. The plain language requires local agency permittees to place trash receptacles at all transit stops within their jurisdictions that have shelters no later than August 1, 2002, and at all other transit stops no later than February 3, 2003. The Department of Finance requests that the language in the "Period of Reimbursement" section of the parameters and guidelines include these deadlines. In its October 23, 2009 comments, Finance recommends that the Commission:

> Identify the reimbursement period, effective July 1, 2002, for the costs associated with placing trash receptacles at transit stops with shelters until August 1, 2002, and at remaining transit stops until February 3, 2003. The reimbursement period, however, for the ongoing maintenance of those trash receptacles continues until the test claim permit is no longer valid.

The cities, in comments filed November 13, 2009, do not want the deadlines identified in the parameters and guidelines because "costs may have been incurred after those dates. For example, after those dates, municipalities may be required to place trash receptacles at new transit stops as the result of changes in transit routes."

Staff finds that the "Period of Reimbursement" section of the parameters and guidelines should not limit reimbursement to the costs of placing trash receptacles at transit stops to only those costs incurred before the deadlines. There is no indication in the permit, or in any document issued by the LA Regional Water Board, that local agencies that fail to meet the deadlines are then not required to perform the mandated activity to place the trash receptacles at all transit stops. In fact, limiting the mandate to activities performed only before the deadlines would defeat the purpose of the mandate to "reduce the discharge

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[38] Government Code section 17557, subdivision (e), states that "A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

[39] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 70, as well as the footer on each page of the permit.

of pollutants into storm water to the maximum extent practicable."[40] Moreover, local agencies are required to install trash receptacles at "all transit stops," including those transit stops that are added by a transit agency after the deadlines in the permit have passed. Therefore, although staff recommends that reimbursement be allowed for receptacles installed at transit stops after the dates in the permit, staff also recommends that the reimbursement for installation activities (as discussed further below) be limited to one-time per transit stop.

As to the ending date for reimbursement, even though the permit at issue expires by its own terms on December 12, 2006,[41] staff finds that the mandate continues past that date until a new permit is approved and issued by the Regional Water Board.

The federal regulation on expired permits states:

> States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.[42]

California's regulations provide for automatically continuing expired permits.

> The terms and conditions of an expired permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits have been complied with.[43]

In short, the law provides for automatic continuation of the permit until a new one is approved. There is no evidence in the record that a new NPDES storm water permit has been issued for Los Angeles County. Therefore, staff finds that reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim (Permit CAS004001, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182.)

Accordingly, staff recommends the following language in Section III of the parameters and guidelines addressing the "Period of Reimbursement:"

> Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year.
>
> The County of Los Angeles filed a test claim on *Transit Trash Receptacles* (03-TC-04) on September 2, 2003. The Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village filed a test claim on *Waste Discharge Requirements* (03-TC-20) on September 30, 2003. The Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina filed a test claim on *Storm Water Pollution Requirements* (03-TC-21) on September 30, 2003. Each test claim alleged that Part 4F5C3 of the Los Angeles Regional Water Quality Control Board Order

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[40] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

[41] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 70.

[42] 40 Code of Federal Regulations, section 122.6 (d).

[43] California Code of Regulations, title 23, section 2235.4.

No. 01-182, Permit CAS004001 was a reimbursable state-mandated program. The filing dates of these test claims establish eligibility for reimbursement beginning July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Resources Control Board for Los Angeles County is adopted.

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, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (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.
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.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

D. Reimbursable Activities

City and County claimants submitted the following activities in their proposed parameters and guidelines, along with the proposed reasonable reimbursement methodology in June 2010:

A. Installation of Trash Receptacles:

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Evaluate and select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and /or drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase receptacles/pads and/or construct receptacles/pads and install receptacles.[44]
5. Repeat steps 3-4 above when necessary for replacement of receptacles/pads.[45]

B. Maintenance of Trash Receptacles

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.

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[44] City claimants: "purchase and/or construct and install pads"

[45] City claimants: "repeat steps 3-4 above when necessary for replacement of receptacles/pads on a non-individual basis."

2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

The Department of Finance, in comments submitted October 23, 2009, states that the installation activities in A1 to A4 above should be deleted because they go beyond the scope of the mandate. Finance "believes activities such as construction contract preparation, specification review, or fabrication and installation of pads are not necessary to implement the approved mandate."

The LA Regional Water Board, in comments submitted October 19, 2009, asserts that the claimants overstate the scope of the trash receptacle requirement. The Board argues that the purpose of the provision is to effectively control litter from transit stops through the simple placement of trash cans:

> Claimants may fairly and adequately comply with the mandates of the order through the placement of any type of receptacle capable of containing the garbage that waiting passengers might throw into the gutter. Likewise, given the water quality context, the obligation to maintain the receptacles is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage.

According to the LA Regional Water Board, the order does not require any construction or installation. "Nor can the order fairly be viewed as requiring the expenditure of $20,000 to identify the location of transit stops that are well known by transit authorities and published on transit authority maps for the benefit of their riders."

City claimants, in their November 2009 rebuttal comments, state that "for the requirement to be effective in an urban environment, the receptacles must be durable and theft proof." Further, proper design requires a permanent installation, often including a concrete pad to which a receptacle is bolted, that will resist thieves and vandals. Missing receptacles receive no trash, defeating the purpose of the mandate. Claimants call construction and installation "intrinsic to the mandate." Claimants also responded to the Regional Board's assertion that the mandate to maintain "is simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage." According to the city claimants, it is less expensive and more appropriate to achieve the goal of less trash in gutters if the receptacles are routinely emptied, inspected and maintained. As to spending $20,000 for the location of transit stops, city claimants assert that these stops are not on transit maps, and that stops must be identified and updated as routes change over time.

The County of Los Angeles, in its November 2009 rebuttal comments, states that the proposed parameters and guidelines include "only the types of installation activities that are reasonably necessary in complying with the mandates found to be reimbursable by the Commission" and also cites the declaration of Aras Ahmed, an Associate Civil Engineer in the Department of Public Works, in the test claim. County claimants also assert the necessity of bolting down receptacles to prevent vandalism, theft, and accidental losses, to a concrete pad, including the pad's design and fabrication, as well as "identifying the topological nature of specific site receptacle placements." Claimants further assert that

scheduled collections and inspections of receptacles are necessary to prevent guessing as to when receptacles should be emptied.

Both city and county claimants point to declarations in the test-claim record. Two declarations were submitted with test claim (03-TC-04) submitted by Los Angeles County. The first is by Frank Kuo, Facilities Program Manager II in the Watershed Management Division of Los Angeles County Department of Public Works; and another by Aras Ahmed, an Associate Civil Engineer in the Programs Development Division of Los Angeles County's Department of Public Works. Both Mr. Kuo and Mr. Ahmed state they are responsible for implementing the permit, and both declarations state their information and belief that the following duties are reasonably necessary to comply with the permit:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Los Angeles County and city claimants included a similar declaration from William Yan, Associate Civil Engineer in the Programs Development Division of the County Public Works Department with their submissions of a reasonable reimbursement methodology (RRM) and revised parameters and guidelines received June 1, 2010 (Los Angeles County) and June 4, 2010 (for cities). In the declaration, Mr. Yan stated the following reasons for the installation activities:

- To prevent frequent loss of trash receptacles in many types of locations, the receptacle must be bolted down and, in order to be bolted down, unimproved bus stops must be constructed with a concrete pad;
- Proper selection of receptacle and pad types, evaluation of appropriate placement of receptacles and preparation of engineering specifications and/or drawings necessary for installation of trash receptacles;
- Securing transit trash receptacles reduces vandalism, theft, and accidental losses and the costs of replacing the missing or damaged receptacles;
- Securing transit trash receptacles would reduce the time the receptacles would be out of service and not available to collect trash;
- Concrete pads would provide adequate bolting surface and for large-capacity transit trash receptacles which require less collection frequency;
- Transit trash receptacles made of wrought iron would be more durable against vandalism and damage, thereby reducing replacement cost;
- Dome covers and the solid trash receptacle liners prevent rain water from going into the receptacles, thereby causing trash to spill out and flow into the storm drains;
- The use of dome covers and solid trash receptacle liners meets the intent of the … [permit] by preventing pollutants from entering the storm drains.

None of the activities proposed by claimants are in the permit. The Commission has discretion, however to determine "the most reasonable methods of complying with the mandate."[46] This is defined as "those methods not specified in statute or executive order that are necessary to carry out the mandated program."[47] Using this standard, each proposed activity is analyzed below.

The first activity, A.1., is: "Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit." Evidence in the record supports the finding that this activity is a reasonable method to comply with the mandate. The declaration in Los Angeles County's test claim by Mr. Kuo and Mr. Ahmed state their information and belief that "identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas" is reasonably necessary to comply with the permit. There is no evidence in the record for the Department of Finance's assertion that all transit stops are on transit maps, or even if they were, that the maps would be up to date. And claimants are only eligible to the extent they are not subject to a trash TMDL, so transit stops in a jurisdiction partially subject to a trash TMDL would need to be identified to the extent they are outside the area subject to the trash TMDL. There is no evidence that this information (or any other watershed information) would be on a transit map.

There is also evidence in the record to find that the second activity, A.2.: "Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and /or drawings" is a reasonable method of complying with the mandate. Mr. Yan of Los Angeles County submitted a declaration supporting this activity, as cited above. Moreover, a receptacle and pad that is not easily vulnerable to theft or vandalism is reasonable to effect the purpose of the mandate: "to reduce the discharge of pollutants into storm water to the maximum extent practicable."[48] Missing or vandalized receptacles would not effectively capture trash and therefore not attain this goal.

Staff also finds that, A.3.: "contract preparation, specification review process, bid advertising, and review and award of bids" is a reasonable method of complying with the mandate. There is no requirement in the permit for city or county employees to personally perform the activities at issue, and the Commission's boilerplate language for reimbursable activities includes contract costs. Moreover, Public Contract Code section 20120 et seq. contains the county bidding and contract requirements, and Public Contract Code section 20160 et seq. contains the city bidding and contract requirements, both of which require competitive bidding for public works contracts.

As for A.4.: "Purchase of receptacles [cities include "pads"] and/or construct receptacles [pads] and install receptacles [pads]" staff finds that this is a reasonable method of complying with the mandate, as the receptacles are required by the plain language of the permit, and are not effective without installation, including affixing the receptacles to prevent theft and vandalism. The declarations of Mr. Kuo and Mr. Ahmed cited above indicate that these activities were performed in compliance with the mandate.

Staff finds that A.5., replacement of receptacles and pads may be necessary from time to time when a transit stop is moved is a reimbursable activity, since the cities and counties do not have direct control

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[46] Government Code section 17557; California Code of Regulations, title 5, section 1183.1, subdivision (a)(4).

[47] *Ibid.*

[48] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

over placement of transit stops by the Metropolitan Transit Authority or other transportation agencies. But to comply with the mandate and to effect the goal of keeping pollutants out of storm water, trash receptacles must be moved to reflect current locations of transit stops.

Staff also finds that activities A.1. through A.5. are limited to one time per transit stop. As discussed above under "period of reimbursement," the permit contains deadlines for placement of the trash receptacles: for stops with shelters no later than August 1, 2002, and at all other transit stops no later than February 3, 2003. Because the shelters are required to be in place by these deadlines, staff finds that installation activities in A.1. through A.5. are eligible for reimbursement only one time per transit stop, which allows for relocation of transit stops.

In A.5., city claimants requested reimbursement for replacement on a "non-individual" basis. Staff finds that this is not a reasonable method to comply with the mandate. Individual replacements are discussed below under B4 for missing or damaged receptacles, and are found to be a reasonable method to comply with the mandate. There is nothing in the record to support non-individual replacement (by group or lot, for example) of trash receptacles. Thus, staff finds that "non-individual" replacement is not a reasonable method to comply with the mandate.

Staff finds that B.1., "routine collection and disposal of trash," falls within the plain language of the mandate that requires "all trash receptacles shall be maintained as necessary." Routine collection and disposal is the most reasonable method to comply with the mandate because the purpose of the mandate is to keep pollutants out of storm water. Disposal at designated facilities is reasonable to comply with the mandate, since it is unlawful to dispose of trash outside of designated areas without a landowner's permission. (Pen. Code, § 374.3.)

Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines[49] indicates that frequency of collection varies from weekly for some local agencies (e.g., Bellflower, Covina, Signal Hill), to 2.57 times per week for Carson. (The pickup frequency data is unclear for Los Angeles County, as the survey appears to state 156 pickups per year, or three times per week, but an August 2010 declaration from William Yan states that pickup frequency is 48-52 times per year). Trash will accumulate at different rates at different transit stops. However, based on the survey data and accompanying declaration, staff finds that the most reasonable method of complying with the mandate is to reimburse collection frequency no more than three times per week.

Staff also finds that inspections and maintenance of receptacles and pads under B.2. and B.3. fall within the scope of the plain language of the mandate to "maintain" the receptacles "as necessary." These activities are also reasonably necessary to comply with the mandate. Any problems with receptacles and pads should be noted and reported to effect the purpose of the mandate: "to reduce the discharge of pollutants into storm water to the maximum extent practicable."[50]

The declaration submitted by Los Angeles County, dated August 16, 2010, by Mr. William Yan, Associate Civil Engineer, states that "trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any reside in

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[49] County of Los Angeles' letter and proposed revised parameter and guidelines dated May 27, 2010; city claimants' letter and proposed revised parameters and guidelines dated June 1, 2010.

[50] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

order to prevent the flow of any waste to enter the storm drain and/or street gutters." The record is insufficient, however, as to how graffiti removal effects the permit's purpose of keeping pollutants out of storm water. Therefore, staff finds that graffiti removal is beyond the scope of the mandate and not reimbursable.

In July 2010 comments, Finance states that cleaning receptacles "may not be reasonably necessary to carry out the mandate." In August 2010 rebuttal comments, the County points to language in the permit that states "all trash receptacles shall be maintained as necessary" and includes a declaration from a civil engineer in the County's Dept. of Public Works that cleaning is necessary to comply with the mandate "in order to prevent the flow of any waste to enter the storm drain and/or street gutters." Based on this evidence in the record, staff finds that the maintenance activity, B.3, includes cleaning receptacles and pads.

Staff further finds that B.4., "replacement of receptacles" falls within the scope of the mandate to maintain receptacles as necessary and is reasonably necessary to comply with the mandate. Damaged or missing receptacles will not keep pollutants out of storm water, thereby defeating the purpose of the mandate. Staff also finds that disposal of replaced receptacles is also eligible for reimbursement.

Although moving receptacles in B.5. is a reasonably necessary activity for transit stops that need to be relocated, because this activity is one-time per transit stop it is listed in A.5.

In sum, staff recommends the following language for section IV of the parameters and guidelines addressing "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 costs were 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 local agency, the following activities are reimbursable:

C. Installation of Trash Receptacles (one-time per transit stop):

6. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

7. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
8. Contract preparation, specification review process, bid advertising, and review and award of bid.
9. Purchase or construct receptacles and pads and install receptacles and pads.
10. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

D. Maintenance of Trash Receptacles and Pads (on-going as needed):

5. Collect trash on routine basis, including trash collection and disposal at disposal/recycling facility. This activity is limited to no more than three times per week.
6. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
7. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners. Graffiti removal is not reimbursable.
8. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

E. Proposed Reasonable Reimbursement Methodology

A reasonable reimbursement methodology (RRM) is to be based on "cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs" and is to "consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." (Gov. Code, § 17518.5)

City and county claimants submitted surveys of 11 local agencies, of which eight were included in the survey data (excluded were two cities that are subject to a trash TMDL and one which included additional costs). Thus, of about 85 eligible claimants, eight were surveyed, which is 9.4% of the claimants. For the surveys in the record, the number of receptacles varies widely, from over 400 in LA County to nine in Artesia. The surveys indicate that there is a sample of both large and small local agency claimants, which constitutes a "representative" sample.

Based on the survey data, claimants propose a weighted average uniform cost allowance of $6.75 per transit stop for pickup and cleaning and maintenance (what appears to correspond to the categories in section B under the reimbursable activities listed above). Claimants also propose increasing that uniform cost allowance for 2006-07 and future years for costs of living adjustments used by the State Controller in promulgating annual claiming instructions, and decreasing the amount for years prior to 2005-06 via the same adjustments. Claimants state that "the League [of Cities] and CSAC fully support this calculation."

In its July 23, 2010 letter, the Department of Finance objects to the proposed RRM because "the survey responses do not clearly explain the costs associated with maintenance of the trash receptacles, e.g., cleaning." Finance points to Los Angeles County data that show cleaning costs increased $7,275 from 05-06 to 06-07, and states: "the concern is that the ratio of increased cleaning costs to increased number

of receptacles is not proportionate or consistent between fiscal years." Additionally, Finance states that some "other" costs should be excluded, such as Signal Hill's cost for review of the collection contract by the City Attorney. Finally, Finance proposed no cost of living adjustment, but that the costs remain constant from 2002 to 2009, and increase in 2009-10 each year by the implicit price deflator.

In its July 26, 2010 comments, the State Controller proposes to delete reference to the RRM and proposes language for reimbursement to be based on actual costs.

Los Angeles County submitted rebuttal comments in August 2010 with a declaration from William Yan from LA County Department of Public Works regarding the cleaning costs. Mr. Yan states that three variables contribute to the variation in cleaning costs: the average number of trash receptacles, the unit cleaning cost per visit (including living wage adjustments), and the frequency of cleanings per month. The declaration also states that "associated cleaning costs are reasonable, proper, and fairly stated."

The city claimants also submitted rebuttal comments in August 2010 and also cite Mr. Yan's declaration regarding cleaning costs. City claimants also state that Signal Hill's contract review a proper administrative cost, and do not object to deleting a cost of living adjustment.

Staff finds that the proposed RRM appears to be complete except for two essential pieces of data. First, the data submitted include surveyed costs for "cleaning," which is eligible for reimbursement. Graffiti removal, however, is not a separate survey category and is not eligible for reimbursement. Assuming that a portion of the "cleaning" costs include graffiti removal,[51] the costs would be inflated because they reflect activities beyond the scope of the mandate. Second, Bellflower's survey included unidentified costs for "other" making it impossible to tell whether the surveyed costs go beyond the scope of the mandate.

Therefore, staff finds that the evidence in the record does not support the RRM as proposed, so that actual costs would be reimbursed.

F. Conclusion & Recommendation

Staff recommends that the parameters and guidelines be adopted, with the changes to the proposed revised parameters and guidelines as noted.

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[51] This assumption is based on the declaration submitted by Los Angeles County, dated August 16, 2010, by Mr. William Yan, Associate Civil Engineer, who states that "trash receptacles and the 10-foot area around each trash receptacle must be thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds and any reside in order to prevent the flow of any waste to enter the storm drain and/or street gutters."

Received
February 18, 2011
Commission on
State Mandates

Exhibit K

JOHN CHIANG

California State Controller

Division of Accounting and Reporting

February 18, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Staff Analysis, Proposed Parameters and Guidelines, Schedule for Comments, and Hearing Date
Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Part 4, Section F.5.c.3.
County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downy, Monterey Park, and Signal Hill, Co-claimants

Dear Mr. Bohan:

We have reviewed the proposed parameters and guidelines submitted by the County of Los Angeles and the various cities, respectively. Below are our comments and recommendations; proposed additions are underlined and deletions are indicated with strikethrough as follows:

III. PERIOD OF REIMBURSEMENT

Page 3

Reimbursement for state-mandated costs may be claimed as follows:

3. Pursuant to Government Code section 17560, subdivision (a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

4. ~~If~~ In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (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. (Government Code section 17560, subdivision (b)).

Comment: Change the boilerplate language to conform to Government Code section 17560, subdivision (b).

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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, subdivision (a).

IV. REIMBURSABLE ACTIVITIES

Page 4, Paragraph 2

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets,~~ calendars, 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 reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Page 4, Paragraph 4

For each eligible local agency, the following activities are reimbursable:

One-Time Activities

A. Installation of Trash Receptacles (one-time per transit stop):

Ongoing Activities

B. Maintenance of Trash Receptacles and Pads (on-going as needed):

Should you have any questions regarding the above, please contact Tiffany Hoang at (916) 323-1127, or e-mail to thoang@sco.ca.gov .

Sincerely,

JAY LAL, Manager
Local Reimbursement Sections

Received
February 24, 2011
Commission on
State Mandates

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

February 23, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Mr. Bohan:

LOS ANGELES COUNTY'S REVIEW
PROPOSED PARAMETERS AND GUIDELINES
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

The County of Los Angeles respectfully submits its review of parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program proposed by Commission staff.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
H:\SB90\A 02 11++ Storm water Ps&Gs Hearing/Cover letter 02 22 11

Enclosure

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Los Angeles County's Review
Proposed Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

Executive Summary

On July 31, 2009, the Commission on State Mandates (Commission) adopted a landmark decision. For the first time in California, municipalities could receive State reimbursement for storm water mandates that are not found in the federal Clean Water Act and related legislation. Specifically, eligible claimants are now required to place and maintain trash receptacles at all transit stops.

On August 26, 2009, the County filed parameters and guidelines (Ps&Gs) which permitted claiming repetitive trash collection activities using time studies. On May 27, 2010, the County filed revised Ps&Gs which added a 'reasonable reimbursement methodology' (RRM) or standard cost provision for claiming repetitive trash collection activities. This standard cost provision was based on a $6.75 unit cost RRM calculation and was endorsed by the League of California Cities and the California State Association of Counties on May 24, 2010.

In comments filed with the Commission on July 27, 2010, the State Department of Finance (Finance) accepted use of an RRM, but on July 26, 2010 the State Controller's Office (SCO) did not. SCO reasoned that "... for uniformity and consistency" only actual costs, not (standard) RRM costs, are available methodologies for claiming repetitive trash collection activities. However, no prohibition against combining actual cost and standard cost claiming options in a single reimbursement program was ever found.

On February 4, 2011, Commission staff issued their analysis and concluded that the County's RRM "... appears to be complete except for two essential pieces of data". The first type of missing data is whether the County included the costs of graffiti removal in its proposed RRM. The County analyzed the matter and found that it did not. Two sworn declarations to this effect are attached. The second type of missing data is the nature of "other" costs in the Bellflower City RRM survey response. It was found that these were not repetitive allowable costs. Accordingly, the per trash pickup RRM was recalculated and dropped from $6.75 to $6.74.

Commission staff also proposed Ps&Gs language limiting installation of receptacles and pads to one-time per transit stop and limiting pickup of trash to no more than three times per week per receptacle. The County finds these limitations to be reasonable.

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Reimbursable Activities

The County agrees with Commission staff that the following activities are reimbursable under the Municipal Storm Water and Urban Runoff Discharges reimbursement program:

"A. Installation of Trash Receptacles (one-time per transit stop):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.

3. Contract preparation, specification review process, bid advertising, and review and award of bid.

4. Purchase or construct receptacles and pads and install receptacles and pads.

5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintenance of Trash Receptacles and Pads (on-going as needed):

1. Collect trash on routine basis, including trash collection and disposal at disposal/recycling facility. This activity is limited to no more than three times per week.

2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.

3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners. Graffiti removal is not reimbursable.

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> 4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads." (Commission Staff Analysis, pages 5-6)

Commission staff further find that the County's proposed RRM "appears to be complete except for two essential pieces of data. Staff explain, on page 27 of their analysis, that:

> "First, the data submitted include surveyed costs for "cleaning," which is eligible for reimbursement. Graffiti removal, however, is not a separate survey category and is not eligible for reimbursement. Assuming that a portion of the "cleaning" costs include graffiti removal... , the costs would be inflated because they reflect activities beyond the scope of the mandate. Second, Bellflower's survey included unidentified costs for "other" making it impossible to tell whether the surveyed costs go beyond the scope of the mandate.
>
> Therefore, staff finds that the evidence in the record does not support the RRM as proposed... "

The "two essential pieces of data" have been identified and are now offered into evidence supporting adoption of the County's RRM at $6.74 per transit trash receptacle pickup.

Under the auspices of the cities representatives in this matter, it was found that Bellflower's "other" cost of $3,421 should be deleted as these costs were not for repetitive activities but for the initial purchase of transit trash receptacles. This deletion was made on Bellflowers' RRM survey response, attached as page 1 of Exhibit One. The mean weighted average unit cost for all respondents was then recalculated and found to be $6.74 per transit trash receptacle pickup. This result is found on page 2 of Exhibit One. A pertinent declaration by Bernardo Iniguez, Environmental Services Manager for the City of Bellflower, is attached on page 3 of Exhibit One.

Regarding the inclusion of graffiti removal costs as reimbursable RRM cleaning costs, it was confirmed that only the costs of cleaning bus stop trash receptacles were included in the RRM survey. Other cleaning costs were not. Specifically, the costs of cleaning the bus stop bench and the bus stop shelter were not included in the RRM survey. Therefore, the relevant question was whether graffiti removal

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costs were being charged by the contractors for cleaning transit trash receptacles. This question was put to both of the County's transit trash contractors.

According to the declaration of Gino Sotelo, General Operations Manager of Sureteck Industrial and Commercial Services, Inc., attached as Exhibit Two, and the declaration of Alan Mudge, General Manager of ShelterClean, Inc. , attached as Exhibit Three, the answer is that County's trash receptacle cleaning costs do not include graffiti removal costs. They explain that:

1. The County is charged three separate rates for cleaning: (1) the bus bench, (2) the bus stop shelter, and (3) the trash receptacle.

2. The costs of graffiti removal are included in the rates for cleaning benches and shelters as these fixtures provide the flat surfaces necessary for graffiti display.

3. Graffiti is very rarely found on the trash receptacle.

4. The very infrequent task of removing graffiti from trash receptacles result in little or no costs to the contractor.

5. Consequently, the negligible costs of graffiti removal are not used by the contractor in developing the rate for cleaning trash receptacles charged the County.

Accordingly, evidence is now in the record indicating that graffiti removal costs are not included in transit trash receptacle cleaning costs.

Finally, it should be noted that the County agrees with Commission staff language indicating graffiti removal is not reimbursable; and, limiting the installation of receptacles and pads to one-time per transit stop and the pickup of trash to no more than three times per week per receptacle.

The County's revised Ps&Gs and RRM for the Municipal Storm Water and Urban Runoff Discharges reimbursement program is presented on the following pages.

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Hearing Date: March 24, 2011
J:mandates/2003/tc/03tc04/psgs/draft Ps&Gs

LOS ANGELES COUNTY
REVISED DRAFT PARAMETERS AND GUIDELINES

Los Angeles Regional Quality Control Board Order No. 01-182

Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04);
Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20);
Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

I. SUMMARY OF THE MANDATE

This consolidated test claim was filed by the County of Los Angeles and several cities in the Los Angeles region, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. (California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.) Part 4F5c3 states the following:

> Permittees not subject to a trash TMDL [total maximum daily load[1]] shall [¶]...[¶] Place trash receptacles at all transit stops

[1] "Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet he water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards." See < http://water.epa.gov /lawsregs/lawsguidance/cwa/tmdl/index.cfm> as of February 2, 2011.

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within its jurisdiction that have *shelters no later than August* 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[2]

The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL), is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

II. ELIGIBLE CLAIMANTS

The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:

- Local agency permittees identified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.
- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the trash TMDL requirements:

  Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County
  Santa Monica, West Hollywood

  These local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the trash TMDL requirements.
- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy,

[2] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

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Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.

- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the trash TMDL requirements:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.

  Beginning September 23, 2008, these local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the trash TMDL requirements

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year.

The County of Los Angeles filed a test claim on *Transit Trash Receptacles* (03-TC-04) on September 2, 2003. The Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village filed a test claim on *Waste Discharge Requirements* (03-TC-20) on September 30, 2003. The Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina filed a test claim on *Storm Water Pollution Requirements* (03-TC-21) on September 30, 2003. Each test claim alleged that Part 4F5C3 of the Los Angeles

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Regional Water Quality Control Board Order No. 01-182, Permit CAS004001 was a reimbursable state-mandated program.

The filing dates of these test claims establish eligibility for reimbursement beginning
July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Resources Control Board for Los Angeles County is adopted.

Reimbursement for state-mandated costs may be claimed as follows:

1. Costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (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.
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.
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, except where reasonable reimbursement methodology ("RRM") rates are adopted for the repetitive task of trash collection and disposal set forth in Section IV.B below. Claimants may elect to use either actual costs, including costs based on time studies as set forth below, or RRM rates for repetitive trash collection tasks.

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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 costs were 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.

Claimants also may use time studies to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office ("SCO"). The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. Further time study guidance is available from the State Controller's Office web site at www.sco.ca.gov.]

With respect to costs incurred as identified in Section IV.B below, Claimants may elect to be reimbursed using an RRM methodology. Under this methodology, the annual standard or unit cost for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle) to compute the annual reimbursement for trash collection activities, subject to the limitation of no more than three pickups per week.

The standard unit RRM rate per trash collection is $6.74 and applies to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment. The RRM rate will be increased in 2009-2010 and subsequent years by the implicit price deflator for that respective year.

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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 local agency, the following activities are reimbursable:

A. Installation of Trash Receptacles (one-time per transit stop):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintenance of Trash Receptacles and Pads (on-going as needed):

1. Collect trash on routine basis, including trash collection and disposal at disposal/recycling facility. This activity is limited to no more than three times per week.
2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs. Graffiti removal is not reimbursable.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

Eligible claimants must use the actual cost method to claim costs for the tasks reflected in Sections IV.A(1-5).

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Eligible claimants may use either the actual cost or RRM methods to claim costs for the collection of trash reflected in Section IV.B above.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Actual costs that are claimed 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 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 were 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 invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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

5. Travel

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

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 (1) the 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 utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distributions 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:

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1. The allocation of allowable indirect costs (as defined and described in 2CRF Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) 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 e expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in 2CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate 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 allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[3] is subject to the initiation of an audit by the State 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. 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.

[3] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets 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 received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State 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 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The

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administrative record, including the Statement of Decision, is on file with the Commission.

Unit Cost Survey - Transit Trash Collection Reimbursement Program (Note 1)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

Survey Respondent

Jurisdiction : City of Bellflower

Contact Person : Bernardo Iniguez
Phone : (562)-804 - 1424, ext. 2233
E-Mail : biniguez@bellflower.org

Please Send Survey Response to:

Dan Carrigg League of California Cities: CarriggD@cacities.org
and cc: Howard Gest hgest@burhenngest.com
Leonard Kaye lkaye@auditor.lacounty.gov

Cost Survey

Fiscal Year	[A] Ave. # Trash Receptacles	Annual Transit Trash Collection Costs (Note 2) $ Pick-up	$ Cleaning	$ Repair	$ Replace	$ Other	[B] $ Total	[B] ÷ [A] Unit Cost
2008-09	189	$96,876	$2,519				$99,395	525.89947
2007-08	189	$96,876	$1,794				$98,670	522.06349
2006-07	189	$96,876	$1,490		$1,383		$99,749	527.77249
2005-06	189	$96,876	$2,187		$1,146		$100,209	530.20635
2004-05	189	$93,497	$1,801				$95,298	504.22222
2003-04	189	$89,925	$1,901				$91,826	485.85185
2002-03	189	$81,047	$267			(note 3)	$81,314	430.23280

Notes

(1) This reimbursement program is effective on and after July 1, 2002 and is for placing trash receptacles at all transit stops that have shelters no later than August 1, 2002, and at all transit stops no later than February 3, 2003. Recurring reimbursable costs include those specified above. Nonrecurring costs for identifcation of transit sites, design and construction of receptacle pads are also reimbursable. However, these costs are not repetitive and therefore are not included in this unit cost survey.

(2) The 'total cost' and 'unit cost' columns will compute automatically. Include the costs of trash receptacle liners with pick-up costs. Please identify 'other costs' here:

(3) 'Other' cost of $3,421was deleted on 02 10 11 in accordance with Commission staff analysis. See attached declaration of Bernardo Iniguez, Environmental Services Manager for the City of Bellflower. 'Other' costs were not for repetitive activities but for the initial purchase of trash receptacles.

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Transit Trash Collection Unit [Per Pickup] Adjusted (2 10 11) Costs Survey Results (Note a)
Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

	Fiscal Years							(X)	(Y)	(X/Y=Z)	M	M/Total=D	DxZ
								Average	# Pickups	Unit Cost	//-- Weighted	Ave. Adjustment --|	
Respondent Survey	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	(Note b)	@ year	@ Pickup	# Units (Note d)	% of Total	Result
1 Los Angeles County	$893	$1,241	$1,152	$1,122	$1,127	$1,132	(Note c)	$1,111	156	$7.12	2,513	34.81%	$2.48
Beverly Hills [in watershed]													
Norwalk [e]													
2 Downey	$347	$321	$320	$290	$272	$581	$602	$390	52	$7.51	1,497	20.74%	$1.56
3 Carson [2.57x52 wks=134]	$311	$299	$708	$144	$144	$144	$144	$271	134	$2.02	1,434	19.86%	$0.40
4 Bellflower	$526	$522	$528	$530	$504	$486	$430	$504	52	$9.69	1,323	18.33%	$1.78
5 Azusa	$1,504	$1,504	$1,504 [f]					$1,504	104	$14.46	39	0.54%	$0.08
6 Artesia	$1,299	$1,299	$1,271	$1,271	$1,361	$1,224	$1,180	$1,272	104	$12.23	63	0.87%	$0.11
Commerce [in watershed]													
Covina [e]													
7 Signal Hill	$398	$384	$374	$374	$374	$353	$343	$371	52	$7.14	350	4.85%	$0.35
Average by Respondent								**$775**		**Totals**	7,219	100.00%	
Average by Year	$754	$796	$837	$622	$630	$653	$540	**$690**		**Weighted Ave**			**$6.74**

Notes

[a] This survey table presents data by fiscal year and by respondent. A weighted mean average per pickup cost of $6.74 was found.

[b] Average annual unit cost per trash receptacle over the reimbursement period. Totals were divided by the number of nonzero years.

[c] During FY 02-03, trash receptacles were installed over a 3-month period. During the installation period, the cleaning and trash pick-up service was first handled in-house and later by contract. Because the number of trash receptacles was not a fixed number during this period and the maintenance service was handled in-house and by contract, it is difficult to accuractely annualize the unit cost for FY 02-03.

[d] The number of units is the sum of all trash receptacles reported by respondents in each average annual cost year [above].

[e] Survey results were inconclusive. In Norwalk's case, contractor billed city for the combined costs of trash collection and bus stop cleaning. In Covina's case, contractor used numerous metrics to bill city, including per ton disposal costs by refuge type.

[f] $6,517 was incurred during four months of 2006-07. Annualized cost was $19,551 for 13 receptacles or 1,504 per receptacle.

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DECLARATION OF BERNARDO INIGUEZ

I, BERNARDO INIGUEZ, hereby declare and state as follows:

1. I am Environmental Services Manager for the City of Bellflower, California ("City"), one of the Claimants before the Commission on State Mandates regarding Municipal Storm Water and Urban Runoff Discharges, a mandate of the Los Angeles Regional Water Quality Control Board. I participated in the City's response to a "Unit Cost Survey" concerning costs incurred by the City in performing the cleaning and maintenance of trash receptacles.

2. I have personal and first-hand knowledge of the matters set forth in this declaration and could, if called upon, testify competently thereto.

3. In the column on the Unit Cost Survey prepared for the City, one amount was included in the "Other" column on the survey form. This amount, for $3,421, was for the initial purchase of trash receptacles.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 15, 2011 at Bellflower, California.

Bernardo Iniguez

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SURETECK
INDUSTRIAL & COMMERCIAL
ENVIRIOMENTAL SERVICE DIVISION

12375 Mills Ave. Suite #7 Chino CA. 91710
Contractor License # 936393 B, C-33, D-38,42,49,63

County of Los Angeles
Transit Trash Receptacle Cleaning Contracts
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of Gino Sotelo

Gino Sotelo makes the following declaration and statement under oath:

I, **Gino Sotelo, General Operations Manager,** of Sureteck Industrial & Commercial Services, Inc. declare that I am responsible for ensuring trash receptacles at bus stops and the 10-foot area around each trash receptacle are thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds, and any residue in the performance of maintenance services, to implement the (above) captioned Permit requirements.

I declare that the County of Los Angeles (County) is charged three separate rates for cleaning: (1) the bus bench, (2) the bus stop shelter, and (3) the trash receptacle.

I declare that it is my information or belief that the costs of graffiti removal are included in the rates for cleaning benches and shelters as these fixtures provide the flat surfaces necessary for graffiti display.

I declare that it is my information and belief that graffiti is very rarely found on the trash receptacle.

I declare that it is my information or belief that the very infrequent task of removing graffiti from trash receptacles result in little or no costs to Sureteck Industrial & Commercial Services, Inc.

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Consequently, I declare that the negligible costs of graffiti removal are not used by **Sureteck Industrial & Commercial Services,** in developing the rate for cleaning trash receptacles charged to the County in the Maintenance Program For Non-Advertising Bus Stop Amenities –North County (Agreement No. 074400).

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

2/15/11
Date

Signature

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Transit Maintenance
ShelterCLEAN 11065 Penrose Street, Sun Valley, CA 91352-2722

County of Los Angeles
Transit Trash Receptacle Cleaning Contracts
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of Alan Mudge

Alan Mudge makes the following declaration and statement under oath:

I , **Alan Mudge, General Manager,** of ShelterClean, Inc. declare that I am responsible for ensuring trash receptacles at bus stops and the 10-foot area around each trash receptacle are thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds, and any residue in the performance of maintenance services, to implement the (above) captioned Permit requirements.

I declare that the County of Los Angeles (County) is charged three separate rates for cleaning: (1) the bus bench, (2) the bus stop shelter, and (3) the trash receptacle.

I declare that it is my information or belief that the costs of graffiti removal are included in the rates for cleaning benches and shelters as these fixtures provide the flat surfaces necessary for graffiti display.

I declare that it is my information and belief that graffiti is very rarely found on the trash receptacle.

I declare that it is my information or belief that the very infrequent task of removing graffiti from trash receptacles result in little or no costs to ShelterClean, Inc.

Consequently, I declare that the negligible costs of graffiti removal are not used by **ShelterClean, Inc.,** in developing the rate for cleaning trash receptacles charged to the County in the Maintenance Program For Non-Advertising Bus Stop Amenities – South County (Agreement No. 076721).

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I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

2-17-11

Date and Place

Signature

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February 24, 2011
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Exhibit Four

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review
Proposed Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review of the Commission staff analysis and draft parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program as adopted by the Commission on July 31, 2009.

I declare that I have revised the County's proposed parameters and guidelines and reasonable reimbursement methodology, attached hereto, in accordance with the findings of Commission staff in their analysis issued on February 4, 2011.

I declare that it is my information or belief that the County's State mandated duties and resulting costs as set forth in the attached revised parameters and guidelines and reasonable reimbursement methodology for the Municipal Storm Water and Urban Runoff Discharges reimbursement program, are reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

2/22/11; Los Angeles, CA
Date and Place

Len Kaye
Signature

Received
February 25, 2011
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BURHENN & GEST LLP
624 SOUTH GRAND AVENUE
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LOS ANGELES, CALIFORNIA 90017-3321
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WRITER'S DIRECT NUMBER
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WRITER'S E-MAIL ADDRESS
dburhenn@burhenngest.com

February 25, 2011

Via E-mail (CSM Dropbox)

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Comments of City Claimants on Proposed Parameters and Guidelines

Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21
Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001; Part 4F5c3
County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downy, Monterey Park, Signal Hill, Co-claimants

Dear Mr. Bohan:

I am writing to set forth the comments of the Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Rancho Palos Verdes and Signal Hill ("Cities") on the above-referenced Proposed Parameters and Guidelines ("Ps & Gs") issued by Commission on State Mandates ("Commission") staff and set for adoption at the Commission hearing on March 24, 2011. This letter also addresses the comments and recommendations of the State Controller's Office ("SCO") as set forth in a letter dated February 18, 2011 from Jay Lal, Manager, Local Reimbursement Sections.

Before turning to our specific comments, the Cities would like to thank Commission staff for their hard and careful work in evaluating the test claims at issue in this matter and in formulating detailed and thoughtful staff reports on issues of great complexity.

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A. Summary of Comments

The Cities generally are satisfied with the provisions of the Ps & Gs as proposed by Commission staff, with the significant exception of staff's decision not to include a Reasonable Reimbursement Methodology ("RRM") component in the Ps & Gs for repetitive maintenance tasks. While staff concluded that the proposed RRM in the Cities' and the County of Los Angeles' proposed Ps & Gs "appears to be complete," staff identified two items, the cleaning of graffiti and an unidentified "other" item in the City of Bellflower cost survey, as creating a deficiency in the record that did not support the RRM as proposed. Draft Staff Analysis, page 27.

Both of these items are addressed by supplemental evidence. First, regarding graffiti removal, the attached Declarations of Alan Mudge and Gino Sotelo set forth that this element was in fact not used by the contractors employed by the County of Los Angeles in determining their charge for trash receptacle cleaning. Thus, the inclusion of graffiti cleaning does not invalidate the RRM's proposed weighted average uniform cost allowance. Second, regarding the City of Bellflower cost survey, the Declaration of Bernardo Iniguez, submitted herewith, demonstrates that the cost item in question concerned the initial purchase of trash receptacles. The Cities agree that this cost was inadvertently included and cannot be used to calculate a weighted average uniform cost in an RRM, as it was a one-time cost. The proposed weighted average uniform cost allowance has therefore been adjusted to remove this cost, resulting in a change from **$6.75** to **$6.74** per transit stop. Please see Transit Trash Collection Unit (Per Pickup) Adjusted (2 10 11) Cost Survey Results, attached hereto, which sets forth the basis for this calculation.

Additionally, the Cities also believe that time cost studies must be included as an alternative to support actual labor costs. The Draft Staff Analysis does not indicate why time cost studies were removed from the proposed Ps & Gs.

For convenience, the Cities have attached a revised Draft Ps & Gs in "redline" format to reflect these requested changes. Other minor clarifying changes also have been made to the Ps & Gs, as noted below.

B. Comments on Ps & Gs

The following comments on the proposed Ps & Gs submitted by Commission staff are set forth in the attached redline. Minor typographical corrections are not discussed herein, but are included in the redline.

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1. Section II, Eligible Claimants

In this section, the Cities request that the discussion of local agency permittees subject to the Ballona Creek and Los Angeles River trash TMDLs be clarified to state that such permittees are eligible to claim reimbursement to the extent that they are not subject to the *Ballona Creek* or *Los Angeles River* trash TMDLs. The addition of the names of the trash TMDLs is meant as a clarification.

2. Section III, Period of Reimbursement

The only requested change in this section is the deletion of the word "Actual" on page 3, since the RRM option is a viable one, as corrected.

3. Section IV, Reimbursable Activities

This section contains several requested changes that address the Cities' position that the RRM option should be included for repetitive maintenance tasks. As noted above, Commission staff determined that the proposed "RRM appears to be complete except for two essential pieces of data." The first of these related to graffiti cleaning, with staff commenting that the record was "insufficient . . . as to how graffiti removal effects the permit's purpose of keeping pollutants out of storm water" and that "[a]ssuming that a portion of the 'cleaning' costs include graffiti removal, the costs would be inflated because they reflect activities beyond the scope of the mandate." Staff referred to a declaration from William Yan, Associate Civil Engineer with the County of Los Angeles, which set forth that trash receptacles must be cleaned of various items, including graffiti.

In response to staff's comment, the Declarations of Alan Mudge and Gino Sotelo (attached hereto) establish that in calculating the rate for the cleaning of trash receptacles for the County, graffiti cleanup was *not* included, as this task is very infrequently performed and thus did not rise to a separate cost item. Thus, this task was not included as a basis for the RRM weighted average unit cost for trash receptacle maintenance and staff's concern that the cost of cleaning might be inflated by graffiti removal has been addressed.[1]

[1] Although graffiti cleaning costs are not included as an element of the RRM weighted average unit cost, we note that this task could fairly be a cost associated with the mandate, since the receptacle is present solely for the purpose of complying with the mandate. If the receptacle is a target for graffiti, the cost for removing graffiti would not have been incurred but for the mandate, which required the receptacle to be installed.

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Staff's second concern related to an item in the City of Bellflower's cost survey entitled "other" that had not been identified, thus making it "impossible to tell whether the surveyed costs go beyond the scope of the mandate." In response to this comment, the Cities have attached the Declaration of Bernardo Iniguez of the City of Bellflower, indicating that this item represented the cost of initially purchasing trash receptacles. Since this is a one-time cost, and not part of repetitive maintenance activities, it has been removed from the RRM calculations, as set forth in the attached Transit Trash Collection Unit (Per Pickup) Adjusted (2 10 11) Cost Survey Results.

With the clarification of these two issues, the Cities believe that they have fully addressed the record deficiencies identified by staff and that a RRM option should be included in the Ps & Gs. (We note that the Department of Finance supported an RRM option in its comments filed on July 23, 2010.) The attached redline reflects the re-inclusion of the RRM option for the maintenance activities identified in Section IV.B of the Ps & Gs.

Additionally, the Cities note that the proposed Ps & Gs do not include a provision for time studies for repetitive tasks. Since the Ps & Gs allow claimants to use actual cost data for the repetitive tasks of trash receptacle maintenance, time studies must be an available option to support labor costs in an actual cost claim. The Cities have included a paragraph in Section IV allowing such studies.

4. Section V, Claim Preparation and Submission

The first sentence of this section has been amended to reflect that actual costs that are claimed must be supported by source documentation as described in section IV. Obviously, costs sought under an RRM do not fall under this requirement.

C. Response to State Controller's Office Comments

The SCO's comments on Section III of the Ps & Gs, slightly modified for consistency, have been incorporated into the attached redline. The SCO raises two principal comments on Section IV. The first comment adds two categories of documents, time sheets and calendars, to the list of evidence corroborating source documents. These have been incorporated into the redline. The SCO also recommends deleting "training packets" from this list. The Cities do not agree to this deletion, as training packets can serve as corroborative evidence. Moreover, they have been included as such evidence in the recent Commission-approved Ps & Gs for the Crime Victim Rights test claim, 05-PGA-28 (CSM-96-358-01) (adopted July 29, 2010).

The second comment on Section IV deletes categories of reimbursable activities found to constitute a state mandate. The Cities disagree with this comment. Staff has agreed that the tasks set forth under Section IV.A (1-5) and IV.B (1-4) are appropriate for

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reimbursement. To ensure that the claimants, and the State, understand in detail the items that are acceptable for reimbursement, these tasks should continue to be identified in the Ps & Gs.

* * *

The Cities appreciate this opportunity to provide comments on the proposed Ps & Gs and look forward to the hearing on March 24. The Cities respectfully request that the proposed Ps & Gs be revised as set forth in the attached redline document and submitted to the Commission for its approval.

Please call me or e-mail if you or your staff have any questions concerning these comments.

Very truly yours,

David W. Burhenn

Encl.

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DECLARATIONS OF ALAN MUDGE, GINO SOTELO AND BERNARDO INIGUEZ, SUBMITTED IN SUPPORT OF CITY CLAIMANTS' COMMENTS ON PROPOSED Ps & Gs

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Transit Maintenance
ShelterCLEAN 11065 Penrose Street, Sun Valley, CA 91352-2722

County of Los Angeles
Transit Trash Receptacle Cleaning Contracts
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of Alan Mudge

Alan Mudge makes the following declaration and statement under oath:

I , **Alan Mudge, General Manager,** of ShelterClean, Inc. declare that I am responsible for ensuring trash receptacles at bus stops and the 10-foot area around each trash receptacle are thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds, and any residue in the performance of maintenance services, to implement the (above) captioned Permit requirements.

I declare that the County of Los Angeles (County) is charged three separate rates for cleaning: (1) the bus bench, (2) the bus stop shelter, and (3) the trash receptacle.

I declare that it is my information or belief that the costs of graffiti removal are included in the rates for cleaning benches and shelters as these fixtures provide the flat surfaces necessary for graffiti display.

I declare that it is my information and belief that graffiti is very rarely found on the trash receptacle.

I declare that it is my information or belief that the very infrequent task of removing graffiti from trash receptacles result in little or no costs to ShelterClean, Inc.

Consequently, I declare that the negligible costs of graffiti removal are not used by **ShelterClean, Inc.,** in developing the rate for cleaning trash receptacles charged to the County in the Maintenance Program For Non-Advertising Bus Stop Amenities – South County (Agreement No. 076721).

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I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

2-17-11

Date and Place

Signature

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SURETECK
INDUSTRIAL & COMMERCIAL
ENVIRIOMENTAL SERVICE DIVISION

12375 Mills Ave. Suite #7 Chino CA. 91710
Contractor License # 936393 B, C-33, D-38,42,49,63

County of Los Angeles
Transit Trash Receptacle Cleaning Contracts
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control Board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of Gino Sotelo

Gino Sotelo makes the following declaration and statement under oath:

I, **Gino Sotelo, General Operations Manager,** of Sureteck Industrial & Commercial Services, Inc. declare that I am responsible for ensuring trash receptacles at bus stops and the 10-foot area around each trash receptacle are thoroughly cleaned of any graffiti, stickers, posters, litter, dust, dirt, weeds, and any residue in the performance of maintenance services, to implement the (above) captioned Permit requirements.

I declare that the County of Los Angeles (County) is charged three separate rates for cleaning: (1) the bus bench, (2) the bus stop shelter, and (3) the trash receptacle.

I declare that it is my information or belief that the costs of graffiti removal are included in the rates for cleaning benches and shelters as these fixtures provide the flat surfaces necessary for graffiti display.

I declare that it is my information and belief that graffiti is very rarely found on the trash receptacle.

I declare that it is my information or belief that the very infrequent task of removing graffiti from trash receptacles result in little or no costs to Sureteck Industrial & Commercial Services, Inc.

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Consequently, I declare that the negligible costs of graffiti removal are not used by **Sureteck Industrial & Commercial Services,** in developing the rate for cleaning trash receptacles charged to the County in the Maintenance Program For Non-Advertising Bus Stop Amenities –North County (Agreement No. 074400).

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

2/15/11
Date

Signature

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DECLARATION OF BERNARDO INIGUEZ

I, BERNARDO INIGUEZ, hereby declare and state as follows:

1. I am Environmental Services Manager for the City of Bellflower, California ("City"), one of the Claimants before the Commission on State Mandates regarding Municipal Storm Water and Urban Runoff Discharges, a mandate of the Los Angeles Regional Water Quality Control Board. I participated in the City's response to a "Unit Cost Survey" concerning costs incurred by the City in performing the cleaning and maintenance of trash receptacles.

2. I have personal and first-hand knowledge of the matters set forth in this declaration and could, if called upon, testify competently thereto.

3. In the column on the Unit Cost Survey prepared for the City, one amount was included in the "Other" column on the survey form. This amount, for $3,421, was for the initial purchase of trash receptacles.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 15, 2011 at Bellflower, California.

Bernardo Iniguez

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TRANSIT TRASH COLLECTION UNIT [PER PICKUP] ADJUSTED (2 10 11) COST SURVEY RESULTS, SUBMITTED IN SUPPORT OF CITY CLAIMANTS' COMMENTS ON PROPOSED Ps & Gs

Transit Trash Collection Unit [Per Pickup] Adjusted (2 10 11) Costs Survey Results (Note a)

Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

	Respondent Survey	Fiscal Years 2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	(X) Average (Note b)	(Y) # Pickups @ year	(X/Y=Z) Unit Cost @ Pickup	M //-- Weighted # Units (Note d)	M/Total=D Ave. Adjustment % of Total	DxZ Result
1	Los Angeles County	$893	$1,241	$1,152	$1,122	$1,127	$1,132	(Note c)	$1,111	156	$7.12	2,513	34.81%	$2.48
	Beverly Hills [in watershed]													
	Norwalk [e]													
2	Downey	$347	$321	$320	$290	$272	$581	$602	$390	52	$7.51	1,497	20.74%	$1.56
3	Carson [2.57x52 wks=134]	$311	$299	$708	$144	$144	$144	$144	$271	134	$2.02	1,434	19.86%	$0.40
4	Bellflower	$526	$522	$528	$530	$504	$486	$430	$504	52	$9.69	1,323	18.33%	$1.78
5	Azusa	$1,504	$1,504	$1,504 [f]					$1,504	104	$14.46	39	0.54%	$0.08
6	Artesia	$1,299	$1,299	$1,271	$1,271	$1,361	$1,224	$1,180	$1,272	104	$12.23	63	0.87%	$0.11
	Commerce [in watershed]													
	Covina [e]													
7	Signal Hill	$398	$384	$374	$374	$374	$353	$343	$371	52	$7.14	350	4.85%	$0.35
	Average by Respondent								**$775**		**Totals**	7,219	100.00%	
	Average by Year	$754	$796	$837	$622	$630	$653	$540	**$690**		**Weighted Ave**			[redacted]

Notes

[a] This survey table presents data by fiscal year and by respondent. A weighted mean average per pickup cost of $6.75 was found.

[b] Average annual unit cost per trash receptacle over the reimbursement period. Totals were divided by the number of nonzero years.

[c] During FY 02-03, trash receptacles were installed over a 3-month period. During the installation period. the cleaning and trash pick-up service was first handled in-house and later by contract. Because the number of trash receptacles was not a fixed number during this period and the maintenance service was handled in-house and by contract, it is difficult to accuractely annualize the unit cost for FY 02-03.

[d] The number of units is the sum of all trash receptacles reported by respondents in each average annual cost year [above].

[e] Survey results were inconclusive. In Norwalk's case, contractor billed city for the combined costs of trash collection and bus stop cleaning. In Covina's case, contractor used numerous metrics to bill city, including per ton disposal costs by refuge type.

[f] $6,517 was incurred during four months of 2006-07. Annualized cost was $19,551 for 13 receptacles or 1,504 per receptacle.

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REDLINE OF PROPOSED Ps & Gs CONTAINING COMMENTS OF CITY CLAIMANTS

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Hearing Date: March 24, 2011
J:mandates/2003/tc/03tc04/psgs/draft Ps&Gs

DRAFT PARAMETERS AND GUIDELINES

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Part 4F5c3

Municipal Storm Water and Urban Runoff Discharges

03-TC-04, 03-TC-20, 03-TC-21

County of Los Angeles, Claimant (03-TC-04);
Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Claimants (03-TC-20);
Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants (03-TC-21)

I. SUMMARY OF THE MANDATE

This consolidated test claim was filed by the County of Los Angeles and several cities in the Los Angeles region, alleging that various sections of the 2001 storm water permit (Permit CAS004001) adopted by the Los Angeles Regional Water Quality Control Board constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. On July 31, 2009, the Commission adopted a Statement of Decision, finding that part 4F5c3 of the permit imposes a reimbursable state-mandated program on specified local agencies. (California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.) Part 4F5c3 states the following:

> Permittees not subject to a trash TMDL [total maximum daily load[1]] shall [¶]...[¶] Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its

[1] "Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards." See <http://water.epa.gov /lawsregs/lawsguidance/cwa/tmdl/index.cfm> as of February 2, 2011.

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jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[2]

The Commission found that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL), is entitled to reimbursement to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." All other activities pled in the test claim were denied by the Commission. The Statement of Decision was issued in September 2009.

II. ELIGIBLE CLAIMANTS

The following local agencies that incur increased costs as a result of this mandate are eligible to claim reimbursement:

- Local agency permittees identified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities.
- The following local agency permittees that are subject to the Ballona Creek trash TMDL are eligible to claim reimbursement for the mandated activities only to the extent they have transit stops located in areas not covered by the Ballona Creek trash TMDL requirements:

  Beverly Hills, Culver City, Inglewood, Los Angeles (City), Los Angeles County Santa Monica, West Hollywood

  These local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the Ballona Creek trash TMDL requirements.
- From August 28, 2002, until September 22, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated activities:

  Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.
- Beginning September 23, 2008, the following local agency permittees that are subject to the Los Angeles River trash TMDL are eligible to claim reimbursement for the mandated

[2] California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

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activities only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL requirements:

> Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte, Glendale, Hidden Hills, Huntington Park, Irwindale, La Canada Flintridge, Los Angeles (City), Los Angeles County, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, Vernon.

Beginning September 23, 2008, these local agency permittees are not eligible to claim reimbursement for the mandated activities for transit stops located in areas covered by the Los Angeles River trash TMDL requirements.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year.

The County of Los Angeles filed a test claim on *Transit Trash Receptacles* (03-TC-04) on September 2, 2003. The Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village filed a test claim on *Waste Discharge Requirements* (03-TC-20) on September 30, 2003. The Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina filed a test claim on *Storm Water Pollution Requirements* (03-TC-21) on September 30, 2003. Each test claim alleged that Part 4F5C3 of the Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001 was a reimbursable state-mandated program.

The filing dates of these test claims establish eligibility for reimbursement beginning July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Resources Control Board for Los Angeles County is adopted.

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, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, subdivision (a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. Pursuant to Government Code section 17560, subdivision (b), in the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local

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agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

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, subdivision (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, except where reasonable reimbursement methodology ("RRM") rates are adopted for the repetitive task of trash collection set forth in Section IV.B below. Claimants may elect to use either actual costs, including costs based on time studies (as set forth below) or RRM rates for repetitive trash collection tasks.

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 costs were 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.

Claimants also may use time studies to support labor (salary, benefit and associated indirect) costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office ("SCO"). The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein. Further time study guidance is available from the State Controller's Office web site at www.sco.ca.gov.

With respect to costs incurred as identified in Section IV.B below, Claimants may elect to be reimbursed using an RRM methodology. Under this methodology, the annual standard or unit cost for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle) to compute the annual reimbursement for trash collection activities, subject to the limitation of no more than three pickups per week.

The standard unit RRM rate per trash collection is $6.74 and applies to the entire initial reimbursement period (2002-03 through 2008-09) without a cost of living adjustment. The RRM

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rate will be increased in 2009-2010 and subsequent years by the implicit price deflator for that respective year.

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 local agency, the following activities are reimbursable:

A. Installation of Trash Receptacles (one-time per transit stop):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Contract preparation, specification review process, bid advertising, and review and award of bid.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Movement (including replacement if required) of receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintenance of Trash Receptacles and Pads (on-going as needed):

1. Collect trash on routine basis, including trash collection and disposal at disposal/recycling facility. This activity is limited to no more than three times per week.
2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners. Graffiti removal is not reimbursable.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles or pads.

Eligible claimants must use the actual cost method to claim costs for the tasks reflected in Sections IV.A(1-5).

Eligible claimants may use either the actual cost or RRM methods to claim costs for the collection of trash reflected in Section IV.B above.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Actual costs that are claimed ~~Each reimbursable cost~~ must be

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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 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 were 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 invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

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

5. Travel

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

B. Indirect Cost Rates

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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 (1) the 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 utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions 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 CRF Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) 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 e expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate 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 allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

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Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[3] is subject to the initiation of an audit by the State 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. 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 offsets 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 received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State 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 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in

[3] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 1, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the Commission on State Mandates' (Commission) draft staff analysis for the parameters and guidelines submitted by the County of Los Angeles and various municipalities (claimants) for Claim No. CSM-03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges."

Finance continues to assert that the proposed activities go beyond the scope of the mandate. As noted on page 23 of the draft staff analysis, the Commission recognizes that none of the activities proposed by the claimants are in the permit. Accordingly, Finance cannot substantiate that the proposed reimbursable activities are reasonably necessary to carry out the mandate.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied the draft staff analysis have been provided with copies of this letter via either United States Mail or email. Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

ZLATKO THEODOROVIC
Assistant Program Budget Manager

Enclosure

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Enclosure A

DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. CSM—CSM-03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21 "Municipal Storm Water and Urban Runoff Discharges"

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

3-1-11
at Sacramento, CA

Jeff Carosone
Jeff Carosone

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
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WENDY L. WATANABE
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MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

March 3, 2011

RECEIVED
MAR 0 3 2011
COMMISSION ON
STATE MANDATES

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Mr. Bohan:

LOS ANGELES COUNTY'S REVISED
PARAMETERS AND GUIDELINES ALLOWING GRAFFITI REMOVAL COSTS
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS

Los Angeles County respectfully submits revised language for sections IV.B.2. and IV.B.3. of the parameters and guidelines we filed on February 24, 2011 to now read:

> IV.B.2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.
>
> IV.B.3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles, replacement of liners, cost of paints, cleaning supplies and liners, and graffiti removal.

Mr. William Yan, an engineer with our Department of Public Works, provides substantial evidence, in his attached declaration, that graffiti removal activities are reasonably necessary for the mandatory reduction of storm water pollutants. If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk

H:\SB90\A 02 11++ Storm water Ps&Gs Hearing/Cover letter 03 03 11

Enclosure

Help Conserve Paper – Print Double-Sided
"To Enrich Lives Through Effective and Caring Service"

County of Los Angeles
Transit Trash Receptacle Graffiti Removal Requirements
Municipal Storm Water and Urban Runoff Discharges Test Claim
California Regional Water Quality Control board
Executive Oder Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F.5.c.3.

Declaration of William Yan

William Yan makes the following declaration and statement under oath:

I, William Yan, Associate Civil Engineer, in the Programs Development Division of the County of Los Angeles County Department of Public Works, declare that I have examined Section SC-70 "Road and Street Maintenance" of the California Stormwater Best Management Practices Municipal Handbook, issued in January 2003, attached, hereinafter referred to as Section SC-70.

I declare that Section SC-70 states, on page 1, that:

> "Streets, roads, and highways are significant sources of pollutants in stormwater discharges, and operation and maintenance (O&M) practices, if not conducted properly, can contribute to the problem. Stormwater pollution from roadway and bridge maintenance should be addressed on a site-specific basis. Use of the procedures outlined below, that address street sweeping and repair, bridge and structure maintenance, and unpaved roads will reduce pollutants in stormwater. "

I declare that Section SC-70 indicates, on page 1, that an approach to "pollution prevention" is to:

> "Use the least toxic materials available (e.g. water based paints, gels or sprays for graffiti removal)."

I declare that Section SC-70, on page 5, describes procedures and activities that are reasonably necessary in removing graffiti:

> "□ Schedule graffiti removal activities for dry weather.
>
> □ Protect nearby storm drain inlets prior to removing graffiti from walls, signs, sidewalks, or other structures needing graffiti abatement.

Clean up afterwards by sweeping or vacuuming thoroughly, and/or by using absorbent and properly disposing of the absorbent.

□ When graffiti is removed by painting over, implement the procedures under Painting and Paint Removal above.

□ Direct runoff from sand blasting and high pressure washing (with no cleaning agents) into a landscaped or dirt area. If such an area is not available, filter runoff through an appropriate filtering device (e.g. filter fabric) to keep sand, particles, and debris out of storm drains.

□ If a graffiti abatement method generates wash water containing a cleaning compound (such as high pressure washing with a cleaning compound), plug nearby storm drains and vacuum/pump wash water to the sanitary sewer.

□ Consider using a waterless and non-toxic chemical cleaning method for graffiti removal (e.g. gels or spray compounds)."

I declare that it is my information or belief that the "other structures needing graffiti abatement" referred to above, includes trash receptacles placed at bus stops in accordance with Part 4, Section F.5.c.3. of Permit Number CAS004001.

I declare that two County declarations were filed regarding removal of graffiti from trash receptacles (by Gino Sotelo on February 15, 2011 and by Alan Mudge on February 17, 2011) and indicated that the costs of trash receptacle graffiti removal are negligible and not included in the costs of cleaning the trash receptacles claimed herein.

Nevertheless, I declare that it is my information or belief that the costs of trash receptacle graffiti removal or cleaning if charged to, or incurred by, eligible claimant(s) would be reimbursable because such activities are reasonably necessary activities in reducing stormwater pollutants.

Accordingly, I declare that it is my information or belief that Section IV.B.2. and Section IV.B.3., regarding reimbursable on-going maintenance activities for trash receptacles and pads, of the parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program filed by the County of Los Angeles with the Commission on State Mandates on February 23, 2011, should be revised to read as follows:

IV.B.2. Inspection of receptacles and pads for wear, cleaning, emptying and other maintenance needs.

IV.B.3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles, replacement of liners, cost of paints, cleaning supplies and liners, and graffiti removal.

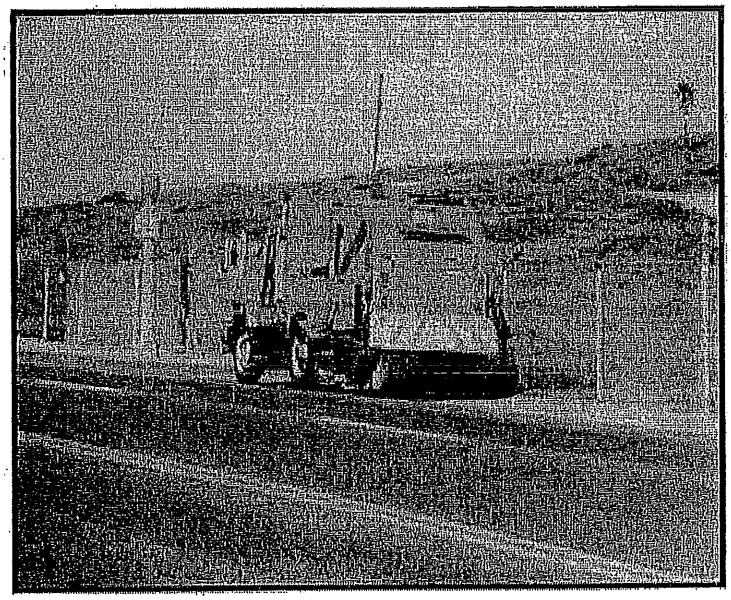
I am personally conversant with the foregoing facts and, if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

3/2/11 ALHAMBRA
Date and Place

Signature

Road and Street Maintenance SC-70



Objectives

- Cover
- Contain
- Educate
- Reduce/Minimize
- Product Substitution

Targeted Constituents

Sediment	☑
Nutrients	
Trash	☑
Metals	☑
Bacteria	
Oil and Grease	☑
Organics	☑
Oxygen Demanding	☑

Description

Streets, roads, and highways are significant sources of pollutants in stormwater discharges, and operation and maintenance (O&M) practices, if not conducted properly, can contribute to the problem. Stormwater pollution from roadway and bridge maintenance should be addressed on a site-specific basis. Use of the procedures outlined below, that address street sweeping and repair, bridge and structure maintenance, and unpaved roads will reduce pollutants in stormwater.

Approach

Pollution Prevention

- Use the least toxic materials available (e.g. water based paints, gels or sprays for graffiti removal)
- Recycle paint and other materials whenever possible.
- Enlist the help of citizens to keep yard waste, used oil, and other wastes out of the gutter.

Suggested Protocols

Street Sweeping and Cleaning

- Maintain a consistent sweeping schedule. Provide minimum monthly sweeping of curbed streets.
- Perform street cleaning during dry weather if possible.

- Avoid wet cleaning or flushing of street, and utilize dry methods where possible.
- Consider increasing sweeping frequency based on factors such as traffic volume, land use, field observations of sediment and trash accumulation, proximity to water courses, etc. For example:
  - Increase the sweeping frequency for streets with high pollutant loadings, especially in high traffic and industrial areas.
  - Increase the sweeping frequency just before the wet season to remove sediments accumulated during the summer.
  - Increase the sweeping frequency for streets in special problem areas such as special events, high litter or erosion zones.
- Maintain cleaning equipment in good working condition and purchase replacement equipment as needed. Old sweepers should be replaced with new technologically advanced sweepers (preferably regenerative air sweepers) that maximize pollutant removal.
- Operate sweepers at manufacturer requested optimal speed levels to increase effectiveness.
- To increase sweeping effectiveness consider the following:
  - Institute a parking policy to restrict parking in problematic areas during periods of street sweeping.
  - Post permanent street sweeping signs in problematic areas; use temporary signs if installation of permanent signs is not possible.
  - Develop and distribute flyers notifying residents of street sweeping schedules.
- Regularly inspect vehicles and equipment for leaks, and repair immediately.
- If available use vacuum or regenerative air sweepers in the high sediment and trash areas (typically industrial/commercial).
- Keep accurate logs of the number of curb-miles swept and the amount of waste collected.
- Dispose of street sweeping debris and dirt at a landfill.
- Do not store swept material along the side of the street or near a storm drain inlet.
- Keep debris storage to a minimum during the wet season or make sure debris piles are contained (e.g. by berming the area) or covered (e.g. with tarps or permanent covers).

Street Repair and Maintenance

Pavement marking

- Schedule pavement marking activities for dry weather.

- Develop paint handling procedures for proper use, storage, and disposal of paints.
- Transfer and load paint and hot thermoplastic away from storm drain inlets.
- Provide drop cloths and drip pans in paint mixing areas.
- Properly maintain application equipment.
- Street sweep thermoplastic grindings. Yellow thermoplastic grindings may require special handling as they may contain lead.
- Paints containing lead or tributyltin are considered a hazardous waste and must be disposed of properly.
- Use water based paints whenever possible. If using water based paints, clean the application equipment in a sink that is connected to the sanitary sewer.
- Properly store leftover paints if they are to be kept for the next job, or dispose of properly.

Concrete installation and repair

- Schedule asphalt and concrete activities for dry weather.
- Take measures to protect any nearby storm drain inlets and adjacent watercourses, prior to breaking up asphalt or concrete (e.g. place san bags around inlets or work areas).
- Limit the amount of fresh concrete or cement mortar mixed, mix only what is needed for the job.
- Store concrete materials under cover, away from drainage areas. Secure bags of cement after they are open. Be sure to keep wind-blown cement powder away from streets, gutters, storm drains, rainfall, and runoff.
- Return leftover materials to the transit mixer. Dispose of small amounts of hardened excess concrete, grout, and mortar in the trash.
- Do not wash sweepings from exposed aggregate concrete into the street or storm drain. Collect and return sweepings to aggregate base stockpile, or dispose in the trash.
- When making saw cuts in pavement, use as little water as possible and perform during dry weather. Cover each storm drain inlet completely with filter fabric or plastic during the sawing operation and contain the slurry by placing straw bales, sandbags, or gravel dams around the inlets. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from site. Alternatively, a small onsite vacuum may be used to pick up the slurry as this will prohibit slurry from reaching storm drain inlets.
- Wash concrete trucks off site or in designated areas on site designed to preclude discharge of wash water to drainage system.

Patching, resurfacing, and surface sealing

- Schedule patching, resurfacing and surface sealing for dry weather.
- Stockpile materials away from streets, gutter areas, storm drain inlets or watercourses. During wet weather, cover stockpiles with plastic tarps or berm around them if necessary to prevent transport of materials in runoff.
- Pre-heat, transfer or load hot bituminous material away from drainage systems or watercourses.
- Where applicable, cover and seal nearby storm drain inlets (with waterproof material or mesh) and maintenance holes before applying seal coat, slurry seal, etc. Leave covers in place until job is complete and until all water from emulsified oil sealants has drained or evaporated. Clean any debris from covered maintenance holes and storm drain inlets when the job is complete.
- Prevent excess material from exposed aggregate concrete or similar treatments from entering streets or storm drain inlets. Designate an area for clean up and proper disposal of excess materials.
- Use only as much water as necessary for dust control, to avoid runoff.
- Sweep, never hose down streets to clean up tracked dirt. Use a street sweeper or vacuum truck. Do not dump vacuumed liquid in storm drains.
- Catch drips from paving equipment that is not in use with pans or absorbent material placed under the machines. Dispose of collected material and absorbents properly.

Equipment cleaning maintenance and storage

- Inspect equipment daily and repair any leaks. Place drip pans or absorbent materials under heavy equipment when not in use.
- Perform major equipment repairs at the corporation yard, when practical.
- If refueling or repairing vehicles and equipment must be done onsite, use a location away from storm drain inlets and watercourses.
- Clean equipment including sprayers, sprayer paint supply lines, patch and paving equipment, and mud jacking equipment at the end of each day. Clean in a sink or other area (e.g. vehicle wash area) that is connected to the sanitary sewer.

Bridge and Structure Maintenance

Paint and Paint Removal

- Transport paint and materials to and from job sites in containers with secure lids and tied down to the transport vehicle.
- Do not transfer or load paint near storm drain inlets or watercourses.

- Test and inspect spray equipment prior to starting to paint. Tighten all hoses and connections and do not overfill paint container.
- Plug nearby storm drain inlets prior to starting painting where there is significant risk of a spill reaching storm drains. Remove plugs when job is completed.
- If sand blasting is used to remove paint, cover nearby storm drain inlets prior to starting work.
- Perform work on a maintenance traveler or platform, or use suspended netting or tarps to capture paint, rust, paint removing agents, or other materials, to prevent discharge of materials to surface waters if the bridge crosses a watercourse. If sanding, use a sander with a vacuum filter bag.
- Capture all clean-up water, and dispose of properly.
- Recycle paint when possible (e.g. paint may be used for graffiti removal activities). Dispose of unused paint at an appropriate household hazardous waste facility.

Graffiti Removal

- Schedule graffiti removal activities for dry weather.
- Protect nearby storm drain inlets prior to removing graffiti from walls, signs, sidewalks, or other structures needing graffiti abatement. Clean up afterwards by sweeping or vacuuming thoroughly, and/or by using absorbent and properly disposing of the absorbent.
- When graffiti is removed by painting over, implement the procedures under Painting and Paint Removal above.
- Direct runoff from sand blasting and high pressure washing (with no cleaning agents) into a landscaped or dirt area. If such an area is not available, filter runoff through an appropriate filtering device (e.g. filter fabric) to keep sand, particles, and debris out of storm drains.
- If a graffiti abatement method generates wash water containing a cleaning compound (such as high pressure washing with a cleaning compound), plug nearby storm drains and vacuum/pump wash water to the sanitary sewer.
- Consider using a waterless and non-toxic chemical cleaning method for graffiti removal (e.g. gels or spray compounds).

Repair Work

- Prevent concrete, steel, wood, metal parts, tools, or other work materials from entering storm drains or watercourses.
- Thoroughly clean up the job site when the repair work is completed.
- When cleaning guardrails or fences follow the appropriate surface cleaning methods (depending on the type of surface) outlined in SC-71 Plaza & Sidewalk Cleaning fact sheet.

- If painting is conducted, follow the painting and paint removal procedures above.
- If graffiti removal is conducted, follow the graffiti removal procedures above.
- If construction takes place, see the Construction Activity BMP Handbook.
- Recycle materials whenever possible.

Unpaved Roads and Trails

- Stabilize exposed soil areas to prevent soil from eroding during rain events. This is particularly important on steep slopes.
- For roadside areas with exposed soils, the most cost-effective choice is to vegetate the area, preferably with a mulch or binder that will hold the soils in place while the vegetation is establishing. Native vegetation should be used if possible.
- If vegetation cannot be established immediately, apply temporary erosion control mats/blankets; a comma straw, or gravel as appropriate.
- If sediment is already eroded and mobilized in roadside areas, temporary controls should be installed. These may include: sediment control fences, fabric-covered triangular dikes, gravel-filled burlap bags, biobags, or hay bales staked in place.

Non-Stormwater Discharges

Field crews should be aware of non-stormwater discharges as part of their ongoing street maintenance efforts.

- Refer to SC-10 Non-Stormwater Discharges
- Identify location, time and estimated quantity of discharges.
- Notify appropriate personnel.

Training

- Train employees regarding proper street sweeping operation and street repair and maintenance.
- Instruct employees and subcontractors to ensure that measures to reduce the stormwater impacts of roadway/bridge maintenance are being followed.
- Require engineering staff and/or consulting A/E firms to address stormwater quality in new bridge designs or existing bridge retrofits.
- Use a training log or similar method to document training.
- Train employees on proper spill containment and clean up, and in identifying non-stormwater discharges.

Spill Response and Prevention

- Refer to SC-11, Spill Prevention, Control & Cleanup.
- Keep your Spill Prevention Control and countermeasure (SPCC) plan up-to-date, and implement accordingly.
- Have spill cleanup materials readily available and in a known location.
- Cleanup spills immediately and use dry methods if possible.
- Properly dispose of spill cleanup material.

Other Considerations

- Densely populated areas or heavily used streets may require parking regulations to clear streets for cleaning.
- No currently available conventional sweeper is effective at removing oil and grease. Mechanical sweepers are not effective at removing finer sediments.
- Limitations may arise in the location of new bridges. The availability and cost of land and other economic and political factors may dictate where the placement of a new bridge will occur. Better design of the bridge to control runoff is required if it is being placed near sensitive waters.

Requirements

Costs

- The maintenance of local roads and bridges is already a consideration of most community public works or transportation departments. Therefore, the cost of pollutant reducing management practices will involve the training and equipment required to implement these new practices.
- The largest expenditures for street sweeping programs are in staffing and equipment. The capital cost for a conventional street sweeper is between $60,000 and $120,000. Newer technologies might have prices approaching $180,000. The average useful life of a conventional sweeper is about four years, and programs must budget for equipment replacement. Sweeping frequencies will determine equipment life, so programs that sweep more often should expect to have a higher cost of replacement.
- A street sweeping program may require the following.
  - Sweeper operators, maintenance, supervisory, and administrative personnel are required.
  - Traffic control officers may be required to enforce parking restrictions.
  - Skillful design of cleaning routes is required for program to be productive.
  - Arrangements must be made for disposal of collected wastes.

- If investing in newer technologies, training for operators must be included in operation and maintenance budgets. Costs for public education are small, and mostly deal with the need to obey parking restrictions and litter control. Parking tickets are an effective reminder to obey parking rules, as well as being a source of revenue.

Maintenance

- Not applicable

Supplemental Information

Further Detail of the BMP

Street sweeping

There are advantages and disadvantages to the two common types of sweepers. The best choice depends on your specific conditions. Many communities find it useful to have a compliment of both types in their fleet.

Mechanical Broom Sweepers - More effective at picking up large debris and cleaning wet streets. Less costly to purchase and operate. Create more airborne dust.

Vacuum Sweepers - More effective at removing fine particles and associated heavy metals. Ineffective at cleaning wet streets. Noisier than mechanical broom sweepers which may restrict areas or times of operation. May require an advance vehicle to remove large debris.

Street Flushers - Not affected by biggest interference to cleaning, parked cars. May remove finer sediments, moving them toward the gutter and stormwater inlets. For this reason, flushing fell out of favor and is now used primarily after sweeping. Flushing may be effective for combined sewer systems. Presently street flushing is not allowed under most NPDES permits.

Cross-Media Transfer of Pollutants

The California Air Resources Board (ARB) has established state ambient air quality standards including a standard for respirable particulate matter (less than or equal to 10 microns in diameter, symbolized as PM10). In the effort to sweep up finer sediments to remove attached heavy metals, municipalities should be aware that fine dust, that cannot be captured by the sweeping equipment and becomes airborne, could lead to issues of worker and public safety.

Bridges

Bridges that carry vehicular traffic generate some of the more direct discharges of runoff to surface waters. Bridge scupper drains cause a direct discharge of stormwater into receiving waters and have been shown to carry relatively high concentrations of pollutants. Bridge maintenance also generates wastes that may be either directly deposited to the water below or carried to the receiving water by stormwater. The following steps will help reduce the stormwater impacts of bridge maintenance:

- Site new bridges so that significant adverse impacts to wetlands, sensitive areas, critical habitat, and riparian vegetation are minimized.

- Design new bridges to avoid the use of scupper drains and route runoff to land for treatment control. Existing scupper drains should be cleaned on a regular basis to avoid sediment/debris accumulation.
- Reduce the discharge of pollutants to surface waters during maintenance by using suspended traps, vacuums, or booms in the water to capture paint, rust, and paint removing agents. Many of these wastes may be hazardous. Properly dispose of this waste by referring to CA21 (Hazardous Waste Management) in the Construction Handbook.
- Train employees and subcontractors to reduce the discharge of wastes during bridge maintenance.

De-icing

- Do not over-apply deicing salt and sand, and routinely calibrate spreaders.
- Near reservoirs, restrict the application of deicing salt and redirect any runoff away from reservoirs.
- Consider using alternative deicing agents (less toxic, biodegradable, etc.).

References and Resources

Model Urban Runoff Program: A How-To Guide for Developing Urban Runoff Programs for Small Municipalities. Prepared by City of Monterey, City of Santa Cruz, California Coastal Commission, Monterey Bay National Marine Sanctuary, Association of Monterey Bay Area Governments, Woodward-Clyde, Central Coast Regional Water Quality Control Board. July. 1998.

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Oregon Association of Clean Water Agencies. Oregon Municipal Stormwater Toolbox for Maintenance Practices. June 1998.

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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER NO. 01-182
NPDES PERMIT NO. CAS004001
WASTE DISCHARGE REQUIREMENTS
FOR
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

December 13, 2001

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STATE OF CALIFORNIA

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MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES WITHIN THE COUNTY OF LOS ANGELES, AND THE INCORPORATED CITIES THEREIN, EXCEPT THE CITY OF LONG BEACH

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the Regional Board) finds:

A. **Existing Permit**

The Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities within the Los Angeles County Flood Control District (see Attachment A, List of Permittees), hereinafter referred to separately as Permittees and jointly as the Discharger, discharge or contribute to discharges of storm water and urban runoff from municipal separate storm sewer systems (MS4s), also called storm drain systems. The discharges flow to water courses within the Los Angeles County Flood Control District and into receiving waters of the Los Angeles Region. These discharges are covered under countywide waste discharge requirements contained in Order No. 96-054 adopted by this Regional Board on July 15, 1996, which replaced Order No. 90-079 adopted by this Regional Board on June 18, 1990. Order No. 96-054 also serves as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

B. **Nature of Discharges and Sources of Pollutant**

1. Storm water discharges consist of surface runoff generated from various land uses in all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. The primary constituents of concern currently identified by the Los Angeles County Flood Control District Integrated Receiving Water Impacts Report (1994-2000) are cyanide, indicator bacteria, total dissolved solids, turbidity, total suspended solids, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons (PAHs), diazinon, and chlorpyrifos.

2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of internal combustion engine

operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. However, the implementation of the measures set forth in this Order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters.

3. Water quality assessments conducted by the Regional Board identified impairment, or threatened impairment, of beneficial uses of water bodies in the Los Angeles Region. The causes of impairments include pollutants of concern identified in municipal storm water discharges by the County of Los Angeles in the Integrated Receiving Water Impacts Report (1994-2000). Pollutants in storm water can have damaging effects on both human health and aquatic ecosystems.

4. The Los Angeles County Grand Jury, September 2000, completed an investigation into the health risks of swimming near beaches in Los Angeles County and made several recommendations to reduce public health risks (Final Report, Grand Jury, Los Angeles County, 1999-2000). The Grand Jury recommended that the Regional Board consider among other actions, (i) a focus on setting contaminant limits rather than programmatic evaluations, (ii) audit of MS4 Permittee programs; and (iii) clarifying enforcement responsibilities between the State and local governments.

5. Studies and research conducted by other Regional agencies, academic institutions, and universities have also identified storm water and urban runoff as significant sources of pollutants to surface waters in Southern California. See, e.g., [*Surface Runoff to the Southern California Bight*, Southern California Coastal Water Research Project, (1992); *Impacts of Urban Runoff on Santa Monica Bay and Surrounding Ocean Waters* (Gersberg, R.M., 1995); *State of the Bay 1998*, Santa Monica Bay Restoration Project; *Storm Water Impact*, In, Southern California Environmental Report Card 1999, Institute of the Environment, University of California, Los Angeles (Stenstrom, M.S., 1999); *Distribution of Anthropogenic and Natural Debris on the Mainland Shelf of Southern California Bight*, Shelly L. Moore and M. James Allen (1999); *The Health Effects of Swimming in Ocean Water Contaminated by Storm Drain Runoff*, Haile, R.W. et al. (1999); *Huntington Beach Closure Investigation: Technical Review* (University of Southern California, 2000); *A Regional Survey of the Microbiological Water Quality Along the Shoreline of the Southern California Bight*, Rachel T. Noble *et al.* (2001); *Integrated Receiving Water Impacts Report (1994-2000)*, County of Los Angeles (2001)].

6. Development and urbanization increase pollutant load, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, pavement and concrete can neither absorb water nor remove pollutants, and thus the natural purification characteristics are

lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. These environmentally sensitive areas designated by the State and/or the County of Los Angeles include Areas of Special Biological Significance (ASBS), water bodies designated as supporting a RARE beneficial use, Significant Natural Areas (SNAs), and Significant Ecological Areas (SEAs).

7. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to greatly accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 10 percent conversion from natural to impervious surfaces. Percentage impervious cover is a reliable indicator and predictor of potential water quality degradation expected from new development. (*Impervious Cover as An Urban Stream Indicator and a Watershed Management Tool*, Schueler, T. and R. Claytor, In, Effects of Water Development and Management on Aquatic Ecosystems (1995), ASCE, New York; Leopold, L. B., (1973), *River Channel Change with Time: An Example*, Geological Society of America Bulletin, v. 84, p. 1845-1860; Hammer, T. R., (1972), *Stream Channel Enlargement Due to Urbanization; Water Resources Research*, v. 8, p. 1530-1540; Booth, D. B., (1991), *Urbanization and the Natural Drainage System–Impacts, Solutions and Prognoses*; The Northwest Environmental Journal, v. 7, p. 93-118; Klein, R. D., (1979), *Urbanization and Stream Quality Impairment*; Water Resources Bulletin, v. 15, p. 948-963; May, C. W., Horner, R. R., Karr, J. R., Mar, B. W., and Welch, E. B., (1997), *Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion*: Watershed Protection Techniques, v. 2, p. 483-494; Morisawa, M. and LaFlure, E. *Hydraulic Geometry, Stream Equilibrium and Urbanization* In Rhodes, D. P. and Williams, G. P. *Adjustments to the Fluvial System* p.333-350. (1979); Dubuque, Iowa, Kendall/Hunt. Tenth Annual Geomorphology Symposia Series; and *The Importance of Imperviousness*; Watershed Protection Techniques, 1(3), Schueler, T. (1994).)

8. The County of Los Angeles has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; (vii) primary metal products (*Critical*

Source Selection and Monitoring Report, Los Angeles County Department of Public Works -Sept 1996). Monitoring conducted by Los Angeles County and the Regional Board demonstrates that the priority industrial sectors and auto repair facilities (one of the commercial sectors) on the list, contribute significant concentrations of heavy metals to storm water (*Los Angeles County 1999-2000 Storm Water Monitoring Report*, Los Angeles County Department of Public Works -July 2000; *Compliance Assessment of the Auto Dismantling Industry; Evaluation of the California General Industrial Storm Water Permit*, H. Chang, (2001), 70 pp., California Regional Water Quality Control Board, Los Angeles Region).

9. The discharge of washwaters and contaminated storm water from industries and businesses specified in this Order for inspection by Permittees is an environmental threat and can also adversely impact public health and safety. For example, a review of industrial waste/ pretreatment records performed in 1995 in the County of Los Angeles on illicit discharges indicates that automotive service facilities and food service facilities sometimes discharge polluted washwaters to the MS4. The pollutants of concern in such washwaters include food waste, oil and grease, and toxic chemicals. Other storm water/industrial waste programs in California have reported similar observations. Illicit discharges from automotive service facilities and food service facilities have been identified elsewhere as a major cause of widespread contamination and water quality problems (Washtenaw County Statutory Drainage Board - 1987 Huron River Pollution Abatement Program).

10. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as parking lots and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of pollutants of concern in storm water. [References: Pitt *et al.*, *Urban Storm Water Toxic Pollutants: Assessment, Sources, and Treatability*, Water Environment Res., 67, 260 (1995); *Results of Retail Gas Outlet and Commercial Parking Lot Storm Water Runoff Study*, Western States Petroleum Association and American Petroleum Institute, (1994); *Action Plan Demonstration Project, Demonstration of Gasoline Fueling Station Best Management Practices*, Final Report, County of Sacramento (1993); *Source Characterization*, R. Pitt, In Innovative Urban Wet-Weather Flow Management Systems (2000) Technomic Press, Field, R *et al.* editors; *Characteristics of Parking Lot Runoff Produced by Simulated Rainfall*, , L.L. Tiefenthaler *et al.* Technical Report 343, Southern California Coastal Water Research Project (2001).]

11. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals. [*The Quality of Trapped Sediments and Poor Water within Oil Grit Separators in Suburban MD*, Schueler T. and Shepp D. (1992), and *Concentrations of Selected Constituents in Runoff from Impervious Surfaces in Four Urban Catchments of Different*

Landuse, Ranabal, F.I., and T.J. Gizzard (1995), In Proceedings of the Fourth Biennial Stormwater Research Conference, Florida, pp-42-52]. Pilot studies indicate that treatment control best management practices installed at retail gasoline stations are effective in removing pollutants, reasonable in capital cost, easy to operate, and do not present safety risks [*Rouge River National Wet Weather Demonstration Project, Task Product Memorandum – Evaluation of On-line Media Filters RPO-NPS-TPM59.00*, Wayne County, MI, March 1999]. The Regional Board and the San Diego Regional Board have jointly prepared a Technical Report on the applicability of new development BMP design criteria for retail gasoline outlets, (*Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts*, (June 2001)). Retail Gasoline Outlets in Western U.S. States (such as Washington and Oregon) are already subject to numerical BMP design criteria, as well in other U.S. States.

C. Permit Background

1. The essential components of the Storm Water Management Program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) - (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, Illicit Connection and Illicit Discharges Elimination Program), and (iv) Monitoring and Reporting Program.

2. The Permittees have filed a Report of Waste Discharge (ROWD), dated February 1, 2001, and applied for renewal of their waste discharge requirements that serves as an NPDES permit to discharge wastes to surface waters. The ROWD includes a proposed SQMP and a Monitoring Program. The proposed SQMP contains programs previously approved under Board Order No. 96-054 in the following areas:

   Public Information and Participation
   Development Planning
   Development Construction
   Public Agency Activities
   Illicit Connection/Illicit Discharge Elimination Program

   These programs are revised pursuant to the provisions of this Order after adoption.

3. The County of Los Angeles has previously conducted source identification and pollutant characterization consistent with 40 CFR 122.26(d)(1)(ii) and (iii) under its storm water Monitoring Program. The Monitoring Program submitted with the ROWD proposes to advance the assessment of receiving water impacts, identification of sources of pollution, evaluation of Best Management Practices (BMPs), and measurement of long term trends in mass emissions.

4. The Regional Board has reviewed the ROWD and has determined it to be complete under the reapplication policy of MS4s issued by the U.S. Environmental Protection Agency (USEPA) (61 *Fed. Reg.* 41697). The Regional Board finds that the Permittees' proposed SQMP, incorporating the additional and/or revised provisions contained in this Order would meet the minimum requirements of federal regulations.

5. The City of Los Angeles has conducted shoreline and nearshore water quality monitoring off the Santa Monica Bay since the 1950s under the monitoring program for the Hyperion Waste Water Treatment Plant (NPDES No. CA0109991). The monitoring results indicate that effluent from Hyperion's 5-Mile Outfall does not impinge the shoreline, and that elevated bacterial counts are associated with runoff from storm drains and discharges from piers. In 1994, the Regional Board approved the relocation of Hyperion's shoreline stations to implement a bay-wide, regional shoreline-monitoring program associated with storm drain outfalls in the Santa Monica Bay. The City of Los Angeles requested that the shoreline-monitoring requirement be incorporated in this Order. The shoreline pathogen monitoring requirements are outlined in the Monitoring Program for this Order.

D. Permit Coverage

1. The requirements in this Order cover all areas within the boundaries of the Permittee municipalities (see Attachment A) over which they have regulatory jurisdiction as well as unincorporated areas in Los Angeles County within the jurisdiction of the Regional Board. The Permittees serve a population of about 9.5 million [Reference: *2000 Census of Population and Housing*, Bureau of the Census, U.S. Department of Commerce (2001)] in an area of approximately 3,100 square miles.

2. Federal, state, regional or local entities within the Permittees' boundaries or in jurisdictions outside the Los Angeles County Flood Control District, and not currently named in this Order, may operate storm drain facilities and/or discharge storm water to storm drains and watercourses covered by this Order. The Permittees may lack legal jurisdiction over these entities under state and federal constitutions. The Regional Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board will consider such facilities for coverage in 2003 under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.

3. Sources of discharges into receiving waters in the County of Los Angeles but in jurisdictions outside its boundary include the following:

About 34 square miles of unincorporated area in Ventura County, which drain into Malibu Creek and then to Santa Monica Bay,

About 9 square miles of the City of Thousand Oaks, which also drain into Malibu Creek and then to Santa Monica Bay, and

About 86 square miles of area in Orange County, which drain into Coyote Creek and then into the San Gabriel River.

The Regional Board will ensure that storm water management programs for the areas in Ventura County and the City of Thousand Oaks that drain into Santa Monica Bay are consistent with the requirements of this Order. The Regional Board will coordinate with the Santa Ana Regional Board so that storm water management programs for the areas in Orange County that drain into Coyote Creek are consistent with the requirements of this Order.

4. This permit is intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. subject to the Permittees' jurisdiction.

5. Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees may control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities, through interagency agreements.

E. Federal, State, and Regional Regulations

1. The Water Quality Act of 1987 added Section 402(p) to the federal Clean Water Act (CWA) (33 U.S.C. § 1251-1387). This section requires the USEPA to establish regulations setting forth NPDES requirements for storm water discharges in two phases.

   - The USEPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase I Final Rule was published on November 16, 1990 (55 *Fed. Reg.* 47990).

   - The USEPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (serving a population of less than 100,000), small construction projects (one to five acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the USEPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the United States. The Phase II Final Rule was published on December 8, 1999 (64 *Fed. Reg.* 68722).

2. The USEPA published an 'Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits' on August 26, 1996 (61 *Fed. Reg.* 43761). This policy discusses the appropriate kinds of

water quality-based effluent limitations to be included in NPDES storm water permits to provide for the attainment of water quality standards.

3. The USEPA published an 'Interpretative Policy Memorandum on Reapplication Requirements' for MS4 permits on August 9, 1996 (61 *Fed. Reg.* 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

4. The USEPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under Section 7 of the Endangered Species Act and the CWA's Water Quality Standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the USEPA, the Services, and CWA delegated States on CWA permit issuance under Section 402 of the CWA [66 *Fed. Reg.* 11202 – 11217].

5. USEPA regulations at 40 CFR 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4. The regulations require that permittees establish priorities and procedures for inspection of industrial facilities and priority commercial establishments. This permit, consistent with the USEPA policy, incorporates a cooperative partnership, including the specifications of minimum expectations, between the Regional Board and the Permittees for the inspection of industrial facilities and priority commercial establishments to control pollutants in storm water discharges (58 *Fed. Reg.* 61157).

6. Section 402 (p) of the CWA (33 U.S.C. § 1342(p) provides that MS4 permits must "require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design engineering method and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." The State Water Resources Control Board's (State Board) Office of Chief Counsel (OCC) has issued a memorandum interpreting the meaning of MEP to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a BMP is not technically feasible in the locality or that BMPs costs would exceed any benefit to be derived (dated February 11, 1993).

7. The CWA authorizes the USEPA to permit a state to serve as the NPDES permitting authority in lieu of the USEPA. The State of California has in-lieu authority for an NPDES program. The Porter-Cologne Water Quality Control Act authorizes the State Board, through the Regional Boards, to regulate and control the discharge of pollutants into waters of the State. The State Board entered into a MOA with the USEPA, on

September 22, 1989, to administer the NPDES Program governing discharges to waters of the U.S.

8. Section 303(d) of the CWA requires that the State identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 U.S.C. §1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, still meet applicable water quality standards and protect beneficial uses. The USEPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica BayKeeper on March 22, 1999, under which the Regional Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This permit incorporates a provision to implement and enforce approved load allocations for municipal storm water discharges and requires amending the SQMP after pollutants loads have been allocated and approved.

9. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA (16 U.S.C. § 1451-1465) amends the Coastal Zone Management Act of 1972, to address five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The Regional Board addresses septic systems through the administration of other programs.

10. On May 18, 2000, the USEPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR)) 65 *Fed. Reg.* 31682 (40 CFR 131.38), for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays, and estuaries. The State Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) – 2000*, on March 2, 2000, for implementation of the CTR (State Board Resolution No. 2000-15 as amended by Board Resolution No. 2000-030). This policy requires that discharges comply with TMDL-derived load allocations as soon as possible but no later than 20 years from the effective date of the policy.

11. The State Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) on July 23, 1997. The Ocean Plan contains water quality objectives which apply to all discharges to the coastal waters of California.

12. The State Board in *In Re*: California Department of Transportation (State Board Order WQ 2001-08), determined that the discharge of storm water to ASBS is subject to the prohibition in the Ocean Plan against the discharge of wastes to an ASBS.

13. The Regional Board adopted an updated Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994, *'Water Quality Control Plan, Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*, (1994).' The Basin Plan designates beneficial uses of receiving waters and specifies both narrative and numerical water quality objectives for the receiving waters in Los Angeles County.

14. The Regional Board on September 19, 2001, adopted amendments to the Basin Plan, to incorporate TMDLs for trash in the Los Angeles River (Resolution No. 01-013) and Ballona Creek (Resolution No. 01-014). After approval by the State Board, the Office of Administrative Law, and the USEPA, the TMDLs for trash will be effective and enforceable.

15. The Regional Board on April 13, 1998, approved BMPs for sidewalk rinsing to minimize the discharge of wash waters to the storm drain system (Resolution No. 98-08). By the same resolution, the Regional Board prohibited the discharge of municipal street wash waters to the storm drain system.

16. The Regional Board on April 13, 1998, approved recommended BMPs for industrial/commercial facilities (Resolution No. 98-08).

17. The Regional Board on April 22, 1999, approved a list of BMPs for use in development planning and development construction (Resolution No. 99-03)

18. The Regional Board adopted and approved requirements for new development and significant redevelopment projects in Los Angeles County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans (SUSMPs) on March 8, 2000. The State Board in large part affirmed the Regional Board action and SUSMPs in State Board Order No. WQ 2000-11 issued on October 5, 2000.

    - The State Board's Chief Counsel has issued a statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for RGOs.

    - The State Board's Chief Counsel interprets the Order to encourage regional solutions and endorses a mitigation fund or "bank" that may be funded by developers who obtain waivers from the numerical design standards for new development and significant redevelopment.

19. 40 CFR 131.10(a) prohibits states from designating waste transport or waste assimilation as a use for any water of the U.S. Authorizing the

construction of a storm water/ urban runoff treatment facility in a jurisdictional water body would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction and operation of a pollution control facility in a water body can impact the physical, chemical, and biological integrity as well as the beneficial uses of the water body. Therefore, storm water treatment and/or mitigation in accordance with SUSMPs and any other requirements of this Order must occur prior to the discharge of storm water into a water of the U.S.

20. The Regional Board supports a Watershed Management Approach to address water quality protection in the region. The objective of the Watershed Management Approach should be to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

21. To promote a watershed management approach, the County of Los Angeles is divided into six Watershed Management Areas (WMAs) as follows:

Malibu Creek and Rural Santa Monica Bay WMA
Ballona Creek and Urban Santa Monica Bay WMA
Los Angeles River WMA
San Gabriel River WMA
Dominguez Channel/Los Angeles Harbor WMA, and
Santa Clara River WMA

Attachment A shows the list of Permittees under each WMA and some Permittees have expressed an intent to form sub-watershed groups within the WMA to promote regional solutions for the mitigation of storm water discharge pollution.

22. To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for storm water discharges: one for storm water from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for storm water from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging storm water associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for storm water discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for

industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES storm water and non-storm water permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

23. The State Board, on October 28, 1968, adopted Resolution No. 68-16, which established an anti-degradation policy for the State and Regional Boards. This policy restricts the degradation of surface waters and protects waterbodies where existing water quality is higher than is necessary for the protection of beneficial uses.

24. The State Board, on June 17, 1999, adopted Order No. WQ 99-05, which, in a precedential decision, identifies acceptable receiving water limitations language to be included in municipal storm water permits issued by the State and Regional Boards. The receiving water limitations included herein are consistent with the State Board Order, USEPA Policy, and the U.S. Appellate court decision in, *Defenders of Wildlife v. Browner* (9th. Cir, 1999). The State Board OCC has determined that the federal court decision did not conflict with State Board Order No. WQ 99-05 (memorandum dated October 14, 1999)

25. California Water Code (CWC) § 13263(a) requires that waste discharge requirements issued by the Regional Board shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; the need to prevent nuisance; and provisions of CWC § 13241. The Regional Board has considered the requirements of § 13263 and § 13241, and applicable plans, policies, rules, and regulations in developing these waste discharge requirements.

26. CWC § 13370 *et seq.* requires that waste discharge requirements issued by the Regional Boards be consistent with provisions of the federal CWA and its amendments.

27. On March 12, 2001, the U.S. Court of Appeals ruled that it is necessary to obtain a NPDES permit for application of aquatic pesticides to waterways, (*Headwaters, Inc. vs. Talent Irrigation District*, 243 F.3d. 526 (9th Cir., 2001)) This decision is controlling in California for nonagricultural applications of pesticides to waterways. The State Board adopted a general NPDES permit (Order No. 2001-12-DWQ) on July 19, 2001, for public entities that discharge pollutants to waters of the U.S. associated with the application of aquatic pesticides for resource or pest management. Public entities that conduct such activities must seek coverage under the general permit.

F. **Implementation**

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 21000 *et seq.*) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary and does not apply to ministerial projects, which involve the use of established standards or objective measurements. A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes, the Regional Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm water mitigation requirements.

2. The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County. To meet this objective, this Order requires that the SQMP specify BMPs that will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable. Further, Permittees are to assure that storm water discharges from the MS4 shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-storm water to the MS4 has been effectively prohibited.

3. The SQMP required in this Order builds upon the programs established in Order Nos. 90-079, and 96-054, consists of the components recommended in the USEPA guidance manual, and was developed with the cooperation of representatives from the regulated community and environmental groups. The SQMP includes provisions that promote customized initiatives, both on a countywide and watershed basis, in developing and implementing cost-effective measures to minimize discharge of pollutants to the receiving water. The various components of the SQMP, taken as a whole rather than individually, are expected to reduce pollutants in storm water and urban runoff to the maximum extent practicable. Provisions of the SQMP are fully enforceable under provisions of this Order.

4. The emphasis of the SQMP is pollution prevention through education, public outreach, planning, and implementation as source control BMPs first and then Structural and Treatment Control BMPs next. Successful implementation of the provisions of the SQMP will require cooperation and coordination of all public agencies in each Permittee's organization, among Permittees, and with the regulated community.

5. The implementation of a Public Information and Participation Program is a critical component of a storm water management program. An informed and knowledgeable community is critical to the success of a storm water management program since it helps insure the following: (i) greater support for the program as the public gains a greater understanding of

the reasons why it is necessary and important, and (ii) greater compliance with the program as the public becomes aware of the personal responsibilities expected of them and others in the community, including the individual actions they can take to protect or improve the quality of area waters.

6. This Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the SIP. The SIP's MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

7. This Order provides flexibility for Permittees to petition the Regional Board Executive Officer to substitute a BMP under the SQMP with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

8. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

9. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Health Services or local vector agencies in accordance with Cal. Health and Safety Code § 2270 *et seq.* and §116110 *et seq.* Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquito and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Health Services for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

G. Public Process

1. The Regional Board has notified the Permittees and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to submit their written view and recommendations.

2. The Regional Board, in a public hearing, heard and considered all comments pertaining to the discharge and to the tentative requirements.

3. The Regional Board has conducted public workshops to discuss drafts of the permit. On April 24, 2001, Regional Board staff conducted a workshop outlining the reasoning behind the changes proposed for the new permit and received input from the Permittees and the public regarding those proposed changes. On July 26, 2001, a second public workshop was held at a special Regional Board meeting. The Permittees and the public had another opportunity to express their opinions regarding the proposed changes to the permit in front of the Regional Board members. A significant number of working meetings with the Permittees and other interested parties have occurred throughout the period from the submittal of the ROWD and completion of the tentative draft, in an attempt to incorporate and address all the comments presented.

4. The Los Angeles County Flood Control District, the County of Los Angeles and the other municipalities are co-permittees as defined in 40 CFR 122.26 (b)(1). Los Angeles County Flood Control District will coordinate with the other municipalities and facilitate program implementation. Each Permittee is responsible only for a discharge for which it is the operator.

5. This Order shall serve as a NPDES Permit, pursuant to CWA § 402, or amendments thereto, and shall take effect 50 days from Order adoption provided the Regional Administrator of the USEPA has no objections.

6. The action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of CEQA (Cal. Pub. Resources Code § 21100 *et seq.*), in accordance with CWC § 13389.

7. Pursuant to CWC §13320, any aggrieved party may seek review of this Order by filing a petition with the State Board. A petition must be sent to: State Water Resources Control Board, P.O. Box 100, Sacramento, California, 95812, within 30 days of adoption of the Order by the Regional Board.

8. This Order may be modified or alternatively revoked or reissued prior to its expiration date, in accordance with the procedural requirements of the NPDES program, and the CWC for the issuance of waste discharge requirements.

IT IS HEREBY ORDERED that the Los Angeles County Flood Control District, Los Angeles County, and the Cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bell, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Cañada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes,

Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA, as amended, and regulations and guidelines adopted thereunder, shall comply with the following:

Part 1. DISCHARGE PROHIBITIONS

The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses, except where such discharges:

1. Are covered by a separate individual or general NPDES permit for non-storm water discharges; or

2. Fall within one of the categories below, and meet all conditions when specified by the Regional Board Executive Officer:

   a) Category A - Natural flow:

      (1) Natural springs and rising ground water;

      (2) Flows from riparian habitats or wetlands;

      (3) Stream diversions, permitted by the State Board; and

      (4) Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)].

   b) Category B - Flows from emergency fire fighting activity.

   c) Category C - Flows incidental to urban activities:

      (1) Reclaimed and potable landscape irrigation runoff;

      (2) Potable drinking water supply and distribution system releases (consistent with American Water Works Association guidelines for dechlorination and suspended solids reduction practices);

      (3) Drains for foundations, footings, and crawl spaces;

      (4) Air conditioning condensate;

      (5) Dechlorinated/debrominated swimming pool discharges;

      (6) Dewatering of lakes and decorative fountains;

      (7) Non-commercial car washing by residents or by non-profit organizations; and

      (8) Sidewalk rinsing.

The Regional Board Executive Officer may add or remove categories of non-storm water discharges above. Furthermore, in the event that any of

the above categories of non-storm water discharges are determined to be a source of pollutants by the Regional Board Executive Officer, the discharge will no longer be exempt from this prohibition unless the Permittee implements conditions approved by the Regional Board Executive Officer to ensure that the discharge is not a source of pollutants. Notwithstanding the above, the Regional Board Executive Officer may impose additional prohibitions of non-storm water discharges in consideration of anti-degradation policies and TMDLs.

Part 2. RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance.

3. The Permittees shall comply with Part 2.1. and 2.2. through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the SQMP and its components and other requirements of this Order including any modifications. The SQMP and its components shall be designed to achieve compliance with receiving water limitations. If exceedances of Water Quality Objectives or Water Quality Standards (collectively, Water Quality Standards) persist, notwithstanding implementation of the SQMP and its components and other requirements of this permit, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with the following procedure:

   a) Upon a determination by either the Permittee or the Regional Board that discharges are causing or contributing to an exceedance of an applicable Water Quality Standard, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report (as described in the Program Reporting Requirements, Section I of the Monitoring and Reporting Program) to the Regional Board that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedances of Water Quality Standards. This RWL Compliance Report may be incorporated in the annual Storm Water Report and Assessment unless the Regional Board directs an earlier submittal. The RWL Compliance Report shall include an implementation schedule. The Regional Board may require modifications to the RWL Compliance Report.

   b) Submit any modifications to the RWL Compliance Report required by the Regional Board within 30 days of notification.

   c) Within 30 days following the approval of the RWL Compliance Report, the Permittee shall revise the SQMP and its components and monitoring program to incorporate the approved modified

BMPs that have been and will be implemented, an implementation schedule, and any additional monitoring required.

d) Implement the revised SQMP and its components and monitoring program according to the approved schedule.

4. So long as the Permittee has complied with the procedures set forth above and is implementing the revised SQMP and its components, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Board to develop additional BMPs.

Part 3. STORM WATER QUALITY MANAGEMENT PROGRAM (SQMP) IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, implement the SQMP. The SQMP is an enforceable element of this Order. The SQMP shall be implemented no later than February 1, 2002, unless a later date has been specified for a particular provision in this Order.

2. The SQMP shall, at a minimum, comply with the applicable storm water program requirements of 40 CFR 122.26(d)(2). The SQMP and its components shall be implemented so as to reduce the discharges of pollutants in storm water to the MEP.

3. Each Permittee shall implement additional controls, where necessary, to reduce the discharges of pollutants in storm water to the MEP.

4. Permittees that modify the countywide SQMP (i.e., implement additional controls, implement different controls than described in the countywide SQMP, or determine that certain BMPs in the countywide SQMP are not applicable in the area under its jurisdiction), shall develop a local SQMP, no later than August 1, 2002. The local SQMP shall be customized to reflect the conditions in the area under the Permittee's jurisdiction and shall specify activities being implemented under the appropriate elements described in the countywide SQMP.

B. Best Management Practice Implementation

The Permittees shall implement or require the implementation of the most effective combination of BMPs for storm water/urban runoff pollution control. When implemented, BMPs are intended to result in the reduction of pollutants in storm water to the MEP.

C. Revision of the Storm Water Quality Management Program

The Permittees shall revise the SQMP, at the direction of the Regional Board Executive Officer, to incorporate program implementation amendments so as to comply with regional, watershed specific requirements, and/or waste load

allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.

D. Designation and Responsibilities of the Principal Permittee

The Los Angeles County Flood Control District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall:

1. Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee;
2. Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Board on permitting issues;
3. Provide personnel and fiscal resources for the necessary updates of the SQMP and its components;
4. Provide technical and administrative support for committees that will be organized to implement the SQMP and its components;
5. Convene the Watershed Management Committees (WMCs) constituted pursuant to Part F, below, upon designation of representatives;
6. Implement the Countywide Monitoring Program required under this Order and evaluate, assess and synthesize the results of the monitoring program;
7. Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Board of annual reports and summaries of other reports required under the SQMP; and
8. Comply with the "Responsibilities of the Permittees" in Part 3.E., below.

E. Responsibilities of the Permittees

Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings D.1, D.2. and D.3.) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall, within its geographic jurisdiction:

1. Comply with the requirements of the SQMP and any modifications thereto;
2. Coordinate among its internal departments and agencies, as appropriate, to facilitate the implementation of the requirements of the SQMP applicable to such Permittee in an efficient and cost-effective manner;
3. Designate a technically knowledgeable representative to the appropriate WMC;

4. Participate in intra-agency coordination (e.g. Fire Department, Building and Safety, Code Enforcement, Public Health, etc.) necessary to successfully implement the provisions of this Order and the SQMP.

5. Prepare an annual Budget Summary of expenditures applied to the storm water management program. This summary shall identify the storm water budget for the following year, using estimated percentages and written explanations where necessary, for the specific categories noted below:

   a) Program management
      - Administrative costs

   b) Program Implementation

      Where information is available, provide an estimated percent breakdown of expenditures for the categories below:
      - Illicit connection/illicit discharge
      - Development planning
      - Development construction
      - Construction inspection activities
      - Industrial/Commercial inspection activities
      - Public Agency Activities
        - Maintenance of Structural BMPs and Treatment Control BMPs
        - Municipal Street Sweeping
        - Catch basin clean-up
        - Trash collection
        - Capital costs

   c) Public Information and Participation

   d) Monitoring Program

   e) Miscellaneous Expenditures

6. Each Permittee, in addition to the Budget Summary, shall report any supplemental dedicated budgets for the same categories.

F. Watershed Management Committees (WMCs)

1. Each WMC shall be comprised of a voting representative from each Permittee in the WMA.

2. The WMC's chair and secretary shall be chosen by the WMC upon Order adoption and on an annual basis, thereafter. In the absence of volunteer Permittee(s) for the positions, the Principal Permittee shall assume those roles until the WMC chooses members of the committee for the positions.

3. Each WMC shall:

   a) Facilitate cooperation and exchange of information among Permittees;

b) Establish additional goals and objectives and associated deadlines for the WMA, as the program implementation progresses;

c) Prioritize pollution control efforts based on beneficial use impairment(s), watershed characteristics and analysis of results from studies and the monitoring program;

d) Develop and/or update and monitor the adequate implementation, on an annual basis, of the tasks identified for the WMA;

e) Assess the effectiveness of, prepare revisions for, and recommend appropriate changes to the SQMP and its components;

f) Continue to prioritize the Industrial/Commercial critical sources for investigation, outreach and follow-up; and

g) Meet four times per year and, as necessary.

G. **Legal Authority**

1. Permittees shall possess the necessary legal authority to prohibit non-storm water discharges to the storm drain system, including, but not limited to:

a) Illicit discharges and illicit connections and require removal of illicit connections;

b) The discharge of wash waters to the MS4 from the cleaning of gas stations, auto repair garages, or other types of automotive service facilities;

c) The discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;

d) The discharge of runoff to the MS4 from areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;

e) The discharge of runoff to the MS4 from storage areas of materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;

f) The discharge of chlorinated/ brominated swimming pool water and filter backwash to the MS4;

g) The discharge of runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

h) Washing impervious surfaces in industrial/commercial areas that results in a discharge of runoff to the MS4;

i) The discharge of concrete or cement laden wash water from concrete trucks, pumps, tools, and equipment to the MS4; and

j) Dumping or disposal of materials into the MS4 other than storm water, such as:

(1) Litter, landscape debris and construction debris;

(2) Any state or federally banned or unregistered pesticides;

(3) Food and food processing wastes; and

(4) Fuel and chemical wastes, animal wastes, garbage, batteries, and other materials that have potential adverse impacts on water quality.

2. The Permittees shall possess adequate legal authority to:

a) Require persons within their jurisdiction to comply with conditions in Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

b) Utilize enforcement mechanisms to require compliance with Permittees ordinances, permits, contracts, or orders;

c) Control pollutants, including potential contribution, in discharges of storm water runoff associated with industrial activities (including construction activities) to its MS4 and control the quality of storm water runoff from industrial sites (including construction sites). This requirement applies to Source Control, and Treatment Control BMPs;

d) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions, including the prohibition of illicit discharges to the MS4. Permittees must possess authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities (including construction sites) discharging polluted or with the potential to discharge polluted storm water runoff into its MS4;

e) Require the use of BMPs to prevent or reduce the discharge of pollutants to MS4s to MEP; and

f) Require that Treatment Control BMPs be properly operated and maintained to prevent the breeding of vectors.

3. Each Permittee shall, no later than November 1, 2002, amend and adopt (if necessary), a Permittee-specific storm water and urban runoff ordinance to enforce all requirements of this permit.

4. Each Permittee shall submit no later than December 2, 2002, a new or updated statement by its legal counsel that the Permittee has obtained all

necessary legal authority to comply with this Order through adoption of ordinances and/or municipal code modifications.

Part 4. SPECIAL PROVISIONS

Maximum Extent Practicable Standard

This permit, and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP from the permitted areas in the County of Los Angeles to the waters of the State.

A. General Requirements

1. Best Management Practice Substitution

The Regional Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s), if the Permittee can document that:

a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants; or

b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality; and,

c) The proposed alternative BMP or program will be implemented within a similar period of time.

B. Public Information and Participation Program (PIPP)

The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the Public Education Program, as described in the SQMP, and shall coordinate with Permittees to implement specific requirements.

The objectives of the PIPP are as follows:

- To measurably increase the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters, and potential solutions to mitigate the problems caused;
- To measurably change the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions; and
- To involve and engage socio-economic groups and ethnic communities in Los Angeles County to participate in mitigating the impacts of storm water pollution.

The Principal Permittee shall convene an advisory committee to provide input and assistance in meeting the goals and objectives of the public education campaign. The advisory committee shall be consulted during the process of developing the PIPP campaign, and shall provide comments and advice during the process of preparing a Request For Proposals for a storm water public education contractor. The committee may participate as a part of a working group that evaluates contractor proposals and other tasks as appropriate. The committee shall be comprised of representatives of the environmental community, Permittee cities, Regional Board staff, and experts in the fields of public education and marketing. The Principal Permittee shall ensure that the committee meets at least once a year.

1. Residential Program

a) "No Dumping" Message

Each Permittee shall mark all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels no later than February 2, 2004. Signage and storm drain messages shall be legible and maintained as necessary during the term of the permit.

b) Countywide Hotline

The 888-CLEAN-LA hotline will serve as the general public reporting contact for reporting clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general storm water management information. Each Permittee may establish its own hotline if preferred. Permittees shall include this information, updated when necessary, in public information, and the government pages of the telephone book, as they are developed or published. The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (888CleanLA.com) and upon request. Permittees shall provide the Principal Permittee with their reporting contacts no later than March 1, 2002. Permittees are responsible for providing current, updated information to the Principal Permittee.

c) Outreach and Education

(1) The Principal Permittee shall continue to implement the following activities that were components of the first five-year PIPP:

(i) Advertising;

(ii) Media relations;

(iii) Public service announcements;

(iv) "How To" instructional material distributed in a targeted and activity-related manner;

(v) Corporate, community association, environmental organization and entertainment industry tie-ins; and

(vi) Events targeted to specific activities and population subgroups.

(2) The Principal Permittee shall develop a strategy to educate ethnic communities and businesses through culturally effective methods. Details of this strategy should be incorporated into the Public Education Program, and implemented, no later than February 3, 2003.

(3) The Principal Permittee shall enhance the existing outreach efforts to residents and businesses related to the proper disposal of cigarette butts.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Principal Permittee shall organize Public Outreach Strategy meetings for Permittees on a quarterly basis, beginning no later than May 1, 2002. The Principal Permittee shall provide guidance for Permittees to augment the countywide outreach and education program. Permittees shall coordinate regional and local outreach and education to reduce duplication of efforts. Permittees are encouraged to include other interested parties in the outreach strategy to strengthen and coordinate educational efforts.

(6) The Principal Permittee shall ensure that a minimum of 35 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.

(7) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution.

(8) Permittees shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee no later than April 1, 2002, and changes to contact information no later than 30 days after a change occurs.

(9) The Principal Permittee shall develop a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of storm water pollution problems and

solutions before and after educational efforts are conducted. The protocol shall be developed and submitted to the Regional Board Executive Officer for approval no later than May 1, 2002. It shall be implemented upon approval.

(10) In order to ensure that the PIPP is demonstrably effective in changing the behavior of the public, the Principal Permittee shall develop a behavioral change assessment strategy no later than May 1, 2002. The strategy shall be developed based on sociological data and studies (such as the County Segmentation Study). The Principal Permittee shall submit the assessment strategy to the Regional Board Executive Office for approval. It shall be implemented on approval.

d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants listed in Table 1 no later than February 3, 2003. Metals may be appropriately addressed through the Industrial/Commercial Facilities Program (e.g. distribute education materials on appropriate BMPs for metal waste management to facilities that have been identified as a potential source, such as metal fabricating facilities). Region-wide pollutants may be included in the Principal Permittee's mass media outreach efforts.

Table 1.	
Watershed	***Target Pollutants for Outreach***
Ballona Creek	Trash, Indicator Bacteria, Metals, PAHs
Malibu Creek	Trash, Nutrients (Nitrogen), Indicator Bacteria, Sediments
Los Angeles River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals, Pesticides, PAHs
San Gabriel River	Trash, Nutrients (Nitrogen), Indicator Bacteria, Metals
Santa Clara River	Nutrients (Nitrogen), Coliform
Dominguez Channel	Trash, Indicator Bacteria, PAHs

Each Permittee shall make outreach materials available to the general public and target audiences, such as schools, community groups, contractors and developers, and at appropriate public counters and events. Outreach material shall include information on pollutants, sources of concern, and source abatement measures.

2. Businesses Program

a) Corporate Outreach

The Principal Permittee shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations. The program shall target RGOs and restaurant chains. At a minimum, this program shall include:

(1) Conferring with corporate management to explain storm water regulations;

(2) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with suggestions to facilitate employee compliance with storm water regulations.

Corporate Outreach for all RGOs and restaurant chain corporations shall be conducted not less than twice during the permit term, with the first outreach contact to begin no later than February 3, 2003.

b) Business Assistance Program

The Principal Permittee and Permittees may implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water runoff. Programs may include:

(1) On-site technical assistance or consultation via telephone to identify and implement storm water pollution prevention methods and best management practices; and

(2) Making available, distributing, and discussing of applicable BMP and educational materials.

C. Industrial/Commercial Facilities Control Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures can be used alone or in combination, and can include Structural and Source Control BMPs, and operation and maintenance procedures, which can be applied before, during, and/or after pollution generating activities. At a minimum, the Industrial/Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance at industrial and commercial facilities that are critical sources of pollutants in storm water.

1. **Track Critical Sources**

a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical sources to be tracked are summarized below, and also specified in Attachment B:

(1) Commercial Facilities

- restaurants;
- automotive service facilities; and
- RGOs and automotive dealerships.

(2) USEPA Phase I Facilities (Tier 1 and 2)

(3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]

- municipal landfills;
- hazardous waste treatment, disposal, and recovery facilities; and
- facilities subject to SARA Title III (also known as EPCRA).

b) Each Permittee shall include the following minimum fields of information for each industrial and commercial facility:

- name of facility and name of owner/operator;
- address;
- coverage under the GIASP or other individual or general NPDES permits; and
- a narrative description including SIC codes that best reflects the industrial activities at and principal products of each facility.

The Regional Board encourages Permittees to add other fields of information, such as material usage and/or industrial output, and discrepancies between SIC Code designations (as reported by facility operators) and the actual type of industrial activity has the potential to pollute storm water. In addition, the Regional Board recommends use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system; however, this is not required.

c) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits).

2. **Inspect Critical Sources**

Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections.

a) Commercial Facilities

(1) Restaurants

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:

- has received educational materials on storm water pollution prevention practices;
- does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
- keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
- does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of inspections: Each Permittee shall inspect all automotive service facilities within its jurisdiction to confirm that storm water BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each

automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry and without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-storm water to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement storm water pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;

- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other storm water pollution prevention practices.

b) Phase I Facilities

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories: Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004. Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to storm water. For those facilities that do have exposure of industrial activities to storm water, a Permittee may reduce the frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

c) Other Federally-mandated Facilities

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

3. Ensure Compliance of Critical Sources

a) **BMP Implementation:** In the event that a Permittee determines that a BMP specified by the SQMP or Regional Board Resolution 98-08 is infeasible at any site, that Permittee shall require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve water quality objectives, Permittees may require additional site-specific controls, such as Treatment Control BMPs.

b) **Environmentally Sensitive Areas and Impaired Waters:** For critical sources that are in ESAs or that are tributary to CWA § 303(d) impaired water bodies, Permittees shall consider requiring operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to the exceedences of Water Quality Objectives.

c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted above, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement action which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

d) Interagency Coordination

(1) **Referral of Violations of the SQMP, Regional Board Resolution 98-08, and Municipal Storm Water Ordinances:** A Permittee may refer a violation(s) to the Regional Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections, and
- Two warning letters or notices of violation.

(2) **Referral of Violations of the GIASP, including Requirements to File a Notice of Intent:** For those facilities in violation of the GIASP, Permittees may escalate referral of such violations to the Regional Board after one inspection and one written notice to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Name of the facility;
- Operator of the facility;
- Owner of the facility;
- Industrial activity being conducted at the facility that is subject to the GIASP; and
- Records of communication with the facility operator regarding the violation, which shall include at least an inspection report and one written notice of the violation.

Permittees shall, at a minimum, make such referrals on a quarterly basis.

(3) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Board Staff:** Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited

inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the SQMP and municipal storm water/urban runoff ordinances, and to oversee corrective action.

(4) **Support of Regional Board Enforcement Actions:** As directed by the Regional Board Executive Officer, Permittees shall support Regional Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Board inspectors; appearing as witnesses in Regional Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(5) **Participation in a Task Force:** The Permittees, Regional Board, and other stakeholders may form a Storm Water Task Force, the purpose of which is to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

D. Development Planning Program

The Permittees shall implement a development-planning program that will require all Planning Priority development and Redevelopment projects to:

- Minimize impacts from storm water and urban runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA, (Cal. Pub. Resources Code § 21100), CWC § 13369, CWA § 319, CWA § 402(p), CWA § 404, CZARA § 6217(g), ESA § 7, and local government ordinances ;
- Maximize the percentage of pervious surfaces to allow percolation of storm water into the ground;
- Minimize the quantity of storm water directed to impervious surfaces and the MS4;
- Minimize pollution emanating from parking lots through the use of appropriate Treatment Control BMPs and good housekeeping practices;
- Properly design and maintain Treatment Control BMPs in a manner that does not promote the breeding of vectors; and
- Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site.

1. Peak Flow Control

The Permittees shall control post-development peak storm water runoff discharge rates, velocities, and duration (peak flow control) in Natural

Drainage Systems (i.e., mimic pre-development hydrology) to prevent accelerated stream erosion and to protect stream habitat. Natural Drainage Systems are located in the following areas:

a) Malibu Creek;

b) Topanga Canyon Creek;

c) Upper Los Angeles River;

d) Upper San Gabriel River;

e) Santa Clara River; and

f) Los Angeles County Coastal streams (see Basin Plan Table 2-1).

The Principal Permittee in consultation with Permittees shall develop numerical criteria for peak flow control, based on the results of the Peak Discharge Impact Study (see Monitoring Program Section II.I).

Each Permittee shall, no later than February 1, 2005, implement numerical criteria for peak flow control.

A Permittee or group of Permittees may substitute for the countywide peak flow control criteria with a Hydromodification Control Plan (HCP), on approval by the Regional Board, in the following circumstances:

(1) Stream or watershed-specific conditions indicate the need for a different peak flow control criteria, and the alternative numerical criteria is developed through the application of hydrologic modeling and supporting field observations; or

(2) A watershed-wide plan has been developed for implementation of control measures to reduce erosion and stabilize drainage systems on a watershed basis.

2. Standard Urban Storm Water Mitigation Plans (SUSMPs)

a) Each Permittee shall amend codes and ordinances not later than August 1, 2002 to give legal effect to SUSMP changes contained in this Order. Changes to SUSMP requirements shall take effect not later than September 2, 2002.

b) Each Permittee shall require that a single-family hillside home:

(1) Conserve natural areas;

(2) Protect slopes and channels;

(3) Provide storm drain system stenciling and signage;

(4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability; and

(5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.

c) Each Permittee shall require that a SUSMP as approved by the Regional Board in Board Resolution No. R 00-02 be implemented for the following categories of developments:

(1) Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments);

(2) A 100,000 or more square feet of impervious surface area industrial/ commercial development;

(3) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539);

(4) Retail gasoline outlets;

(5) Restaurants (SIC 5812);

(6) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; and

(7) Redevelopment projects in subject categories that meet Redevelopment thresholds.

d) Each Permittee shall submit an ESA Delineation Map for its jurisdictional boundary, based on the Regional Board's ESA Definition, no later than June 3, 2002, for approval by the Regional Board Executive Officer in consultation with the California Department of Fish and Game, and the California Coastal Commission.

e) Each Permittee shall require the implementation of SUSMP provisions no later than September 2, 2002, for all projects located in or directly adjacent to or discharging directly to an ESA, where the development will:

(1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat; and

(2) Create 2,500 square feet or more of impervious surface area.

3. Numerical Design Criteria

The Permittees shall require that post-construction Treatment Control BMPs incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff:

a) Volumetric Treatment Control BMP

(1) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from

the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ ASCE Manual of Practice No. 87, (1998)*; or

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook – Industriall Commercial*, (1993); or

(3) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; or

(4) The volume of runoff produced from a historical-record based reference 24-hour rainfall criterion for "treatment" (0.75 inch average for the Los Angeles County area) that achieves approximately the same reduction in pollutant loads achieved by the 85th percentile 24-hour runoff event.

b) Flow Based Treatment Control BMP

(1) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or

(2) The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for Los Angeles County; or

(3) The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.

4. Applicability of Numerical Design Criteria

The Permittees shall require the following categories of Planning Priority Projects to design and implement post-construction treatment controls to mitigate storm water pollution:

a) Single-family hillside residential developments of one acre or more of surface area;

b) Housing developments (includes single family homes, multifamily homes, condominiums, and apartments) of ten units or more;

c) A 100,000 square feet or more impervious surface area industrial/ commercial development;

d) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area];

e) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs

which may endanger public safety (i.e., create an explosive environment) are considered not appropriate;

f) Restaurants (SIC 5812) [5,000 square feet or more of surface area];

g) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces;

h) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2.e; and

i) Redevelopment projects in subject categories that meet Redevelopment thresholds.

5. Not later than March 10, 2003, each Permittee shall require the implementation of SUSMP and post-construction control requirements for the industrial/commercial development category to projects that disturb one acre or more of surface area.

6. Site Specific Mitigation

Each Permittee shall, no later than September 2, 2002, require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where one or more of the following project characteristics exist:

a) Vehicle or equipment fueling areas;

b) Vehicle or equipment maintenance areas, including washing and repair;

c) Commercial or industrial waste handling or storage;

d) Outdoor handling or storage of hazardous materials;

e) Outdoor manufacturing areas;

f) Outdoor food handling or processing;

g) Outdoor animal care, confinement, or slaughter; or

h) Outdoor horticulture activities.

7. Redevelopment Projects

The Permittees shall apply the SUSMP, or site specific requirements including post-construction storm water mitigation to all Planning Priority Projects that undergo significant Redevelopment in their respective categories.

a) Significant Redevelopment means land-disturbing activity that results in the creation or addition or replacement of 5,000 square

feet or more of impervious surface area on an already developed site.

Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated. Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.

b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety.

c) Existing single family structures are exempt from the Redevelopment requirements.

8. Maintenance Agreement and Transfer

Each Permittee shall require that all developments subject to SUSMP and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits. Verification at a minimum shall include:

a) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either

b) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards; or

c) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year; or

d) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs; or

e) Any other legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs.

9. Regional Storm Water Mitigation Program

A Permittee or Permittee group may apply to the Regional Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly SUSMP requirements. Upon review and a determination by the Regional Board Executive Officer that the proposal is technically valid and appropriate, the Regional Board may consider for approval such a program if its implementation will:

a) Result in equivalent or improved storm water quality;

b) Protect stream habitat;

c) Promote cooperative problem solving by diverse interests;

d) Be fiscally sustainable and has secure funding; and

e) Be completed in five years including the construction and start-up of treatment facilities.

Nothing in this provision shall be construed as to delay the implementation of SUSMP requirements, as approved in this Order.

10. Mitigation Funding

The Permittees may propose a management framework, for endorsement by the Regional Board Executive Officer, to support regional or sub-regional solutions to storm water pollution, where any of the following situations occur:

a) A waiver for impracticability is granted;

b) Legislative funds become available;

c) Off-site mitigation is required because of loss of environmental habitat; or

d) An approved watershed management plan or a regional storm water mitigation plan exists that incorporates an equivalent or improved strategy for storm water mitigation.

11. California Environmental Quality Act (CEQA) Document Update

Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents. The procedures shall require consideration of the following:

a) Potential impact of project construction on storm water runoff;

b) Potential impact of project post-construction activity on storm water runoff;

c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous

materials handling or storage, delivery areas or loading docks, or other outdoor work areas;

d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit;

e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies;

f) Potential for significant changes in the flow velocity or volume of storm water runoff that can cause environmental harm; and

g) Potential for significant increases in erosion of the project site or surrounding areas.

12. General Plan Update

a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended: (i) Land Use, (ii) Housing, (iii) Conservation, and (iv) Open Space.

b) Each Permittee shall provide the Regional Board with the draft amendment or revision when a listed General Plan element or the General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq.*

13. Targeted Employee Training

Each Permittee shall train its employees in targeted positions (whose jobs or activities are engaged in development planning) regarding the development planning requirements on an annual basis beginning no later than August 1, 2002, and more frequently if necessary. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003.

14. Developer Technical Guidance and Information

a) Each Permittee shall develop and make available to the developer community SUSMP (development planning) guidelines immediately.

b) The Principal Permittee in partnership with Permittees shall issue no later than February 2, 2004, a technical manual for the siting and design of BMPs for the development community in Los Angeles County. The technical manual may be adapted from the revised California Storm Water Quality Task Force Best Management Practices Handbooks scheduled for publication in September 2002. The technical manual shall at a minimum include:

(1) Treatment Control BMPs based on flow-based and volumetric water quality design criteria for the purposes of countywide consistency;

(2) Peak Flow Control criteria to control peak discharge rates, velocities and duration;

(3) Expected pollutant removal performance ranges obtained from national databases, technical reports and the scientific literature;

(4) Maintenance considerations; and

(5) Cost considerations.

E. Development Construction Program

1. Each Permittee shall implement a program to control runoff from construction activity at all construction sites within its jurisdiction. The program shall ensure the following minimum requirements are effectively implemented at all construction sites:

   a) Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs;

   b) Construction-related materials, wastes, spills, or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff;

   c) Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project site; and

   d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Board Resolution No. 99-03), such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

2. For construction sites one acre and greater, each Permittee shall comply with all conditions in section E.1. above and shall:

   a) Require the preparation and submittal of a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects.

   The Local SWPPP shall include appropriate construction site BMPs and maintenance schedules. (A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP). The Local SWPPP must include the rationale used for selecting or rejecting BMPs. The project architect, or engineer of record, or authorized

qualified designee, must sign a statement on the Local SWPPP to the effect:

"As the architect/engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."

The landowner or the landowner's agent shall sign a statement to the effect:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/or adequately implement the Local SWPPP may result in revocation of grading and/or other permits or other sanctions provided by law."

The Local SWPPP certification shall be signed by the landowner as follows, for a corporation: by a responsible corporate officer which means (a) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of the construction activity if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; for a partnership or sole proprietorship: by a general partner or the proprietor; or for a municipality or other public agency: by an elected official, a ranking management official (e.g., County Administrative Officer, City Manager, Director of Public Works, City Engineer, District Manager), or the manager of the construction activity if authority to sign Local SWPPPs has been assigned or delegated to the manager in accordance with established agency policy.

b) Inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season. The Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal

codes). If compliance has not been achieved, and the site is also covered under a statewide general construction storm water permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

c) Require, no later than March 10, 2003, prior to issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction storm water permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E.1. and E.2. and shall:

a) Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the GCASP and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

4. GCASP Violation Referrals

a) Referral of Violations of the SQMP, Regional Board Resolution 98-08, and municipal storm water ordinances:

A Permittee may refer a violation(s) to the Regional Board provided that the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must include documentation of:

- Two follow-up inspections within 3 months, and
- Two warning letters or notices of violation.

b) Referral of Violations of GCASP Filing Requirements:

For those projects subject to the GCASP, Permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of

making a determination. In making such referrals, Permittees shall include, at a minimum, the following documentation:

- Project location;
- Developer;
- Estimated project size; and
- Records of communication with the developer regarding filing requirements.

5. Each Permittee shall train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the storm water management program no later than August 1, 2002, and annually thereafter. For Permittees with a population of 250,000 or more (2000 U.S. Census), initial training shall be completed no later than February 3, 2003. Each Permittee shall maintain a list of trained employees.

F. Public Agency Activities Program

Each Permittee shall implement a Public Agency program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:

- Sewage Systems Maintenance, Overflow, and Spill Prevention
- Public Construction Activities Management
- Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management
- Landscape and Recreational Facilities Management
- Storm Drain Operation and Management
- Streets and Roads Maintenance
- Parking Facilities Management
- Public Industrial Activities Management
- Emergency Procedures
- Treatment Feasibility Study

1. Sewage System Maintenance, Overflow, and Spill Prevention

a) Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction, which shall consist at a minimum of the following:

(1) Investigation of any complaints received;

(2) Upon notification, immediate response to overflows for containment; and

(3) Notification to appropriate sewer and public health agencies when a sewer overflows to the MS4.

b) In addition to 1.a.1, 1.a.2, and 1.a.3 above, for those Permittees, which own and/or operate a sanitary sewer system, the Permittee shall also implement the following requirements:

(1) Procedures to prevent sewage spills or leaks from sewage facilities from entering the MS4; and

(2) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4.

2. Public Construction Activities Management

a) Each Permittee shall implement the Development Planning Program requirements (Permit Part 4.D) at public construction projects.

b) Each Permittee shall implement the Development Construction Program requirements (Permit Part 4.E) at Permittee owned construction sites.

c) Each Permittee shall obtain coverage under the GCASP for public construction sites 5 acres or greater (or part of a larger area of development) except that a municipality under 100,000 in population (1990 U.S. Census) need not obtain coverage under a separate permit until March 10, 2003.

d) Each Permittee, no later than March 10, 2003, shall obtain coverage under a statewide general construction storm water permit for public construction sites for projects between one and five acres.

3. Vehicle Maintenance/Material Storage Facilities/Corporation Yards Management

a) Each Permittee, consistent with the SQMP, shall implement SWPPPs for public vehicle maintenance facilities, material storage facilities, and corporation yards which have the potential to discharge pollutants into storm water.

b) Each Permittee shall implement BMPs to minimize pollutant discharges in storm water including but not be limited to:

(1) Good housekeeping practices;

(2) Material storage control;

(3) Vehicle leaks and spill control; and

(4) Illicit discharge control.

c) Each Permittee shall implement the following measures to prevent the discharge of pollutants to the MS4:

(1) For existing facilities, that are not already plumbed to the sanitary sewer, all vehicle and equipment wash areas (except for fire stations) shall either be:

(i) Self-contained;

(ii) Equipped with a clarifier;

(iii) Equipped with an alternative pre-treatment device; or

(iv) Plumbed to the sanitary sewer.

(2) For new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas shall be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency.

4. Landscape and Recreational Facilities Management

Each Permittee shall implement the following requirements:

a) A standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers;

b) Consistency with State Board's guidelines and monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2001-12 DWQ);

c) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied;

d) Ensure that no banned or unregistered pesticides are stored or applied;

e) Ensure that staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator;

f) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs;

g) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment;

h) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills; and

i) Regularly inspect storage areas.

5. Storm Drain Operation and Management

a) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:

Priority A:	Catch basins that are designated as consistently generating the highest volumes of trash and/or debris.
Priority B:	Catch basins that are designated as consistently generating moderate volumes of trash and/or debris.
Priority C:	Catch basins that are designated as generating low volumes of trash and/or debris.

b) Permittees subject to a trash TMDL (Los Angeles River and Ballona Creek WMAs) shall continue to implement the requirements listed below until trash TMDL implementation measures are adopted. Thereafter, the subject Permittees shall implement programs in conformance with the TMDL implementation schedule, which shall include an effective combination of measures such as street sweeping, catch basin cleaning, installation of treatment devices and trash receptacles, or other BMPs. Default requirements include:

(1) Inspection and cleaning of catch basins between May 1 and September 30 of each year;

(2) Additional cleaning of any catch basin that is at least 40% full of trash and/or debris;

(3) Record keeping of catch basins cleaned; and

(4) Recording of the overall quantity of catch basin waste collected.

If the implementation phase for the Los Angeles River and Ballona Creek Trash TMDLs has not begun by October 2003, subject Permittees shall implement the requirements described below in subsection 5(c), until such time programs in conformance with the subject Trash TMDLs are being implemented.

c) Permittees not subject to a trash TMDL shall:

(1) Clean catch basins according to the following schedule:

Priority A:	A minimum of three times during the wet season and once during the dry season every year.
Priority B:	A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

In addition to the schedule above, between February 1, 2002 and July 1, 2003, Permittees shall ensure that any catch basin that is at least 40% full of trash and/or debris shall be cleaned out. After July 1, 2003, Permittees shall ensure that any catch basin that is at least 25% full of trash and debris shall be cleaned out.

(2) For any special event that can be reasonably expected to generate substantial quantities of trash and litter, include provisions that require for the proper management of trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

(3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

d) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest the inlet. Catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection.

e) Each Permittee shall implement BMPs for Storm Drain Maintenance that include:

(1) A program to visually monitor Permittee-owned open channels and other drainage structures for debris at least annually and identify and prioritize problem areas of illicit discharge for regular inspection;

(2) A review of current maintenance activities to assure that appropriate storm water BMPs are being utilized to protect water quality;

(3) Removal of trash and debris from open channel storm drains shall occur a minimum of once per year before the storm season;

(4) Minimize the discharge of contaminants during MS4 maintenance and clean outs; and

(5) Proper disposal of material removed.

6. Streets and Roads Maintenance

a) Each Permittee shall designate streets and/or street segments within its jurisdiction as one of the following:

Priority A: Streets and/or street segments that are designated as consistently generating the highest volumes of trash and/or debris.

Priority B: Streets and/or street segments that are designated as consistently generating moderate volumes of trash and/or debris.

Priority C: Streets and/or street segments that are designated as generating low volumes of trash and/or debris.

b) Each Permittee shall perform street sweeping of curbed streets according to the following schedule:

Priority A: These streets and/or street segments shall be swept at least two times per month.

Priority B: Each Permittee shall ensure that each street and/or street segments is swept at least once per month.

Priority C: These streets and/or street segments shall be swept as necessary but in no case less than once per year.

c) Each Permittee shall require that:

(1) Sawcutting wastes be recovered and disposed of properly and that in no case shall waste be left on a roadway or allowed to enter the storm drain;

(2) Concrete and other street and road maintenance materials and wastes shall be managed to prevent discharge to the MS4; and

(3) The washout of concrete trucks and chutes shall only occur in designated areas and never discharged to storm drains, open ditches, streets, or catch basins.

d) Each Permittee shall, no later than August 1, 2002, train their employees in targeted positions (whose interactions, jobs, and activities affect storm water quality) regarding the requirements of the storm water management program to:

(1) Promote a clear understanding of the potential for maintenance activities to pollute storm water; and

(2) Identify and select appropriate BMPs.

For Permittees with a population of 250,000 or more (2000 U.S. Census) training shall be completed no later than February 1, 2003.

7. Parking Facilities Management

Permittee-owned parking lots exposed to storm water shall be kept clear of debris and excessive oil buildup and cleaned no less than 2 times per month and/or inspected no less than 2 times per month to determine if cleaning is necessary. In no case shall a Permittee-owned parking lot be cleaned less than once a month.

8. Public Industrial Activities Management

Each Permittee shall, for any municipal activity considered a discharge of storm water associated with industrial activity, obtain separate coverage under the GIASP except that a municipality under 100,000 in population (1990 U.S. Census) need not file the Notice Of Intent to be covered by said permit until March 10, 2003 (with the exception of power plants, airports, and uncontrolled sanitary landfills).

9. Emergency Procedures

Each Permittee shall repair essential public services and infrastructure in a manner to minimize environmental damage in emergency situations such as: earthquakes; fires; floods; landslides; or windstorms. BMPs shall be implemented to the extent that measures do not compromise public health and safety. After initial emergency response or emergency repair activities have been completed, each Permittee shall implement BMPs and programs as required under this Order.

10. Treatment Feasibility Study

The Permittees in cooperation with the County Sanitation Districts of Los Angeles County shall conduct a study to investigate the possible diversion of dry weather discharges or the use of alternative Treatment Control BMPs to treat flows from their jurisdiction which may impact public health and safety and/or the environment. The Permittees shall collectively review their individual prioritized lists and create a watershed based priority list of drains for potential diversion or treatment and submit the priority listing to the Regional Board Executive Officer, no later than July 1, 2003.

G. Illicit Connections and Illicit Discharges Elimination Program

Permittees shall eliminate all illicit connections and illicit discharges to the storm drain system, and shall document, track, and report all such cases in accordance

with the elements and performance measures specified in the following subsections.

1. General

a) Implementation: Each Permittee must develop an Implementation Program which specifies how each Permittee is implementing revisions to the IC/ID Program of the SQMP. This Implementation Program must be documented, and available for review and approval by the Regional Board Executive Officer, upon request.

b) Tracking: All Permittees shall, no later than February 3, 2003, develop and maintain a listing of all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee all illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee. No later than February 3, 2003, the Principal Permittee shall use this information as well as results of baseline and priority screening for illicit connections (as set forth in subsection 2 below) to start an annual evaluation of patterns and trends of illicit connections and illicit discharges, with the objectives of identifying priority areas for elimination of illicit connections and illicit discharges.

c) Training: All Permittees shall train all targeted employees who are responsible for identification, investigation, termination, cleanup, and reporting of illicit connections and discharges. For Permittees with a population of less than 250,000 (2000 U.S. Census), training shall be completed no later than August 1, 2002. For Permittees with a population of 250,000 or more (2000 U.S. Census), training shall be completed no later than February 3, 2003. Furthermore, all Permittees shall conduct refresher training on an annual basis thereafter.

2. Illicit Connections

a) Screening for Illicit Connections

(1) Field Screening: All Permittees shall field Screen the storm drain system for illicit connections in accordance with the following schedule:

(i) Open channels: No later than February 3, 2003;

(ii) Underground pipes in priority areas: No later than February 1, 2005; and

(iii) Underground pipes with a diameter of 36 inches or greater: No later than December 12, 2006.

Permittees shall report, to the Principal Permittee, on the location and length of open channels or underground pipes that have been Screened *vis a vis* the entire storm drain

network, and on the status of suspected, confirmed, and terminated illicit connections. Permittees shall maintain a list containing all permitted connections and the status of connections under investigation for possible illicit connection.

(2) Permit Screening: No later than December 12, 2006, Permittees shall complete a review of all permitted connections to the storm drain system, to confirm compliance with Part 1 (Discharge Prohibition).

b) Response to Illicit Connections

(1) Investigation: Upon discovery or upon receiving a report of a suspected illicit connection, Permittees shall initiate an investigation within 21 days, to determine the source of the connection, the nature and volume of discharge through the connection, and the responsible party for the connection.

(2) Termination: Upon confirmation of the illicit nature of a storm drain connection, Permittees shall ensure termination of the connection within 180 days, using enforcement authority as needed.

3. Illicit Discharges

a) Abatement and Cleanup: Permittees shall respond, within one business day of discovery or a report of a suspected illicit discharge, with activities to abate, contain, and clean up all illicit discharges, including hazardous substances.

b) Investigation: Permittees shall investigate illicit discharges as soon as practicable (during or immediately following containment and cleanup activities), and shall take enforcement action as appropriate.

Part 5. DEFINITIONS

The following are definitions for terms applicable to this Order:

"Adverse Impact" means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

"Anti-degradation policies" means the *Statement of Policy with Respect to Maintaining High Quality Water in California* (State Board Resolution No. 68-16) which protects surface and ground waters from degradation. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water.

"Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including

"effluent limitations, "water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 404 of CWA.

"**Areas of Special Biological Significance (ASBS)**" means all those areas of this state as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the meanhigh tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

"**Authorized Discharge**" means any discharge that is authorized pursuant to an NPDES permit or meets the conditions set forth in this Order.

"**Automotive Service Facilities**" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 5511, 7532-7534, or 7536-7539. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

"**Basin Plan**" means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Board on June 13, 1994 and subsequent amendments.

"**Beneficial Uses**" means the existing or potential uses of receiving waters in the permit area as designated by the Regional Board in the Basin Plan.

"**Best Management Practices (BMPs)**" means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

"**Commercial Development**" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

"**Construction**" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction includes structure teardown. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility; emergency construction activities required to immediately protect public health and safety; interior remodeling with no outside exposure of construction material or construction waste to storm water; mechanical permit work; or sign permit work.

"Control" means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

"Dechlorinated/Debrominated Swimming Pool Discharge" means swimming pool discharges which have no measurable chlorine or bromine and do not contain any detergents, wastes, or additional chemicals not typically found in swimming pool water. The term does not include swimming pool filter backwash.

"Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and other non-residential projects, including public agency projects; or mass grading for future construction. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Directly Adjacent" means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

"Director" means the Director of a municipality and Person(s) designated by and under the Director's instruction and supervision.

"Discharge" means when used without qualification the "discharge of a pollutant."

"Discharging Directly" means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

"Discharge of a Pollutant" means: any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Disturbed Area" means an area that is altered as a result of clearing, grading, and/or excavation.

"Environmentally Sensitive Areas (ESAs)" means an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments (California Public Resources Code § 30107.5). Areas subject to storm water mitigation requirements are: areas designated as Significant Ecological Areas by the County of Los Angeles (*Los Angeles County Significant Areas Study, Los Angeles County Department of Regional Planning (1976)* and amendments); an area designated as a Significant Natural Area by the California Department of Fish and Game's Significant Natural Areas Program, provided that area has been field verified by the Department of Fish and Game; an area listed in the

Basin Plan as supporting the "Rare, Threatened, or Endangered Species (RARE)" beneficial use; and an area identified by a Permittee as environmentally sensitive.

"General Construction Activities Storm Water Permit (GCASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from construction activities under certain conditions.

"General Industrial Activities Storm Water Permit (GIASP)" means the general NPDES permit adopted by the State Board which authorizes the discharge of storm water from certain industrial activities under certain conditions.

"Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 25% or greater and where grading contemplates cut or fill slopes.

"Illicit Connection" means any man-made conveyance that is connected to the storm drain system without a permit, excluding roof drains and other similar type connections. Examples include channels, pipelines, conduits, inlets, or outlets that are connected directly to the storm drain system.

"Illicit Discharge" means any discharge to the storm drain system that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non storm-water discharges except discharges pursuant to an NPDES permit, discharges that are identified in Part 1, "Discharge Prohibitions" of this order, and discharges authorized by the Regional Board Executive Officer.

"Illicit Disposal" means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

"Industrial/Commercial Facility" means any facility involved and/or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/or commodities, and any facility involved and/or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by the Standard Industrial Classifications (SIC). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

"Infiltration" means the downward entry of water into the surface of the soil.

"Inspection" means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research.;
2. Request for entry;
3. Interview of facility personnel;
4. Facility walk-through.
5. Visual observation of the condition of facility premises;
6. Examination and copying of records as required;
7. Sample collection (if necessary or required);

8. Exit conference (to discuss preliminary evaluation); and,
9. Report preparation, and if appropriate, recommendations for coming into compliance.

In the case of restaurants, a Permittee may conduct an inspection from the curbside, provided that such "curbside" inspection provides the Permittee with adequate information to determine an operator's compliance with BMPs that must be implemented per requirements of this Order, Regional Board Resolution 98-08, County and municipal ordinances, and the SQMP.

"Large Municipal Separate Storm Sewer System (MS4)" means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR 122.26 (b)(4). The Regional Board designated Los Angeles County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 8.9 million, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

"Local SWPPP" means the Storm Water Pollution Prevention Plan required by the local agency for a project that disturbs one or more acres of land.

"Maximum Extent Practicable (MEP)" means the standard for implementation of storm water management programs to reduce pollutants in storm water. CWA § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. See also State Board Order WQ 2000-11 at page 20.

"Method Detection Limit (MDL)" means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR 136, Appendix B.

"Minimum Level (ML)" means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed.

"Municipal Separate Storm Sewer System (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, alleys, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned by a State, city, county, town or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not part of a publicly owned treatment works, and which discharges to Waters of the United States.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA §307, 402, 318, and 405. The term includes an "approved program."

"Natural Drainage Systems" means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

"New Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision.

"Non-Storm Water Discharge" means any discharge to a storm drain that is not composed entirely of storm water.

"Nuisance" means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.; (3) occurs during, or as a result of, the treatment or disposal of wastes.

"Parking Lot" means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use, with a lot size of 5,000 square feet or more of surface area, or with 25 or more parking spaces.

"Permittee(s)" means Co-Permittees and any agency named in this Order as being responsible for permit conditions within its jurisdiction. Permittees to this Order include the Los Angeles County Flood Control District, Los Angeles County, and the cities of Agoura Hills, Alhambra, Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bell Gardens, Beverly Hills, Bradbury, Burbank, Calabasas, Carson, Cerritos, Claremont, Commerce, Compton, Covina, Cudahy, Culver City, Diamond Bar, Downey, Duarte, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawaiian Gardens, Hawthorne, Hermosa Beach, Hidden Hills, Huntington Park, Industry, Inglewood, Irwindale, La Canada Flintridge, La Habra Heights, Lakewood, La Mirada, La Puente, La Verne, Lawndale, Lomita, Los Angeles, Lynwood, Malibu, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pasadena, Pico Rivera, Pomona, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Fernando, San Gabriel, San Marino, Santa Clarita, Santa Fe Springs, Santa Monica, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Torrance, Vernon, Walnut, West Covina, West Hollywood, Westlake Village, and Whittier.

"Planning Priority Projects" means those projects that are required to incorporate appropriate storm water mitigation measures into the design plan for their respective project. These types of projects include:

1. Ten or more unit homes (includes single family homes, multifamily homes, condominiums, and apartments)
2. A 100,000 or more square feet of impervious surface area industrial/ commercial development (1 ac starting March 2003).
3. Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534, and 7536-7539)
4. Retail gasoline outlets
5. Restaurants (SIC 5812)
6. Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces

7. Redevelopment projects in subject categories that meet Redevelopment thresholds
8. Projects located in or directly adjacent to or discharging directly to an ESA, which meet thresholds; and
9. Those projects that require the implementation of a site-specific plan to mitigate post-development storm water for new development not requiring a SUSMP but which may potentially have adverse impacts on post-development storm water quality, where the following project characteristics exist:
   a) Vehicle or equipment fueling areas;
   b) Vehicle or equipment maintenance areas, including washing and repair;
   c) Commercial or industrial waste handling or storage;
   d) Outdoor handling or storage of hazardous materials;
   e) Outdoor manufacturing areas;
   f) Outdoor food handling or processing;
   g) Outdoor animal care, confinement, or slaughter; or
   h) Outdoor horticulture activities.

"Pollutants" means those "pollutants" defined in CWA §502(6) (33.U.S.C.§1362(6)), and incorporated by reference into California Water Code §13373.

"Potable Water Distribution Systems Releases" means sources of flows from drinking water storage, supply and distribution systems including flows from system failures, pressure releases, system maintenance, distribution line testing, fire hydrant flow testing; and flushing and dewatering of pipes, reservoirs, vaults, and minor non-invasive well maintenance activities not involving chemical addition(s). It does not include wastewater discharges from activities that occur at wellheads, such as well construction, well development (i.e., aquifer pumping tests, well purging, etc.), or major well maintenance.

"Project" means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Pub. Resources Code §21065).

"Rain Event" means any rain event greater than 0.1 inch in 24 hours except where specifically stated otherwise.

"Rare, Threatened, or Endangered Species (RARE)" means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

"Receiving Waters" means all surface water bodies in the Los Angeles Region that are identified in the Basin Plan.

"Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; ...

addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

"Regional Administrator" means the Regional Administrator of the Regional Office of the USEPA or the authorized representative of the Regional Administrator.

"Restaurant" means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

"Retail Gasoline Outlet" means any facility engaged in selling gasoline and lubricating oils.

"Runoff" means any runoff including storm water and dry weather flows from a drainage area that reaches a receiving water body or subsurface. During dry weather it is typically comprised of base flow either contaminated with pollutants or uncontaminated, and nuisance flows.

"Screening" means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

"Sidewalk Rinsing" means pressure washing of paved pedestrian walkways with average water usage of 0.006 gallons per square foot, with no cleaning agents, and properly disposing of all debris collected, as authorized under Regional Board Resolution No. 98-08.

"Significant Ecological Area (SEA)" means an area that is determined to possess an example of biotic resources that cumulatively represent biological diversity, for the purposes of protecting biotic diversity, as part of the Los Angeles County General Plan.[1]
Areas are designated as SEAs, if they possess one or more of the following criteria:

1. The habitat of rare, endangered, and threatened plant and animal species.
2. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind, or are restricted in distribution on a regional basis.
3. Biotic communities, vegetative associations, and habitat of plant and animal species that are either one of a kind or are restricted in distribution in Los Angeles County.

[1] The 61 existing SEAs represent the findings of a study that was completed in 1976 by England and Nelson, Environmental Consultants, as amended through the adoption of a revised Los Angeles County General Plan in 1980. The results of an update study to evaluate existing SEAs within unincorporated Los Angeles County is currently being proposed to the Los Angeles County Planning Commission (*Los Angeles County Significant Ecological Area Update Study 2000, Background Report*, PCR Services Corporation). The *Update Study 2000*, which contains existing and proposed SEA boundaries, can be downloaded from the Los Angeles County Department of Planning website at http://planning.co.la.ca.us/drp_revw.html#SEA

4. Habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, migrating grounds and is limited in availability either regionally or within Los Angeles County.
5. Biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or represent an unusual variation in a population or community.
6. Areas important as game species habitat or as fisheries.
7. Areas that would provide for the preservation of relatively undisturbed examples of natural biotic communities in Los Angeles County.
8. Special areas.[2]

"Significant Natural Area (SNA)" means an area defined by the California Department of Fish and Game (DFG), Significant Natural Areas Program, as an area that contains an important example of California's biological diversity. The most current SNA maps, reports, and descriptions can be downloaded from the DFG website at ftp://maphost.dfg.ca.gov/outgoing/whdab/sna/. These areas are identified using the following biological criteria only, irrespective of any administrative or jurisdictional considerations:

1. Areas supporting extremely rare species or habitats.
2. Areas supporting associations or concentrations of rare species or habitats.
3. Areas exhibiting the best examples of rare species and habitats in the state.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Source Control BMP" means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

"SQMP" means the Los Angeles Countywide Stormwater Quality Management Program.

"State Storm Water Pollution Prevention Plan (State SWPPP)" means a plan, as required by a State General Permit, identifying potential pollutant sources and describing the design, placement and implementation of BMPs, to effectively prevent non-stormwater Discharges and reduce Pollutants in Stormwater Discharges during activities covered by the General Permit.

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Discharge Associated with Industrial Activity" means industrial discharge as defined in 40 CFR 122.26(b)(14)

"Stormwater Quality Management Program" means the Los Angeles Countywide Stormwater Quality Management Program, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

[2] These criteria from the 1976 study have been modified in the *Update Study 2000*.

"Structural BMP" means any structural facility designed and constructed to mitigate the adverse impacts of storm water and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

"SUSMP" means the Los Angeles Countywide Standard Urban Stormwater Mitigation Plan. The SUSMP shall address conditions and requirements of new development.

"Total Maximum Daily Load (TMDL)" means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

"Toxicity Identification Evaluation (TIE)" means a set of procedures to identify the specific chemical(s) responsible for toxicity. These procedures are performed in three phases (characterization, identification, and confirmation) using aquatic organism toxicity tests.

"Toxicity Reduction Evaluation (TRE)" means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

"Treatment" means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

"Treatment Control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

"USEPA Phase I Facilities" means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include:

i. facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
ii. manufacturing facilities
iii. oil and gas/mining facilities
iv. hazardous waste treatment, storage, or disposal facilities
v. landfills, land application sites, and open dumps
vi. recycling facilities
vii. steam electric power generating facilities
viii. transportation facilities
ix. sewage of wastewater treatment works
x. light manufacturing facilities

"Vehicle Maintenance/Material Storage Facilities/Corporation Yards" means any Permittee owned or operated facility or portion thereof that:

i. Conducts industrial activity, operates equipment, handles materials, and provides services similar to Federal Phase I facilities;
ii. Performs fleet vehicle service/maintenance on ten or more vehicles per day including repair, maintenance, washing, and fueling;

iii. Performs maintenance and/or repair of heavy industrial machinery/equipment ; and
iv. Stores chemicals, raw materials, or waste materials in quantities that require a hazardous materials business plan or a Spill Prevention, Control , and Countermeasures (SPCC) plan.

"Water Quality Standards and Water Quality Objectives" means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Board to regulate all discharges, including storm water discharges.

"Waters of the State" means any surface water or groundwater, including saline waters, within boundaries of the state.

"Waters of the United States" or "Waters of the U.S." means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
b. All interstate waters, including interstate "wetlands";
c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    1. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    3. Which are used or could be used for industrial purposes by industries in interstate commerce;
d. All impoundments of waters otherwise defined as waters of the United States under this definition;
e. Tributaries of waters identified in paragraphs (a) through (d) of this definition;
f. The territorial sea; and
g. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.22(m), which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man-made bodies of water, which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with USEPA.

"Wet Season" means the calendar period beginning October 1 through April 15.

Part 6. STANDARD PROVISIONS

A. Standard Requirements

1. Each Permittee shall comply with all provisions and requirements of this permit.

2. Should a Permittee discover a failure to submit any relevant facts or that it submitted incorrect information in a report, it shall promptly submit the missing or correct information.

3. Each Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes the attached Monitoring and Reporting Program, and SUSMP(Regional Board Resolution No. R00-02), which are a part of the permit and must be complied with in the same manner as with the rest of the requirements in the permit.

B. Regional Board Review

Any formal determination or approval made by the Regional Board Executive Officer pursuant to the provisions of this Order may be reviewed by the Regional Board. A Permittee(s) or a member of the public may request such review upon petition within 30 days of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Board.

C. Public Review

1. All documents submitted to the Regional Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552 (as amended) and the Public Records Act (Cal. Government Code § 6250 *et seq.*).

2. All documents submitted to the Regional Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance; or a combination thereof [40 CFR 122.41(a), CWC § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].

2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. **Duty to Mitigate [40 CFR 122.41 (d)]**

Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. **Inspection and Entry [40 CFR 122.41(i), CWC § 13267]**

The Regional Board, USEPA, and other authorized representatives shall be allowed:

1. Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;

2. Access to copy any records, at reasonable times, that are kept under the conditions of this Order;

3. To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and,

4. To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CWC.

G. **Proper Operation and Maintenance [40 CFR 122.41 (e), CWC § 13263(f)]**

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. **Signatory Requirements [40 CFR 122.41(k) & 122.22]**

Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Board shall be signed by the Director of Public Works, City Engineer, or authorized designee and certified as set forth in 40 CFR 122.22.

I. **Reopener and Modification [40 CFR 122.41(f) & 122.62]**

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Board, in accordance with the procedural requirements of the CWC and CCR Title 23 for the issuance of waste

discharge requirements, 40 CFR 122.62, and upon prior notice and hearing, to:

a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Board;

b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan;

c) Comply with any applicable requirements; guidelines, and/or regulations issued or approved pursuant to CWA Section 402(p); and/or,

d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:

a) Violation of any term or condition contained in this Order;

b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,

c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR 122.63, if processed as a minor modification. Minor modifications may only:

a) Correct typographical errors, or

b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

The provisions of this permit are severable; and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected.

K. Duty to Provide Information [40 CFR 122.41(h)]

The Permittees shall furnish, within a reasonable time, any information the Regional Board or USEPA may request to determine whether cause exists for

modifying, revoking and reissuing, or terminating this Order. The Permittees shall also furnish to the Regional Board, upon request, copies of records required to be kept by this Order.

L. **Twenty-four Hour Reporting [40 CFR 122.41(l)(6)][3]**

1. The Permittees shall report to the Regional Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Board may waive the required written report on a case-by-case basis.

M. **Bypass [40 CFR 122.41(m)][4]**

Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Board may take enforcement action against Permittees for bypass unless:

1. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

2. There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;

3. The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Board; or,

4. Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to

[3] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Los Angeles County SQMP are exceeded, and which endanger public health or the environment.

[4] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the SQMP.

assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR 122.41(n)][5]

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   a) An upset occurred and that the Permittee can identify the cause(s) of the upset;
   b) The permitted facility was being properly operated by the time of the upset;
   c) The Permittee submitted notice of the upset as required; and,
   d) The Permittee complied with any remedial measures required.
2. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.
3. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR 122.41(g)]

This Order does not convey any property rights of any sort, or any exclusive privilege.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:
   a) Criminal Penalties for:

[5] *Supra*. See footnote number 3.

(1) Negligent Violations:

The CWA provides that any person who negligently violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment:

The CWA provides that any person who knowingly violates permit conditions implementing § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement:

The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See CWA § 309(c)(4))

b) Civil Penalties

The CWA provides that any person who violates a permit condition implementing § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. The CWC provides that any person who violates a waste discharge requirement provision of the CWC is subject to civil penalties of up to $5,000 per day, $10,000 per day, or $25,000 per day of violation; or when the violation involves the discharge of pollutants, is subject to civil penalties of up to $10 per gallon per day or $25 per gallon per day of violation; or some combination thereof, depending on the violation or combination of violations.

Q. **Need to Halt or Reduce Activity not a Defense [40 CFR 122.41(c)]**

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. **Rescission**

Regional Board Order No. 96-054 is hereby rescinded.

S. **Expiration**

This Order expires on December 12, 2006. The Permittees must submit a Report of Waste Discharges and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than June 12, 2006.

I, Dennis A. Dickerson, Regional Board Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on December 13, 2001.

Dennis A. Dickerson
Executive Officer

December 13, 2001

ATTACHMENT A
LIST OF PERMITTEES
BY
WATERSHED MANAGEMENT AREAS

Santa Monica Bay

Malibu Creek and Other Rural
Agoura Hills
*Calabasas
Los Angeles County Flood Control
Los Angeles County
Malibu
Westlake Village

Ballona Creek and Other Urban
Beverly Hills
Culver City
El Segundo
Hermosa Beach
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Manhattan Beach
Palos Verdes Estates
Rancho Palos Verdes
Redondo Beach
Rolling Hills
Rolling Hills Estates

*Santa Monica
West Hollywood

Dominguez Channel/ Los Angeles Harbor Drainage

Carson
Gardena
Hawthorne
Inglewood
Lawndale
Lomita
Los Angeles (City of)
Los Angeles County Flood Control

Los Angeles (County of)
*Torrance

Los Angeles River

Alhambra
Arcadia
Bell
Bell Gardens
Burbank
Commerce
Compton
Cudahy
El Monte
*Glendale
Hidden Hills
Huntington Park
La Canada Flintridge
Los Angeles (City of)
Los Angeles County Flood Control
Los Angeles (County of)
Lynwood
Maywood
Monrovia
Montebello
Monterey Park
Paramount

Pasadena
Rosemead
San Fernando
San Gabriel
San Marino
Sierra Madre
Signal Hill
South El Monte
South Gate
South Pasadena
Temple City
Vernon

San Gabriel River

Artesia
Azusa
Baldwin Park
Bellflower
Bradbury
Cerritos
Claremont
Covina
Diamond Bar
Downey
Duarte
Glendora
Hawaiian Gardens
Industry
Irwindale
La Habra Heights
La Mirada
La Puente
La Verne
Lakewood
*Long Beach[1]
Los Angeles County Flood Control
Los Angeles (County of)
Norwalk
Pomona
Pico Rivera
San Dimas
Santa Fe Springs
Walnut
West Covina
Whittier

Santa Clara River

*Santa Clarita
Los Angeles County Flood Control
Los Angeles (County of)

*Italicized agencies are present in more than one Watershed Management Area. *Indicates City with the largest watershed population other than County of Los Angeles and the City of Los Angeles.*

[1] *The City of Long Beach is covered under order No. 99-060*

ATTACHMENT B
Critical Sources Categories[1]

Tier 1 Categories

Municipal Landfills (SIC 4953)

Hazardous Waste Treatment, Disposal and Recovery Facilities[2]

Facilities Subject to SARA Title III (also known as EPCRA)[2]

Restaurants[3]

Wholesale trade (scrap, auto dismantling) (SIC 50)

Automotive service facilities[3]

Fabricated metal products (SIC 34)

Motor freight (SIC 42)

Chemical/allied products (SIC 28)

Automotive Dealers/Gas Stations (SIC 55)

Primary Metals Products (SIC 33)

Tier 2 Categories

Electric/Gas/Sanitary (SIC 49)

Air Transportation (SIC 45)

Rubbers/Miscellaneous Plastics (SIC 30)

Local/Suburban Transit (SIC 41)

Railroad Transportation (SIC 40)

Oil & Gas Extraction (SIC 13)

Lumber/Wood Products (SIC 24)

Machinery Manufacturing (SIC 35)

Transportation Equipment (SIC 37)

Stone, Clay, Glass, Concrete (SIC 32)

Leather/Leather Products (SIC 31)

Miscellaneous Manufacturing (SIC 39)

Food and kindred Products (SIC 20)

Mining of Nonmetallic Minerals (SIC 14)

Printing and Publishing (SIC 27)

Electric/Electronic (SIC 36)

---

[1] Italicized categories belong to Phase 1 facilities
[2] Various categories subject to these requirements
[3] See Definition in Part 5. of the permit

Paper and Allied Products (SIC 26)

Furniture and Fixtures (SIC 25)

Laundries *(SIC 72)*

Instruments (SIC 38)

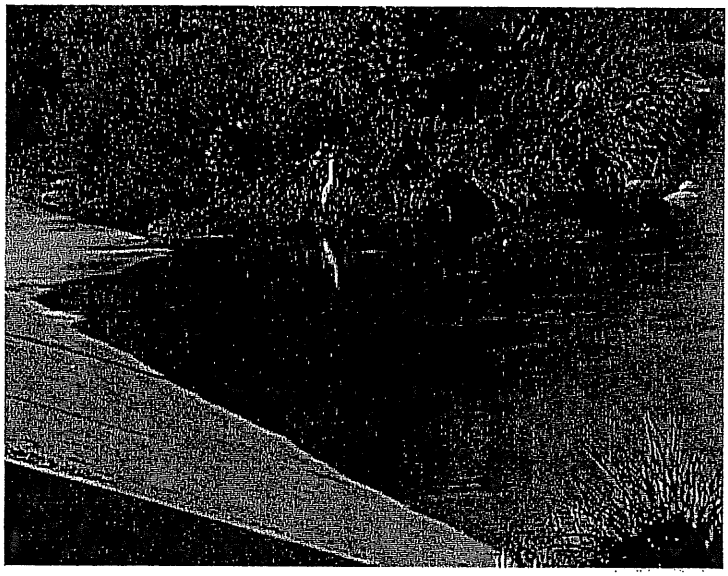
Textile Mills Products (SIC 22)

Apparel (SIC 23)

Trash Total Maximum Daily Loads

for the

Los Angeles River Watershed



September 19, 2001

California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street
Los Angeles, California 90013

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I. Introduction – Legal Background

The California Regional Water Quality Control Board, Los Angeles Region (herein referred to as the "Regional Board") has developed this total maximum daily load (TML designed to attain the water quality standards for trash in the Los Angeles River. The TML has been prepared pursuant to state and federal requirements to preserve and enhance wat quality in the Los Angeles Basin River Watershed.

The California Water Quality Control Plan, Los Angeles Region, also known as the *Basin Plan*, sets standards for surface waters and groundwaters in the regions. These standards are comprised of designated beneficial uses for surface and ground water, and numeric and narrative objectives necessary to support beneficial uses and the state's antidegradation policy. Such standards are mandated for all waterbodies within the state under the Porter-Cologne Water Quality Act. In addition, the Basin Plan describes implementation programs to protect all waters in the region. The Basin Plan implements the Porter-Cologne Water Quality Act (also known as the "California Water Code") and serves as the State Water Quality Control Plan applicable to the Los Angles River, as required pursuant to the federal Clean Water Act (CWA).

Section 305(b) of the CWA mandates biennial assessment of the nation's water resources, and these water quality assessments are used to identify and list impaired waters. The resulting list is referred to as the 303(d) list. The CWA also requires states to establish a priority ranking for impaired waters and to develop and implement TMDLs. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loadings to point and non-point sources.

The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) program and must approve or disapprove the state's 303(d) lists and each specific TMDL. USEPA is ultimately responsible for issuing a TMDL, if the state fails to do so in a timely manner.

As part of California's 1996 and 1998 303(d) list submittals, the Regional Board identified the reaches of the Los Angeles River at the Sepulveda Flood Basin and downstream as being impaired due to trash.

A consent decree between the USEPA, the Santa Monica BayKeeper and Heal the Bay Inc., represented by the Natural Resources Defense Council (NRDC), was signed on March 22, 1999. This consent decree requires that all TMDLs for the Los Angeles Region be adopted within 13 years. The consent decree also prescribed schedules for certain TMDLs. According to this schedule, a Trash TMDL for the Los Angeles River watershed must be approved before March 2001.

This Trash TMDL is based on existing, readily available information concerning the conditions in the Los Angeles River watershed and other watersheds in Southern California, as well as TMDLs previously developed by the State and USEPA.

II. Definitions

The definitions of terms as used in this TMDL are provided as follows:

Baseline Waste Load Allocation. The Baseline Waste Load Allocation is the Waste Load Allocation assigned to a permittee before reductions are required. The progressive reductions in the Waste Load Allocations will be based on a percentage of the Baseline Waste Load Allocation. The Baseline Waste Load Allocation will be calculated based on the annual average amount of trash discharged to the storm drain system from a representative sampling of land use areas, as determined during the Baseline Monitoring Program.

Daily Generation Rate (DGR). The DGR is the average amount of litter deposited to land or surface water during a 24-hour period, as measured in a specified drainage area.

Full Capture Device. A full capture device is any device or system that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow resulting from a one-year, one-hour, storm (determined to be 0.6 inch per hour for the Los Angeles River watershed).

Monitoring Entity. The Monitoring Entity is the permittee or one of multiple permittees and/or co-permittees that has been authorized by all the other affected permittees or co-permittees to conduct baseline monitoring on their behalf.

Permittee. The term "permittee" refers to any permittee or co-permittee of a stormwater permit.

Trash. In this document, we are defining "trash" as man-made litter, as defined in California Government Code Section 68055.1(g):

> "Litter means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling or manufacturing [....]."

For purposes of this TMDL, we will consider trash to consist of litter and particles of litter that are retained by a 5-mm mesh screen. These particles of litter are referred to as "gross pollutants" in European and Australian scientific literature. This definition excludes sediments, and it also excludes oil and grease, and vegetation, except for yard waste that is illegally disposed of in the storm drain system. Additional TMDLs for sediments[1] and oil and grease may be required at a later date.

[1] Sediments which may be addressed in a separate TMDL are natural particulate matters such as silt and sand. Sediments result from erosion and are deposited at the bottom of a stream. Sediments do not refer to the decomposition of settleable litter into small particulate matters, which this TMDL is trying to prevent.

Urbanized Portion of the Watershed. For the purposes of this TMDL, the urban portion of the watershed includes the sum total area of the incorporated cities and the unincorporated portion of Los Angeles County which are located on the Los Angeles River watershed.[2] The estimated area of the "urbanized" portion of the watershed is 584 square miles[3]. The remainder of the watershed is made up of the Los Angeles National Forest and other open space.

III. Problem Statement

The problem statement consists of a description of the watershed, beneficial uses, water quality objectives, and a description of the impairment to the watershed caused by trash.

A. Description of the Watershed

The Los Angeles River flows 51 miles from the western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach (see Figure A). The headwaters are at the confluence of Arroyo Calabasas and Bell Creek. Arroyo Calabasas drains Woodland Hills, Calabasas, and Hidden Hills in the Santa Monica Mountains. Bell Creek drains the Simi Hills and receives flows from Chatsworth Creek. From the confluence of Arroyo Calabasas and Bell Creek, the Los Angeles River flows east through the southern portion of the San Fernando Valley, bends around the Hollywood Hills before it turns south onto the broad coastal plain of the Los Angeles Basin, eventually discharging into Queensway Bay and thence into San Pedro Bay West of Long Beach Harbor. Together with its several major tributaries, notably the Tujunga Wash, Burbank Western Channel, Arroyo Seco, Rio Hondo, and Compton Creek, the Los Angeles River drains an area of about 834[4] square miles. Of this area, the incorporated cities and unincorporated portion of Los Angeles County comprise 584 square miles. The remaining acreage consists of the Los Angeles National Forest and other uses.

In the San Fernando Valley, the river flows east for approximately 16 miles along the base of the Santa Monica Mountains. Most of the Los Angeles River channel was lined with concrete between 1935 and 1959 for flood control purposes[5]. This reach is lined in concrete except for a section of the river with a soft bottom at the Sepulveda Flood Control Basin. The Sepulveda Basin is a 2,150-acre open space, located upstream of the Sepulveda Dam. It is designed to collect flood waters during major storms. Because the area is periodically inundated, it remains in natural or semi-natural conditions and supports a variety of low-intensity uses. The US Army Corps of Engineers owns the entire basin and leases most of the area to the City of Los Angeles Department of Recreation and Parks, which has developed a multi-use recreational area that includes a golf course, playing fields, hiking trails, and bicycle paths.

---

[2] The Regional Board recognizes that some areas within the unincorporated sections of Los Angeles County are actually suburban or rural.

[3] As determined by the Regional Board from GIS mapping. (Other minor differences in figures are due to rounding.)

[4] As determined by the Regional Board from GIS mapping.

[5] Gumprecht, Blake (1999) *The Los Angeles River: Its Life, Death, And Possible Rebirth*, p. 206.

The river is again lined in concrete for most of its course except for a seven-mile soft-bottomed segment between the confluence of the Burbank/Western Channel near Riverside Drive and north of the Arroyo Seco confluence. Three miles of this segment border Griffith Park (encompassing 4,217 acres). Four miles downstream, the river flows parallel to Elysian Park (585 acres in size). The original Pueblo de Los Angeles was founded just east of the river "to take advantage of the river's dependable supply of water."[6] Early this century, the progressive pumping of groundwater, together with major diversions of water for irrigation and other uses throughout the watershed, contributed to a decreased flow in the River. From Willow Street all the way through the estuary, the river is soft bottomed with areas of riparian vegetation. This unlined section is about three miles long. Also part of the watershed are a number of lakes including Peck Road Park Lake, Echo Park Lake, and Lincoln Park Lake.

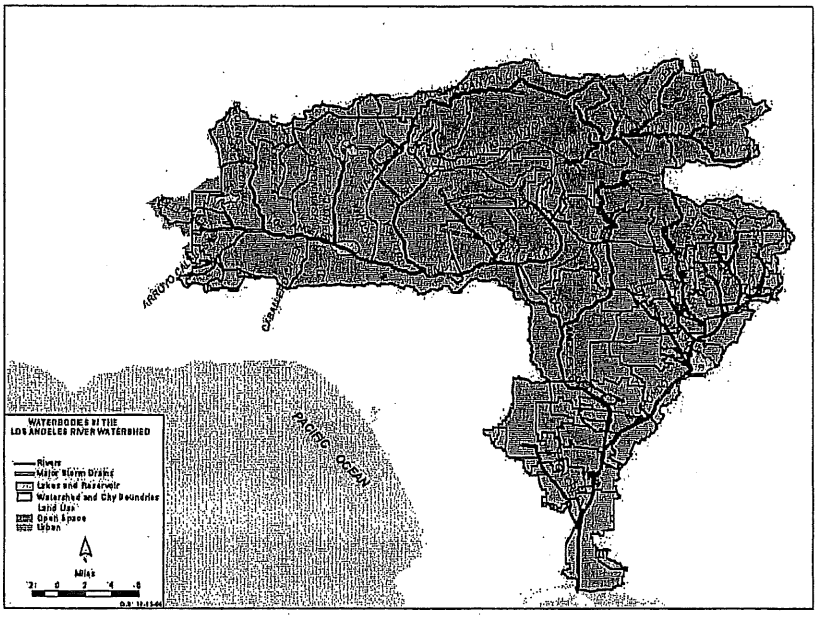

Figure A. Waterbodies in the Los Angeles River Watershed.

B. Beneficial Uses of the Watershed

A brief description of the beneficial uses most likely to be impaired due to trash in the Los Angeles River is provided in this section.

The upper reaches of the Los Angeles River include Sepulveda Basin, a soft-bottomed area that is designed as a flood control basin. Designated beneficial uses for the upper reaches are Municipal and Domestic Supply (MUN), Ground Water Recharge (GWR), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Wetland Habitat (WET). The arroyo chub is also found in the Sepulveda Basin area, and cannot survive on the flat surfaces on the concrete-lined portions of the Los Angeles River. The thick growth of riparian plants in this area provides habitat for a variety of wildlife. Native oaks grow along stretches of Valleyheart Drive in

[6] Los Angeles River Master Plan, June 1996, p. 211.

Studio City and Sherman Oaks. The river levees along this reach are accessible and neighborhood residents use them for walking and jogging.

Three native species of fish (the south coast minnow-sucker community) are found in Big Tujunga Creek from Big Tujunga Dam downstream to upper Hansen Dam. These are the Santa Ana sucker (Catastomus santaanae), which is listed as a federally endangered species, the Santa Ana speckled dace (Rhinichthys osculus) and the arroyo chub (Gila orcutti), both of which are State Species of Special Concern. They thrive in the moderate to fast cool or cold flows in gravelly and rocky riffles (suckers and dace), alternating with slower pools (chubs)[7].

Glendale Narrows, from Riverside Drive to Arroyo Seco (Figueroa Street), with the longest soft-bottomed segment (seven miles), supports many beneficial uses and is designated accordingly in the Basin Plan. This portion of the Los Angeles River is designated as open space in the various community general plans. Dense riparian vegetation provides habitat for wildlife including birds, ducks, frogs and turtles. Several small pocket parks are found along this section of the River, many of which were designed by North East Trees (NET), sometimes in partnership with the Mountains Recreation and Conservation Authority (MRCA), such as a small park South and North of Los Feliz Boulevard sometimes referred to as the "Los Angeles RiverWalk"[8] and Sunnynook park on the Atwater side, and Rattlesnake Park and Zanja Madre Park on the Silver Lake side. Another example of a pocket park, designed by MRCA, is Knox Park[9], at the end of Knox avenue. The riparian vegetation closely mimics the historical "willow sloughs" that once dotted the basin[10]. The relatively lush environment in this reach attracts people who enjoy many forms of recreation including walking, jogging, horseback riding, bicycling, bird watching, photography and crayfishing. There are several access points in this reach, including the pedestrian bridge over the Golden State Freeway from Griffith Park near Los Feliz Boulevard (Sunnynook Bridge). This whole section is lined with a maintained bike path, and many bicyclists use the path, which is cooled in places by the riparian trees. In addition, cut fences provide easy access for the many people who use this section of the river, including the homeless who have set up camp under some of the bridges within this reach or on the vacant land between Highway 5 and the fence to the river.

[7] Camm Swift, Emeritus Natural History Museum of Los Angeles County, California Academy of Sciences, May 20, 2000.
[8] Nishith Dhandha, North East Trees, August 24, 2000.
[9] Ibid.
[10] Dan Cooper, Audubon Society, California Academy of Sciences, May 20, 2000.

Figure B. Fletcher Drive: Great Egret, October 26, 1999.

From Figueroa Street to Washington Boulevard, the river supports several beneficial uses, including the Downtown Channel, which is used by many for recreation and bathing, in particular by homeless people who seek shelter there.

The mid-cities reach (11½ miles from Washington Boulevard to Atlantic Avenue), has several beneficial uses. The western levee is available for trail use from Atlantic Boulevard in Vernon to Firestone Boulevard in South Gate. There is a county bike path on the eastern levee (the Lario Trail) and a county equestrian and hiking trail adjacent to the levee. Continuous access to the Lario Trail is provided below each street bridge crossing. Several parks have been developed adjacent to the river on the east side, some of which provide access to the river trail (Cudahy Park). In Vernon, the channel invert is used for lunchtime soccer games, and people walk or jog on the river maintenance roads mostly during the week at lunchtime. The utility easement in Bell is used partly for small, informal vegetable gardening.[11] South of the confluence of the Los Angeles River and the Rio Hondo Channel in South Gate, increasing numbers of birds can be seen using the channel and adjacent lands.[12]

The nine-mile reach from Atlantic Avenue to the ocean supports some of the most abundant bird life found on the Los Angeles River. The parks, spreading grounds, utility easements and vacant land adjacent to the river provide roosting and feeding habitat. Many species of birds also feed in the concrete channel, where algae grow in the warm, shallow water, and in the estuary South of Willow Street, including fish-eaters like waders (herons, egrets, occidental bitterns and rails), terns, osprey (a fish-eating hawk), pelicans and cormorants. California Brown Pelican and California Least Tern are Federally Endangered Species.[13]

[11] Los Angeles River Master Plan, p. 99.

[12] At the confluence there is a ten-acre site (approx.) owned by the City of South Gate which contains an abandoned landfill which is vegetated with grasses, shrubs and trees (Los Angeles River Master Plan).

[13] Dan Cooper, California Audubon Society, December 17, 1999.

The water in the estuary pools is deep and slow enough to support an abundant fish community as well. In addition to gobies and tilapia (mostly *Tilapia mozambica*)[14], which are very abundant in the Los Angeles River, especially South of Willow Street, many species of fish are found in the estuary of the Los Angeles River. As an example, the following species have been found between the Ocean boulevard bridge and Queensway Bay bridge: California tonguefish, California halibut, specklefin midshipman, California lizardfish, diamond turbot, barcheek pipefish, and Pacific staghorn sculpin (bottom feeders), as well as white croaker, queenfish, deepbody anchovy, white seaperch, slough anchovy, barred sand bass, shiner perch, California grunion, and striped mullet (midwater feeders, often associated with bottom environment). This area also has harbored some pelagic fish, some of which will venture up an undetermined portion of the estuary: northern anchovy, Pacific sardine, Pacific pompano, Pacific barracuda, topsmelt, jacksmelt, white seabass, barred pipefish, giant kelpfish, and bay pipefish.[15]

[14] Charles Mitchell, MBC Applied Environmental Sciences, December 19, 1999.
[15] Marine Biological Baseline Study of Queensway Bay, Long Beach Harbor, MBC Applied Environmental Sciences, 1994.

Beneficial uses of the Los Angeles River watershed are summarized in Table 1, excerpted from the 1994 Basin Plan. These are the designated beneficial uses that must be protected.[16]

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Los Angeles River Estuary	405.12		E			E	E	E	E			E	E	E	E	E	E	P	E
Los Angeles River to Estuary	405.12	P	P	P	E		E	E		E			E	E	E	P	P	P	
Los Angeles River	405.15	P	P		E		E	E		E				P					
Los Angeles River	405.21	P	P		E		E	E		E				E					E
Compton Creek	405.15	P			E		E	E		E				E					E
Rio Hondo downstream Spreading Grounds	405.15	P			I		P	E		P				I					
Rio Hondo	405.41	P			I		I	E		P				I	E				E
Alhambra Wash	405.41	P			I		P	I		P				P	E				
Rubio Wash	405.41	P			I		I	I		I				E	P				
Rubio Canyon	405.31	P			E		I	I		I				E	E				E
Eaton Wash	405.41	P			I		I	I		I				E					
Eaton Wash (downstream dam)	405.31	P			I		I	I		I				E					
Eaton Wash (upstream dam)	405.31	P			I		I	I		I				E					
Eaton Dam and Reservoir	405.31	P			I		P	I		I				E					
Eaton Canyon Creek	405.31	P			E		E	E		E				E	E		E		E
Arcadia Wash (lower)	405.41	P			I		P	I		P				P					
Arcadia Wash (upper)	405.33	P			E		P	I		P				P					
Santa Anita Wash (lower)	405.41	P			I		P	E		P				P	E				
Santa Anita Wash (upper)	405.33	P			E		E	E		E				E	E				
Little Santa Anita Canyon Creek	405.33	P			I		I	I		I				E					
Big Santa Anita Reservoir	405.33	P			E		P	E		E	E			E					

[16] Water Quality Control Plan, Los Angeles Region, California Regional Water Quality Control Board, Los Angeles Region, 1994, p. 2-10.

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Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, continued.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Santa Anita Canyon Creek	405.33	E			E		E	E		E	E			E	E		E		E
Winter Creek	405.33	P			I		I	E		I				E					E
East Fork Santa Anita Canyon	405.33	P			E		E	E		E	E			E			E		E
Sawpit Wash	405.41	I			I		I	I		I				E					
Sawpit Canyon Creek	405.41	P			I		I	I		I				E	E				
Sawpit Dam and Reservoir	405.41	P			I		P	I		I				E					
Monrovia Canyon Creek	405.41	I			I		I	I		I				E					E
Arroyo Seco downstream Devil's Gate R. (L)	405.15	P					I	I		P				P					
Arroyo Seco downstream Devil's Gate R. (U)	405.31	P					I	I		P				P	E				
Devil's Gate Reservoir (L)	405.31	P			I		I	I		I				E					
Devil's Gate Reservoir (U)	405.32	I			I		I	I		I				E					
Arroyo Seco upstream Devil's Gate R.	405.32	E	E	E	E		E	E		E	E			E					E
Millard Canyon Creek	405.32	E	E	E	E		E	E		E				E	E				E
El Prieto Canyon Creek	405.32	I	I	I	I		I	I		I				E					
Little Bear Canyon Creek	405.32	P			I		I	I		I	I			E					E
Verdugo Wash	405.24	P			I		P	I		P				P					
Halls Canyon Channel	405.24	P	I	I	I		I	I		I				E					
Snover Canyon	405.32	I	I	I	I		I	I		I				E					
Pickens Canyon	405.24	I			I		I	I		I				E					
Shields Canyon	405.24	I	I	I	I		I	I		I				E					
Dunsmore Canyon Creek	405.24	I	I	I	I		I	I		I				E					

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, continued.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Burbank Western Channel	405.21	P					P	I		P				P					
La Tuna Canyon Creek	405.21	P			I		I	I		I				E					
Tujunga Wash	405.21	P			I		P	I		P	P			P					
Hansen Flood Control Basin & Lakes	405.23	P			E		E	E		E	E			E	E				
Lopez Canyon Creek	405.21	P			I		I	I		I				E					
Little Tujunga Canyon Creek	405.23	P			I		I	E		I	I			E	E				
Kagel Canyon Creek	405.23	P			I		I	I		I				E					
Big Tujunga Canyon Creek	405.23	P			E		E	E		E	E			E	E		E		E
Upper Big Tujunga Canyon Creek	405.23	P			E		E	E		I	P			E					E
Haines Canyon Creek	405.23	P			I		I	I		I				E	E				
Vasquez Creek	405.23	P			E		E	E		P	P			E					E
Clear Creek	405.23	P			E		E	E		E	E			E					E
Big Tujunga Reservoir	405.23	P			E		P	E		E	P			E			E		
Mill Creek	405.23	P			E		E	E		E	E			E					E
Pacoima Wash	405.21	P			E		P	E		E				E	E				
Pacoima Reservoir	405.22	P			E		E	E		E				E					
Pacoima Canyon Creek	405.22	P			E		E	E		E	E			E	E		E		E
Stetson Canyon Creek	405.22	P			I		P	E		P				P					
Wilson Canyon Creek	405.22	P			I		E	E		I				E					
May Canyon Creek	405.22	P			I		I	E		I				E					
Sepulveda Flood Control Basin	405.21	P			E		E	E		E				E					E
Bull Creek	405.21	P			I		I	I		I				E					
Los Angeles Reservoir	405.21	E	E	E	P		P	E		E				E	E				
Lower Van Norman Reservoir	405.21	E	E	E	E		E	E		E				E	E				
Solano Reservoir	405.21	E					P			P				E					
Caballero Creek	405.21	P			I		I	I		I				E					
Aliso Canyon Wash and Creek	405.21	P			I		I	I		I				E					
Limekiln Canyon Wash	405.21	P			I		I	I		I				E					

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, concluded.

Surface Waters	Hyd ro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	SPWN	SHELL	WET
Browns Canyon Wash and Creek	405.21	P			I		I	I		I				E				
Arroyo Calabasas	405.21	P			I		P	I		P				P				
McCoy Canyon Creek	405.21	P			I		I	I		I				E				
Dry Canyon Creek	405.21	P			I		I	I		I				E				
Bell Creek	405.21	P			I		I	I		I				E				
Chatsworth Reservoir	405.21	E	E	E			P	E		E				E				
Dayton Canyon Creek	405.21	P			I		I	I		I				E				
Echo Lake	405.15	P					P	E		P				E				
Lincoln Park Lake	405.15	P					P	E		P				E				

E: Existing beneficial use
P: Potential beneficial use
I: Intermittent beneficial use

BENEFICIAL USE CODES (see Basin Plan for more details):

MUN - Municipal and Domestic Water Supply
IND - Industrial Service Supply
PROC - Industrial Process Supply
GWR - Ground Water Recharge
REC1 - Water Contact Recreation
REC2 - Non-Contact Water Recreation
COMM - Commercial and Sport Fishing
WARM - Warm Freshwater Habitat
COLD - Cold Freshwater Habitat
EST - Estuarine Habitat
MAR - Marine Habitat
WILD - Wildlife Habitat
RARE - Rare, Threatened or Endangered Species
SPWN - Spawning, Reproduction, and/or Early Development
SHELL - Shellfish Harvesting
WET - Wetland Habitat

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C. Water Quality Objectives

Water quality standards consist of a combination of beneficial uses, water quality objectives and the State's Antidegradation Policy. The narrative water quality objectives applicable to this TMDL are **floating materials**: *"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses"*[17] and **solid, suspended, or settleable materials:** *"Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses."*[18] The States' Antidegradation Policy is formally referred to as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (State Board Resolution No. 68-16).

D. Impairment of Beneficial Uses

Existing beneficial uses impaired by trash in the Los Angeles River are contact recreation (REC 1) (contact sports: swimmers are spotted regularly in the Los Angeles River at Glendale Narrows and also at Willow Street in Long Beach) and non-contact recreation such as fishing (REC 2) (trash is aesthetically displeasing and deters recreational use and tourism); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); Commercial and sport fishing (COMM); [19]Wetland Habitat (WET), and Cold freshwater habitat (COLD). These beneficial uses in the Los Angeles River are impaired by large accumulations of suspended and settled debris throughout the river system. The problem is even more acute in Long Beach where debris flushed down from the upper reaches of the river collects. Common items that have been observed by Regional Board staff include Styrofoam cups, Styrofoam food containers, glass and plastic bottles, toys, balls, motor oil containers, antifreeze containers, construction materials, plastic bags, and cans. Heavier debris can be transported during storms as well.

Reaches of the Los Angeles River that are impaired by trash, and listed on the 303(d) list for such, are Tujunga Wash (downstream Hansen Dam to Los Angeles River), Los Angeles River Reach 5 (within Sepulveda Basin), Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.), Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.), Los Angeles River Reach 2 (Figueroa St. to upstream Carson St.), Los Angeles River Reach 1 (upstream Carson St. to estuary), Burbank Western Channel, Verdugo Wash (Reaches 1 & 2), Arroyo Seco Reach 1 (downstream Devil's Gate Dam) & Reach 2 (W. Holly Ave. to Devil's Gate), and Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River). In addition, Peck Road Lake, Echo Park Lake and Lincoln Park Lake are listed as impaired for trash.

Trash in waterways causes significant water quality problems. Small and large floatables can inhibit the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items such as

[17] Water Quality Control Plan ("Basin Plan"), p. 3-9.
[18] Ibid., pp. 3-16.
[19] Why did we delete this use? Shellfish harvesting is designated as potential for the estuary, and the estuary is listed for Trash. (MZ)

shopping carts, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, construction debris and more. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris e.g. (diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, repelling visitors away from our beaches and degrading coastal waters.

A major trash problem experienced in the Los Angeles River Watershed contributes to a broader phenomena that affects ocean waters, as small pieces of plastic called "nurdles" (defined as pre-production virgin material from plastic parts manufacturers, as well as post-production discards that are occasionally recycled) float at various depths in the ocean and affect organisms at all levels of the food chain. As sunlight and UV radiation render plastic brittle, wave energy pulverizes the brittle material, with a subsequent chain of nefarious effects on the various filter feeding organisms found near the ocean's surface. Studies in the North Pacific indicate that both large floating plastic and smaller fragments are increasing. As a result of increased reports of resin pellet ingestion by aquatic wildlife and evidence that the ingested pellets are harming wildlife, the Interagency Task Force on Persistent Marine Debris (ITF) identified resin pellets, also know as plastic pellets, as a debris of special concern.[20] When released into the environment, these pellets either may float on or near the water surface, may become suspended at mid-depths, or may sink to the bottom of a water body. Whether a specific pellet floats or sinks depends on the type of polymer used to create the pellet, on additives used to modify the characteristics of the resin, and on the density of the receiving water.

A 1999 study of Marine Debris in the Mid-Pacific Gyre in an attempt to assess the potential effects of ocean particles on filter feeding marine organisms, collected plankton samples at various locations throughout the gyre. The results were stunning: the mass of plastic particles collected was six times higher than the mass of plankton (841 g/km^2), although the number of planktonic organisms (1,837,342/km^2) was five times the number of plastic pieces. The distribution of the sampling points allows one to assume that these number can be safely extrapolated to the breadth of the Mid-Pacific Gyre. A remarkable finding was that the number of particles did not increase in successively smaller size classes as expected, indicating there may be non-selective removal by mucus web-feeding jellies and salp. In this study, the most common type of identifiable particle, thin plastic film, accounted for 29% of the total. Many birds will die from ingesting this non-nutritive plastic.[21]

The prevention and removal of trash in the Los Angeles River ultimately will lead to improved water quality and protection of aquatic life and habitat, expansion of opportunities for public recreational access, enhancement of public interest in the rivers and public participation in restoration activities, and propagation of the vision of the river as a whole and enhancement of the quality of life of riparian residents.

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[20] US Environmental Protection Agency (US EPA) (1992) **Plastic Pellets in the Aquatic Environment: Sources and Recommendations.**

[21] Moore, C.J. et al. **Marine Debris in the North Pacific Gyre, 1999, with a Biomass Comparison of Neustonic Plastic and Plankton.** (in preparation)

E. Extent of the Trash Problem in the Los Angeles River

Trash is a water quality problem throughout the Los Angeles River. The Regional Board has determined that current levels of trash exceed the existing Water Quality Objectives necessary to protect the beneficial uses of the river.

For many years, Los Angeles County and other cities have recognized that trash is a problem.[22] The Los Angeles County Department of Public Works is reporting a "30% decrease in roadway trash on unincorporated County roads and a 50% decrease in trash entering catchbasins since adoption of the current National Pollutant Discharge Elimination System (NPDES) Permit".[23] However, trash in the Los Angeles River continues to be a serious problem.

Every city in the watershed agrees that the amount of trash found in the waterways is excessive, and that trash is found in all reaches of the river from Calabasas to Long Beach, and in all tributaries. Although the Regional Board has not yet received the data that the Los Angeles County Department of Public Works used for its findings, Regional Board staff regularly observe trash in the waterways of this watershed. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others, organize volunteer clean-ups periodically, and document the amount of trash that was removed on such days, but these data do not indicate how long the trash had been accumulating at that particular site, only the amount that was picked up by the volunteers on a given day.

For example, at Coastal Clean-up Day in 1996, 26,300 lbs of trash were collected in Los Angeles County. During the September 18, 1999, California Coastal Clean up organized by Heal the Bay, a total of 60,711 lbs of trash were collected.[24]

At a clean-up organized during the Sacred Music Festival on Saturday, October 16, 1999, between Los Feliz Boulevard and Fletcher Drive over a distance of slightly under 1.5 miles, eleven shopping carts and six 40-gallon bags of trash were removed (see Figure C). However, this was not the total amount of trash on site, as Regional Board staff noticed more shopping carts and more trash on the same site the very next afternoon.[25] Meanwhile, the purpose of volunteer clean-ups is to visibly clean the river and its banks, not to quantify debris. As a result, it is likely that some of the debris collected during those events are not recorded. In addition, volunteers traditionally focus on larger, more visible debris to the exclusion of smaller debris which are commonly encountered, such as cigarette butts.

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[22]See comments from Los Angeles County, Agoura Hills, Artesia, Beverly Hills, Hermosa Beach, Hidden Hills, Carson, Diamond Bar, La Habra Heights, La Mirada, La Puente, Monrovia, Norwalk, Rancho Palos Verdes, Rolling Hills, San Fernando, San Marino, West Hollywood, Westlake Village, and the Executive Advisory Committee (Stormwater Program - Los Angeles County) on behalf of all the Los Angeles County cities, submitted in response to the first draft of this Trash TMDL for the Los Angeles River Watershed.

[23]Comment letter from County of Los Angeles, Department of Public Works, May 15, 2000, p. 1.

[24] Alix Gerosa, Heal the Bay, November 22, 1999.

[25] Trash observed by Regional Board staff on October 17, 1999, included mixed polystyrene waste (cups, plates and others), plastic bags, cement, sound boards, large clutters of cigarette butts, disposable plastic glass lids, aluminum wrappers, balloons, medications, plastic bottles, clothing, books, and aerosol paint cans.

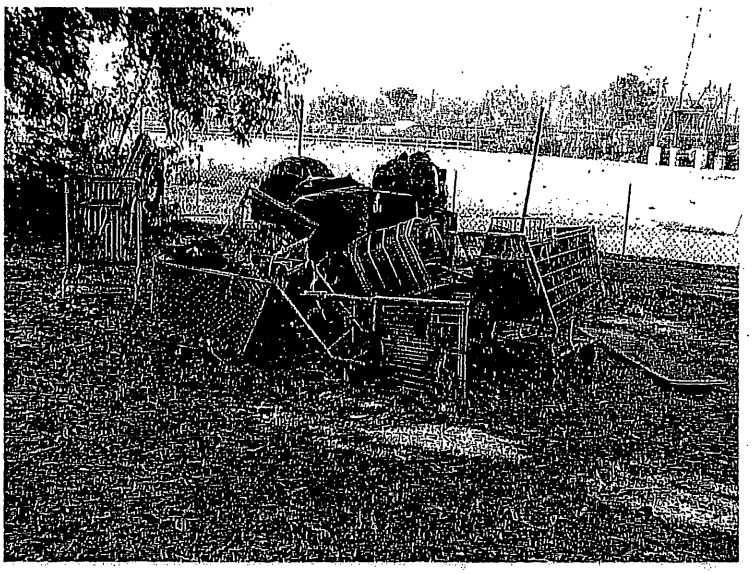

Figure C. Trash waiting for pick-up at Los Feliz Boulevard after the Sunday, October 16, 1999 river clean-up.

Several studies which attempted to quantify trash generated from discreet areas have been completed, but they concern relatively small areas, or relatively short periods, or both. The findings of some of these studies are discussed below.

The City of Calabasas cleaned out the Continuous Deflective Separation (CDS) Unit they had installed in December of 1998, on September 28, 1999. This CDS unit, located in Calabasas at the intersection of Las Virgenes Road and Agoura Road, collects trash from the runoff of a small storm drain, as well as part of the runoff from Calabasas Park Hills (Santa Monica Mountains), and eventually empties to Las Virgenes Creek. It is assumed that this CDS unit prevented all trash from passing through. The calculated area drained by this CDS Unit, as provided to the Regional Board by Los Angeles County Department of Public Works staff, amounts to 12.8 square miles. The urbanized area was estimated by Regional Board staff to amount to 0.10 square miles of the total area. The result of this clean-out, which represents approximately half of the 1998-1999 rainy season, was 2,000 gallons of sludgy water and a 64-gallon bag about two-third full of plastic food wrappers. It is assumed that part of the trash that accumulated in the CDS unit over roughly half of the rainy season had decomposed in the unit, hence the absence of paper products. Given the CDS unit was cleaned out after slightly more than nine months of use, it was assumed that this 0.10 square mile urbanized area produced a volume of 64 gallons of trash over one year. This datum will be used as the default value for the implementation plan. Although other studies are informative, studies currently available to the Regional Board provide insufficient data and could not be applied directly to establishing trash generation rates.

The City of Los Angeles conducted an Enhanced Catch Basin Cleaning Pilot Project in compliance with a consent decree between the United States Environmental Protection Agency, the State of California, and the City of Los Angeles. The project goals were to determine debris loading rates, characterize the debris, and find an optimal cleaning schedule through enhancing catch basin cleaning. The project evaluated trash loading at two drainage basins:

-The Hollywood Basin (1,366 acres and 793 catch basins) includes much of Hancock Park and is mostly residential with some commercial and open space, and no industrial land;

-The Sawtelle Basin (2,267 acres and 502 catch basins) includes residential areas with some commercial, industrial and transportation-related uses, and some open space.

The catch basins are inlet structures without a sump below the level of the outlet pipe to capture solids and trash washed down by the stormwater.[26] These inlets also collect trash, grass clippings and animal wastes during dry weather. Catch basins were cleaned 3-4 times from March 1992 to December 1994 and yielded approximately 0.79 yd^3 (160 Gal) of debris per cleaning (Sawtelle – 1.04 yd^3 (210 Gal) and Hollywood – 0.61 yd^3 (123 Gal)), characterized as paper (26%), plastic wastes (10%), soil (33%), and yard trimmings (31%).

The study also observed that the amount of plastic waste was less in residential areas and greater in non-residential areas, that paper waste was greater in commercial areas, and that soil and yard waste was greater in residential areas and open spaces.[27]

Long Beach collects large amounts of trash at the mouth of the Los Angeles River, as much of the trash carried down the Los Angeles River ends up at the river's mouth in Long Beach. Debris tonnage at the mouth of the Los Angeles River is listed in Table 2.

Table 2. Storm Debris Collection Summary for Long Beach: Debris is measured in Tonnage.[28]

	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
1995-96	73[29]	344	3,100	645	4,162
1996-97	350	2,361	601	681	3,993
1997-98	647	3,650	4,016	977	9,290
1998-99	565	720	532	1,274	3,091

IV. Numeric Target

The numeric target is 0 (zero) trash in the water. The numeric target is staff's interpretation of the narrative water quality objective, including an implicit margin of safety. Although a substantial number of comments were received in response to the March 17, 2000 Draft TMDL, no information was provided to justify any other number that would fully support the designated beneficial uses. The numeric target was used to calculate the Waste Load Allocations as described in the Implementation Plan (see Section VIII.)

[26] Such structures are usually termed *catchments*, but the term *catch basin* is used throughout Southern California. The absence of flow during dry weather allows trash to collect at the inlet. (Phone conversation with Wing Tam, City of Los Angeles, November 10, 1999.)

[27] This information and all of the above concerning the City of Los Angeles Enhanced Catch Basin Cleaning was found in: City of Los Angeles Department of Public Works, Bureau of Sanitation: Consent Decree Report, Enhanced Catch Basin Cleaning, April 1999. (Unpublished report.)

[28] City of Long Beach Memorandum from Geoffrey Hall, Parks, Recreation and Marine, to Ed Putz, City Engineer.

[29] 9/95 only.

V. Source Analysis

The major source of trash in the river results from litter, which is intentionally or accidentally discarded in watershed drainage areas. Transport mechanisms include the following:

1. Storm drains: trash is deposited throughout the watershed and is carried to the various reaches of the river and its tributaries during and after significant rainstorms through storm drains.

2. Wind action: trash can also blow into the waterways directly.

3. Direct disposal: direct dumping also occurs.

Extensive research has not been done on trash generation or the precise relationship between rainfall and its deposition in waterways. However, it has been found that the amount of gross pollutants entering the stormwater system is rainfall dependent but does not necessarily depend on the source (Walker and Wong, December 1999). The amount of trash which enters the stormwater system depends on the energy available to re-mobilize and transport deposited gross pollutants on street surfaces rather than on the amount of available gross pollutants deposited on street surfaces. The exception to this finding of course would be in the event that there is zero gross pollutants deposited on the street surfaces or other drainages tributary to the storm drain. Where gross pollutants exist, a clear relationship between the gross pollutant load in the stormwater system and the magnitude of the storm event has been established. The limiting mechanism affecting the transport of gross pollutants, in the majority of cases, appears to be re-mobilization and transport processes (i.e., stormwater rates and velocities).

Several studies conclude that urban runoff is the dominant source of trash. The large amounts of trash conveyed by urban storm water to the Los Angeles River is evidenced by the amount of as trash that accumulates at the base of storm drains. The amount and type of trash that is washed into the storm drain system appears to be a function of the surrounding land use.

A number of studies (Walker and Wong, 1999, Allison, 1995), have shown that commercial land-use catchments generate more pollutants than residential land use catchments, and as much as three times the amount generated from light industrial land use catchment. It is generally accepted that commercial land uses tend to contribute larger loads of gross pollutants per area compared to residential and mixed land-use areas. This is in spite of daily street sweeping in the commercial sub-catchment compared to once every two weeks in residential and mixed land use areas.

VI. Waste Load Allocations

Storm drains have been identified as a major source of trash in the Los Angeles River. The strategy for meeting the water quality objective will focus on reducing the trash discharged via municipal storm drains.

Waste Load Allocations will be assigned to the Permittees and Co-permittees of the Los Angeles County Municipal Stormwater Permit (hereinafter referred to as Permittees) and Caltrans. In addition, Waste Load Allocations may be issued to additional facilities in the future under Phase II of the US EPA Stormwater Permitting Program. Waste Load Allocations assigned under the MS4 permit and the Caltrans permit will be based on a phased reduction from the estimated current discharge (i.e., baseline) over a 10-year period until the final Waste Load Allocation (currently set at zero) is met. The baseline allocation for the MS4 Permittees and Co-permittees (referred to hereinafter as the "Permittees") will be derived from currently available data (i.e., default baseline allocations) or refined data collected during the Baseline Monitoring Program.

Upon completion of the baseline monitoring, staff shall report to the Board the results of such baseline monitoring. The Regional Board will review the final Waste Load Allocations once a reduction of 50% has been achieved. This means that the final Waste Load Allocation will be reviewed only after substantial reductions are achieved. A review of the Waste Load Allocation will be based on the findings of future studies regarding the threshold levels needed for protecting beneficial uses. The threshold level is presumed to be specific to all categories of trash.

A. Default Baseline Waste Load Allocation

The Default Baseline Waste Load Allocation for the municipal stormwater permittees is equal to 640 gallons of uncompressed trash per square mile per year. No differentiation will be applied for different land uses in the Default Baseline Waste Load Allocation. This value is based on data provided by the City of Calabasas, as described previously. In the event that the permittees elect to rely on the Default Baseline Waste Load Allocation, they must first establish a conversion factor translating uncompressed volume to a standardized compacted volume and/or dry weight. The final Default Baseline Waste Load Allocation, as described in compressed volume and/or dry weight, will be specified in the stormwater permit.

B. Refined Baseline Waste Load Allocations

The municipal stormwater permittees may opt to seek refinement of the Default Baseline Waste Load Allocation by implementing an approved "Baseline Monitoring Plan," as described in Section VII. The goal of the Baseline Monitoring program is to derive a representative trash generation rate for various land uses from across the Los Angeles River watershed. The Baseline Waste Load Allocation for any single city will be the sum of the products of each land use area multiplied by the Waste Load Allocation for the land use area, as shown below:

$$LA = \sum for\ each\ city\ (area\ by\ land\ uses \bullet allocations\ for\ this\ land\ use)$$

The urban portion of the Los Angeles River watershed was divided into twelve types of land uses for every city and unincorporated area in the watershed. Similar land use classifications already exist on the land use maps used by L.A. County Department of Public

Works to assess the generation of certain pollutants by land use.[30] The land use categories are: (1) high density residential[31], (2) low density residential[32], (3) commercial and services, (4) industrial, (5) public facilities[33], (6) educational institutions[34], (7) military installations, (8) transportation[35], (9) mixed urban[36], (10) open space and recreation[37], (11) agriculture[38], and (12) water[39]. Given that the minimum mapping resolution is 2.5 acres, a non-critical land use unit may not be mapped if it is less than 2.5 acres in size[40].

The appendix contains a table which shows the square mileage for each land use for each city and unincorporated areas in the watershed, and a list of maps showing land uses for each city. Unincorporated areas include areas such as Altadena, East Compton, East Los Angeles, East Pasadena, East San Gabriel, Florence, La Crescenta, Mayflower Village, North El Monte, South San Gabriel, Walnut Park, Westmount and Willowbrook. For cities that are only partially located on the watershed, the square mileage indicated is for the part of this city that is in the watershed only.

Land uses that are not under municipal jurisdiction, such as military installations, will be dealt with through separate permits, and will thus be monitored separately.

Each permittee will be allowed 90% of their baseline Waste Load Allocation during the first year of implementation, and the allocation will be reduced from the baseline by an average 10% through every year of implementation.

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[30] The land use classification was developed by Aerial Information Systems as a modified Anderson Land Use Classification and originally included 104 categories. The land use coverages were donated for GIS library use by Southern California Association of Governments (SCAG), and show land use for 1990 and for 1993. The coverages were mapjoined into a single coverage by Teale Data Center. The Regional Board layers were aggregated from the TDC coverage into the land uses shown above.

[31] High Density Residential includes High Density Single Family Residential and all Multi Family Residential, Mobile Homes, Trailer Parks and Rural Residential High Density.

[32] Under 2 units per acre.

[33] These include government centers, police and sheriff stations, fire stations, medical health care facilities, religious facilities large enough to be distinguished on an aerial photograph, libraries, museums, community centers, public auditoriums, observatories, live indoor and outdoor theaters, convention centers which were built prior to 1990, communication facilities, and utility facilities (electrical, solid waste, liquid waste, water storage and water transfer, natural gas and petroleum).

[34] Preschools and daycare centers, elementary schools, high schools, colleges and universities, and trade schools, including police academies and fire fighting training schools.

[35] Airports, railroads, freeways and major roads (that meet the minimum mapping resolution of 2.5 acres), park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utility.

[36] Mixed commercial, industrial and/or residential, and areas under construction or vacant in 1990.

[37] Golf courses, local and regional parks and recreation, cemeteries, wildlife preserves and sanctuaries, botanical gardens, beach parks.

[38] Orchards and vineyards, nurseries, animal intensive operations, horse ranches.

[39] Open water bodies, open reservoirs larger than 5 acres, golf course ponds, lakes, estuaries, channels, detention ponds, percolation basins, flood control and debris dams.

[40] Critical land uses were mapped regardless of resolution limits. Critical land use units below 1 acre in size were mapped as 1-acre units.

C. Baseline Waste Load Allocations for Caltrans

A Litter Management Pilot Study (LMPS)[41] was conducted to evaluate the effectiveness of several litter management practices in reducing litter that is discharged from Caltrans storm water conveyance systems. The LMPS employed four field study sites, each of which was used to test a separate BMP. Each site included three replicate testing pairs, consisting of one site designed to measure the amount of trash produced when treatment was applied, and one control with no treatment site. The LMPS averages the data collected at the control outfalls in order to obtain the annual litter loads. The average combined total loads for the three control outfalls at each site normalized by the total area of control catchments is presented in the following table, adapted from the LMPS report[42]:

Table 3. Average Combined Total Loads for Control Outfalls at 3 Litter Management Pilot Study (LMPS) Sites.

Site	Weight lbs/sq mi	Volume cu ft/sq mi
1E	10584.00	1312.97
1W	7479.36	971.73
6	7479.36	881.34
8	4374.72	404.51

A preliminary baseline Waste Load Allocation for weight and volume load generation for freeways is arrived at by averaging weight and volume columns. (see Table 4.)

Table 4. A Preliminary Baseline Waste Load Allocation for Weight and Volume for Freeways.

Weight lbs/sq mi	Volume cu ft/sq mi
7479.36	892.64

This is a default allocation which can be refined through baseline monitoring following the protocol previously indicated for baseline monitoring. It is to be noted that control site 1E already had one BMP in place before testing of the other BMPs, as it was cleaned monthly through an "Adopt a Highway" program.

Average Annual Daily Traffic (AADT) for all control sites in the study ranged from 216,000 to 238,000.[43] Considering AADT on Los Angeles County freeways may be close to 300,000 on some sections[44], the chosen sites, although typical freeway outfalls, are not distributed throughout the whole AADT range. As the purpose of the study was to assess the effectiveness of specific BMPs, not to assess a trash generation factor, sites were chosen with similar characteristics.

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[41] California Department of Transportation District 7 Litter Management Pilot Study, June 2000. This study defined litter in stormwater as "manufactured items that can be retained by ¼-inch mesh made from paper, plastic, cardboard, etc.", and "that are not of natural origin (i.e. does not include sand, soil, gravel, vegetation, etc.)" (p. 1-2).

[42] Ibid., Table 6-8.

[43] Ibid., Table 6-8.

[44] Information on AADT on select freeways can be found on Caltrans' website: http://www.caltrans.ca.gov/.

D. Baseline Waste Load Allocations for Municipal Permittees

Watershed wide default allocations for the ten-year implementation period are presented in Table 5. The default annual baseline Waste Load Allocation for the municipal permittees is 49,124.6 cubic feet (expressed as uncompressed volume) and 7,944 cubic feet for Caltrans.[45] The Waste Load Allocations represent a progressive reduction in the baseline Waste Load Allocation over a period of 10 years. The volumes shown, in cubic feet, are in uncompressed volumes, but in the event that the permittees elect to rely on the default baseline Waste Load Allocations, this unit of measure will be converted to an equivalent unit expressed in cubic yards based on a standardized compaction rate or dry weight.

Table 5. Default Waste Load Allocations. (Expressed as cubic feet of uncompressed trash and % reduction.)[46]

Year of Implementation[47]	Municipal Stormwater Default Waste Load Allocation
Year One	44,212.1 or 90% of the baseline load
Year Two	39,299.7 or 80% of the baseline load
Year Three	34,387.2 or 70% of the baseline load
Year Four	29,474.8 or 60% of the baseline load
Year Five	24,562.3 or 50% of the baseline load
Year Six	19,649.8 or 40% of the baseline load
Year Seven[48]	14737.4 or 30% of the baseline load
Year Eight	9,824.9 or 20% of the baseline load
Year Nine	7 4,912.5 or 10% of the baseline load
Year Ten	0 or 0% of the baseline load

VII. Baseline Monitoring

The goal of the Baseline Monitoring Program is to collect representative data from across the watershed that can be used to refine the default Waste Load Allocations. Two Baseline Monitoring Strategies are outlined herein. The first is the program presented in the March 17, 2000, draft document. The second is an Alternative Baseline Monitoring Program based on a plan presented by the Los Angeles County, Department of Public Works, in a

[45] Based on a default baseline load allocation of 86 cubic feet per square mile for the municipal permittees and 893 cubic feet per square mile for Caltrans.

[46] Table has been simplified to show default watershed wide allocations for permittees only.

[47] Year of implementation subsequent to the two-year baseline monitoring program.

[48] A review of the current target will be allowed once a reduction of 50% has been achieved and sustained.

letter dated August 30, 2000. Baseline monitoring will be required via Section 13267 of the Porter-Cologne Water Quality Control Act (hereinafter referred to as "Porter-Cologne").

A number of permittees objected to the Baseline Monitoring Plan as presented in the March 17, 2000, Draft TMDL. Most of the objections were based on the cost of employing full-capture monitoring systems across 10% of the watershed. In addition, finding a watershed that drains a single land use also was problematic. In an effort to arrive at a less costly plan that would still provide representative data sufficient for use in deriving Baseline Waste Load Allocations, the Los Angeles County Department of Public Works convened a committee of the municipal permittees to evaluate alternative strategies. Regional Board staff met with the committee on nine occasions to establish the minimum requirements for an Alternative Baseline Monitoring Plan and to review various strategies. The minimum requirements established were:

- The plan would provide representative data from across the watershed.
- The plan would provide data in units that were easily reproduceable and would be comparable with data to be collected during the Implementation Phase (i.e., we would be comparing apples with apples).
- The permittees agreed that Baseline Waste Load Allocations would be derived from data generated from the plan.

One issue of concern was whether representative data could be collected if rainfall was below normal during the Baseline Monitoring period. Staff has addressed this concern by specifying that the Permittees may elect to continue the Baseline Monitoring for an additional two years. However, the Implementation Schedule will not be delayed as a result of the extended Baseline Monitoring.

A. Land Use Areas to be Monitored

Monitoring data will be used to establish specific trash generation rates per land use. Thus, all monitoring will be designed according to land use. Some of the land uses will be monitored by the Los Angeles County Department of Public Works (LACDPW), possibly in association with the cities located on the Los Angeles River watershed, while other land uses which are outside the jurisdiction of the municipalities, such as airports, will be monitored using similar methods by the appropriate permittees, and the resulting baseline monitoring results will then be applied as these entities are permitted under EPA Phase II Storm Water regulations. City and County streets are included in each land use as they are monitored.

The land use categories that will be monitored by the LACDPW baseline monitoring group (in order to determine land use based generation rates) are:

- High density residential,
- Low density residential,
- Commercial and services,
- Industrial, and
- Open space and recreation.

Certain land uses will be exempt from monitoring:

- public facilities,
- mixed urban,
- agriculture, and
- water.

Public facilities (except educational institutions) will not be monitored because their diversity makes it difficult to obtain a representative generation rate. Thus, their generation rate will be assumed to be the highest between residential, commercial and industrial.

Mixed urban will not be monitored, instead the generation rate for mixed urban will again be assumed to be the highest between residential, commercial and industrial.

Agricultural land uses will be exempt from monitoring because they represent such a small percentage of the total watershed. The assigned generation rate will be that of the geographically closest land use.

Water will be exempt from monitoring because it is not considered a generator of trash.

Transportation land use, as defined by the Regional Board, includes airports, railroads, freeways and major roads (that meet the minimum mapping resolution of 2.5 acres), park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utilities. Of that land use, what is under Caltrans' jurisdiction will be covered under Caltrans' permit. Caltrans will be required to submit a monitoring plan for that land use, and will be assigned a Waste Load Allocation as well. Major boulevards that are currently under Caltrans' jurisdiction, but are affected by trash generated on municipal sites, such as Santa Monica Boulevard, will be addressed by the cities concerned. Baseline monitoring for airports will be done separately and airports will be permitted separately, so the Regional Board will require that the Burbank-Glendale-Pasadena airport submit a separate monitoring program.

Under EPA Phase II of the Storm Water Regulations, separate permits will be written for state and federal facilities. Thus, public educational institutions and military installations will be covered under separate permits under Phase II. Again, these entities covered under separate permits will have to conduct baseline monitoring as well in order to arrive at a trash generation factor. Private education facilities, however, are under cities' jurisdiction and are part of the city. Thus, private educational institutions will be assigned the rate of the geographically closest land use.

Each of the permittees and co-permittees are responsible for monitoring land uses within their jurisdiction. However, monitoring responsibilities may be delegated to a third-party monitoring entity such as LACDPW, or other permittees or co-permittees as appropriate.

B. General Baseline Monitoring Plan Requirements

The following general requirements will apply during Baseline Monitoring, regardless of the monitoring plan employed.

- Monitoring Plan. The permittee will submit a monitoring plan with the proposed monitoring sites and at least two alternate monitoring locations for each site. The plan must include maps of the drainage and storm drain data for each proposed and alternate monitoring location. The monitoring plan(s) will be submitted to the Regional Board within 30 days after receipt of the Executive Officer's letter requesting such a plan. Such a request is authorized pursuant to Section 13267 of the Porter-Cologne. The Regional Board's Executive Officer will have full authority to review the monitoring plan(s), to modify the plan, to select among the alternate monitoring sites, and to approve or disapprove the plan(s).

- Jurisdiction. While each city, and Los Angeles County for non-incorporated areas, will receive an allocation based on the trash generation factors for its land uses, the areas not regulated under municipal or industrial storm water permits may be permitted separately. For this reason, each city must provide the Regional Board with a list of entities located within their municipal boundaries that are outside of their jurisdiction including state or federal lands and facilities, within 120 days of the effective date of this TMDL. The Regional Board will review the lists of state and federal entities and issue permits as warranted.

- Data Collection. Baseline data will be collected over a period of at least two years. Although the amount of trash deposited into the waterways through the conveyance of a storm drain is dependent on rainfall patterns, and larger amounts of trash are typically deposited into the channels as a result of the first storm of the season, monitoring will include dates in both the rainy season and the dry season. The Los Angeles County Department of Public Works defines the rainy season as spanning from October 15 to April 15. In the event that precipitation during the two years of Baseline Monitoring is below average, the permittees may elect to extend the monitoring plan for another two years. However, an extension of the Baseline Monitoring program, shall not cause a delay in the commencement of the Implementation Plan as described in Section VIII.

- Unit of Measure. Data will be reported in a single unit of measure that is reproduceable and measures the amount of trash, irrespective of water content (e.g., compacted volume based on a standardized compaction rate, dry weight, etc.). The permittees may select the unit, but all permittees must use the same unit of measure. The unit of measure used during Baseline Monitoring also will be used during Implementation for determining compliance with Waste Load Allocations.

- Sampling Frequency. During wet weather, all sampling devices will be emptied within 72 hours of every precipitation event of 0.25 inch. During dry weather, sampling devices will be emptied and analyzed every three months in the absence of precipitation.

- Vegetation. The permittees may exclude vegetation from their reported discharge except where there is evidence that the vegetation is the result of the illegal discharge of yard waste. However, all monitoring data must be reported uniformly (either with or without vegetation). If the permittees include vegetation in the discharges reported during Baseline Monitoring, they will be obligated to include natural vegetation in their reports of discharge during Implementation.

- Disposal of Collected Trash. Trash captured during the monitoring program must be disposed of in accordance with all applicable laws and regulations.

A summary of the requirements and milestone dates related to the Baseline Monitoring Program are summarized in Table 6.

Table 6. Baseline Monitoring Plan Due Dates.

30 days after receipt of the Executive Officer's request as authorized by Section 13267 of Porter-Cologne.	Submit baseline monitoring plan(s).
120 days after receipt of the Executive Officer's request as authorized by Section 13267 of Porter-Cologne.	List facilities that are outside of the permittee's jurisdiction but drain to a portion of the the permittee's storm drain system, which discharges to the Los Angeles River.
First 2 years after approval of this amendment; to be extended to 4 years at the option of the Permittees	Collect Baseline Data
72 hours after each rain event	Clean out and measure trash retained
Every 3 months during dry weather	Clean out and measure trash retained

C. Baseline Monitoring Plan

During the first year of baseline monitoring, permittees or groups thereof will capture and quantify trash from an area of no less than 10% of the total land area over which they have jurisdiction and that drains to the Los Angeles River. The monitoring areas will also represent 10% of every land use the group has jurisdiction over. If storm drain configuration vs. land use make the representation of 10% of a land use unfeasible, the permittees or groups thereof can choose areas that their land uses as representatively as possible, as long as the extent of the surface being monitored represents 10%.

For the purposes of developing monitoring data for the establishment of Waste Load Allocations, the Regional Board will accept "full capture" as defined in Section II herein. This level of treatment will capture 100% of the trash mobilized by a one-year storm and nearly all of the trash generated from a more intense storm. This is because most pollutants occur in the first flush of the runoff and would thus be intercepted by a structural treatment device prior to the crest of the runoff flow resulting from a more intense storm.

D. Alternative Baseline Monitoring Plan

For each land use monitored, a minimum of ten representative sites will be sampled. For each sampling site, a minimum of five catch basins will be fitted with inserts, for a total of not less than 50 catch basin inserts per land use monitored. The existing litter removal practices that are employed by the cities will remain in place, so that baseline monitoring will evaluate how much trash is washed into the system under current practices.

In addition, the Regional Board will require a structural, full capture device downstream of at least one sampling site for each land use monitored. For this sampling site, all of the catch basins that are upstream of the full capture-monitoring device must be fitted with inserts. This configuration will provide information on the relative effectiveness of the catch basin inserts as opposed to the full capture systems in varying land uses and under varying weather conditions.

VIII. Implementation and Compliance

As required by the Clean Water Act, discharges of pollutants to surface waters from storm water are prohibited, unless the discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. Discharge of trash to the Los Angeles River will be regulated via the Municipal NPDES Storm Water Permits and the Caltrans stormwater permit. In addition, USEPA Phase II stormwater permits, general permits, and industrial permits may also be used to regulate discharges of trash to the river.

In June 1990, the first Municipal NPDES Storm Water Permit was issued jointly to Los Angeles County and 84 cities as co-permittees. A separate NPDES Storm Water Permit was issued to the City of Long Beach on June 30, 1999. Storm water municipal permits will be one of the implementation tools of this Trash TMDL, and will include the allocations as

effluent limits. Thus, future storm water permits will be modified to incorporate the Waste Load Allocations and to address monitoring and implementation of this TMDL.

A. Compliance Determination

During the Baseline Monitoring Program that occurs prior to the commencement of the Implementation Phase, cities will be deemed in compliance with the Waste Load Allocations provided that all of the trash collected during the monitoring program is disposed of in compliance with all applicable regulations. Thereafter, compliance with the Waste Load Allocations will be calculated as a running three-year average. Other measures of compliance will relate to the implementation and reporting as required under the approved Baseline Monitoring Program.

The first compliance point during the Implementation Phase will be September 30, 2006. Compliance will be evaluated based on the total load discharged to the river during the period October 1, 2003 through September 30, 2006, divided by three. Compliance thereafter will be evaluated at the end of each successive storm season and will be based on a rolling three-year average (see Table 7). This method will provide allowances for variability due to rainfall. Exceedance of the 3-year rolling average discharge will subject the permittee to enforcement action. A summary of the schedule for determining compliance with the Waste Load Allocations is presented in Table 7.

The final waste load allocation will be considered complied with when the Executive Officer finds that: Structural devices or systems and/or institutional controls have removed effectively 100% of the trash from the storm drain system discharge to Los Angeles River or its tributaries.

Table 7. Compliance Schedule.
(Default waste load allocations expressed as cubic feet of uncompressed trash and % reduction.)

Year	Baseline Monitoring/ Implementation	Waste Load Allocation	Compliance Point
1	Baseline Monitoring	No allocation specified. Trash will be reduced by levels collected during the baseline monitoring program.	Achieved through timely compliance with baseline monitoring program.
2	Baseline Monitoring	No allocation specified. Trash will be reduced by levels collected during the baseline monitoring program.	Achieved through timely compliance with baseline monitoring program.
3 10/1/03-- 9/30/04	Baseline Monitoring (optional)/ Implementation: Year 1	90% (44,212.1 for the Municipal permittees, 7150.0 for Caltrans)	No compliance point (target of 90%).
4 10/1/04-- 9/30/05	Baseline Monitoring (optional)/ Implementation: Year 2.	80% (39,299.7 for the Municipal permittees, 6,355.6 for Caltrans)	No compliance point (target of 80%).
5 10/1/05-- 9/30/06	Implementation: Year 3	70% (34,387.2 for the Municipal permittees, 5,561.1 for Caltrans)	Compliance is 80% of the baseline load calculated as a rolling 3-year annual average (39,299.7 for the Municipal permittees, 6,355.6 for Caltrans).
6 10/1/06-- 9/30/07	Implementation: Year 4	60% (29,474.8 for the Municipal permittees, 4,766.7 for Caltrans)	70% of the baseline load the baseline load calculated as a rolling 3-year annual average (34,387.2 for the Municipal permittees, 5,561.1 for Caltrans).
7 10/1/07-- 9/30/08	Implementation: Year 5	50% (24,562.3 for the Municipal permittees, 3,972.2 for Caltrans)	60% of the baseline load calculated as a rolling 3-year annual average (29,474.8 for the Municipal permittees, 4,766.7 for Caltrans).
8 10/1/08-- 9/30/09	Implementation: Year 6	40% (19,649.8 for the Municipal permittees, 3,177.8 for Caltrans)	50% of the baseline load calculated as a rolling 3-year annual average (24,562.3 for the Municipal permittees, 3,972.2 for Caltrans).
9 10/1/09-- 9/30/10	Implementation: Year 7	30% (14,737.4 for the Municipal permittees, 2,383.3 for Caltrans)	40% of the baseline load calculated as a rolling 3-year annual average (19,649.8 for the Municipal permittees, 3177.8 for Caltrans).
10 10/1/10-- 9/30/11	Implementation: Year 8	20% (9,824.9 for the Municipal permittees, 1,588.9 for Caltrans)	30% of the baseline load calculated as a rolling 3-year annual average (14,737.4 for the Municipal permittees , 2,383.3 for Caltrans).
11 10/1/11-- 9/30/12	Implementation: Year 9[49]	10% (4,912.5 for the Municipal permittees, 794.4 for Caltrans)	20% of the baseline load calculated as a rolling 3-year annual average (9,824.9 for the Municipal permittees, 1,588.9 for Caltrans).
12 10/1/12-- 9/30/13	Implementation: Year 10	0 or 0 % of the baseline load.	10% of the baseline load as determined calculated as a rolling 3-year annual average (4,912.5) for the Municipal permittees, 794.4 for Caltrans).
13 10/1/13-- 9/30/14	Implementation: Year 11	0 or 0 % of the baseline load.	3.3 % of the baseline load as determined calculated as a rolling 3-year annual average (1,621.1 for the Municipal permittees, 262.2 for Caltrans) .
14 10/1/14-- 9/30/15	Implementation: Year 12	0 or 0 % of the baseline load.	0 or 0 % of the baseline load.

[49] A review of the current target will be allowed once a reduction of 50% has been achieved and sustained.

B. Compliance Strategies

Permittees may employ a variety of strategies to meet the progressive reductions in their Waste Load Allocations. These strategies may be broadly classified as either:

- End-of-pipe full capture structural controls or
- Partial capture control systems and/or
- Institutional controls.

A permittee could comply with the successive reduction in Waste Load Allocations by installing full capture devices progressively throughout the watershed until all of the outlets to the Los Angeles River system are covered. This approach may be best suited for open space areas, where low levels of trash may accumulate over large vegetated drainage areas. However, in more urban settings, institutional controls including enforcement of litter laws and more frequent street sweeping may be preferred.

It is to be noted that ordinances that prohibit litter are already in place in most cities. For example, the Los Angeles City Code of Regulations recognizes that trash becomes a pollutant in the storm drain system when exposed to storm water or any runoff and prohibits the disposal of trash on public land:

> No person shall throw, deposit, leave, cause or permit to be thrown, deposited, placed, or left, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, gutter, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City so that such materials, when exposed to storm water or any runoff, become a pollutant in the storm drain system. (City Code of Regulations, §64.70.02.C.1(a).)

Institutional controls provide several advantages over structural full capture systems. Foremost, institutional controls offer other societal benefits associated with reducing litter in our city streets, parks and other public areas. The capital investment required to implement institutional controls is generally less than for full-capture systems. However, the labor costs associated with institutional controls may be higher, and institutional controls may be more costly in the long-term.

There have been a number of discussions as to how permittees may best implement the gradual reductions required by this Trash TMDL, and as to the types of devices or best management practices they should elect. The permittees will be free to implement trash reduction in any manner that they choose.

A discussion of the means for determining compliance for various implementation strategies is presented in the following subsections.

1. Full Capture Treatment Systems

The amount of trash discharged to the river by an area serviced by a full-capture system will be considered to be in compliance with the final Waste Load Allocation for the drainage area, provided that the full capture systems are adequately sized, maintained and maintenance records are available for inspection by the Regional Board. Compliance with the final Waste Load Allocation will be assumed, for full capture systems with a design treatment capacity of not less than the peak flow resulting from a one-year storm (determined to be 0.6 inch of rain per hour for the Los Angeles River Watershed).

The permittees may employ devices or systems other than the vortex separation system to meet the final Waste Load Allocations. However, such systems must be approved by the Executive Officer to attain removal credit. Before approving a full-capture system, the Executive Officer must make the following findings:

- The device or system will capture all particles retained by a 5 mm mesh screen from all runoff generated from a one-year storm (determined to be 0.6 inch per hour) and
- The device or system is designed to prevent plugging or blockage of the screening module.

2. Partial Capture Treatment Systems and Institutional Controls

Measuring the effectiveness of partial-capture systems and institutional controls is more complicated. The discharge resulting from an area addressed by partial capture and/or institutional controls will be estimated using a mass balance approach, based on the daily generation rate (DGR) for the specific area. [Note: The DGR should not be confused with the trash generation rates obtained during baseline monitoring. The baseline monitoring program is designed to obtain "typical" trash generation rates for a given land use. Those values are then used to calculate a Permittee's baseline load allocation. The DGR is the average amount of trash deposited within a specified drainage area over a 24-hour period. The DGR will be used in a mass balance equation to estimate the amount of trash discharged during a rain event.] (See Example 1.)

Annual re-calculation of the DGR will serve as a measure of the effectiveness of source reduction measures including public education, enforcement of litter laws, etc. Source reduction measures will be accredited based on an annual recalculation of the DGR to allow for progressive improvement and/or to account for backsliding.

The DGR will be determined from direct measurement of trash deposited in the drainage area during the month of July[50], and re-calculated every year thereafter. July was assumed to be a month characterized by high outdoor activity when trash is most likely to be

[50] Provided no special events are schedule that may affect the representativity of that month.

deposited on the ground. The recommended method for measuring trash during this time period is to close the catch basins in a manner that prevents trash from being swept into the catch basins and then to collect trash on the ground via street sweeping, manual pickup, or other comparable means. The DGR will be calculated as the total amount of trash collected during the month divided by 31 (the number of days in the month).

Accounting of DGR and trash removal via street sweeping, catch basin clean outs, etc. will be tracked in a central spreadsheet or database to facilitate the calculation of discharge for each rain event. The spreadsheet and/or database will be available to the Regional Board for inspection during normal working hours. The database/spreadsheet system will allow for the computation of calculated discharges and can be coordinated with enforcement. This database will be developed by cities or groups of cities.

The Executive Officer may approve alternative compliance monitoring programs other than those described above, upon finding that the program will provide a scientifically-based estimate of the amount of trash discharged from the storm drain system.

3. Examples of Implementation Strategies

Two example control strategies for municipal stormwater discharges are described in this section.

Example 1.

A permittee installs catch basin inserts and "dry weather trash door" devices of the type that maintains the catch basin shut during dry weather, and implements regular street sweeping. After each storm of 0.25 inch or greater, the catch basin inserts are emptied. In this case, the DGR was calculated during the month of July as follows:.[51]

DGR = (Volume of trash collected via street sweeping during the month of Julyg / 31 days.)

The stormwater discharge for a given rain event then would be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the volume of trash recovered in the catch basin inserts.

Stormwater Discharge = [(Days since last street sweeping) (DGR)] –
[Volume of trash recovered from catch basin inserts]

Example 2.

City X is comprised of three land use areas (Land Uses A, B, and C). The city has adopted an implementation strategy using a combination of full capture structural and institutional controls. As of year five, the city has installed full capture structural controls in Area A and institutional controls in Area B. City X has not yet taken any action to control

[51] In the event that trash generation rates differ between weekday and weekends, a distinction in the DGRs may be warranted.

trash in Area C. The watershed-wide baseline Waste Load Allocation have been established at 100 lbs per square mile for Land Uses A and B, and at 200 lbs per square mile for land use C. The full capture treatment system is assumed to meet the final Waste Load Allocation. The city's mass balance calculations show that 100 lbs of trash was discharged from Land Use Area B. The discharge from Land Use Area C is assumed to be the base load allocation since no controls were implemented and the daily generation rate has not been established. As shown in Figure D, City X's discharge for the year was 1,100 lbs, and the 3-year rolling average discharge was less than the 5-Year Waste Load Allocation. Therefore the city was found to be in compliance with its discharge loading unit.

Land Use A: 10 sq miles treated by a full capture system Baseline Waste Load Allocation: 100 lbs/sq mi/year	Land Use B: 5 sq miles treated via institutional controls and partial capture Baseline Waste Load Allocation: 100 lbs/sq mi/year
	Land Use C: 5 sq miles - No treatment applied Baseline Waste Load Allocation: 200 lbs/sq mi/year

Baseline Waste Load Allocation for each land use in City X:
A=(100 lbs/sq mi/yr) (10 sq mi)=1000 lbs
B=(100 lbs/sq mi/yr) (5 sq mi)=500 lbs
C=(200 lbs/sq mi/yr) (5 sq mi)=1000 lbs
Total baseline Waste Load Allocation = 2,500 lbs
Year 5 Waste Load Allocation = 2,000 lbs*
*An 80% reduction based on a 3-year rolling average.

Previous Years' Discharge:
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs

Trash Discharge for Year 5:
A=0
B=100 lbs (Determined by mass balance)
C=1,000 lbs (No reduction)
Total Discharge (Year 5) = 1,100 lbs

Three-Year Rolling Average Discharge
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs
Year 5 = 1,100 lbs
3-year rolling average discharge = 1,833 lbs

Compliance is achieved: Discharge (1,833 lbs) < Waste Load Allocation (2,000 lbs).

Figure D. Example 2, City X After Year 5.

A summary of implementation strategies and compliance assurance methods is provided in Table 8.

Table 8. Summary of Possible Trash Reduction Implementation Measures.

Treatment Applied	Measure of Effectiveness	Compliance Determination
Source Control: Public education, enforcement of litter laws, container redemption programs, etc.	Daily Generation Rate: Amount of trash collected via street sweeping and or from catch basin inserts divided by the number of days provides a measure of source control measure effectiveness	DGR used in mass balance calculation of discharge: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts]
Partial Capture: (Catchbasin inserts, trash excluder doors, etc.)	Mass Balance: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts] OR Downstream Monitoring w/ Full Capture System	Discharge based on mass balance calculation: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts] OR Monitoring Results
Full Capture: Capture 100% of particles retained by a 5 mm mesh screen. from flow resulting from 0.6 inches rain/hr	Effectiveness verified by literature	Final Waste Load Allocation Achieved: Provided system is adequately sized, maintained and maintenance records are available for Regional Board inspection

IX. Cost Considerations

The Porter-Cologne Section 13241(d), requires staff to "consider costs" associated with the establishment of water quality objectives. The TMDL does not establish water quality objectives, but is merely a plan for achieving the existing water quality objective. Therefore cost considerations required in Section 13241 are not required for this TMDL.

The purpose of this cost analysis is to provide the Regional Board with information concerning the potential cost of implementing this TMDL and to addresses concerns about costs that have been raised by stakeholders. This section takes into account a reasonable range of economic factors in fulfillment of the applicable provisions of the California Environmental Quality Act (Public Resources Code Section 21159.)

An evaluation of the costs of implementing this Trash TMDL amounts to evaluating the costs of preventing trash from getting from the storm drains to the river. This brief report gives a summary overview of the costs associated with the most likely ways the permittees will achieve the required reduction in discharges to the storm drain system. Such an analysis would be incomplete if it failed to consider the existing cost that presently is transferred to "innocent" downstream communities. Approximately 1,620 tons of litter are estimated to be discharged to the Los Angeles River annually, requiring costly removal measures. In addition there is an unquantified cost to aquatic life within the River and the Ocean.

The Regional Board has some information about various facets of the costs of preventing trash from getting into the storm drains. However, exact information on infrastructure currently in place and current structural projects being undertaken is currently not available to the Board. Furthermore, lack of complete information on existing costs precludes a comparison between costs of compliance with existing costs.

A. Current Cost of Trash Clean-Ups

Cleaning up the river, its tributaries and the beaches is a costly endeavor. The Los Angeles County Department of Public Works contracts out the cleaning of over 75,000 catchments (catch basins) for a total cost of slightly over $1 million per year, billed to 42 municipalities. Each catch basin is cleaned once a year before the rainy season, except for 1,700 priority catch basins that fill faster and have to be cleaned out more frequently.

Over 4,000 tons of trash are collected from Los Angeles County beaches annually, at a cost of $3.6 million to Santa Monica Bay communities in fiscal year 1988-89 alone. In 1994 the annual cost to clean the 31 miles of beaches (19 beaches) along Los Angeles County was $4,157,388.

Long Beach bears a large part of the financial burden for cleaning up trash from the Los Angeles River watershed, which is disproportionate to the amount actually produced by this city.[52] The costs of gathering and disposing of trash at the mouth of the Los Angeles River during the rainy season are listed on Table 9.

Table 9. Storm Debris Summary for Long Beach: Billings.[53]

	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
1995-96	$44,152[54]	$130,986	$224,023	$126,416	$525,577
1996-97	$102,055	$187,344	$88,180	$122,416	$499,995
1997-98	$158,612	$268,594	$282,988	$169,340	$879,534
1998-99	$247,986	$198,147	$185,179	$246,950	$878,262

[52] However, the cost to the City of Long Beach is offset somewhat by an annual reimbursement from Los Angeles County in the amount of $500,000. (Written comment from The City of Los Angeles, June 23, 2000.)
[53] Memorandum from Geoffrey Hall; City of Long Beach; Parks and Recreation.
[54] 9/95 only.

B. Cost of Implementing Trash TMDL

The cost of implementing this TMDL will range widely, depending on the method that the Permittees select to meet the Waste Load Allocations. Arguably, enforcement of existing litter ordinances could be used to achieve the final Waste Load Allocations at minimal or no additional cost. The most costly approach in the short-term is the installation of full-capture structural treatment devices on all discharges to the river. However, in the long term this approach would result in lower labor costs and may be less expensive than some other approaches.

Most of the information presented herein consists of catch basin inserts, structural vortex separation devices and end of pipe nets. We are considering the costs associated with preventing the disposal of trash into the storm drain system over the whole watershed. For all calculations, the urbanized portions of the Los Angeles River watershed is assumed to span an area of 574 square miles[55].

Regardless of the method(s) used, costs associated with the gradual decrease of the amount of trash in the waterways, and the maintenance of the Los Angeles River and its tributaries free of trash include monitoring and implementation costs. Any device chosen for monitoring trash or removing trash from storm drain, regardless of its installation costs, will also be associated with labor costs.

We are looking at several methods separately, from retrofitting all the catch basins in the urbanized portion of the watershed, to using solely structural full capture methods.

1. Catch Basin Inserts

At a cost of around $800 per insert, catch basin inserts are the least expensive structural treatment device in the short term. However, because they are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping. We assumed that approximately 150,000 catch basins would have to be retrofitted with inserts to cover 574 square miles of the watershed. A summary of estimated costs for using catch basin inserts across the entire watershed is provided in Table 10.

Table 10. Costs of retrofitting the urban portion of the watershed with catch basin inserts. (amounts in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operation & Maintenance costs (yearly, cumulative)	$6	$12	$18	$24	$30	$36	$42	$48	$54	$60	$60	$60
Capital costs (yearly)	$12	$12	$12	$12	$12	$12	$12	$12	$12	$12	$00	$00
Costs per year (servicing + capital costs)	$18	$24	$30	$36	$42	$48	$54	$60	$66	$72	$60	$60

[55] Although the urbanized portion of the watershed is 584 square miles, about 10 square miles are covered with water.

The total capital costs required for retrofitting the whole watershed would be $120 million, while the yearly maintenance costs after full implementation would be $60 million.

2. Full Capture Vortex Separation Systems (VSS)

Permanent structural devices can be used to trap gross pollutants for monitoring purposes as well as implementation. Among those "litter control devices" are structural vortex separation systems (VSS), floating debris traps, end-of-pipe nets and trash racks. VSS units appear to be among the best alternatives to evaluate or remove the amount of trash generated throughout a particular drainage area.

An ideal way to capture trash deposited into a stormdrain system would be to install a VSS unit. This device diverts the incoming flow of stormwater and pollutants into a pollutant separation and containment chamber. Solids within the separation chamber are kept in continuous motion, and are prevented from blocking the screen so that water can pass through the screen and flow downstream. This is a permanent device that can be retrofitted for oil separation as well. Studies have shown that VSS systems remove virtually all of the trash contained in the treated water. The cost of installing a VSS is assumed to be high, so limited funds will place a cap on the number of units which can be installed during any single fiscal year.

Table 11 shows estimated costs associated with retrofitting the watershed with low capacity vortex separation systems progressively over ten years.

Table 11. Costs Associated with Low Capacity Vortex Gross Pollutant Separation Systems.
(amounts in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operations and Maintenance (yearly, cumulative)	$14.8	$29.5	$44.3	59.1	$73.9	$88.6	$103.4	118.2	$132.9	$147.7	$147.7	$147.7
Capital costs (yearly)	$94.5	$94.5	$94.5	$94.5	$94.5	$94.5	$94.5	$94.5	$94.5	$94.5	$0.0	$0.0
Annual costs per year (capital costs + Operation and Maintenance)	$109.3	$124.1	$138.8	$153.6	$168.4	$183.2	$197.9	$212.7	$227.5	$242.2	$147.7	$147.7

Similarly, Table 12 provides estimates of costs associated with the installation of large capacity VSS systems.

Table 12. Costs Associated with Large Capacity Vortex Gross Pollutant Separation Systems.
(amounts in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operations and Maintenance (yearly, cumulative)	$0.7	$1.5	$2.2	$3.0	$3.7	$4.4	$5.2	$5.9	$6.6	$7.4	$7.4	$7.4
Capital costs (yearly)	$33.2	$33.2	$33.2	$33.2	$33.2	$33.2	$33.2	$33.2	$33.2	$33.2	$0.0	$0.0
Annual costs per year (capital costs + Operation and Maintenance)	$34.0	$34.7	$35.5	$36.2	$36.9	$37.7	$38.4	$39.1	$39.9	$40.6	$7.4	$7.4

As shown in Table 13, outfitting a large drainage with a number of large VSS systems may be less costly than using a larger number of small VSS systems. Maintenance costs decrease dramatically as the size of the system increases. Topographical and geotechnical considerations also should come into play when choosing VSS systems or other structural devices.

Table 13. Costs Associated with VSS.

Capacity	Acres (average)	Number of devices needed on urban portion of watershed	Capital costs	Yearly costs for servicing all devices
1 to 2 cfs	5	73,856	$945,356,800	$147,712,000
6 to 8 cfs	30	12,309	$553,920,000	$24,618,000
19 to 24 cfs	100	3,693	$332,352,000	$7,386,000

For this table, we have assumed the cost of yearly servicing of a VSS unit to be $2000 per year.

3. End of Pipe Nets

"Release nets" are a relatively economical way to monitor trash loads from municipal drainage systems. However, in general they can only be used to monitor or intercept trash at the end of a pipe and are considered to be partial capture systems, as the nets are usually sized at a 1/2" to 1" mesh. These nets are attached to the end of pipe systems. The nets remain in place on the end of the drains until water levels upstream of the net rise sufficiently to release a catch that holds the net in place. The water level may rise from either the bag being too full to allow sufficient water to pass, or from a disturbance during very high flows. When the nets release they are attached to the side of the pipe by a steel cable and as they are washed downstream (a yard or so) are tethered off so that no pollutants from within the bags are washed out.

Preliminary observations suggest that the nets rarely fill sufficiently to cause the bags to release. And therefore, if they are cleaned after a storm event, the entire quantity of material is captured and can be measured for monitoring purposes using two bags per trap. This makes it easy to replace the full or partially full bag with an empty one, so that the first bag can be taken to a laboratory for analysis without manual handling of the material it contains.

The net are valid devices because of the ease of maintenance and also because the devices can be relocated after a set period at one location (provided the pipe diameters are the same). With limited funding, installation could be spread over several land uses and lead to valuable monitoring results.

Because the devices require attachment to the end of a pipe, this can severely reduce the number of locations within a drainage system that can be monitored. In addition, these nets cannot be installed on very large channels (7 feet in diameter is the maximum), while the largest outlets into the Los Angeles River are 10 feet in diameter. Thus costs shown in Table 14 are given per pipe, and no drainage coverage is given.

Table 14. Sample Costs for End of Pipe Nets.

Pipe Size	Release nets (cost estimates)
End of 3 ft pipe	$10,000
End of 4 ft pipe	$15,000
End of 5 ft pipe	$20,000
In 3 ft pipe network	$40,000
In 4 ft pipe network	$60,000
In 5 ft pipe network	$80,000

4. Cost Comparison

A comparison of costs between strategies based on catch basin inserts (CBIs), low capacity VSS, high capacity VSS systems, and enforcement of litter laws is presented in Table 15.

Table 15. Cost Comparison (amounts in millions)

	CBI only	Low capacity VSS Units	Large capacity VSS Units	Enforcement of Litter Laws[56]
Cumulative capital costs over 10 years	$120	$945	$332	<$1
Cumulative maintenance and capital costs after 10 years	$450	$1,758	$373	<$1
Annual servicing costs after full implementation	$60	$148	$7.4	<$1

Trash abatement in the Los Angeles River system may be expensive; the costs will differ depending on the options selected by the permittees.

[56] Revenues from fines assessed to offset increased law enforcement cost. The cost of a database system used to calculate trash discharges estimated to be less than $250,000.

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Appendix I

This table shows the square mileage for "high density residential", "low density residential", "commercial and services", "industrial", "public facilities", "educational institutions", "military institutions", "transportation and utilities", "mixed urban", "open space and recreation", "agriculture" and "water" land uses for every city and incorporated areas in the watershed. The "water" land use of water is not in itself a source of trash, and will therefore not receive an allocation. For cities that are only partially located on the watershed, the square mileage indicated is for the portion located in the watershed.

SQUARE MILEAGE ESTIMATED FOR EACH LAND USE FOR CITIES IN THE WATERSHED, AND FOR UNINCORPORATED AREAS.

City	High Density Residential	Low Density Residential	Commercial Services	Industrial	Public Facilities	Educational Institutions	Military Institutions	Transportation	Mixed Urban	Open Space & Recreation	Agriculture	Water	Total for all classes
Alhambra	5.11	0.03	0.84	0.33	0.24	0.29	0.00	0.39	0.04	0.35	0.00	0.00	**7.62**
Arcadia	6.56	0.98	1.18	0.20	0.22	0.22	0.00	0.22	0.11	1.01	0.00	0.17	**10.89**
Bell	1.20	0.00	0.28	0.44	0.20	0.06	0.04	0.22	0.05	0.01	0.00	0.25	**2.74**
Bell Gardens	1.37	0.00	0.31	0.25	0.04	0.16	0.00	0.03	0.04	0.11	0.10	0.02	**2.48**
Bradbury	0.01	0.31	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.27	0.17	0.00	**0.82**
Burbank	7.97	3.69	1.31	1.59	0.33	0.34	0.01	1.20	0.26	0.58	0.01	0.06	**17.36**
Calabasas	0.94	0.08	0.14	0.01	0.01	0.12	0.00	0.03	0.22	4.66	0.01	0.03	**6.27**
Carson	0.00	0.00	0.00	0.26	0.00	0.00	0.00	0.01	0.00	0.00	0.02	0.01	**0.30**
Commerce	0.64	0.00	0.57	3.84	0.15	0.05	0.00	0.91	0.15	0.11	0.12	0.02	**6.56**
Compton	4.30	0.22	0.79	1.99	0.15	0.72	0.02	0.63	0.16	0.12	0.08	0.05	**9.37**
Cudahy	0.78	0.00	0.09	0.04	0.01	0.05	0.00	0.00	0.00	0.02	0.00	0.02	**1.12**
Downey	4.10	0.02	0.59	0.07	0.45	0.24	0.00	0.07	0.05	0.42	0.00	0.10	**6.10**
Duarte	0.64	0.00	0.15	0.13	0.24	0.05	0.00	0.08	0.06	0.67	0.00	0.01	**2.04**
El Monte	4.27	0.01	1.06	0.97	0.18	0.32	0.00	0.40	0.09	0.06	0.00	0.17	**7.56**
Glendale	12.69	6.74	1.86	0.87	1.00	0.38	0.01	0.57	0.22	6.05	0.03	0.13	**30.65**
Hidden Hills	0.02	1.14	0.00	0.00	0.00	0.00	0.00	0.01	0.03	0.25	0.01	0.00	**1.47**
Huntington Park	1.61	0.00	0.51	0.52	0.04	0.13	0.00	0.12	0.02	0.07	0.00	0.00	**3.03**
Irwindale	0.02	0.01	0.00	0.73	0.16	0.01	0.00	0.13	0.06	0.05	0.00	0.67	**1.84**

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SQUARE MILEAGE ESTIMATED FOR EACH LAND USE FOR CITIES IN THE WATERSHED, AND FOR UNINCORPORATED AREAS, CONTINUED.

City	High Density Residential	Low Density Residential	Commercial Services	Industrial	Public Facilities	Educational Institutions	Military Institutions	Transportation	Mixed Urban	Open Space & Recreation	Agriculture	Water	Total for all classes
La Canada Flintridge	2.99	2.02	0.18	0.15	0.24	0.16	0.00	0.22	0.02	2.56	0.05	0.04	**8.65**
Lakewood	0.15	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.00	**0.17**
Long Beach	11.98	0.02	2.39	1.46	0.74	0.58	0.01	1.04	0.43	0.98	0.26	0.79	**20.70**
Los Angeles	134.12	13.04	16.84	18.69	8.45	7.97	0.13	11.66	4.28	66.02	3.07	5.06	**290.43**
Lynwood	3.00	0.00	0.51	0.44	0.10	0.20	0.00	0.48	0.06	0.07	0.00	0.00	**4.86**
Maywood	0.86	0.00	0.16	0.10	0.00	0.03	0.00	0.00	0.01	0.01	0.00	0.00	**1.17**
Monrovia	3.25	0.29	0.48	0.58	0.14	0.16	0.00	0.14	0.10	7.27	0.04	0.11	**12.55**
Montebello	3.82	0.00	0.68	1.64	0.35	0.36	0.00	0.29	0.18	0.62	0.15	0.20	**8.36**
Monterey Park	4.60	0.00	0.64	0.28	0.44	0.27	0.00	0.20	0.06	0.95	0.23	0.00	**7.67**
Paramount	1.30	0.00	0.17	0.95	0.07	0.10	0.00	0.25	0.08	0.07	0.15	0.12	**3.26**
Pasadena	11.50	1.70	2.24	0.52	0.90	0.96	0.02	0.91	0.10	4.02	0.12	0.25	**23.22**
Pico Rivera	1.03	0.00	0.23	0.51	0.05	0.03	0.00	0.10	0.03	0.10	0.01	0.91	**3.00**
Rosemead	3.32	0.00	0.73	0.13	0.14	0.26	0.00	0.17	0.08	0.15	0.15	0.01	**5.14**
San Fernando	1.43	0.00	0.41	0.28	0.09	0.10	0.00	0.01	0.01	0.04	0.00	0.04	**2.42**
San Gabriel	2.90	0.01	0.49	0.10	0.08	0.15	0.00	0.05	0.02	0.23	0.09	0.00	**4.13**
San Marino	2.02	1.05	0.07	0.00	0.09	0.11	0.00	0.09	0.00	0.32	0.00	0.00	**3.77**
Santa Clarita	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.00	**0.06**
Sierra Madre	1.71	0.06	0.05	0.01	0.06	0.06	0.00	0.00	0.02	0.98	0.01	0.05	**3.01**
Signal Hill	0.30	0.00	0.06	0.63	0.06	0.03	0.00	0.00	0.00	0.00	0.00	0.00	**1.10**
Simi Valley	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.00	**0.02**
South El Monte	0.90	0.01	0.15	1.23	0.03	0.11	0.00	0.05	0.02	0.03	0.07	0.02	**2.62**
South Gate	3.97	0.00	0.76	1.11	0.21	0.16	0.00	0.35	0.25	0.23	0.15	0.20	**7.48**
South Pasadena	2.32	0.13	0.20	0.00	0.05	0.10	0.00	0.12	0.04	0.39	0.01	0.02	**3.43**
Temple City	3.43	0.01	0.27	0.07	0.08	0.12	0.00	0.00	0.00	0.03	0.01	0.00	**4.02**
Vernon	0.00	0.00	0.00	4.03	0.09	0.00	0.00	0.67	0.08	0.00	0.00	0.19	**5.06**
Unincorporated areas	17.04	1.65	2.05	2.86	0.68	0.80	0.02	1.28	0.22	12.28	0.46	0.58	**39.92**
Total for each land use watershedwise	**270.17**	**33.29**	**39.48**	**48.00**	**16.59**	**15.99**	**0.39**	**23.10**	**7.71**	**112.24**	**5.66**	**10.36**	**584.43**

Trash Total Maximum Daily Loads

for the

Los Angeles River Watershed

Revised Draft: July 27, 2007

California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, California 90013

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I. Introduction – Legal Background

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the "Regional Board") has developed this total maximum daily load (TMDL) designed to attain the water quality standards for trash in the Los Angeles River. The TMDL has been prepared pursuant to state and federal requirements to preserve and enhance water quality in the Los Angeles Basin River Watershed.

The California Water Quality Control Plan, Los Angeles Region, also known as the *Basin Plan*, sets standards for surface waters and ground waters in the regions. These standards are comprised of designated beneficial uses for surface and ground water, and numeric and narrative objectives necessary to support beneficial uses and the state's antidegradation policy. Such standards are mandated for all waterbodies within the state under the Porter-Cologne Water Quality Act. In addition, the Basin Plan describes implementation programs to protect all waters in the region. The Basin Plan implements the Porter-Cologne Water Quality Act (also known as the "California Water Code") and serves as the State Water Quality Control Plan applicable to the Los Angles River, as required pursuant to the federal Clean Water Act (CWA).

Section 305(b) of the CWA mandates biennial assessment of the nation's water resources, and these water quality assessments are used to identify and list impaired waters. The resulting list is referred to as the 303(d) list. The CWA also requires states to establish a priority ranking for impaired waters and to develop and implement TMDLs. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loadings to point and non-point sources.

The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) program and must approve or disapprove the state's 303(d) lists and each specific TMDL. USEPA is ultimately responsible for issuing a TMDL, if the state fails to do so in a timely manner.

As part of California's 1996 and 1998 303(d) list submittals, the Regional Board identified the reaches of the Los Angeles River at the Sepulveda Flood Basin and downstream as being impaired due to trash.

A consent decree between the USEPA, the Santa Monica BayKeeper and Heal the Bay Inc., represented by the Natural Resources Defense Council (NRDC), was signed on March 22, 1999. This consent decree requires that all TMDLs for the Los Angeles Region be adopted within 13 years. The consent decree also prescribed schedules for certain TMDLs. According to this schedule, a Trash TMDL for the Los Angeles River watershed had to be approved before March 2001.

On September 19, 2001, the Regional Board adopted a Trash TMDL for the Los Angeles River Watershed. The TMDL was subsequently approved by the State Water Resources Control Board on February 19, 2002 and by the Office of Administrative Law on July 16, 2002. The United States Environmental Protection Agency approved the Los Angeles River Trash TMDL on August 1, 2002.

The City of Los Angeles and the County of Los Angeles both filed petitions and complaints in Los Angeles Superior Court challenging the Los Angeles River Trash TMDL. Subsequent negotiations led to a settlement agreement, which became effective on September 23, 2003. Twenty-two other cities[1] ("Cities") sued the Regional Board and State Water Resources Control Board (State Water Board) to set aside the TMDL, on several grounds. The trial court entered an order deciding some claims in favor of the Los Angeles Water Board and State Water Board (collectively "California Water Boards"), and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the California Water Boards, except with respect to CEQA compliance. (*City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392.) The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities' claims.

The Appellate Court found that the California Water Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the California Water Boards should have performed an EIR level of analysis through an EIR or its functional equivalent. (135 Cal.App.4th at 1420-26.) The Court therefore affirmed a writ of mandate issued by the trial court, which orders the California Water Boards to set aside and not implement the TMDL, until it has been brought into compliance with California Environmental Quality Act (CEQA).

On June 8, 2006 the Regional Board set aside the trash TMDL and resolution # 01-013 which established it, pursuant to the writ of mandate and to sections 13240 and 13242 of the Water Code. Setting aside the TMDL was not deemed a repudiation of the settlement agreement entered into between the Los Angeles Regional Water Quality Control Board and the City of Los Angeles and the County of Los Angeles, which was executed on September 24, 2003, and the Los Angeles Water Board expressed its continued intent to be bound by that agreement. The Regional Board also directed staff to revise the CEQA documentation as directed by the writ of mandate, and to prepare and submit for the Regional Board's reconsideration, a TMDL for Trash in the Los Angeles River Watershed, consistent with the requirements of the writ. Staff was also directed to incorporate into its proposed revised TMDL the changes agreed upon in the settlement with the City of Los Angeles, Los Angeles County and the Los Angeles County Flood Control District.

This TMDL staff report and accompanying Basin Plan Amendment incorporate, the changes agreed upon in the settlement with the City of Los Angeles, Los Angeles County and the Los Angeles County Flood Control District. Additional revisions have been made to the TMDL to update the Implementation and Compliance schedules and include city-specific baseline waste load allocations derived from results of the baseline monitoring program

[1] The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier. They are members of a group that refers to itself as "The Coalition for Practical Regulation."

conducted by the Los Angeles County Department of Public Works (LACDPW). In addition, the CEQA checklist has been revised as directed by the writ of mandate.

The Los Angeles River Trash TMDL is a Basin Plan Amendment and is therefore subject to the 2001 provision of the Public Resources Code Section 21083.9 that requires a CEQA Scoping to be conducted for Regional Projects. CEQA Scoping involves identifying a range of project/program related actions, alternatives, mitigation measures, and significant effects to be analyzed in an EIR or its functionally equivalent document. On June 28, 2006 a CEQA Scoping hearing was held to present and discuss the foreseeable potential environmental impacts of compliance with the Los Angeles River Trash TMDL. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Los Angeles River watershed. Input from all stakeholders and interested parties was solicited for consideration in the development of the CEQA document

This Trash TMDL is based on existing, readily available information concerning the conditions in the Los Angeles River watershed and other watersheds in Southern California, as well as TMDLs previously developed by the State and USEPA.

II. Definitions

The definitions of terms as used in this TMDL are provided as follows:

Baseline Waste Load Allocation. The Baseline Waste Load Allocation is the Waste Load Allocation assigned to a permittee before reductions are required. The progressive reductions in the Waste Load Allocations will be based on a percentage of the Baseline Waste Load Allocation. The Baseline Waste Load Allocation was calculated based on the annual average amount of trash discharged to the storm drain system from a representative sampling of land use areas, as determined during the Baseline Monitoring Program.

Daily Generation Rate (DGR). The DGR is the average amount of litter deposited to land or surface water during a 24-hour period, as measured in a specified drainage area.

Full Capture System. A full capture system is any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour, storm in the subdrainage area. Rational equation is used to compute the peak flow rate: $Q = C \times I \times A$, where Q = design flow rate (cubic feet per second, cfs); C = runoff coefficient (dimensionless); I = design rainfall intensity (inches per hour, as determined per the rainfall isohyetal map in Figure A),[2] and A= subdrainage area (acres).

[2] The isohyetal map may be updated annually by the Los Angeles County hydrologist to reflect additional rain data gathered during the previous year. Annual updates published by the Los Angeles County Department of Public Works are prospectively incorporated by reference into this TMDL and accompanying Basin Plan amendment.

Monitoring Entity. The Monitoring Entity is the permittee or one of multiple permittees and/or co-permittees that has been authorized by all the other affected permittees or co-permittees to conduct baseline monitoring on their behalf.

Permittee. The term "permittee" refers to any permittee or co-permittee of a stormwater permit.

Trash. In this document, we are defining "trash" as man-made litter, as defined in California Government Code Section 68055.1(g):

> "Litter means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling or manufacturing."

For purposes of this TMDL, we will consider trash to consist of litter and particles of litter, including cigarette butts. These particles of litter are referred to as "gross pollutants" in European and Australian scientific literature. This definition excludes sediments, and it also excludes oil and grease, and vegetation, except for yard waste that is illegally disposed of in the storm drain system. Additional TMDLs for sediments[3] and oil and grease may be required at a later date.

Urbanized Portion of the Watershed. For the purposes of this TMDL, the urban portion of the watershed includes the sum total area of the incorporated cities and the unincorporated portion of Los Angeles County which are located on the Los Angeles River watershed.[4] The estimated area of the "urbanized" portion of the watershed is 609 square miles[5]. The remainder of the watershed is made up of the Los Angeles National Forest and other open space.

[3] Sediments which may be addressed in a separate TMDL are natural particulate matters such as silt and sand. Sediments result from erosion and are deposited at the bottom of a stream. Sediments do not refer to the decomposition of settleable litter into small particulate matters, which this TMDL is trying to prevent.

[4] The Regional Board recognizes that some areas within the unincorporated sections of Los Angeles County are actually suburban or rural.

[5] As determined by the Regional Board from GIS mapping. (Other minor differences in figures are due to rounding.)

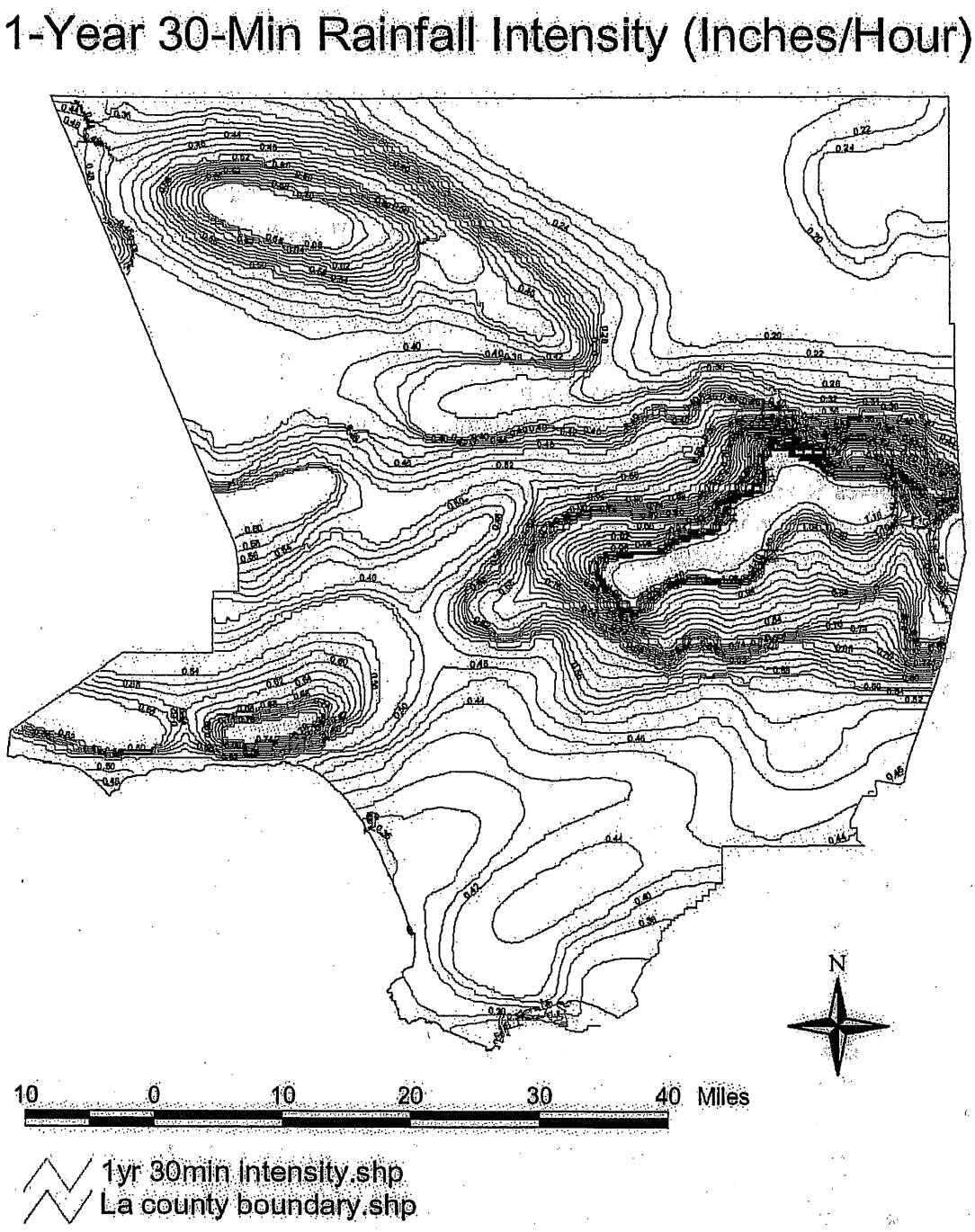

Figure A: Isohyethal Map of Rainfall Intensities in Portions of Los Angeles County (LADPW, 2003).

III. Problem Statement

The problem statement consists of a description of the watershed, beneficial uses, water quality objectives, and a description of the impairment to the watershed caused by trash.

A. Description of the Watershed

The Los Angeles River flows 51 miles from the western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach (see Figure B). The headwaters are at the confluence of Arroyo Calabasas and Bell Creek. Arroyo Calabasas drains Woodland Hills, Calabasas, and Hidden Hills in the Santa Monica Mountains. Bell Creek drains the Simi Hills and receives flows from Chatsworth Creek. From the confluence of Arroyo Calabasas and Bell Creek, the Los Angeles River flows east through the southern portion of the San Fernando Valley, bends around the Hollywood Hills before it turns south onto the broad coastal plain of the Los Angeles Basin, eventually discharging into Queensway Bay and thence into San Pedro Bay West of Long Beach Harbor. Together with its several major tributaries, notably the Tujunga Wash, Burbank Western Channel, Arroyo Seco, Rio Hondo, and Compton Creek, the Los Angeles River drains an area of about 834[6] square miles. Of this area, the incorporated cities and unincorporated portion of Los Angeles County comprise 599 square miles. The remaining acreage consists of the Los Angeles National Forest and other uses.

In the San Fernando Valley, the river flows east for approximately 16 miles along the base of the Santa Monica Mountains. Most of the Los Angeles River channel was lined with concrete between 1935 and 1959 for flood control purposes[7]. This reach is lined in concrete except for a section of the river with a soft bottom at the Sepulveda Flood Control Basin. The Sepulveda Basin is a 2,150-acre open space, located upstream of the Sepulveda Dam. It is designed to collect flood waters during major storms. Because the area is periodically inundated, it remains in natural or semi-natural conditions and supports a variety of low-intensity uses. The US Army Corps of Engineers owns the entire basin and leases most of the area to the City of Los Angeles Department of Recreation and Parks, which has developed a multi-use recreational area that includes a golf course, playing fields, hiking trails, and bicycle paths.

The river is again lined in concrete for most of its course except for a seven-mile soft-bottomed segment between the confluence of the Burbank/Western Channel near Riverside Drive and north of the Arroyo Seco confluence. Three miles of this segment border Griffith Park (encompassing 4,217 acres). Four miles downstream, the river flows parallel to Elysian Park (585 acres in size). The original Pueblo de Los Angeles was founded just east of the river "to take advantage of the river's dependable supply of water."[8] Early this century, the progressive pumping of ground water, together with major diversions of water for irrigation and other uses throughout the watershed, contributed to a decreased flow in the River. From

[6] As determined by the Regional Board from GIS mapping.
[7] Gumprecht, Blake (1999) *The Los Angeles River: Its Life, Death, And Possible Rebirth*, p. 206.
[8] Los Angeles River Master Plan, June 1996, p. 211.

Willow Street all the way through the estuary, the river is soft bottomed with areas of riparian vegetation. This unlined section is about three miles long. Also part of the watershed are a number of lakes including Peck Road Park Lake, Echo Park Lake, and Lincoln Park Lake.

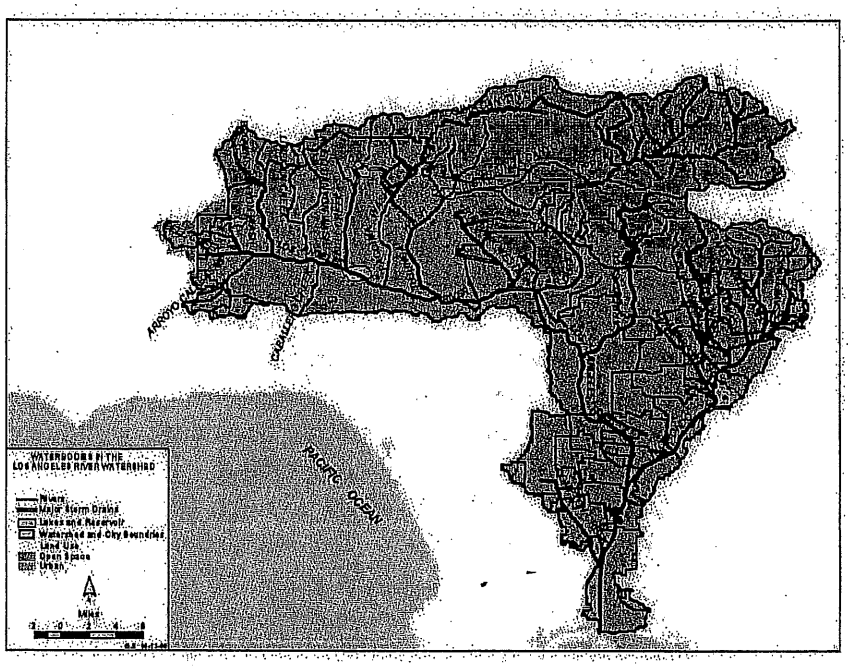

Figure B. Waterbodies in the Los Angeles River Watershed.

B. Beneficial Uses of the Watershed

A brief description of the beneficial uses most likely to be impaired due to trash in the Los Angeles River is provided in this section.

The upper reaches of the Los Angeles River include Sepulveda Basin, a soft-bottomed area that is designed as a flood control basin. Designated beneficial uses for the upper reaches are Municipal and Domestic Supply (MUN) (although most reaches only have conditional MUN designations), Ground Water Recharge (GWR), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Wetland Habitat (WET). The arroyo chub is also found in the Sepulveda Basin area, and cannot survive on the flat surfaces on the concrete-lined portions of the Los Angeles River. The thick growth of riparian plants in this area provides habitat for a variety of wildlife. Native oaks grow along stretches of Valleyheart Drive in Studio City and Sherman Oaks. The river levees along this reach are accessible and neighborhood residents use them for walking and jogging.

Three native species of fish (the south coast minnow-sucker community) are found in Big Tujunga Creek from Big Tujunga Dam downstream to upper Hansen Dam. These are the Santa Ana sucker (Catastomus santaanae), which is listed as a federally endangered species, the Santa Ana speckled dace (Rhinichthys osculus) and the arroyo chub (Gila orcutti), both of

which are State Species of Special Concern. They thrive in the moderate to fast cool or cold flows in gravelly and rocky riffles (suckers and dace), alternating with slower pools (chubs)[9].

Glendale Narrows, from Riverside Drive to Arroyo Seco (Figueroa Street), with the longest soft-bottomed segment (seven miles), supports many beneficial uses and is designated accordingly in the Basin Plan. This portion of the Los Angeles River is designated as open space in the various community general plans. Dense riparian vegetation provides habitat for wildlife including birds, ducks, frogs and turtles. Several small pocket parks are found along this section of the River, many of which were designed by North East Trees (NET), sometimes in partnership with the Mountains Recreation and Conservation Authority (MRCA), such as a small park South and North of Los Feliz Boulevard sometimes referred to as the "Los Angeles RiverWalk"[10] and Sunnynook park on the Atwater side, and Rattlesnake Park and Zanja Madre Park on the Silver Lake side. Another example of a pocket park, designed by MRCA, is Knox Park[11], at the end of Knox Avenue. The riparian vegetation closely mimics the historical "willow sloughs" that once dotted the basin[12]. The relatively lush environment in this reach attracts people who enjoy many forms of recreation including walking, jogging, horseback riding, bicycling, bird watching, photography and crayfishing. There are several access points in this reach, including the pedestrian bridge over the Golden State Freeway from Griffith Park near Los Feliz Boulevard (Sunnynook Bridge). This whole section is lined with a maintained bike path, and many bicyclists use the path, which is cooled in places by the riparian trees. In addition, cut fences provide easy access for the many people who use this section of the river, including the homeless who have set up camp under some of the bridges within this reach or on the vacant land between Highway 5 and the fence to the river.

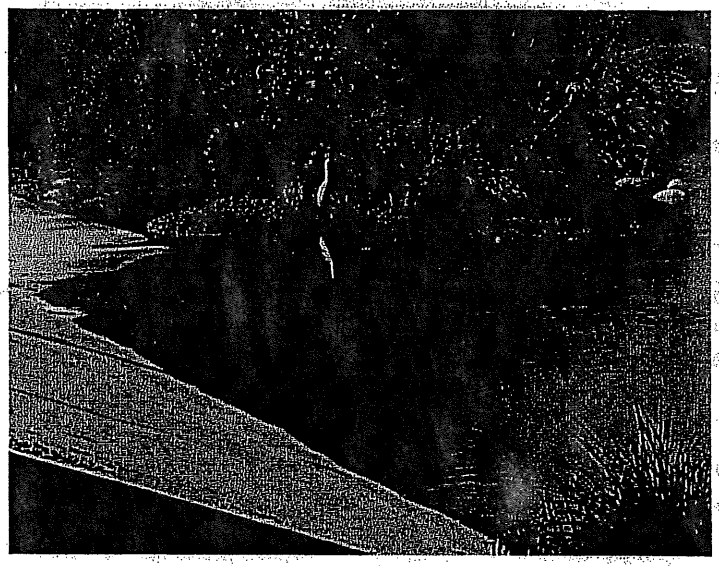

Figure C. Fletcher Drive: Great Egret, October 26, 1999.

[9] Camm Swift, Emeritus Natural History Museum of Los Angeles County, California Academy of Sciences, May 20, 2000.
[10] Nishith Dhandha, North East Trees, August 24, 2000.
[11] Ibid.
[12] Dan Cooper, Audubon Society, California Academy of Sciences, May 20, 2000.

From Figueroa Street to Washington Boulevard, the river supports several beneficial uses, including the Downtown Channel, which is used by many for recreation and bathing, in particular by homeless people who seek shelter there.

The mid-cities reach (11½ miles from Washington Boulevard to Atlantic Avenue), has several beneficial uses. The western levee is available for trail use from Atlantic Boulevard in Vernon to Firestone Boulevard in South Gate. There is a county bike path on the eastern levee (the Lario Trail) and a county equestrian and hiking trail adjacent to the levee. Continuous access to the Lario Trail is provided below each street bridge crossing. Several parks have been developed adjacent to the river on the east side, some of which provide access to the river trail (Cudahy Park). In Vernon, the channel invert is used for lunchtime soccer games, and people walk or jog on the river maintenance roads mostly during the week at lunchtime. The utility easement in Bell is used partly for small, informal vegetable gardening.[13] South of the confluence of the Los Angeles River and the Rio Hondo Channel in South Gate, increasing numbers of birds can be seen using the channel and adjacent lands.[14]

The nine-mile reach from Atlantic Avenue to the ocean supports some of the most abundant bird life found on the Los Angeles River. The parks, spreading grounds, utility easements and vacant land adjacent to the river provide roosting and feeding habitat. Many species of birds also feed in the concrete channel, where algae grow in the warm, shallow water, and in the estuary South of Willow Street, including fish-eaters like waders (herons, egrets, occidental bitterns and rails), terns, osprey (a fish-eating hawk), pelicans and cormorants. California Brown Pelican and California Least Tern are Federally Endangered Species.[15]

The water in the estuary pools is deep and slow enough to support an abundant fish community as well. In addition to gobies and tilapia (mostly *Tilapia mozambica*)[16], which are very abundant in the Los Angeles River, especially South of Willow Street, many species of fish are found in the estuary of the Los Angeles River. As an example, the following species have been found between the Ocean boulevard bridge and Queensway Bay bridge: California tonguefish, California halibut, specklefin midshipman, California lizardfish, diamond turbot, barcheek pipefish, and Pacific staghorn sculpin (bottom feeders), as well as white croaker, queenfish, deepbody anchovy, white seaperch, slough anchovy, barred sand bass, shiner perch, California grunion, and striped mullet (midwater feeders, often associated with bottom environment). This area also has harbored some pelagic fish, some of which will venture up an undetermined portion of the estuary: northern anchovy, Pacific sardine, Pacific pompano, Pacific barracuda, topsmelt, jacksmelt, white seabass, barred pipefish, giant kelpfish, and bay pipefish.[17]

[13] Los Angeles River Master Plan, p. 99.
[14] At the confluence there is a ten-acre site (approx.) owned by the City of South Gate that contains an abandoned landfill which is vegetated with grasses, shrubs and trees (Los Angeles River Master Plan).
[15] Dan Cooper, California Audubon Society, December 17, 1999.
[16] Charles Mitchell, MBC Applied Environmental Sciences, December 19, 1999.
[17] Marine Biological Baseline Study of Queensway Bay, Long Beach Harbor, MBC Applied Environmental Sciences, 1994.

Beneficial uses of the Los Angeles River watershed are summarized in Table 1, excerpted from the 1994 Basin Plan. These are the designated beneficial uses that must be protected.[18]

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Los Angeles River Estuary	405.12		E			E	E	E	E			E	E	E	E	E	E	P	E
Los Angeles River to Estuary	405.12	P*	P	P	E		E	E		E			E	E	E	P	P	P	
Los Angeles River	405.15	P*	P		E		E	E		E				P					
Los Angeles River	405.21	P*	P		E		E	E		E				E					E
Compton Creek	405.15	P*			E		E	E		E				E					E
Rio Hondo downstream Spreading Grounds	405.15	P*			I		P	E		P				I					
Rio Hondo	405.41	P*			I		I	E		P				I	E				E
Alhambra Wash	405.41	P*			I		P	I		P				P	E				
Rubio Wash	405.41	P*			I		I	I		I				E	E				
Rubio Canyon	405.31	P*			E		I	I		I				E	E				E
Eaton Wash	405.41	P*			I		I	I		I				E					
Eaton Wash (downstream dam)	405.31	P*			I		I	I		I				E					
Eaton Wash (upstream dam)	405.31	P*			I		I	I		I				E					
Eaton Dam and Reservoir	405.31	P*			I		P	I		I				E					
Eaton Canyon Creek	405.31	P*			E		E	E		E				E	E		E		E
Arcadia Wash (lower)	405.41	P*			I		P	I		P				P					
Arcadia Wash (upper)	405.33	P*			I		P	I		P				P					
Santa Anita Wash (lower)	405.41	P*			I		P	E		P				P	E				
Santa Anita Wash (upper)	405.33	P*			E		E	E		E				E	E				
Little Santa Anita Canyon Creek	405.33	P*			I		I	I		I				E					
Big Santa Anita Reservoir	405.33	P*			E		P	E		E	E			E					

[18] Water Quality Control Plan, Los Angeles Region, California Regional Water Quality Control Board, Los Angeles Region, 1994, p. 2-10.

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Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, continued.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Santa Anita Canyon Creek	405.33	E			E		E	E		E	E			E	E		E		E
Winter Creek	405.33	P*			I		I	E		I				E					E
East Fork Santa Anita Canyon	405.33	P*			E		E	E		E	E			E			E		E
Sawpit Wash	405.41	I			E		I	I		I				E					
Sawpit Canyon Creek	405.41	P*			I		I	I		I				E	E				
Sawpit Dam and Reservoir	405.41	P*			I		P	I		I				E					
Monrovia Canyon Creek	405.41	I			I		I	I		I				E					E
Arroyo Seco downstream Devil's Gate R. (L)	405.15	P*					I	I		P				P					
Arroyo Seco downstream Devil's Gate R. (U)	405.31	P*					I	I		P				P	E				
Devil's Gate Reservoir (L)	405.31	P*			I		I	I		I				E					
Devil's Gate Reservoir (U)	405.32	I*			I		I	I		I				E					
Arroyo Seco upstream Devil's Gate R.	405.32	E	E	E	E		E	E		E	E			E					E
Millard Canyon Creek	405.32	E*	E	E	E		E	E		E				E	E				E
El Prieto Canyon Creek	405.32	I	I	I	I		I	I		I				E					
Little Bear Canyon Creek	405.32	P*			I		I	I		I	I			E					E
Verdugo Wash	405.24	P*			I		P	I		P				P					
Halls Canyon Channel	405.24	P*	I	I	I		I	I		I				E					
Shover Canyon	405.32	I	I	I	I		I	I		I				E					
Pickens Canyon	405.24	I*			I		I	I		I				E					
Shields Canyon	405.24	I	I	I	I		I	I		I				E					
Dunsmore Canyon Creek	405.24	I	I	I	I		I	I		I				E					

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, continued.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET
Burbank Western Channel	405.21	P*				I	P	I		P				P					
La Tuna Canyon Creek	405.21	P*			I		I	I		I				E					
Tujunga Wash	405.21	P*			I		P	I		P	P			P					
Hansen Flood Control Basin & Lakes	405.23	P*			E		E	E		E	E			E	E				
Lopez Canyon Creek	405.21	P*			I		I	I		I				E					
Little Tujunga Canyon Creek	405.23	P*			I		I	E		I	I			E	E				
Kagel Canyon Creek	405.23	P*			I		I	I		I				E					
Big Tujunga Canyon Creek	405.23	P*			E		E	E		E	E			E	E		E		E
Upper Big Tujunga Canyon Creek	405.23	P*			E		E	E		I	P			E					E
Haines Canyon Creek	405.23	P*			I		I	I		I				E	E				
Vasquez Creek	405.23	P*			E		E	E		P	P			E					E
Clear Creek	405.23	P*			E		E	E		E	E			E					E
Big Tujunga Reservoir	405.23	P*			E		P	E		E	P			E			E		
Mill Creek	405.23	P*			E		E	E		E	E			E					E
Pacoima Wash	405.21	P*			E		P	E		E				E	E				
Pacoima Reservoir	405.22	P*			E		E	E		E				E					
Pacoima Canyon Creek	405.22	P*			E		E	E		E	E			E	E		E		E
Stetson Canyon Creek	405.22	P*			I		P	E		P				P					
Wilson Canyon Creek	405.22	P*			I		E	E		I				E					
May Canyon Creek	405.22	P*			I		I	E		I				E					
Sepulveda Flood Control Basin	405.21	P*			E		E	E		E				E					E
Bull Creek	405.21	P*			I		I	I		I				E					
Los Angeles Reservoir	405.21	E	E	E	P		P	E		E				E	E				
Lower Van Norman Reservoir	405.21	E*	E	E	E		E	E		E				E	E				
Solano Reservoir	405.21	E*					P			P				E					
Caballero Creek	405.21	P*			I		I	I		I				E					
Alisо Canyon Wash and Creek	405.21	P*			I		I	I		I				E					
Limeklin Canyon Wash	405.21	P*			I		I	I		I				E					

Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, concluded.

Surface Waters	Hydro Unit	MUN	IND	PROC	GWR	NAV	REC1	REC2	COMM	WARM	COLD	EST	MAR	WILD	RARE	MTGR	SPWN	SHELL	WET
Browns Canyon Wash and Creek	405.21	P*			I		I	I		I				E					
Arroyo Calabasas	405.21	P*					P	I		P				P					
McCoy Canyon Creek	405.21	P*			I		I	I		I				E					
Dry Canyon Creek	405.21	P*			I		I	I		I				E					
Bell Creek	405.21	P*			I		I	I		I				E					
Chatsworth Reservoir	405.21	E	E	E			P	E		E				E					
Dayton Canyon Creek	405.21	P*			I		I	I		I				E					
Echo Lake	405.15	P*					P	E		P				E					
Lincoln Park Lake	405.15	P*					P	E		P				E					

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E: Existing beneficial use
P: Potential beneficial use
I: Intermittent beneficial use

BENEFICIAL USE CODES (see Basin Plan for more details):
MUN - Municipal and Domestic Water Supply
IND - Industrial Service Supply
PROC - Industrial Process Supply
GWR - Ground Water Recharge
REC1 - Water Contact Recreation
REC2 - Non-Contact Water Recreation
COMM - Commercial and Sport Fishing

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: Conditional designation: the waters designated with an "" in the table do not have MUN as a designated use until such time as the Basin Plan is modified based on additional study. In the interim, no new effluent limitations will be placed in Waste Discharge Requirements as a result of these designations until the Regional Board adopts an amendment that identifies those waters in the Region that should be excepted from the MUN designation.

WARM - Warm Freshwater Habitat
COLD - Cold Freshwater Habitat
EST - Estuarine Habitat
MAR - Marine Habitat
WILD - Wildlife Habitat

RARE - Rare, Threatened or Endangered Species
SPWN - Spawning, Reproduction, and/or Early Development
SHELL - Shellfish Harvesting
WET - Wetland Habitat

C. Water Quality Objectives

Water quality standards consist of a combination of beneficial uses, water quality objectives and the State's Antidegradation Policy. The Regional Board has determined that the narrative water quality objectives applicable to this TMDL are **floating materials**: *"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses"*[19] and **solid, suspended, or settleable materials:** *"Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses."*[20] The States' Antidegradation Policy is formally referred to as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (State Board Resolution No. 68-16).

D. Impairment of Beneficial Uses

Existing beneficial uses impaired by trash in the Los Angeles River are contact recreation (REC 1) (contact sports: swimmers are spotted regularly in the Los Angeles River at Glendale Narrows and also at Willow Street in Long Beach) and non-contact recreation such as fishing (REC 2) (trash is aesthetically displeasing and deters recreational use and tourism); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); Commercial and sport fishing (COMM); Wetland Habitat (WET), and Cold freshwater habitat (COLD). These beneficial uses in the Los Angeles River are impaired by large accumulations of suspended and settled debris throughout the river system. The problem is even more acute in Long Beach where debris flushed down from the upper reaches of the river collects. Common items that have been observed by Regional Board staff include Styrofoam cups, Styrofoam food containers, glass and plastic bottles, toys, balls, motor oil containers, antifreeze containers, construction materials, plastic bags, and cans. Heavier debris can be transported during storms as well.

Reaches of the Los Angeles River that are impaired by trash, and listed on the 303(d) list for such, are Tujunga Wash (downstream Hansen Dam to Los Angeles River), Los Angeles River Reach 5 (within Sepulveda Basin), Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.), Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.), Los Angeles River Reach 2 (Figueroa St. to upstream Carson St.), Los Angeles River Reach 1 (upstream Carson St. to estuary), Burbank Western Channel, Verdugo Wash (Reaches 1 & 2), Arroyo Seco Reach 1 (downstream Devil's Gate Dam) & Reach 2 (W. Holly Ave. to Devil's Gate), and Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River). In addition, Peck Road Lake, Echo Park Lake and Lincoln Park Lake are listed as impaired for trash.

Trash in waterways causes significant water quality problems. Small and large floatables can inhibit the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items such as shopping carts, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber,

[19] Water Quality Control Plan ("Basin Plan"), p. 3-9.
[20] Ibid., pp. 3-16.

construction debris and more. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, repelling visitors away from our beaches and degrading coastal waters.

A major trash problem experienced in the Los Angeles River Watershed contributes to a broader phenomena that affects ocean waters, as small pieces of plastic called "nurdles" (defined as pre-production virgin material from plastic parts manufacturers, as well as post-production discards that are occasionally recycled) float at various depths in the ocean and affect organisms at all levels of the food chain. As sunlight and UV radiation render plastic brittle, wave energy pulverizes the brittle material, with a subsequent chain of nefarious effects on the various filter feeding organisms found near the ocean's surface. Studies in the North Pacific indicate that both large floating plastic and smaller fragments are increasing. As a result of increased reports of resin pellet ingestion by aquatic wildlife and evidence that the ingested pellets are harming wildlife, the Interagency Task Force on Persistent Marine Debris (ITF) identified resin pellets, also know as plastic pellets, as a debris of special concern.[21] When released into the environment, these pellets either may float on or near the water surface, may become suspended at mid-depths, or may sink to the bottom of a water body. Whether a specific pellet floats or sinks depends on the type of polymer used to create the pellet, on additives used to modify the characteristics of the resin, and on the density of the receiving water.

A 1999 study of Marine Debris in the Mid-Pacific Gyre in an attempt to assess the potential effects of ocean particles on filter feeding marine organisms, collected plankton samples at various locations throughout the gyre. The results were stunning: the mass of plastic particles collected was six times higher than the mass of plankton (841 g/km^2), although the number of planktonic organisms (1,837,342/km^2) was five times the number of plastic pieces. The distribution of the sampling points allows one to assume that this number can be safely extrapolated to the breadth of the Mid-Pacific Gyre. A remarkable finding was that the number of particles did not increase in successively smaller size classes as expected, indicating there may be non-selective removal by mucus web-feeding jellies and salp. In this study, the most common type of identifiable particle, thin plastic film, accounted for 29% of the total. Many birds will die from ingesting this non-nutritive plastic.[22]

The prevention and removal of trash in the Los Angeles River ultimately will lead to improved water quality and protection of aquatic life and habitat, expansion of opportunities for public recreational access, enhancement of public interest in the rivers and public participation in restoration activities, and propagation of the vision of the river as a whole and enhancement of the quality of life of riparian residents.

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[21] US Environmental Protection Agency (US EPA) (1992) **Plastic Pellets in the Aquatic Environment: Sources and Recommendations.**

[22] Moore, C.J. et al. **Marine Debris in the North Pacific Gyre, 1999, with a Biomass Comparison of Neustonic Plastic and Plankton.** (in preparation)

E. Extent of the Trash Problem in the Los Angeles River

Trash is a water quality problem throughout the Los Angeles River. The Regional Board has determined that current levels of trash exceed the existing Water Quality Objectives necessary to protect the beneficial uses of the river.

For many years, Los Angeles County and other cities have recognized that trash is a problem.[23] The Los Angeles County Department of Public Works is reporting a "30% decrease in roadway trash on unincorporated County roads and a 50% decrease in trash entering catchbasins since adoption of the current National Pollutant Discharge Elimination System (NPDES) Permit".[24] However, trash in the Los Angeles River continues to be a serious problem.

Every city in the watershed agrees that the amount of trash found in the waterways is excessive, and that trash is found in all reaches of the river from Calabasas to Long Beach, and in all tributaries. Although the Regional Board has not yet received the data that the Los Angeles County Department of Public Works used for its findings, Regional Board staff regularly observe trash in the waterways of this watershed. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others, organize volunteer clean-ups periodically, and document the amount of trash that was removed on such days, but these data do not indicate how long the trash had been accumulating at that particular site, only the amount that was picked up by the volunteers on a given day.

For example, at Coastal Clean-up Day in 1996, 26,300 lbs of trash were collected in Los Angeles County. During the September 18, 1999, California Coastal Clean up organized by Heal the Bay, a total of 60,711 lbs of trash were collected.[25]

At a clean-up organized during the Sacred Music Festival on Saturday, October 16, 1999, between Los Feliz Boulevard and Fletcher Drive over a distance of slightly under 1.5 miles, eleven shopping carts and six 40-gallon bags of trash were removed (see Figure D). However, this was not the total amount of trash on site, as Regional Board staff noticed more shopping carts and more trash on the same site the very next afternoon.[26] Meanwhile, the purpose of volunteer clean-ups is to visibly clean the river and its banks, not to quantify debris. As a result, it is likely that some of the debris collected during those events are not recorded. In

[23]See comments from Los Angeles County, Agoura Hills, Artesia, Beverly Hills, Hermosa Beach, Hidden Hills, Carson, Diamond Bar, La Habra Heights, La Mirada, La Puente, Monrovia, Norwalk, Rancho Palos Verdes, Rolling Hills, San Fernando, San Marino, West Hollywood, Westlake Village, and the Executive Advisory Committee (Stormwater Program - Los Angeles County) on behalf of all the Los Angeles County cities, submitted in response to the first draft of this Trash TMDL for the Los Angeles River Watershed.

[24]Comment letter from County of Los Angeles, Department of Public Works, May 15, 2000, p. 1.

[25] Alix Gerosa, Heal the Bay, November 22, 1999.

[26] Trash observed by Regional Board staff on October 17, 1999, included mixed polystyrene waste (cups, plates and others), plastic bags, cement, sound boards, large clusters of cigarette butts, disposable plastic glass lids, aluminum wrappers, balloons, medications, plastic bottles, clothing, books, and aerosol paint cans.

addition, volunteers traditionally focus on larger, more visible debris to the exclusion of smaller debris which are commonly encountered, such as cigarette butts.

Figure D. Trash waiting for pick-up at Los Feliz Boulevard after the Sunday, October 16, 1999 river clean-up.

Several studies which attempted to quantify trash generated from discreet areas have been completed, but they concern relatively small areas, or relatively short periods, or both. The findings of some of these studies are discussed below.

The City of Calabasas cleaned out the Continuous Deflective Separation (CDS) Unit they had installed in December of 1998, on September 28, 1999. This CDS unit, located in Calabasas at the intersection of Las Virgenes Road and Agoura Road, collects trash from the runoff of a small storm drain, as well as part of the runoff from Calabasas Park Hills (Santa Monica Mountains), and eventually empties to Las Virgenes Creek. It is assumed that this CDS unit prevented all trash from passing through. The calculated area drained by this CDS Unit, as provided to the Regional Board by Los Angeles County Department of Public Works staff, amounts to 12.8 square miles. The urbanized area was estimated by Regional Board staff to amount to 0.10 square miles of the total area. The result of this clean-out, which represents approximately half of the 1998-1999 rainy season, was 2,000 gallons of sludgy water and a 64-gallon bag about two-third full of plastic food wrappers. It is assumed that part of the trash that accumulated in the CDS unit over roughly half of the rainy season had decomposed in the unit, hence the absence of paper products. Given the CDS unit was cleaned out after slightly more than nine months of use, it was assumed that this 0.10 square mile urbanized area produced a volume of 64 gallons of trash over one year. This datum will be used as the default value for the implementation plan. Although other studies are informative, studies currently available to the Regional Board provide insufficient data and could not be applied directly to establishing trash generation rates.

The City of Los Angeles conducted an Enhanced Catch Basin Cleaning Pilot Project in compliance with a consent decree between the United States Environmental Protection Agency, the State of California, and the City of Los Angeles. The project goals were to

determine debris loading rates, characterize the debris, and find an optimal cleaning schedule through enhancing catch basin cleaning. The project evaluated trash loading at two drainage basins:

-The Hollywood Basin (1,366 acres and 793 catch basins) includes much of Hancock Park and is mostly residential with some commercial and open space, and no industrial land;

-The Sawtelle Basin (2,267 acres and 502 catch basins) includes residential areas with some commercial, industrial and transportation-related uses, and some open space.

The catch basins are inlet structures without a sump below the level of the outlet pipe to capture solids and trash washed down by the stormwater.[27] These inlets also collect trash, grass clippings and animal wastes during dry weather. Catch basins were cleaned 3-4 times from March 1992 to December 1994 and yielded approximately 0.79 yd^3 (160 Gal) of debris per cleaning (Sawtelle – 1.04 yd^3 (210 Gal) and Hollywood – 0.61 yd^3 (123 Gal)), characterized as paper (26%), plastic wastes (10%), soil (33%), and yard trimmings (31%).

The study also observed that the amount of plastic waste was less in residential areas and greater in non-residential areas, that paper waste was greater in commercial areas, and that soil and yard waste was greater in residential areas and open spaces.[28]

Long Beach collects large amounts of trash at the mouth of the Los Angeles River, as much of the trash carried down the Los Angeles River ends up at the river's mouth in Long Beach. Debris tonnage at the mouth of the Los Angeles River is listed in Table 2.

Table 2. Storm Debris Collection Summary for Long Beach: Debris is measured in Tonnage.[29]

Storm Year	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
1994-95	436	509	3,576	702	5,224
1995-96	504	344	3,100	645	4,593
1996-97	350	2,361	601	681	3,993
1997-98	647	3,650	4,016	977	9,290
1998-99	565	720	532	1,274	3,091
1999-00	781	176	1,664	1,223	3,844
2000-01	757	581	2,625	474	4,437
2001-02	424	739	288	407	1,858
2002-03	430	752	2,564	884	4,630
2003-04	299	779	607	951	2,636

[27] Such structures are usually termed *catchments*, but the term *catch basin* is used throughout Southern California. The absence of flow during dry weather allows trash to collect at the inlet. (Phone conversation with Wing Tam, City of Los Angeles, November 10, 1999.)

[28] This information and all of the above concerning the City of Los Angeles Enhanced Catch Basin Cleaning was found in: City of Los Angeles Department of Public Works, Bureau of Sanitation: Consent Decree Report, Enhanced Catch Basin Cleaning, April 1999. (Unpublished report.)

[29] City of Long Beach *L.A. River Debris Summary* (as of June 2006).

Storm Year	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
2004-05	273	4,390	6,176	1,416	12,255
2005-06	561	495	862	670	2,591

IV. Numeric Target

The numeric target for this TMDL is 0 (zero) trash in the water. The numeric target is derived from the narrative water quality objectives, including an implicit margin of safety. Although a substantial number of comments were received in response to the March 17, 2000 Draft TMDL, no information was provided to justify any other number for the final TMDL target that would fully support the designated beneficial uses. The numeric target was used to calculate the Waste Load Allocations as described in the Implementation Plan (see Section VIII.)

V. Source Analysis

The major source of trash in the river results from litter, which is intentionally or accidentally discarded in watershed drainage areas. Transport mechanisms include the following:

1. Storm drains: trash is deposited throughout the watershed and is carried to the various reaches of the river and its tributaries during and after significant rainstorms through storm drains.

2. Wind action: trash can also blow into the waterways directly.

3. Direct disposal: direct dumping also occurs.

Extensive research has not been done on trash generation or the precise relationship between rainfall and its deposition in waterways. However, it has been found that the amount of gross pollutants entering the stormwater system is rainfall dependent but does not necessarily depend on the source (Walker and Wong, December 1999). The amount of trash which enters the stormwater system depends on the energy available to re-mobilize and transport deposited gross pollutants on street surfaces rather than on the amount of available gross pollutants deposited on street surfaces. The exception to this finding of course would be in the event that there is zero gross pollutants deposited on the street surfaces or other drainages tributary to the storm drain. Where gross pollutants exist, a clear relationship between the gross pollutant load in the stormwater system and the magnitude of the storm event has been established. The limiting mechanism affecting the transport of gross pollutants, in the majority of cases, appears to be re-mobilization and transport processes (i.e., stormwater rates and velocities).

Several studies conclude that urban runoff is the dominant source of trash. The large amounts of trash conveyed by urban storm water to the Los Angeles River is evidenced by the amount of as trash that accumulates at the base of storm drains. The amount and type of trash that is washed into the storm drain system appears to be a function of the surrounding land use.

A number of studies (Walker and Wong, 1999, Allison, 1995), have shown that commercial land-use catchments generate more pollutants than residential land use catchments, and as much as three times the amount generated from light industrial land use catchment. It is generally accepted that commercial land uses tend to contribute larger loads of gross pollutants per area compared to residential and mixed land-use areas. This is in spite of daily street sweeping in the commercial sub-catchment compared to once every two weeks in residential and mixed land use areas.

VI. Waste Load Allocations

Storm drains have been identified as a major source of trash in the Los Angeles River. The strategy for meeting the water quality objective will focus on reducing the trash discharged via municipal storm drains.

Waste Load Allocations are assigned to the Permittees and Co-permittees of the Los Angeles County Municipal Stormwater Permit (hereinafter referred to as Permittees) and Caltrans. In addition, Waste Load Allocations may be issued to additional facilities in the future under Phase II of the US EPA Stormwater Permitting Program. Waste Load Allocations assigned under the MS4 permit and the Caltrans permit will be based on a phased reduction from the estimated current discharge (i.e., baseline) over a 9-year period until the final Waste Load Allocation (currently set at zero) is met. Permittees under the Phase II Stormwater Permitting Program will also be assigned a final WLSA of zero trash discharge. The baseline allocation for the MS4 Permittees and Co-permittees (referred to hereinafter as the "Permittees") is derived from data collected during the Baseline Monitoring Program.

A. Reconsideration and Refinement Provision

The baseline Waste Load Allocations for the MS4 Permittees and Co-permittees have been modified from that assigned in the earlier trash TMDL. The Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocation has been achieved. This means that the final Waste Load Allocation will be reviewed only after substantial reductions are achieved. This reconsideration of the Waste Load Allocation will be based on the findings of future studies regarding the threshold levels needed for protecting beneficial uses.

B. Default Baseline Waste Load Allocation

The Default Baseline Waste Load Allocation for the municipal stormwater permittees, in the earlier version of the trash TMDL was equal to 640 gallons of uncompressed trash per square mile per year. No differentiation was applied for different land uses in the Default Baseline Waste Load Allocation.

C. Refined Baseline Waste Load Allocations

The municipal stormwater permittees opted to seek refinement of the Default Baseline Waste Load Allocation by implementing a "Baseline Monitoring Plan." The goal of the Baseline Monitoring program was to derive a representative trash generation rate for various land uses from across the Los Angeles River watershed. The Baseline Waste Load Allocation for any single city is the sum of the products of each land use area multiplied by the Waste Load Allocation for the land use area, as shown below:

$$LA = \sum for\ each\ city\ (area\ by\ land\ uses \bullet allocations\ for\ this\ land\ use)$$

The urban portion of the Los Angeles River watershed was divided into twelve types of land uses for every city and unincorporated area in the watershed. Similar land use classifications already exist on the land use maps used by L.A. County Department of Public Works to assess the generation of certain pollutants by land use.[30] The land use categories are: (1) high density residential[31], (2) low density residential[32], (3) commercial and services, (4) industrial, (5) public facilities[33], (6) educational institutions[34], (7) military installations, (8) transportation[35], (9) mixed urban[36], (10) open space and recreation[37], (11) agriculture[38], and (12) water[39]. Given that the minimum mapping resolution is 2.5 acres, a non-critical land use unit may not be mapped if it is less than 2.5 acres in size[40].

The appendix contains a table which shows the square mileage for each land use for each city and unincorporated areas in the watershed, and a list of maps showing land uses for each city. Unincorporated areas include areas such as Altadena, East Compton, East Los

[30] The land use classification was developed by Aerial Information Systems as a modified Anderson Land Use Classification and originally included 104 categories. The land use coverages were donated for GIS library use by Southern California Association of Governments (SCAG), and show land use for 1990 and for 1993. The coverages were map-joined into a single coverage by Teale Data Center. The Regional Board layers were aggregated from the TDC coverage into the land uses shown above.

[31] High Density Residential includes High Density Single Family Residential and all Multi Family Residential, Mobile Homes, Trailer Parks and Rural Residential High Density.

[32] Under 2 units per acre.

[33] These include government centers, police and sheriff stations, fire stations, medical health care facilities, religious facilities large enough to be distinguished on an aerial photograph, libraries, museums, community centers, public auditoriums, observatories, live indoor and outdoor theaters, convention centers which were built prior to 1990, communication facilities, and utility facilities (electrical, solid waste, liquid waste, water storage and water transfer, natural gas and petroleum).

[34] Preschools and daycare centers, elementary schools, high schools, colleges and universities, and trade schools, including police academies and fire fighting training schools.

[35] Airports, railroads, freeways and major roads (that meet the minimum mapping resolution of 2.5 acres), park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utility.

[36] Mixed commercial, industrial and/or residential, and areas under construction or vacant in 1990.

[37] Golf courses, local and regional parks and recreation, cemeteries, wildlife preserves and sanctuaries, botanical gardens, beach parks.

[38] Orchards and vineyards, nurseries, animal intensive operations, horse ranches.

[39] Open water bodies, open reservoirs larger than 5 acres, golf course ponds, lakes, estuaries, channels, detention ponds, percolation basins, flood control and debris dams.

[40] Critical land uses were mapped regardless of resolution limits. Critical land use units below 1 acre in size were mapped as 1-acre units.

Angeles, East Pasadena, East San Gabriel, Florence, La Crescenta, Mayflower Village, North El Monte, South San Gabriel, Walnut Park, Westmount and Willowbrook. For cities that are only partially located in the watershed, the square mileage indicated is for the part of this city that is in the watershed only.

Land uses that are not under municipal jurisdiction, such as military installations, will be dealt with through separate permits, and were thus not included in the calculation of the baseline Waste Load Allocations.

Each permittee will be allowed 60% of their baseline Waste Load Allocation during the first year of implementation, and subsequent annual reductions of 10% of from the baseline will be required through every year of implementation.

D. Baseline Waste Load Allocations for Caltrans

A Litter Management Pilot Study (LMPS)[41] was conducted to evaluate the effectiveness of several litter management practices in reducing litter that is discharged from Caltrans storm water conveyance systems. The LMPS employed four field study sites, each of which was used to test a separate BMP. Each site included three replicate testing pairs, consisting of one site designed to measure the amount of trash produced when treatment was applied, and one control with no treatment site. The LMPS averages the data collected at the control outfalls in order to obtain the annual litter loads. The average combined total loads for the three control outfalls at each site normalized by the total area of control catchments is presented in the following table, adapted from the LMPS report[42]:

Table 3. Average Combined Total Loads for Control Outfalls at 3 Litter Management Pilot Study (LMPS) Sites.

Site	Weight lbs/sq mi	Volume cu ft/sq mi
1E	10584.00	1312.97
1W	7479.36	971.73
6	7479.36	881.34
8	4374.72	404.51

The baseline Waste Load Allocation for weight and volume load generation for freeways is arrived at by averaging weight and volume columns. (see Table 4.) It is to be noted that control site 1E already had one BMP in place before testing of the other BMPs, as it was cleaned monthly through an "Adopt a Highway" program.

[41] California Department of Transportation District 7 Litter Management Pilot Study, June 2000. This study defined litter in stormwater as "manufactured items that can be retained by ¼-inch mesh made from paper, plastic, cardboard, etc.", and "that are not of natural origin (i.e. does not include sand, soil, gravel, vegetation, etc.)" (p. 1-2).

[42] Ibid., Table 6-8.

Table 4. A Preliminary Baseline Waste Load Allocation for Weight and Volume for Freeways.

Weight lbs/sq mi	Volume cu ft/sq mi
7479.36	892.64

Average Annual Daily Traffic (AADT) for all control sites in the study ranged from 216,000 to 238,000.[43] Considering AADT on Los Angeles County freeways may be close to 300,000 on some sections[44], the chosen sites, although typical freeway outfalls, are not distributed throughout the whole AADT range. As the purpose of the study was to assess the effectiveness of specific BMPs, not to assess a trash generation factor, sites were chosen with similar characteristics.

E. Baseline Waste Load Allocations for Municipal Permittees

Baseline Monitoring was conducted by the Los Angeles County Department of Public Works, as prescribed in the September 19, 2001 Los Angeles River Trash TMDL. The goal of the Baseline Monitoring Program was to collect representative data from across the watershed to refine the default Waste Load Allocations presented in the 2001 Los Angeles River Trash TMDL. Monitoring data was used to establish specific trash generation rates per land use. The land use categories that were monitored by the LACDPW baseline monitoring group (to determine land use based generation rates) were:

- High density residential,
- Low density residential,
- Commercial and services,
- Industrial, and
- Open space and recreation.

Public facilities-, Educational Institutions-, Mixed urban-, Agricultural-, and Water- land uses were exempt from monitoring.

In the analysis of the monitoring results provided by LACDPW, staff assumed the litter generation rate from public facilities and mixed urban landuse to be equivalent to that from the industrial land use. The transportation land use was equated with industrial land use, and agricultural land use was equated to open space. Water was assigned a litter generation rate of zero since it is not considered a generator of trash. The portion of the transportation land use that is under Caltrans' jurisdiction will be covered under Caltrans' permit. Major boulevards that are currently under Caltrans' jurisdiction, but are affected by trash generated on municipal sites, such as Santa Monica Boulevard, will be addressed by the cities concerned.

Military Installations were not included in the Waste Load Allocations of the cities that had this land use. Under EPA Phase II of the Storm Water Regulations, separate permits will be written for these facilities. While public educational institutions will also be covered under separate permits under Phase II, the analysis did not differentiate between public and private

[43] Ibid., Table 6-8.
[44] Information on AADT on select freeways can be found on Caltrans' website: http://www.caltrans.ca.gov/.

educational facilities under this landuse. Therefore, the cities have the option of providing information on the acreage of such land uses within their jurisdiction in order that contributions from these facilities be removed from their assigned baseline waste load allocations.

The baseline Waste Load Allocations for the municipal permittees is presented on a city by city basis in Table 5. A more detailed breakdown along land uses is provided in Appendix II. The Waste Load allocations for the first year of compliance will be a 40% reduction in the baseline Waste Load Allocation. The subsequent annual Waste Load Allocations will be a progressive 10% reduction in the baseline Waste Load Allocations over a period of 6 years, and apply except in areas serviced by Full Capture Systems. The values shown, in gallons, are in uncompressed volumes.

Table 5. Los Angeles River Trash TMDL Baseline Waste Load Allocations (gallons and lbs of trash) *Military Installations were not included in calculation of Baseline WLA

City	WLA (gals)	WLA (lbs)
Alhambra	39903	68761
Arcadia	50108	93036
Bell*	16026	25337
Bell Gardens	13500	23371
Bradbury	4277	12160
Burbank*	92590	170389
Calabasas	22505	52230
Carson	6832	10208
Commerce	58733	85481
Compton*	53191	86356
Cudahy	5935	10061
Downey	39063	68507
Duarte	12210	23687
El Monte	42208	68267
Glendale*	140314	293498
Hidden Hills	3663	10821
Huntington Park	19159	30929
Irwindale	12352	17911
La Cañada Flintridge	33496	73747
Long Beach*	87135	149759
Los Angeles*	1374845	2572500
Los Angeles County*	310223	651806
Lynwood	28201	46467
Maywood	6129	10549
Monrovia	46687	100988
Montebello	50369	83707
Monterey Park	38899	70456
Paramount	27452	44490
Pasadena*	111998	207514
Pico Rivera	13953	22549
Rosemead	27305	47378
San Fernando	13947	23077
San Gabriel	20343	36437
San Marino	14391	29147
Santa Clarita	901	2326
Sierra Madre	11611	25192
Signal Hill	9434	14220
Simi Valley	137	344
South El Monte	15999	24319
South Gate	43904	72333
South Pasadena	14907	28357
Temple City	17572	31819
Vernon	47203	66814
Caltrans	59421	66566

VII. Implementation and Compliance

As required by the Clean Water Act, discharges of pollutants to surface waters from storm water are prohibited, unless the discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. Discharge of trash to the Los Angeles River will be regulated via the Municipal NPDES Storm Water Permits and the Caltrans stormwater permit. In addition, USEPA Phase II stormwater permits, general permits, and industrial permits may also be used to regulate discharges of trash to the river.

In June 1990, the first Municipal NPDES Storm Water Permit was issued jointly to Los Angeles County and 84 cities as co-permittees. A separate NPDES Storm Water Permit was issued to the City of Long Beach on June 30, 1999. Storm water municipal permits will be one of the implementation tools of this Trash TMDL, and will include the allocations as effluent limits or other permit requirements. Thus, future storm water permits will be modified to incorporate the Waste Load Allocations and to address monitoring and implementation of this TMDL.

The implementation and compliance schedule is designed to accommodate trash reduction efforts that have been conducted by several cities and the county throughout the Los Angeles River Watershed, in response to the previously adopted trash TMDL. The calculated baseline waste load allocations are derived from data collected during the 2002/03 and 2003/04 storm years. The initial compliance requirement of a 40% reduction from baseline trash levels assumes a 10% reduction per year in trash discharges from the end of the baseline monitoring period. Flexibility is provided by determining compliance based on a 2-year average in the second year and 3-year rolling averages in subsequent years until the numeric target of a zero discharge is attained. The purpose of the rolling averages is to account for fluctuations in trash discharge rates that may occur as a result of variations in annual rainfall patterns and/or littering and trash removal. This approach ensures that measurable reductions to the trash impairment will be achieved in a timely manner, while flexibility in implementation is provided for the responsible agencies

A. Compliance Determination

For those areas not covered by Full Capture Systems, compliance with the Waste Load Allocations will be calculated as follows:

The first compliance date during the Implementation Phase will be September 30, 2007. Compliance will be evaluated based on the total load discharged to the river during the period October 1, 2007 through September 30, 2008. The second compliance date will be based on the average annual load discharged to the river from October1 2007 through September 30, 2009. Compliance thereafter will be evaluated at the end of each successive storm season and will be based on a rolling three-year average (see Table 6). This method will provide allowances for variability due to rainfall. Exceedance of the allowable discharges will subject the permittee to

enforcement action. A summary of the schedule for determining compliance with the Waste Load Allocations is presented in Table 6.

The final waste load allocation will be considered complied with when the Executive Officer finds that devices or systems and/or institutional controls have removed effectively 100% of the trash from the storm drain system discharge to Los Angeles River or its listed tributaries.

Table 6. Los Angeles River Trash TMDL: Implementation Schedule.[45]
(Required percent reductions based on initial baseline wasteload allocation of each city)

Year	Implementation	Waste Load Allocation	Compliance Point
1 Sept 2008	Implementation: Year 1	60% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 60% of the baseline load
2 Sept 2009	Implementation: Year 2	50% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 55% of the baseline load calculated as a 2-year annual average
3 Sept 2010	***Implementation: Year 3***[46]	40% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 50% of the baseline load calculated as a rolling 3-year annual average
4 Sept 2011	***Implementation: Year 4***	30% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 40% of the baseline load calculated as a rolling 3-year annual average
5 Sept 2012	***Implementation: Year 5***	20% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 30% of the baseline load calculated as a rolling 3-year annual average
6 Sept 2013	Implementation: Year 6	10% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 20% of the baseline load calculated as a rolling 3-year annual average
7 Sept 2014	Implementation: Year 7	0% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 10% of the baseline load calculated as a rolling 3-year annual average
8 Sept 2015	Implementation: Year 8	0% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 3.3% of the baseline load calculated as a rolling 3-year annual average
9 Sept 2016	Implementation: Year 9	0% of Baseline Waste Load Allocations for the Municipal permittees; and Caltrans	Compliance is 0% of the baseline load calculated as a rolling 3-year annual average

[45] "Notwithstanding the zero trash target and the baseline waste load allocations shown in Table 5, a Permittee will be deemed in compliance with the Trash TMDL in areas served by a Full Capture System within the Los Angeles River Watershed."

[46] As specified in Section VI.A., the Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed.

B. Compliance Strategies

Permittees may employ a variety of strategies to meet the progressive reductions in their Waste Load Allocations. These strategies may be broadly classified as either:

- Full capture systems or
- Partial capture control systems and/or
- Institutional controls.

A permittee could comply with the successive reduction in Waste Load Allocations by installing Full Capture Systems progressively throughout the watershed until all of the outlets to the Los Angeles River system are covered. This approach may be best suited for open space areas, where low levels of trash may accumulate over large vegetated drainage areas. However, in more urban settings, institutional controls including enforcement of litter laws and more frequent street sweeping may be preferred.

It is to be noted that ordinances that prohibit litter are already in place in most cities. For example, the Los Angeles City Code of Regulations recognizes that trash becomes a pollutant in the storm drain system when exposed to storm water or any runoff and prohibits the disposal of trash on public land:

> No person shall throw, deposit, leave, cause or permit to be thrown, deposited, placed, or left, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, gutter, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City so that such materials, when exposed to storm water or any runoff, become a pollutant in the storm drain system. (City Code of Regulations, §64.70.02.C.1(a).)

Institutional controls provide several advantages over structural full capture systems. Foremost, institutional controls offer other societal benefits associated with reducing litter in our city streets, parks and other public areas. The capital investment required to implement institutional controls is generally less than for full capture systems. However, the labor costs associated with institutional controls may be higher, and institutional controls may be more costly in the long-term.

There have been a number of discussions as to how permittees may best implement the gradual reductions required by this Trash TMDL, and as to the types of devices or best management practices they should elect. The permittees will be free to implement trash reduction in any manner that they choose.

A discussion of the means for determining compliance for various implementation strategies is presented in the following subsections.

1. Full Capture Treatment Systems

The amount of trash discharged to the river by an area serviced by a full-capture system will be considered to be in compliance with the final Waste Load Allocation for the drainage area, provided that the Full Capture Systems are adequately sized, maintained and maintenance records are available for inspection by the Regional Board. Compliance with the final Waste Load Allocation will be assumed wherever Full Capture Systems are installed in the Los Angeles River Watershed. The installation of a Full Capture System by a discharger does not establish any presumption that the system is adequately sized, and the Regional Board reserves the right to review sizing and other data in the future to validate that a system satisfies the criteria established in this TMDL for a Full Capture System.

2. Partial Capture Treatment Systems and Institutional Controls

Measuring the effectiveness of partial-capture systems and institutional controls is more complicated. The discharge resulting from an area addressed by partial capture and/or institutional controls will be estimated using a mass balance approach, based on the daily generation rate (DGR) for the specific area. [Note: The DGR should not be confused with the trash generation rates obtained during baseline monitoring. The baseline monitoring program is designed to obtain "typical" trash generation rates for a given land use. Those values are then used to calculate a Permittee's baseline load allocation. The DGR is the average amount of trash deposited within a specified drainage area over a 24-hour period. The DGR will be used in a mass balance equation to estimate the amount of trash discharged during a rain event.] (See Example 1.)

Annual re-calculation of the DGR will serve as a measure of the effectiveness of source reduction measures including public education, enforcement of litter laws, etc. Source reduction measures will be accredited based on an annual recalculation of the DGR to allow for progressive improvement and/or to account for backsliding.

The DGR will be determined from direct measurement of trash deposited in the drainage area during the month of July[47], and re-calculated every year thereafter. July was assumed to be a month characterized by high outdoor activity when trash is most likely to be deposited on the ground. The recommended method for measuring trash during this time period is to close the catch basins in a manner that prevents trash from being swept into the catch basins and then to collect trash on the ground via street sweeping, manual pickup, or other comparable means. The DGR will be calculated as the total amount of trash collected during the month divided by 31 (the number of days in the month).

Accounting of DGR and trash removal via street sweeping, catch basin clean outs, etc. will be tracked in a central spreadsheet or database to facilitate the calculation of discharge for

[47] Provided no special events are schedule that may affect the representative nature of that month.

each rain event. The spreadsheet and/or database will be available to the Regional Board for inspection during normal working hours. The database/spreadsheet system will allow for the computation of calculated discharges and can be coordinated with enforcement. This database will be developed by cities or groups of cities.

The Executive Officer may approve alternative compliance monitoring programs other than those described above, upon finding that the program will provide a scientifically-based estimate of the amount of trash discharged from the storm drain system.

3. Examples of Implementation Strategies

Two example control strategies for municipal stormwater discharges are described in this section.

Example 1.

A permittee installs catch basin inserts and "dry weather trash door" devices of the type that maintains the catch basin shut during dry weather, and implements regular street sweeping. After each storm of 0.25 inch or greater, the catch basin inserts are emptied. In this case, the DGR was calculated during the month of July as follows:[48]

DGR = (Volume of trash collected via street sweeping during the month of July / 31 days.)

The stormwater discharge for a given rain event then would be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the volume of trash recovered in the catch basin inserts.

Stormwater Discharge = [(Days since last street sweeping) (DGR)] –
[Volume of trash recovered from catch basin inserts]

Example 2.

City X is comprised of three land use areas (Land Uses A, B, and C). The city has adopted an implementation strategy using a combination of full capture structural and institutional controls. As of year five, the city has installed full capture systems in Area A and institutional controls in Area B. City X has not yet taken any action to control trash in Area C. The watershed-wide baseline Waste Load Allocation have been established at 100 lbs per square mile for Land Uses A and B, and at 200 lbs per square mile for landuse C. The full capture system is assumed to meet the final Waste Load Allocation. The city's mass balance calculations show that 100 lbs of trash was discharged from Land Use Area B. The discharge from Land Use Area C is assumed to be the base load allocation since no controls were implemented and the daily generation rate has not been established. As shown in Figure E City X's discharge for the year was 1,100 lbs, and the 3-year rolling average discharge was less than

[48] In the event that trash generation rates differ between weekday and weekends, a distinction in the DGRs may be warranted.

the 5-Year Waste Load Allocation. Therefore the city was found to be in compliance with its discharge loading unit.

4. Potential Environmental Impact of Implementation Strategies

An accompanying CEQA Checklist document analyses the potential negative environmental impacts of compliance with the trash TMDL based on the implementation strategies discussed above. The previous Los Angeles River Trash TMDL became effective in 2002 and several municipalities have completed projects in which storm sewer catchment basins were retrofitted with inserts and vortex separation devices were installed within storm drain systems. The most significant environmental impacts have proved to be construction activities associated with the installation of these devices, and maintenance activities. Construction impacts from structural measures are similar to those of small scale public works projects that are sited in previously developed areas. The major construction activities appear to be concrete and electrical work, and in some areas, earth work associated with structural improvements. The environmental impacts and mitigation methods for these types of activities are well known. The environmental impacts from maintenance of the structural measures are associated with removing and disposing trash collected from the structural devices.

Regarding cumulative impacts, it is noted that both the construction and maintenance activities are in small, discrete, discontinuous areas over a short duration. Consequently, cumulative impacts are not significantly exacerbated from the sum of individual project impacts. Project level environmental analysis, by municipalities and responsible agencies for implementation of structural methods, were conducted under notices of exemption. Categorical exemptions were based on the nature of the projects including:

-Minor alteration of existing public structures involving negligible expansion of an existing facility.
-Modifications of existing storm drain system and addition of environmental protection devices in existing structures with negligible or no expansion of use.
-Modifications to sewers constructed to alleviate a high potential or existing public health hazard.

The analysis concludes that the implementation of this TMDL will result in improved water quality in the Los Angeles River Watershed, but may result in temporary or permanent localized significant adverse impacts to the environment. While specific projects employed to implement the TMDL may have significant impacts, these impacts are expected to be limited, short-term or may be mitigated through careful design and scheduling. Furthermore, to the extent the alternatives, mitigation measures, or both, are not deemed feasible by those agencies, the necessity of implementing the federally required TMDL and removing the trash impairment from the Los Angeles River the Watershed (an action required to achieve the express, national policy of the Clean Water Act) outweigh the unavoidable adverse environmental effects, as they will be minimal because project level planning, construction, and operation methods are available to mitigate foreseeable environmental impacts from implementing the TMDL as described in the CEQA checklist.

Figure E. Example 2, City X After Year 5.

<table>
<tr><td rowspan="2">Land Use A:
10 sq miles treated by a full capture system

Baseline Waste Load Allocation:
100 lbs/sq mi/year</td><td>Land Use B:
5 sq miles treated via institutional controls and partial capture

Baseline Waste Load Allocation:
100 lbs/sq mi/year</td></tr>
<tr><td>Land Use C:
5 sq miles - No treatment applied

Baseline Waste Load Allocation:
200 lbs/sq mi/year</td></tr>
</table>

Baseline Waste Load Allocation for each land use in City X:
A=(100 lbs/sq mi/yr) (10 sq mi)=1000 lbs
B=(100 lbs/sq mi/yr) (5 sq mi)=500 lbs
C=(200 lbs/sq mi/yr) (5 sq mi)=1000 lbs
Total baseline Waste Load Allocation = 2,500 lbs
Year 5 Waste Load Allocation = 2,000 lbs*
*An 80% reduction based on a 3-year rolling average.

Previous Years' Discharge:
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs

Trash Discharge for Year 5:
A=0
B=100 lbs (Determined by mass balance)
C=1,000 lbs (No reduction)
Total Discharge (Year 5) = 1,100 lbs

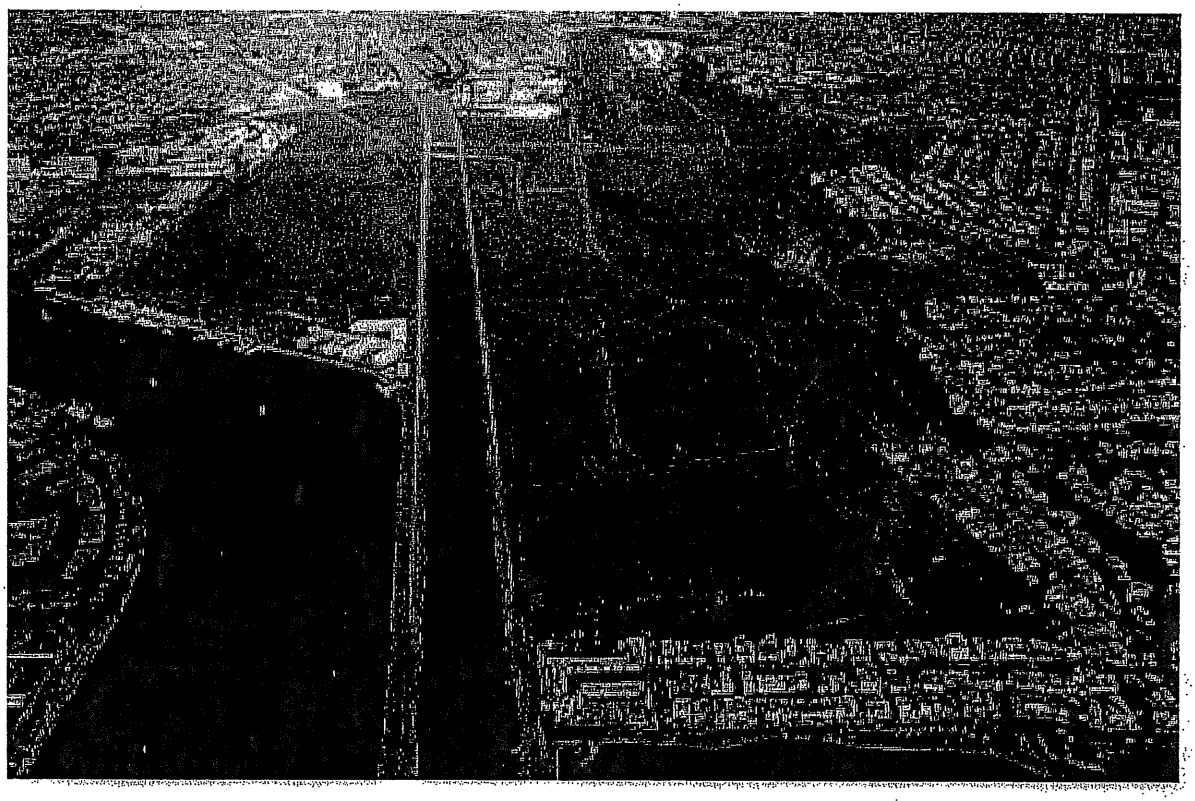
Three-Year Rolling Average Discharge
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs
Year 5 = 1,100 lbs
3-year rolling average discharge = 1,833 lbs

Compliance is achieved: Discharge (1,833 lbs) < Waste Load Allocation (2,000 lbs).

Trash Total Maximum Daily Loads

for the

Ballona Creek and Wetland



September 19, 2001

California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street
Los Angeles, California 90013

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I. Introduction – Legal Background

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as the "Regional Board") has developed this total maximum daily load (TMDL) designed to attain the water quality standards for trash in Ballona Creek. The TMDL has been prepared pursuant to state and federal requirements to preserve and enhance water quality in the Los Angeles Basin River Watershed.

The California Water Quality Control Plan, Los Angeles Region, also known as the *Basin Plan*, sets standards for surface waters and groundwaters in the regions. These standards are comprised of designated beneficial uses for surface and ground water, and numeric and narrative objectives necessary to support beneficial uses and the state's antidegradation policy. Such standards are mandated for all waterbodies within the state under the Porter-Cologne Water Quality Act. In addition, the Basin Plan describes implementation programs to protect all waters in the region. The Basin Plan implements the Porter-Cologne Water Quality Act (also known as the "California Water Code") and serves as the State Water Quality Control Plan applicable to the Los Angles River, as required pursuant to the federal Clean Water Act (CWA).

Section 305(b) of the CWA mandates biennial assessment of the nation's water resources, and these water quality assessments are used to identify and list impaired waters. The resulting list is referred to as the 303(d) list. The CWA also requires states to establish a priority ranking for impaired waters and to develop and implement TMDLs. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loadings to point and non-point sources.

The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) program and must approve or disapprove the state's 303(d) lists and each specific TMDL. USEPA is ultimately responsible for issuing a TMDL, if the state fails to do so in a timely manner.

As part of California's 1996 and 1998 303(d) list submittals, the Regional Board identified the reaches of Ballona Creek as being impaired due to trash.

A consent decree between the USEPA, the Santa Monica BayKeeper and Heal the Bay Inc., represented by the Natural Resources Defense Council (NRDC), was signed on March 22, 1999. This consent decree requires that all TMDLs for the Los Angeles Region be adopted within 13 years. The consent decree also prescribed schedules for certain TMDLs, including a Trash TMDL for Ballona Creek , including the Ballona Creek Estuary, and Ballona Wetland.

This Trash TMDL is based on existing, readily available information concerning the conditions in the Ballona Creek watershed and other watersheds in Southern California, as well as TMDLs previously developed by the State and USEPA.

II. Definitions

The definitions of terms as used in this TMDL are provided as follows:

Baseline Waste Load Allocation. The Baseline Waste Load Allocation is the Waste Load Allocation assigned to a permittee before reductions are required. The progressive reductions in the Waste Load Allocations will be based on a percentage of the Baseline Waste Load Allocation. The Baseline Waste Load Allocation will be calculated based on the annual average amount of trash discharged to the storm drain system from a representative sampling of land use areas, as determined during the Baseline Monitoring Program. Ballona Creek watershed permittees have the option to pool their resources with Los Angeles River watershed permittees into a single baseline monitoring program. If all permittees chose to share the same monitoring program, the same Baseline Waste Load Allocation will be assigned to all permittees in both the Los Angeles River and the Ballona Creek watershed.

Daily Generation Rate (DGR). The DGR is the average amount of litter deposited to land or surface water during a 24-hour period, as measured in a specified drainage area.

Full Capture Device or System. A full capture device is any device or system that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow resulting from a one-year, one-hour, storm (determined to be 0.6 inch per hour for the Los Angeles River watershed, and assumed to be similar for the Ballona Creek watershed).

Monitoring Entity. The Monitoring Entity is the permittee or one of multiple permittees and/or co-permittees that has been authorized by all the other affected permittees or co-permittees to conduct baseline monitoring on their behalf.

Permittee. The term "permittee" refers to any permittee or co-permittee of a stormwater permit.

Trash. In this document, we are defining "trash" as man-made litter, as defined in California Government Code Section 68055.1(g):

> "Litter means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling or manufacturing [....]."

For purposes of this TMDL, we will consider trash to consist of litter and particles of litter that are retained by a 5-mm mesh screen. These particles of litter are referred to as "gross pollutants" in European and Australian scientific literature. This definition excludes sediments, and it also excludes oil and grease, and vegetation, except for yard waste that is illegally

disposed of in the storm drain system. Additional TMDLs for sediments[1] and oil and grease may be required at a later date.

Urbanized Portion of the Watershed. For the purposes of this TMDL, the urban portion of the watershed includes the sum total area of the incorporated cities and the unincorporated portion of Los Angeles County which are located on the Ballona Creek watershed.[2] The estimated area of the "urbanized" portion of the watershed is 129 square miles[3].

III. Problem Statement

The problem statement consists of a description of the watershed, beneficial uses, water quality objectives, and a description of the impairment to the watershed caused by trash.

A. Description of the Watershed

Ballona Creek flows slightly over 10 miles from Los Angeles (South of Hancock Park) through Culver City, reaching the ocean at Playa del Rey. Except for the estuary of Ballona Creek[4], which is trapezoidal composed of grouted rip-rap side slopes and an earth bottom, Ballona Creek is entirely lined in concrete and extends into a complex underground network of stormdrains which reaches to Beverly Hills and West Hollywood, draining 130 square miles of highly developed land, with both residential and commercial land uses. Tributaries of Ballona Creek include Centinela Creek, Sepulveda Canyon Channel, Benedict Canyon Channel, and numerous other storm drains. All of these tributaries are either concrete channels or covered culverts. Cities on this small coastal watershed are Culver City, Beverly Hills, West Hollywood, parts of Santa Monica, parts of Inglewood, parts of Los Angeles, and some unincorporated areas of Los Angeles County.

Adjacent to the downstream channel of Ballona Creek are the Marina del Rey Harbor, Ballona Lagoon and Venice Canals, Del Rey Lagoon and Ballona Wetlands. Although they do not discharge directly into the Creek, they are grouped as waterbodies in this subwatershed because of their proximity and various forms of hydrological connection to Ballona Creek.

---

[1] Sediments which may be addressed in a separate TMDL are natural particulate matters such as silt and sand. Sediments result from erosion and are deposited at the bottom of a stream. Sediments do not refer to the decomposition of settleable litter into small particulate matters, which this TMDL is trying to prevent.

[2] The Regional Board recognizes that some areas within the unincorporated sections of Los Angeles County are actually suburban or rural.

[3] As determined by the Regional Board from GIS mapping.

[4] The estuary reaches up to Centinela Boulevard. Ballona Creek is concrete-lined upstream of Centinela Boulevard.

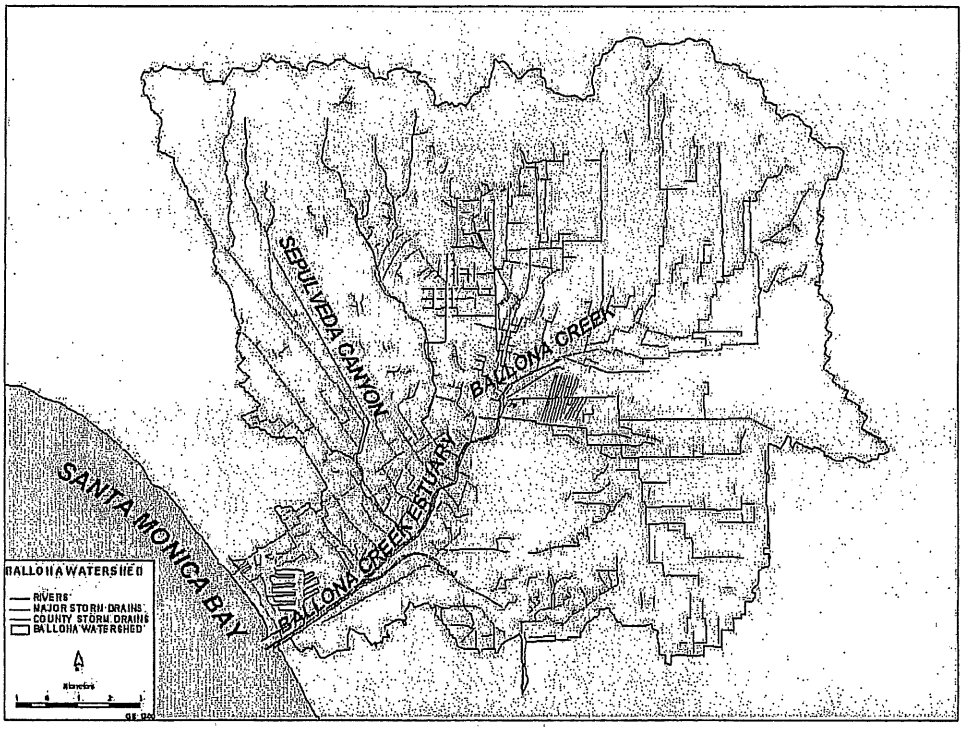

Figure A. Waterbodies in Ballona Creek Watershed.

While at one time it drained into a large wetlands complex[5], since its chanellization by the US Corps of Engineers in 1935, Ballona Creek has lost its direct connection to the Ballona Wetlands in spite of the tidal gates which connect both ecosystems. Ballona Creek has been designated as a Significant Ecological Area within the Los Angeles County in its general plan (Los Angeles County, 1976). Although Ballona Creek and the Ballona Wetlands used to share a 2100-acre coastal estuary, the degraded wetlands that remain encompass only 186 acres.

B. Beneficial Uses of the Watershed

A brief description of the beneficial uses most likely to be impaired due to trash in Ballona Creek is provided in this section.

Beneficial uses impaired by trash in Ballona Creek are Municipal and Domestic Supply (MUN), Water Contact Recreation (REC1), Non-Contact Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD). Other beneficial uses impaired by trash are estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); Commercial and sport fishing (COMM); Shellfish harvesting (SHELL); and Wetland Habitat (WET). Ballona Creek is fenced off from riparian access on all

[5] Ballona Creek and the Ballona Wetlands used to be home to the Gabrielino and Shoshonean peoples. The Ballona Wetlands have been considered sacred ground by native peoples for thousands of years.

of its length, but children age 2 to 14 are regularly observed bathing in the Creek during hot afternoons. On a peaceful Sunday afternoon, families of ducks can also be observed frolicking at many points on the creek. The bicycle path, shaded in places by riparian trees, along the creek is used extensively.

Figure B. Flycatcher[6]

In addition, several federal and state listed endangered species inhabit the Ballona Wetlands Ecosystem, including the Southwestern Willow Flycatcher.

[6] Source: Ballona Wetlands Land Trust.

Beneficial uses of Ballona Creek watershed are summarized in Table 1, excerpted from the 1994 Basin Plan. These are the designated beneficial uses that must be protected.[7]

Table 1. Beneficial Uses of Surface Waters of Ballona Creek.

	Hydro Unit #	MUN	NAV	REC1	REC2	COMM	WARM	EST	MAR	WILD	RARE	MIGR	SPWN	SHELL	WET[b]
BALLONA CREEK WATERSHED															
Ballona Creek Estuary w	405.13		E	E	E	E		E	E	E	Ee	Ef	Ef	E	
Ballona Wetlands	405.13			E	E			E		E	Ee	Ef	Ef		E
Ballona Creek to Estuary	405.13	P*		Ps	E		P			P					
Ballona Creek	405.15	P*		Ps	E		P			E					

Beneficial use designations apply to all tributaries to the indicated waterbody, if not listed separately.

E: Existing beneficial use

P: Potential beneficial use

* Asterixed MUN designations are designated under SB 88-63 and RB 89-03.

b Waterbodies designated as WET may have wetlands habitat associated with only a portion of the waterbody. Any regulatory action would require a detailed analysis of the area.

e One or more rare species utilize all ocean, bays, estuaries,

f Aquatic organisms utilize all bays, estuaries, lagoons and coastal wetlands, to a certain extent, for spawning
and early development. This may include migration into areas which are heavily influenced by freshwater inputs.

w These areas are engineered channels. All references to Tidal Prisms in Regional Board documents are functionally equivalent to estuaries.

BENEFICIAL USE CODES (see Basin Plan for more details):

MUN - Municipal and Domestic Water Supply
REC1 - Water Contact Recreation
REC2 - Non-Contact Water Recreation
COMM - Commercial and Sport Fishing
WARM - Warm Freshwater Habitat
COLD - Cold Freshwater Habitat
MAR - Marine Habitat
EST – Estuarine Habitat
WILD – Wildlife Habitat
RARE – Rare, Threatened or Endangered Species
SPWN – Spawning, Reproduction, and/or Early Development
SHELL – Shellfish Harvesting
WET – Wetland Habitat

[7] Water Quality Control Plan, Los Angeles Region, California Regional Water Quality Control Board, Los Angeles Region, 1994, p. 2-10.

C. Water Quality Objectives

Water quality standards consist of a combination of beneficial uses, water quality objectives and the State's Antidegradation Policy. The narrative water quality objectives applicable to this TMDL are **floating materials**: *"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses"*[8] and **solid, suspended, or settleable materials:** "*Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.*"[9] The States' Antidegradation Policy is formally referred to as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (State Board Resolution No. 68-16).

D. Impairment of Beneficial Uses

Existing beneficial uses impaired by trash in Ballona Creek are contact recreation (REC 1) and non-contact recreation such as fishing (REC 2) (trash is aesthetically displeasing and deters recreational use and tourism); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); Commercial and sport fishing (COMM); Shellfish harvesting (SHELL); Wetland Habitat (WET). These beneficial uses in Ballona Creek are impaired by large accumulations of suspended and settled debris throughout the river system. Common items that have been observed by Regional Board staff include Styrofoam cups, Styrofoam food containers, glass and plastic bottles, toys, balls, motor oil containers, antifreeze containers, construction materials, plastic bags, and cans. Heavier debris can be transported during storms as well.

Trash in waterways causes significant water quality problems. Small and large floatables can inhibit the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items such as shopping carts, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, construction debris and more. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, repelling visitors away from our beaches and degrading coastal waters.

A major trash problem experienced in Ballona Creek and Wetland contributes to a broader phenomenon that affects ocean waters, as small pieces of plastic called "nurdles" (defined as pre-production virgin material from plastic parts manufacturers, as well as post-production discards that are occasionally recycled) float at various depths in the ocean and affect organisms at all levels of the food chain. As sunlight and UV radiation render plastic brittle, wave energy pulverizes the brittle material, with a subsequent chain of nefarious effects

[8] Water Quality Control Plan ("Basin Plan"), p. 3-9.
[9] Ibid., pp. 3-16.

on the various filter feeding organisms found near the ocean's surface. Studies in the North Pacific indicate that both large floating plastic and smaller fragments are increasing. As a result of increased reports of resin pellet ingestion by aquatic wildlife and evidence that the ingested pellets are harming wildlife, the Interagency Task Force on Persistent Marine Debris (ITF) identified resin pellets, also know as plastic pellets, as a debris of special concern.[10] When released into the environment, these pellets either may float on or near the water surface, may become suspended at mid-depths, or may sink to the bottom of a water body. Whether a specific pellet floats or sinks depends on the type of polymer used to create the pellet, on additives used to modify the characteristics of the resin, and on the density of the receiving water.

A 1999 study of Marine Debris in the Mid-Pacific Gyre in an attempt to assess the potential effects of ocean particles on filter feeding marine organisms, collected plankton samples at various locations throughout the gyre. The results were stunning: the mass of plastic particles collected was six times higher than the mass of plankton (841 g/km^2), although the number of planktonic organisms (1,837,342/km^2) was five times the number of plastic pieces. The distribution of the sampling points allows one to assume that these numbers can be safely extrapolated to the breadth of the Mid-Pacific Gyre. A remarkable finding was that the number of particles did not increase in successively smaller size classes as expected, indicating there may be non-selective removal by mucus web-feeding jellies and salp. In this study, the most common type of identifiable particle, thin plastic film, accounted for 29% of the total. Many birds will die from ingesting this non-nutritive plastic.[11]

The prevention and removal of trash in Ballona Creek ultimately will lead to improved water quality and protection of aquatic life and habitat, expansion of opportunities for public recreational access, enhancement of public interest in the rivers and public participation in restoration activities, and propagation of the vision of the river as a whole and enhancement of the quality of life of riparian residents.

E. Extent of the Trash Problem in Ballona Creek

Trash is a water quality problem throughout Ballona Creek. The Regional Board has determined that current levels of trash exceed the existing Water Quality Objectives necessary to protect the beneficial uses of the river.

For many years, Los Angeles County and other cities have recognized that trash is a problem.[12] The Los Angeles County Department of Public Works is reporting a "30% decrease in roadway trash on unincorporated County roads and a 50% decrease in trash

[10] US Environmental Protection Agency (US EPA) (1992) **Plastic Pellets in the Aquatic Environment: Sources and Recommendations.**

[11] Moore, C.J. et al. **Marine Debris in the North Pacific Gyre, 1999, with a Biomass Comparison of Neustonic Plastic and Plankton.** (in preparation)

[12] See comments from Los Angeles County, Agoura Hills, Artesia, Beverly Hills, Hermosa Beach, Hidden Hills, Carson, Diamond Bar, La Habra Heights, La Mirada, La Puente, Monrovia, Norwalk, Rancho Palos Verdes, Rolling Hills, San Fernando, San Marino, West Hollywood, Westlake Village, and the Executive Advisory Committee (Stormwater Program - Los Angeles County) on behalf of all the Los Angeles County cities, submitted in response to the first draft of this Trash TMDL for the Los Angeles River Watershed.

entering catchbasins since adoption of the current National Pollutant Discharge Elimination System (NPDES) Permit".[13] However, trash in Ballona Creek continues to be a serious problem.

Every city in the watershed agrees that the amount of trash found in the waterways is excessive. Although the Regional Board has not yet received the data that the Los Angeles County Department of Public Works used for its findings, Regional Board staff regularly observe trash in the waterways of this watershed. Non-profit organizations such as Santa Monica BayKeeper or Heal the Bay, and others, organize volunteer clean-ups periodically, and document the amount of trash that was removed on such days, but these data do not indicate how long the trash had been accumulating at that particular site, only the amount that was picked up by the volunteers on a given day.

For example, at Coastal Clean-up Day in 1996, 26,300 lbs of trash were collected in Los Angeles County. During the September 18, 1999, California Coastal Clean up organized by Heal the Bay, a total of 60,711 lbs of trash were collected in Los Angeles County.[14]

Earthday clean ups results in large amounts of trash being removed from the Creek. Meanwhile, the purpose of volunteer clean-ups is to visibly clean the river and its banks, not to quantify debris. As a result, it is likely that some of the debris collected during those events are not recorded. In addition, volunteers traditionally focus on larger, more visible debris to the exclusion of smaller debris which are commonly encountered, such as cigarette butts. Table 2 shows the tonnage of trash collected at 3 sites along Ballona Creek. These figures show a portion of the trash existing along the creek.

Table 2. Ballona Creek Tonnage: Yearly Tonnage.[15]

In conjunction with Coastal Clean Up Day	
September 1994	32.8 tons
September 1995	20 tons
September 1996	24.94 tons
September 1997	unknown
September 1998	20 tons
September 1999	17 tons
September 2000	18.67 tons
In conjunction with Earth Day	
April 1995	7 tons
April 1996	8.74 tons
April 1997	21.67 tons
April 1998	3.5 tons
April 1999	7 tons
April 2000	8 tons

[13]Comment letter from County of Los Angeles, Department of Public Works, May 15, 2000, p. 1.
[14] Alix Gerosa, Heal the Bay, November 22, 1999.
[15] City of Culver City.

Several studies which attempted to quantify trash generated from discreet areas have been completed, but these concern relatively small areas, or relatively short periods, or both. The findings of some of these studies are discussed below.

The City of Calabasas cleaned out the Continuous Deflective Separation (CDS) Unit they had installed in December of 1998, on September 28, 1999. This CDS unit, located in Calabasas at the intersection of Las Virgenes Road and Agoura Road, collects trash from the runoff of a small storm drain, as well as part of the runoff from Calabasas Park Hills (Santa Monica Mountains), and eventually empties to Las Virgenes Creek. It is assumed that this CDS unit prevented all trash from passing through. The calculated area drained by this CDS Unit, as provided to the Regional Board by Los Angeles County Department of Public Works staff, amounts to 12.8 square miles. The urbanized area was estimated by Regional Board staff to amount to 0.10 square miles of the total area. The result of this clean-out, which represents approximately half of the 1998-1999 rainy season, was 2,000 gallons of sludgy water and a 64-gallon bag about two-third full of plastic food wrappers. It is assumed that part of the trash that accumulated in the CDS unit over roughly half of the rainy season had decomposed in the unit, hence the absence of paper products. Given the CDS unit was cleaned out after slightly more than nine months of use, it was assumed that this 0.10 square mile urbanized area produced a volume of 64 gallons of trash over one year. This datum will be used as the default value for the implementation plan. Although other studies are informative, studies currently available to the Regional Board provide insufficient data and could not be applied directly to establishing trash generation rates.

The City of Los Angeles conducted an Enhanced Catch Basin Cleaning Pilot Project in compliance with a consent decree between the United States Environmental Protection Agency, the State of California, and the City of Los Angeles. The project goals were to determine debris loading rates, characterize the debris, and find an optimal cleaning schedule through enhancing catch basin cleaning. The project evaluated trash loading at two drainage basins:

- The Hollywood Basin (1,366 acres and 793 catch basins) includes much of Hancock Park and is mostly residential with some commercial and open space, and no industrial land;
- The Sawtelle Basin (2,267 acres and 502 catch basins) includes residential areas with some commercial, industrial and transportation-related uses, and some open space.

The catch basins are inlet structures without a sump below the level of the outlet pipe to capture solids and trash washed down by the stormwater.[16] These inlets also collect trash, grass clippings and animal wastes during dry weather. Catch basins were cleaned 3-4 times from March 1992 to December 1994 and yielded approximately 0.79 yd^3 (160 Gal) of debris per cleaning (Sawtelle – 1.04 yd^3 (210 Gal) and Hollywood – 0.61 yd^3 (123 Gal)), characterized as paper (26%), plastic wastes (10%), soil (33%), and yard trimmings (31%).

[16] Such structures are usually termed *catchments*, but the term *catch basin* is used throughout Southern California. The absence of flow during dry weather allows trash to collect at the inlet. (Phone conversation with Wing Tam, City of Los Angeles, November 10, 1999.)

The study also observed that the amount of plastic waste was less in residential areas and greater in non-residential areas, that paper waste was greater in commercial areas, and that soil and yard waste was greater in residential areas and open spaces.[17]

IV. Numeric Target

The numeric target is 0 (zero) trash in the water. The numeric target is staff's interpretation of the narrative water quality objective, including an implicit margin of safety. Although a substantial number of comments were received in response to the March 17, 2000 Draft TMDL, no information was provided to justify any other number that would fully support the designated beneficial uses. The numeric target was used to calculate the Waste Load Allocations as described in the Implementation Plan (see Section VIII.)

V. Source Analysis

The major source of trash in the river results from litter, which is intentionally or accidentally discarded in watershed drainage areas. Transport mechanisms include the following:

1. Storm drains: trash is deposited throughout the watershed and is carried to the various reaches of the river and its tributaries during and after significant rainstorms through storm drains.

2. Wind action: trash can also blow into the waterways directly.

3. Direct disposal: direct dumping also occurs.

Extensive research has not been done on trash generation or the precise relationship between rainfall and its deposition in waterways. However, it has been found that the amount of gross pollutants entering the stormwater system is rainfall dependent but does not necessarily depend on the source (Walker and Wong, December 1999). The amount of trash which enters the stormwater system depends on the energy available to re-mobilize and transport deposited gross pollutants on street surfaces rather than on the amount of available gross pollutants deposited on street surfaces. The exception to this finding of course would be in the event that there is zero gross pollutants deposited on the street surfaces or other drainages tributary to the storm drain. Where gross pollutants exist, a clear relationship between the gross pollutant load in the stormwater system and the magnitude of the storm event has been established. The limiting mechanism affecting the transport of gross pollutants, in the majority of cases, appears to be re-mobilization and transport processes (i.e., stormwater rates and velocities).

Several studies conclude that urban runoff is the dominant source of trash. Ballona Creek collects runoff from several partially urbanized canyons on the south slopes of the Santa

[17] This information and all of the above concerning the City of Los Angeles Enhanced Catch Basin Cleaning was found in: City of Los Angeles Department of Public Works, Bureau of Sanitation: Consent Decree Report, Enhanced Catch Basin Cleaning, April 1999. (Unpublished report.)

Monica Mountains as well as form intensely urbanized areas of West Los Angeles, Culver City, Beverly Hills, Hollywood, and parts of Central Los Angeles. The large amounts of trash conveyed by urban storm water to Ballona Creek and the Wetland is evidenced by the amount of as trash that accumulates at the base of storm drains. The amount and type of trash that is washed into the storm drain system appears to be a function of the surrounding land use.

A number of studies (Walker and Wong, 1999, Allison, 1995), have shown that commercial land-use catchments generate more pollutants than residential land use catchments, and as much as three times the amount generated from light industrial land use catchment. It is generally accepted that commercial land uses tend to contribute larger loads of gross pollutants per area compared to residential and mixed land-use areas. This is in spite of daily street sweeping in the commercial sub-catchment compared to once every two weeks in residential and mixed land use areas.

VI. Waste Load Allocations

Storm drains have been identified as a major source of trash in the Los Angeles River. The strategy for meeting the water quality objective will focus on reducing the trash discharged via municipal storm drains.

Waste Load Allocations will be assigned to the Permittees and Co-permittees of the Los Angeles County Municipal Stormwater Permit (hereinafter referred to as Permittees) and Caltrans. In addition, Waste Load Allocations may be issued to additional facilities in the future under Phase II of the US EPA Stormwater Permitting Program. Waste Load Allocations assigned under the MS4 permit and the Caltrans permit will be based on a phased reduction from the estimated current discharge (i.e., baseline) over a 10-year period until the final Waste Load Allocation (currently set at zero) is met. The baseline allocation for the MS4 Permittees and Co-permittees (referred to hereinafter as the "Permittees") will be derived from currently available data (i.e., default baseline allocations) or refined data collected during the Baseline Monitoring Program.

Upon completion of the baseline monitoring, staff shall report to the Board the results of such baseline monitoring. The Regional Board will review the final Waste Load Allocations once a reduction of 50% has been achieved. This means that the final Waste Load Allocation will be reviewed only after substantial reductions are achieved. A review of the Waste Load Allocation will be based on the findings of future studies regarding the threshold levels needed for protecting beneficial uses. The threshold level is presumed to be specific to all categories of trash.

A. Default Baseline Waste Load Allocation

The Default Baseline Waste Load Allocation for the municipal stormwater permittees is equal to 640 gallons (86 cubic feet) of uncompressed trash per square mile per year. No differentiation will be applied for different land uses in the Default Baseline Waste Load Allocation. This value is based on data provided by the City of Calabasas, as described previously. In the event that the permittees elect to rely on the Default Baseline Waste Load

Allocation, they must first establish a conversion factor translating uncompressed volume to a standardized compacted volume and/or dry weight. The final Default Baseline Waste Load Allocation, as described in compressed volume and/or dry weight, will be specified in the stormwater permit.

B. Refined Baseline Waste Load Allocations

The municipal stormwater permittees may opt to seek refinement of the Default Baseline Waste Load Allocation by implementing an approved "Baseline Monitoring Plan," as described in Section VII. The goal of the Baseline Monitoring program is to derive a representative trash generation rate for various land uses from across the Los Angeles River watershed. The Baseline Waste Load Allocation for any single city will be the sum of the products of each land use area multiplied by the Waste Load Allocation for the land use area, as shown below:

$$LA = \sum for\ each\ city\ (area\ by\ land\ uses \bullet allocations\ for\ these\ land\ uses)$$

The urban portion of the Los Angeles River watershed was divided into twelve types of land uses for every city and unincorporated area in the watershed. Similar land use classifications already exist on the land use maps used by L.A. County Department of Public Works to assess the generation of certain pollutants by land use.[18] The land use categories are: (1) high density residential[19], (2) low density residential[20], (3) commercial and services, (4) industrial, (5) public facilities[21], (6) educational institutions[22], (7) military installations, (8) transportation[23], (9) mixed urban[24], (10) open space and recreation[25], (11) agriculture[26], and

[18] The land use classification was developed by Aerial Information Systems as a modified Anderson Land Use Classification and originally included 104 categories. The land use coverages were donated for GIS library use by Southern California Association of Governments (SCAG), and show land use for 1990 and for 1993. The coverages were mapjoined into a single coverage by Teale Data Center. The Regional Board layers were aggregated from the TDC coverage into the land uses shown above.

[19] High Density Residential includes High Density Single Family Residential and all Multi Family Residential, Mobile Homes, Trailer Parks and Rural Residential High Density.

[20] Under 2 units per acre.

[21] Public facilities include government centers, police and sheriff stations, fire stations, medical health care facilities, religious facilities large enough to be distinguished on an aerial photograph, libraries, museums, community centers, public auditoriums, observatories, live indoor and outdoor theaters, convention centers which were built prior to 1990, communication facilities, and utility facilities (electrical, solid waste, liquid waste, water storage and water transfer, natural gas and petroleum).

[22] Preschools and daycare centers, elementary schools, high schools, colleges and universities, and trade schools, including police academies and fire fighting training schools.

[23] Airports, railroads, freeways and major roads (that meet the minimum mapping resolution of 2.5 acres), park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utility.

[24] Mixed commercial, industrial and/or residential, and areas under construction or vacant in 1990.

[25] Golf courses, local and regional parks and recreation, cemeteries, wildlife preserves and sanctuaries, botanical gardens, beach parks.

[26] Orchards and vineyards, nurseries, animal intensive operations, horse ranches.

(12) water[27]. Given that the minimum mapping resolution is 2.5 acres, a non-critical land use unit may not be mapped if it is less than 2.5 acres in size[28].

The appendix contains a table which shows the square mileage for each land use for each city and unincorporated areas in the watershed. Cities on the Ballona Creek watershed are Culver City, Beverly Hills, West Hollywood, parts of Santa Monica, parts of Inglewood, parts of Los Angeles, and some unincorporated areas of Los Angeles County. For cities that are only partially located on the watershed, the square mileage indicated is for the part of this city that is in the watershed only.

Land uses that are not under municipal jurisdiction, such as military installations, will be dealt with through separate permits, and will thus be monitored separately.

Each permittee will be allowed 90% of their baseline Waste Load Allocation during the first year of implementation, and the allocation will be reduced from the baseline by an average 10% through every year of implementation.

C. Baseline Waste Load Allocations for Caltrans

A Litter Management Pilot Study (LMPS)[29] was conducted to evaluate the effectiveness of several litter management practices in reducing litter that is discharged from Caltrans storm water conveyance systems. The LMPS employed four field study sites, each of which was used to test a separate BMP. Each site included three replicate testing pairs, consisting of one site designed to measure the amount of trash produced when treatment was applied, and one control with no treatment site. The LMPS averages the data collected at the control outfalls in order to obtain the annual litter loads. The average combined total loads for the three control outfalls at each site normalized by the total area of control catchments is presented in the following table, adapted from the LMPS report[30]:

Table 3. Average Combined Total Loads for Control Outfalls at 3 Litter Management Pilot Study (LMPS) Sites.

Site	Weight lbs/sq mi	Volume cu ft/sq mi
1E	10584.00	1312.97
1W	7479.36	971.73
6	7479.36	881.34
8	4374.72	404.51

[27] Open water bodies, open reservoirs larger than 5 acres, golf course ponds, lakes, estuaries, channels, detention ponds, percolation basins, flood control and debris dams.
[28] Critical land uses were mapped regardless of resolution limits. Critical land use units below 1 acre in size were mapped as 1-acre units.
[29] California Department of Transportation District 7 Litter Management Pilot Study, June 2000. This study defined litter in stormwater as "manufactured items that can be retained by ¼-inch mesh made from paper, plastic, cardboard, etc.", and "that are not of natural origin (i.e. does not include sand, soil, gravel, vegetation, etc.)" (p. 1-2).
[30] Ibid., Table 6-8.

A preliminary baseline Waste Load Allocation for weight and volume load generation for freeways is arrived at by averaging weight and volume columns. (see Table 4.)

Table 4. A Preliminary Baseline Waste Load Allocation for Weight and Volume for Freeways.

Weight lbs/sq mi	Volume cu ft/sq mi
7479.36	892.64

This is a default allocation which can be refined through baseline monitoring following the protocol previously indicated for baseline monitoring. It is to be noted that control site 1E already had one BMP in place before testing of the other BMPs, as it was cleaned monthly through an "Adopt a Highway" program.

Average Annual Daily Traffic (AADT) for all control sites in the study ranged from 216,000 to 238,000.[31] Considering AADT on Los Angeles County freeways may be close to 300,000 on some sections[32], the chosen sites, although typical freeway outfalls, are not distributed throughout the whole AADT range. As the purpose of the study was to assess the effectiveness of specific BMPs, not to assess a trash generation factor, sites were chosen with similar characteristics.

D. Baseline Waste Load Allocations for Municipal Permittees

Watershed wide default allocations for the ten-year implementation period are presented in Table 5. Using a default baseline load allocation of 86 cubic feet per square mile for the municipal permittees and 893 cubic feet per square mile for Caltrans[33], the default annual baseline Waste Load Allocation for the municipal permittees is 11,094 cubic feet (expressed as uncompressed volume) and 1,635 cubic feet for Caltrans.[34] The Waste Load Allocations represent a progressive reduction in the baseline Waste Load Allocation over a period of 10 years. The volumes shown, in cubic feet, are in uncompressed volumes, but in the event that the permittees elect to rely on the default baseline Waste Load Allocations, this unit of measure will be converted to an equivalent unit expressed in cubic yards based on a standardized compaction rate or dry weight.

[31] Ibid., Table 6-8.
[32] Information on AADT on select freeways can be found on Caltrans' website: http://www.caltrans.ca.gov/.
[33] The default allocation used here, based on the discussions mentioned above, is the same as the default allocation used for the Trash TMDL for the Los Angeles River watershed.
[34] This figure assumes Caltrans covers an area of 1.83 square miles, taking into account 329,600 linear feet of highway, 6 maintenance stations and 1 Park & Ride (Information provided by Caltrans.)

Table 5. Default Waste Load Allocations.
(Expressed as cubic feet of uncompressed trash and % reduction.)[35]

Year of Implementation[36]	Municipal Stormwater Default Waste Load Allocation	CalTrans Default Waste Load Allocation
Year One	9,985 or 90% of the baseline load	1,472 or 90% of the baseline load
Year Two	8,875 or 80% of the baseline load	1,308 or 80% of the baseline load
Year Three	7,776 or 70% of the baseline load	1,146 or 70% of the baseline load
Year Four	6,656 or 60% of the baseline load	981 or 60% of the baseline load
Year Five	5,547 or 50% of the baseline load	818 or 50% of the baseline load
Year Six	4,438 or 40% of the baseline load	654 or 40% of the baseline load
Year Seven[37]	3,328 or 30% of the baseline load	491 or 30% of the baseline load
Year Eight	2,218 or 20% of the baseline load	327 or 20% of the baseline load
Year Nine	1,110 or 10% of the baseline load	164 or 10% of the baseline load
Year Ten	0 or 0% of the baseline load	0 or 0% of the baseline load

VII. Baseline Monitoring

The goal of the Baseline Monitoring Program is to collect representative data from across the watershed that can be used to refine the default Waste Load Allocations. Two Baseline Monitoring Strategies are outlined herein. The first is the program presented in the March 17, 2000, Draft Los Angeles River Trash TMDL. The second is an Alternative Baseline Monitoring Program based on a plan presented by the Los Angeles County, Department of Public Works, in a letter dated August 30, 2000. Baseline monitoring will be required via Section 13267 of the Porter-Cologne Water Quality Control Act (hereinafter referred to as "Porter-Cologne").

A number of permittees objected to the Baseline Monitoring Plan as presented in the March 17, 2000, Draft TMDL. Most of the objections were based on the cost of employing full-capture monitoring systems across 10% of the watershed. In addition, finding a watershed that drains a single land use also was problematic. In an effort to arrive at a less costly plan that would still provide representative data sufficient for use in deriving Baseline

[35] Table has been simplified to show default watershed wide allocations for municipal permittees only.

[36] Year of implementation subsequent to the two-year baseline monitoring program.

[37] A review of the current target will be allowed once a reduction of 50% has been achieved and sustained.

Waste Load Allocations, the Los Angeles County Department of Public Works convened a committee of the municipal permittees to evaluate alternative strategies. Regional Board staff met with the committee on nine occasions to establish the minimum requirements for an Alternative Baseline Monitoring Plan and to review various strategies. The minimum requirements established were:

- The plan would provide representative data from across the watershed.
- The plan would provide data in units that were easily reproduceable and would be comparable with data to be collected during the Implementation Phase (i.e., we would be comparing apples with apples).
- The permittees agreed that Baseline Waste Load Allocations would be derived from data generated from the plan.

One issue of concern was whether representative data could be collected if rainfall was below normal during the Baseline Monitoring period. Staff has addressed this concern by specifying that the Permittees may elect to continue the Baseline Monitoring for an additional two years. However, the Implementation Schedule will not be delayed as a result of the extended Baseline Monitoring.

A. Land Use Areas to be Monitored

Monitoring data will be used to establish specific trash generation rates per land use. Thus, all monitoring will be designed according to land use. Some of the land uses will be monitored by the Los Angeles County Department of Public Works (LACDPW), possibly in association with the cities located on Ballona Creek watershed, while other land uses which are outside the jurisdiction of the municipalities, such as airports, will be monitored using similar methods by the appropriate permittees, and the resulting baseline monitoring results will then be applied as these entities are permitted under EPA Phase II Storm Water regulations. City and County streets are included in each land use as they are monitored.

The land use categories that will be monitored by the LACDPW baseline monitoring group (in order to determine land use based generation rates) are:

- High density residential,
- Low density residential,
- Commercial and services,
- Industrial, and
- Open space and recreation.

Certain land uses will be exempt from monitoring:

- public facilities,
- mixed urban,
- agriculture, and
- water.

Public facilities (except educational institutions) will not be monitored because their diversity makes it difficult to obtain a representative generation rate. Thus, their generation rate will be assumed to be the highest between residential, commercial and industrial.

Mixed urban will not be monitored, instead the generation rate for mixed urban will again be assumed to be the highest between residential, commercial and industrial.

Agricultural land uses will be exempt from monitoring because they represent such a small percentage of the total watershed. The assigned generation rate will be that of the geographically closest land use.

Water will be exempt from monitoring because it is not considered a generator of trash.

Transportation land use, as defined by the Regional Board, includes airports, railroads, freeways and major roads (that meet the minimum mapping resolution of 2.5 acres), park and ride lots, bus terminals and yards, truck terminals, harbor facilities, mixed transportation and mixed transportation and utilities. Of that land use, what is under Caltrans' jurisdiction will be covered under Caltrans' permit. Caltrans will be required to submit a monitoring plan for that land use, and will be assigned a Waste Load Allocation as well. Major boulevards that are currently under Caltrans' jurisdiction, but are affected by trash generated on municipal sites, such as Santa Monica Boulevard, will be addressed by the cities concerned. Baseline monitoring for airports will be done separately and airports will be permitted separately.

Under EPA Phase II of the Storm Water Regulations, separate permits will be written for state and federal facilities. Thus, public educational institutions and military installations will be covered under separate permits under Phase II. Again, these entities covered under separate permits will have to conduct baseline monitoring as well in order to arrive at a trash generation factor. Private education facilities, however, are under cities' jurisdiction and are part of the city. Thus, private educational institutions will be assigned the rate of the geographically closest land use.

Each of the permittees and co-permittees are responsible for monitoring land uses within their jurisdiction. However, monitoring responsibilities may be delegated to a third-party monitoring entity such as LACDPW, or other permittees or co-permittees as appropriate.

B. General Baseline Monitoring Plan Requirements

The following general requirements will apply during Baseline Monitoring, regardless of the monitoring plan employed.

- Monitoring Plan. The permittee will submit a monitoring plan with the proposed monitoring sites and at least two alternate monitoring locations for each site. The plan must include maps of the drainage and storm drain data for each proposed and alternate monitoring location. The monitoring plan(s) will be submitted to the

Regional Board within 30 days after receipt of the Executive Officer's letter requesting such a plan. Such a request is authorized pursuant to Section 13267 of the Porter-Cologne. The Regional Board's Executive Officer will have full authority to review the monitoring plan(s), to modify the plan, to select among the alternate monitoring sites, and to approve or disapprove the plan(s).

- Jurisdiction. While each city, and Los Angeles County for non-incorporated areas, will receive an allocation based on the trash generation factors for its land uses, the areas not regulated under municipal or industrial storm water permits may be permitted separately. For this reason, each city must provide the Regional Board with a list of entities located within their municipal boundaries that are outside of their jurisdiction including state or federal lands and facilities, within 120 days of the effective date of this TMDL. The Regional Board will review the lists of state and federal entities and issue permits as warranted.

- Data Collection. Baseline data will be collected over a period of at least two years. Although the amount of trash deposited into the waterways through the conveyance of a storm drain is dependent on rainfall patterns, and larger amounts of trash are typically deposited into the channels as a result of the first storm of the season, monitoring will include dates in both the rainy season and the dry season. The Los Angeles County Department of Public Works defines the rainy season as spanning from October 15 to April 15. In the event that precipitation during the two years of Baseline Monitoring is below average, the permittees may elect to extend the monitoring plan for another two years. However, an extension of the Baseline Monitoring program, shall not cause a delay in the commencement of the Implementation Plan as described in Section VIII.

- Unit of Measure. Data will be reported in a single unit of measure that is reproduceable and measures the amount of trash, irrespective of water content (e.g., compacted volume based on a standardized compaction rate, dry weight, etc.). The permittees may select the unit, but all permittees must use the same unit of measure. The unit of measure used during Baseline Monitoring also will be used during Implementation for determining compliance with Waste Load Allocations.

- Sampling Frequency. During wet weather, all sampling devices will be emptied within 72 hours of every precipitation event of 0.25 inch. During dry weather, sampling devices will be emptied and analyzed every three months in the absence of precipitation.

- Vegetation. The permittees may exclude vegetation from their reported discharge except where there is evidence that the vegetation is the result of the illegal discharge of yard waste. However, all monitoring data must be reported uniformly (either with or without vegetation). If the permittees include vegetation in the discharges reported during Baseline Monitoring, they will be obligated to include natural vegetation in their reports of discharge during Implementation.

- Disposal of Collected Trash. Trash captured during the monitoring program must be disposed of in accordance with all applicable laws and regulations.

A summary of the requirements and milestone dates related to the Baseline Monitoring Program are summarized in Table 6.

Table 6. Baseline Monitoring Plan Due Dates.

Due Date	Requirement
30 days after receipt of the Executive Officer's request as authorized by Section 13267 of Porter-Cologne.	Submit baseline monitoring plan(s).
120 days after receipt of the Executive Officer's request as authorized by Section 13267 of Porter-Cologne.	List facilities that are outside of the permittee's jurisdiction but drain to a portion of the the permittee's storm drain system, which discharges to Ballona Creek.
First 2 years after approval of this amendment; to be extended to 4 years at the option of the Permittees	Collect Baseline Data
72 hours after each rain event	Clean out and measure trash retained
Every 3 months during dry weather	Clean out and measure trash retained

C. Baseline Monitoring Plan

During the first year of baseline monitoring, permittees or groups thereof will capture and quantify trash from an area of no less than 10% of the total land area over which they have jurisdiction and that drains to Ballona Creek. The monitoring areas will also represent 10% of every land use the group has jurisdiction over. If storm drain configuration vs. land use make the representation of 10% of a land use unfeasible, the permittees or groups thereof can choose areas that their land uses as representatively as possible, as long as the extent of the surface being monitored represents 10%.

For the purposes of developing monitoring data for the establishment of Waste Load Allocations, the Regional Board will accept "full capture" as defined in Section II herein. This level of treatment will capture 100% of the trash mobilized by a one-year storm and nearly all of the trash generated from a more intense storm. This is because most pollutants occur in the first flush of the runoff and would thus be intercepted by a structural treatment device prior to the crest of the runoff flow resulting from a more intense storm.

D. Alternative Baseline Monitoring Plan

For each land use monitored, a minimum of ten representative sites will be sampled. For each sampling site, a minimum of five catch basins will be fitted with inserts, for a total of not less than 50 catch basin inserts per land use monitored. The existing litter removal practices that are employed by the cities will remain in place, so that baseline monitoring will evaluate how much trash is washed into the system under current practices.

In addition, the Regional Board will require a structural, full capture device downstream of at least one sampling site for each land use monitored. For this sampling site, all of the catch basins that are upstream of the full capture-monitoring device must be fitted with inserts. This configuration will provide information on the relative effectiveness of the catch basin inserts as opposed to the full capture systems in varying land uses and under varying weather conditions.

Ballona Creek watershed permittees have the option to pool their resources with Los Angeles River watershed permittees into a single baseline monitoring program. With this option, a minimum of ten representative sites per land use would be sampled throughout the two watersheds, and data obtained from the Los Angeles River watershed could be used to document generation rates in the Ballona Creek watershed, and vice versa. If all permittees choose to share the same monitoring program, the same generation rate will be used to determine the Baseline Waste Load Allocation for all permittees in both the Los Angeles River and the Ballona Creek watershed.

VIII. Implementation and Compliance

As required by the Clean Water Act, discharges of pollutants to surface waters from storm water are prohibited, unless the discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. Discharge of trash to Ballona Creek will be regulated via the Municipal NPDES Storm Water Permits and the Caltrans stormwater permit. In addition, USEPA Phase II stormwater permits, general permits, and industrial permits may also be used to regulate discharges of trash to the river.

In June 1990, the first Municipal NPDES Storm Water Permit was issued jointly to Los Angeles County and 84 cities as co-permittees. A separate NPDES Storm Water Permit was issued to the City of Long Beach on June 30, 1999. Storm water municipal permits will be one of the implementation tools of this Trash TMDL, and will include the allocations as effluent limits. Thus, future storm water permits will be modified to incorporate the Waste Load Allocations and to address monitoring and implementation of this TMDL.

A. Compliance Determination

During the Baseline Monitoring Program that occurs prior to the commencement of the Implementation Phase, cities will be deemed in compliance with the Waste Load Allocations provided that all of the trash collected during the monitoring program is disposed of in compliance with all applicable regulations. Thereafter, compliance with the Waste Load Allocations will be calculated as a running three-year average. Other measures of compliance will relate to the implementation and reporting as required under the approved Baseline Monitoring Program.

The first compliance point during the Implementation Phase will be September 30, 2006. Compliance will be evaluated based on the total load discharged to the river during the period October 1, 2003 through September 30, 2006, divided by three. Compliance thereafter will be evaluated at the end of each successive storm season and will be based on a rolling three-year average (see Table 7). This method will provide allowances for variability due to

rainfall. Exceedance of the 3-year rolling average discharge will subject the permittee to enforcement action. A summary of the schedule for determining compliance with the Waste Load Allocations is presented in Table 7.

The final waste load allocation will be considered complied with when the Executive Officer finds that:

Structural devices or systems, and/or institutional controls have removed effectively 100% of the trash from the storm drain system discharge to the Ballona Creek or its tributaries.

Table 7. Compliance Schedule.
(Default waste load allocations expressed as cubic feet of uncompressed trash and % reduction.)

Year	Baseline Monitoring/ Implementation	Waste Load Allocation	Compliance Point
1 10/1/01-- 9/30/02	Baseline Monitoring	No allocation specified. Trash will be reduced by levels collected during the baseline monitoring program.	Achieved through timely compliance with baseline monitoring program.
2 10/1/02-- 9/30/03	Baseline Monitoring	No allocation specified. Trash will be reduced by levels collected during the baseline monitoring program.	Achieved through timely compliance with baseline monitoring program.
3 10/1/03-- 9/30/04	Baseline Monitoring (optional)/ Implementation: Year 1	90% (9,985 for the Municipal permittees, 1,472 for Caltrans)	No compliance point (target of 90%)
4 10/1/04-- 9/30/05	Baseline Monitoring (optional)/ Implementation: Year 2	80% (8,875 for the Municipal permittees, 1,308 for Caltrans)	No compliance point (target of 80%)
5 10/1/05-- 9/30/06	Implementation: Year 3	70% (7,776 for the Municipal permittees; 1,146 for Caltrans)	Compliance is 80% of the baseline load calculated as a rolling 3-year annual average (8,875 for the Municipal permittees; 1,308 for Caltrans).
6 10/1/06-- 9/30/07	Implementation: Year 4	60% (6,656 for the Municipal permittees; 981 for Caltrans)	70% of the baseline load the baseline load calculated as a rolling 3-year annual average (7,776 for the Municipal permittees; 1,146 for Caltrans).
7 10/1/07-- 9/30/08	Implementation: Year 5[38]	50% (5,547 for the Municipal permittees; 818 for Caltrans)	60% of the baseline load calculated as a rolling 3-year annual average (6,656 for the Municipal permittees; 981 for Caltrans)
8 10/1/08-- 9/30/09	Implementation: Year 6	40% (4,438 for the Municipal permittees; 654 for Caltrans)	50% of the baseline load calculated as a rolling 3-year annual average (5,547 for the Municipal permittees; 818 for Caltrans).
9 10/1/09-- 9/30/10	Implementation: Year 7	30% (3,328 for the Municipal permittees; 491 for Caltrans)	40% of the baseline load calculated as a rolling 3-year annual average (4,438 for the Municipal permittees; 654 for Caltrans).
10 10/1/10-- 9/30/11	Implementation: Year 8	20% (2,218 for the Municipal permittees; 327 for Caltrans)	30% of the baseline load calculated as a rolling 3-year annual average (3,328 for the Municipal permittees; 491 for Caltrans).
11 10/1/11-- 9/30/12	Implementation: Year 9	10% (1,110 for the Municipal permittees; 164 for Caltrans)	20% of the baseline load calculated as a rolling 3-year annual average (2,218 for the Municipal permittees; 327 for Caltrans).
12 10/1/12-- 9/30/13	Implementation: Year 10	0 or 0 % of the baseline load.	10% of the baseline load calculated as a rolling 3-year annual average (1,110 for the Municipal permittees; 164 for Caltrans).
13 10/1/13-- 9/30/14	Implementation: Year 11	0 or 0 % of the baseline load .	3.3 % of the baseline load calculated as a rolling 3-year annual average (366 for the Municipal permittees, 54 for Caltrans)
14 10/1/14-- 9/30/15	Implementation: Year 12	0 or 0 % of the baseline.	0 or 0 % of the baseline.

[38] A review of the current target will be allowed once a reduction of 50% has been achieved and sustained.

B. Compliance Strategies

Permittees may employ a variety of strategies to meet the progressive reductions in their Waste Load Allocations. These strategies may be broadly classified as either:

- End-of-pipe full capture structural controls or
- Partial capture control systems and/or
- Institutional controls.

A permittee could comply with the successive reduction in Waste Load Allocations by installing full capture devices progressively throughout the watershed until all of the outlets to Ballona Creek system are covered. This approach may be best suited for open space areas, where low levels of trash may accumulate over large vegetated drainage areas. However, in more urban settings, institutional controls including enforcement of litter laws and more frequent street sweeping may be preferred.

It is to be noted that ordinances that prohibit litter are already in place in most cities. For example, the Los Angeles City Code of Regulations recognizes that trash becomes a pollutant in the storm drain system when exposed to storm water or any runoff and prohibits the disposal of trash on public land:

> No person shall throw, deposit, leave, cause or permit to be thrown, deposited, placed, or left, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, gutter, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City so that such materials, when exposed to storm water or any runoff, become a pollutant in the storm drain system. (City Code of Regulations, §64.70.02.C.1(a).)

Institutional controls provide several advantages over structural full capture systems. Foremost, institutional controls offer other societal benefits associated with reducing litter in our city streets, parks and other public areas. The capital investment required to implement institutional controls is generally less than for full-capture systems. However, the labor costs associated with institutional controls may be higher, and institutional controls may be more costly in the long-term.

There have been a number of discussions as to how permittees may best implement the gradual reductions required by this Trash TMDL, and as to the types of devices or best management practices they should elect. The permittees will be free to implement trash reduction in any manner that they choose.

A discussion of the means for determining compliance for various implementation strategies is presented in the following subsections.

1. Full Capture Treatment Systems

The amount of trash discharged to the river by an area serviced by a full-capture device or system will be considered to be in compliance with the final Waste Load Allocation for the drainage area, provided that the full capture systems are adequately sized, maintained and maintenance records are available for inspection by the Regional Board. Compliance with the final Waste Load Allocation will be assumed, for full capture systems with a design treatment capacity of not less than the peak flow resulting from a one-year storm (determined to be 0.6 inch of rain per hour and assumed to be similar for the Ballona Creek watershed).

The permittees may employ devices or systems other than the vortex separation system to meet the final Waste Load Allocations. However, such systems must be approved by the Executive Officer to attain removal credit. Before approving a full-capture system, the Executive Officer must make the following findings:

- The device or system will capture all particles retained by a 5 mm mesh screen from all runoff generated from a one-year storm (determined to be 0.6 inch per hour) and

- The device or system is designed to prevent plugging or blockage of the screening module.

2. Partial Capture Treatment Systems and Institutional Controls

Measuring the effectiveness of partial-capture systems and institutional controls is more complicated. The discharge resulting from an area addressed by partial capture and/or institutional controls will be estimated using a mass balance approach, based on the daily generation rate (DGR) for the specific area. [Note: The DGR should not be confused with the trash generation rates obtained during baseline monitoring. The baseline monitoring program is designed to obtain "typical" trash generation rates for a given land use. Those values are then used to calculate a Permittee's baseline load allocation. The DGR is the average amount of trash deposited within a specified drainage area over a 24-hour period. The DGR will be used in a mass balance equation to estimate the amount of trash discharged during a rain event.] (See Example 1.)

Annual re-calculation of the DGR will serve as a measure of the effectiveness of source reduction measures including public education, enforcement of litter laws, etc. Source reduction measures will be accredited based on an annual recalculation of the DGR to allow for progressive improvement and/or to account for backsliding.

The DGR will be determined from direct measurement of trash deposited in the drainage area during the month of July[39], and re-calculated every year thereafter. July was assumed to be a month characterized by high outdoor activity when trash is most likely to be deposited on the ground. The recommended method for measuring trash during this time

[39] Provided no special events are schedule that may affect the representativity of that month.

period is to close the catch basins in a manner that prevents trash from being swept into the catch basins and then to collect trash on the ground via street sweeping, manual pickup, or other comparable means. The DGR will be calculated as the total amount of trash collected during the month divided by 31 (the number of days in the month).

Accounting of DGR and trash removal via street sweeping, catch basin clean outs, etc. will be tracked in a central spreadsheet or database to facilitate the calculation of discharge for each rain event. The spreadsheet and/or database will be available to the Regional Board for inspection during normal working hours. The database/spreadsheet system will allow for the computation of calculated discharges and can be coordinated with enforcement. This database will be developed by cities or groups of cities.

The Executive Officer may approve alternative compliance monitoring programs other than those described above, upon finding that the program will provide a scientifically-based estimate of the amount of trash discharged from the storm drain system.

3. Examples of Implementation Strategies

Two example control strategies for municipal stormwater discharges are described in this section.

Example 1.

A permittee installs catch basin inserts and "dry weather trash door" devices of the type that maintains the catch basin shut during dry weather, and implements regular street sweeping. After each storm of 0.25 inch or greater, the catch basin inserts are emptied. In this case, the DGR was calculated during the month of July as follows:[40]

DGR = (Volume of trash collected via street sweeping during the month of July/31 days.)

The stormwater discharge for a given rain event then would be calculated by multiplying the number of days since the last street sweeping by the DGR and subtracting the volume of trash recovered in the catch basin inserts.

Stormwater Discharge = [(Days since last street sweeping) (DGR)] –
[Volume of trash recovered from catch basin inserts]

Example 2.

City X is comprised of three land use areas (Land Uses A, B, and C). The city has adopted an implementation strategy using a combination of full capture structural and institutional controls. As of year five, the city has installed full capture structural controls in Area A and institutional controls in Area B. City X has not yet taken any action to control

[40] In the event that trash generation rates differ between weekday and weekends, a distinction in the DGRs may be warranted.

trash in Area C. The watershed-wide baseline Waste Load Allocation have been established at 100 lbs per square mile for Land Uses A and B, and at 200 lbs per square mile for land use C. The full capture treatment system is assumed to meet the final Waste Load Allocation. The city's mass balance calculations show that 100 lbs of trash was discharged from Land Use Area B. The discharge from Land Use Area C is assumed to be the base load allocation since no controls were implemented and the daily generation rate has not been established. As shown in Figure D, City X's discharge for the year was 1,100 lbs, and the 3-year rolling average discharge was less than the 5-Year Waste Load Allocation. Therefore the city was found to be in compliance with its discharge loading unit.

Land Use A: 10 sq miles treated by a full capture system Baseline Waste Load Allocation: 100 lbs/sq mi/year	Land Use B: 5 sq miles treated via institutional controls and partial capture Baseline Waste Load Allocation: 100 lbs/sq mi/year
	Land Use C: 5 sq miles - No treatment applied Baseline Waste Load Allocation: 200 lbs/sq mi/year

Baseline Waste Load Allocation for each land use in City X:
A=(100 lbs/sq mi/yr) (10 sq mi)=1000 lbs
B=(100 lbs/sq mi/yr) (5 sq mi)=500 lbs
C=(200 lbs/sq mi/yr) (5 sq mi)=1000 lbs
Total baseline Waste Load Allocation = 2,500 lbs
Year 5 Waste Load Allocation = 2,000 lbs*
*An 80% reduction based on a 3-year rolling average.

Previous Years' Discharge:
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs

Trash Discharge for Year 5:
A=0
B=100 lbs (Determined by mass balance)
C=1,000 lbs (No reduction)
Total Discharge (Year 5) = 1,100 lbs

Three-Year Rolling Average Discharge
Year 3 = 2,400 lbs
Year 4 = 2,000 lbs
Year 5 = 1,100 lbs
3-year rolling average discharge = 1,833 lbs

Compliance is achieved: Discharge (1,833 lbs) < Waste Load Allocation (2,000 lbs).

Figure C. Example 2, City X After Year 5.

A summary of implementation strategies and compliance assurance methods is provided in Table 8.

Table 8. Summary of Possible Trash Reduction Implementation Measures.

Treatment Applied	Measure of Effectiveness	Compliance Determination
Source Control: Public education, enforcement of litter laws, container redemption programs, etc.	Daily Generation Rate: Amount of trash collected via street sweeping and or from catch basin inserts divided by the number of days provides a measure of source control measure effectiveness	DGR used in mass balance calculation of discharge: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts]
Partial Capture: (Catch basin inserts, trash excluder doors, etc.)	Mass Balance: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts] OR Downstream Monitoring w/ Full Capture System	Discharge based on mass balance calculation: Discharge = [DGR (x) Days since last street sweeping] (-) [Catch basin cleanouts] OR Monitoring Results
Full Capture: Capture 100% of particles retained by a 5 mm mesh screen. from flow resulting from 0.6 inches rain/hr	Effectiveness verified by literature	Final Waste Load Allocation Achieved: Provided system is adequately sized, maintained and maintenance records are available for Regional Board inspection

IX. Cost Considerations

The Porter-Cologne Section 13241(d), requires staff to "consider costs" associated with the establishment of water quality objectives. The TMDL does not establish water quality objectives, but is merely a plan for achieving the existing water quality objective. Therefore cost considerations required in Section 13241 are not required for this TMDL.

The purpose of this cost analysis is to provide the Regional Board with information concerning the potential cost of implementing this TMDL and to addresses concerns about costs that have been raised by stakeholders. This section takes into account a reasonable range of economic factors in fulfillment of the applicable provisions of the California Environmental Quality Act (Public Resources Code Section 21159.)

An evaluation of the costs of implementing this Trash TMDL amounts to evaluating the costs of preventing trash from getting from the storm drains to the river. This brief report gives a summary overview of the costs associated with the most likely ways the permittees will achieve the required reduction in discharges to the storm drain system. Such an analysis would be incomplete if it failed to consider the existing cost that presently is transferred to "innocent" downstream communities. Approximately 1,620 tons of litter are estimated to be discharged to Ballona Creek annually, requiring costly removal measures. In addition there is an unquantified cost to aquatic life within the River and the Ocean.

The Regional Board has some information about various facets of the costs of preventing trash from getting into the storm drains. However, exact information on infrastructure currently in place and current structural projects being undertaken is currently not available to the Board. Furthermore, lack of complete information on existing costs precludes a comparison between costs of compliance with existing costs.

A. Current Cost of Trash Clean-Ups

Cleaning up the river, its tributaries and the beaches is a costly endeavor. In Los Angeles County, the Los Angeles County Department of Public Works contracts out the cleaning of over 75,000 catchments (catch basins) for a total cost of slightly over $1 million per year, billed to 42 municipalities. Each catch basin is cleaned once a year before the rainy season, except for 1,700 priority catch basins that fill faster and have to be cleaned out more frequently.

Over 4,000 tons of trash are collected from Los Angeles County beaches annually, at a cost of $3.6 million to Santa Monica Bay communities in fiscal year 1988-89 alone. In 1994 the annual cost to clean the 31 miles of beaches (19 beaches) along Los Angeles County was $4,157,388.

B. Cost of Implementing Trash TMDL

The cost of implementing this TMDL will range widely, depending on the method that the Permittees select to meet the Waste Load Allocations. Arguably, enforcement of existing litter ordinances could be used to achieve the final Waste Load Allocations at minimal or no additional cost. The most costly approach in the short-term is the installation of full-capture structural treatment devices on all discharges to the river. However, in the long term this approach would result in lower labor costs and may be less expensive than some other approaches.

Most of the information presented herein consists of catch basin inserts, structural vortex separation devices and end of pipe nets. We are considering the costs associated with preventing the disposal of trash into the storm drain system over the whole watershed. For all calculations, the urbanized portions of Ballona Creek watershed is assumed to span an area of 129 square miles.

Regardless of the method(s) used, costs associated with the gradual decrease of the amount of trash in the waterways, and the maintenance of Ballona Creek and its tributaries free of trash include monitoring and implementation costs. Any device chosen for monitoring trash

or removing trash from storm drain, regardless of its installation costs, will also be associated with labor costs.

We are looking at several methods separately, from retrofitting all the catch basins in the urbanized portion of the watershed, to using solely structural full capture methods.

1. Catch Basin Inserts

At a cost of around $800 per insert, catch basin inserts are the least expensive structural treatment device in the short term. However, because they are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping. We assumed that approximately 33,710 catch basins would have to be retrofitted with inserts to cover 129 square miles of the watershed. A summary of estimated costs for using catch basin inserts across the entire watershed is provided in Table 9.

Table 9. Costs of retrofitting the urban portion of the watershed with catch basin inserts. (amounts in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operations & Maintenance costs (yearly)	1.3	2.5	3.8	5.0	6.3	7.5	8.8	10.0	11.3	12.5	12.5	12.5
Capital costs (yearly)	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	0.0	0.0
Costs per year (servicing + capital costs)	3.8	5.0	6.3	7.5	8.8	10.0	11.3	12.5	13.8	15.0	12.5	12.5

The total capital costs required for retrofitting the whole watershed would be $25 million, while the yearly maintenance costs after full implementation would be $12.5 million.

2. Full Capture Vortex Separation Systems (VSS)

Permanent structural devices can be used to trap gross pollutants for monitoring purposes as well as implementation. Among those "litter control devices" are structural vortex separation systems (VSS), floating debris traps, end-of-pipe nets and trash racks. VSS units appear to be among the best alternatives to evaluate or remove the amount of trash generated throughout a particular drainage area.

An ideal way to capture trash deposited into a stormdrain system would be to install a VSS unit. This device diverts the incoming flow of stormwater and pollutants into a pollutant separation and containment chamber. Solids within the separation chamber are kept in continuous motion, and are prevented from blocking the screen so that water can pass through the screen and flow downstream. This is a permanent device that can be retrofitted for oil separation as well. Studies have shown that VSS systems remove virtually all of the trash contained in the treated water. The cost of installing a VSS is assumed to be high, so limited funds will place a cap on the number of units which can be installed during any single fiscal year.

Table 10 shows estimated costs associated with retrofitting the watershed with low capacity vortex separation systems progressively over ten years.

Table 10. Costs Associated with Low Capacity Vortex Gross Pollutant Separation Systems.
(amounts rounded in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operations & Maintenance costs (yearly)	3.3	6.6	9.9	13.2	16.5	19.8	23.1	26.4	29.7	33.0	33.0	33.0
Capital costs (yearly)	21.1	21.1	21.1	21.1	21.1	21.1	21.1	21.1	21.1	21.1	0.0	0.0
Costs per year (servicing + capital costs)	24.4	27.7	31.0	34.3	37.6	40.9	44.3	47.6	50.9	54.2	33.0	33.0

Similarly, Table 11 provides estimates of costs associated with the installation of large capacity VSS systems.

Table 11. Costs Associated with Large Capacity Vortex Gross Pollutant Separation Systems.
(amounts in millions)

Number of years into the program	1	2	3	4	5	6	7	8	9	10	11	12
Operations & Maintenance costs (yearly)	0.2	0.3	0.5	0.7	0.8	1.0	1.2	1.3	1.5	1.6	1.7	1.7
Capital costs (yearly)	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	0.0	0.0
Costs per year (servicing + capital costs)	7.6	7.7	7.9	8.1	8.3	8.4	8.6	8.8	8.9	9.0	1.7	1.7

As shown in Table 12, outfitting a large drainage with a number of large VSS systems may be less costly than using a larger number of small VSS systems. Maintenance costs decrease dramatically as the size of the system increases. Topographical and geotechnical considerations also should come into play when choosing VSS systems or other structural devices.

Table 12. Costs Associated with VSS.

Capacity	Acres (average)	Number of devices needed on urban portion of watershed	Capital costs	Yearly costs for servicing all devices
1 to 2 cfs	5	16,700	210	33
6 to 8 cfs	30	2,800	120	5.5
19 to 24 cfs	100	800	74	1.7

For this table, we have assumed the cost of yearly servicing of a VSS unit to be $2000 per year.

3. End of Pipe Nets

"Release nets" are a relatively economical way to monitor trash loads from municipal drainage systems. However, in general they can only be used to monitor or intercept trash at the end of a pipe and are considered to be partial capture systems, as the nets are usually sized at a 1/2" to 1" mesh. These nets are attached to the end of pipe systems. The nets remain in place on the end of the drains until water levels upstream of the net rise sufficiently to release a catch that holds the net in place. The water level may rise from either the bag being too full to allow sufficient water to pass, or from a disturbance during very high flows. When the nets release they are attached to the side of the pipe by a steel cable and as they are washed downstream (a yard or so) are tethered off so that no pollutants from within the bags are washed out.

Preliminary observations suggest that the nets rarely fill sufficiently to cause the bags to release. And therefore, if they are cleaned after a storm event, the entire quantity of material is captured and can be measured for monitoring purposes using two bags per trap. This makes it easy to replace the full or partially full bag with an empty one, so that the first bag can be taken to a laboratory for analysis without manual handling of the material it contains.

The net are valid devices because of the ease of maintenance and also because the devices can be relocated after a set period at one location (provided the pipe diameters are the same). With limited funding, installation could be spread over several land uses and lead to valuable monitoring results.

Because the devices require attachment to the end of a pipe, this can severely reduce the number of locations within a drainage system that can be monitored. In addition, these nets cannot be installed on very large channels (7 feet in diameter is the maximum), while the largest outlets into Ballona Creek are 10 feet in diameter. Thus costs shown in Table 13 are given per pipe, and no drainage coverage is given.

Table 13. Sample Costs for End of Pipe Nets.

Pipe Size	Release nets (cost estimates)
End of 3 ft pipe	$10,000
End of 4 ft pipe	$15,000
End of 5 ft pipe	$20,000
In 3 ft pipe network	$40,000
In 4 ft pipe network	$60,000
In 5 ft pipe network	$80,000

4. Cost Comparison

A comparison of costs between strategies based on catch basin inserts (CBIs), low capacity VSS, high capacity VSS systems, and enforcement of litter laws is presented in Table 14.

Table 14. Cost Comparison (amounts in millions)[41]

	CBI Only	Low capacity VSS units	Large capacity VSS units	Enforcement of Litter Laws
Cumulative capital over 10 years	25.0	211.4	74.3	<1
Cumulative maintenance & capital costs after 10 years	93.9	393.0	83.4	<1
Annual servicing costs after full implementation	12.5	33.0	1.7	<1

Trash abatement in the Ballona Creek system may be expensive; the costs will differ depending on the options selected by the permittees.

[41] Revenues from fines assessed to offset increased law enforcement cost. The cost of a database system used to calculate trash discharges estimated to be less than $250,000.

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Appendix I

This table shows the square mileage for "high density residential", "low density residential", "commercial and services", "industrial", "public facilities", "educational institutions", "military institutions", "transportation and utilities", "mixed urban", "open space and recreation", "agriculture" and "water" land uses for every city and incorporated areas in the watershed. The "water" land use of water is not in itself a source of trash, and will therefore not receive an allocation. For cities that are only partially located on the watershed, the square mileage indicated is for the portion located in the watershed.

SQUARE MILEAGE ESTIMATED FOR EACH LAND USE FOR CITIES IN THE WATERSHED, AND FOR UNINCORPORATED AREAS.

City	No Data Available	High Density Residential	Low Density Residential	Commercial	Industrial	Public Facilities	Educational Institutions	Military Institutions	Transportation	Mixed Urban	Open Space & Recreation	Agriculture	Water	Total
Beverly Hills	0.00	2.33	2.17	0.61	0.00	0.04	0.09	0.00	0.00	0.01	0.35	0.00	0.00	5.60
Culver City	0.01	2.49	0.02	0.97	0.66	0.07	0.13	0.00	0.16	0.09	0.32	0.00	0.12	5.04
Inglewood	0.02	1.86	0.00	0.32	0.22	0.09	0.07	0.01	0.13	0.02	0.24	0.00	0.00	2.98
Los Angeles	0.39	61.46	2.27	11.22	3.53	1.57	3.33	0.00	2.13	1.46	19.05	0.06	0.69	107.16
Los Angeles County	0.01	2.64	0.00	0.32	1.33	0.63	0.19	0.01	0.08	0.07	1.51	0.00	0.01	6.80
Santa Monica	0.00	0.25	0.00	0.03	0.06	0.01	0.00	0.00	0.03	0.00	0.00	0.00	0.00	0.38
West Hollywood	0.02	1.27	0.01	0.45	0.04	0.01	0.01	0.00	0.01	0.00	0.02	0.00	0.00	1.84
Totals	0.45	72.30	4.47	13.92	5.84	2.42	3.82	0.02	2.54	1.65	21.49	0.06	0.82	129.80

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Staff Report Supporting Approval of TMDLs:
Los Angeles River Watershed, California TMDLs for Trash
July 30, 2002

Background

The Los Angeles Regional Water Quality Control Board (Regional Board) and California Water Resources Control Board (State Board) listed the Los Angeles River, several tributaries to the River, and several lakes in the watershed as water quality limited due to trash in California's 1998 Clean Water Act Section 303(d) list. Consistent with the requirements of Clean Water Act Section 303(d)(1), the Regional Board staff developed the TMDLs for these listed waters and one additional segment (Los Angeles River estuary) which the State later determined to be impaired by trash. These TMDLs were adopted by the Regional Board and the State Board on September 19, 2001 and February 19, 2002, respectively. Because the State of California was unable to complete adoption of these TMDLs by the March 22, 2002 consent decree deadline specified in *Heal the Bay, et al. v. Browner,* Northern District of California, C 98-4825 SBA, (March 22, 1999), EPA established TMDLs for trash on March 19, 2002 in order to fulfill its obligations under the decree. The decree required EPA to establish these TMDLs if the State failed to adopt and submit the TMDLs in time to meet the deadline set in the decree. Because the State did not adopt and submit final TMDLs in time to meet the decree schedule, EPA was obliged to establish them at that time. EPA's TMDLs were based largely on the TMDLs for trash adopted by the Regional Board.

California adopted and submitted for EPA approval TMDLs for trash for the Los Angeles River Watershed on July 15, 2002. The specific waters covered by this action include:

Los Angeles River Reaches 1, 2, 3, 4, and 5;
Los Angeles River Estuary;
Tujunga Wash (Hansen Dam to Los Angeles River);
Burbank Western Channel;
Verdugo Wash Reaches 1 and 2;
Arroyo Seco Reaches 1 and 2;
Rio Hondo Reach 1;
Peck Road Lake;
Echo Park Lake; and
Lincoln Park Lake.

EPA is approving these TMDLs because they meet the requirements of Clean Water Act Section 303(d) and federal regulations at 40 CFR 130.2 and 130.7. EPA finds that the State's identification of the Los Angeles River Estuary as a water quality limited segment needing a TMDL is appropriate and consistent with the requirements of Section 303(d) and 40 CFR 130.7.

TMDL Review

EPA reviewed the State TMDL submittal package to ensure that all required TMDL elements have been adequately addressed. EPA's review is presented in the attached checklist, which determines that all required TMDL elements and an adequate level of technical justification for each element are included.

The TMDL submittal for Los Angeles River watershed includes TMDLs for several water body segments that were listed due to trash impairment on the 1998 Section 303(d) list. In addition, the State adopted a trash TMDL for the Los Angeles River estuary. The estuary was not listed in 1998. However, the State determined that based on information gathered during the TMDL development process, the estuary is impaired due to trash. The State indicated that the Los Angeles River estuary would have been included in the 1998 list due to trash if the evidence of impairment had been available at the time of the listing (see Staff Report, p. 16 and letter dated July 29, 2002). EPA has reviewed the documentation submitted by the State and has concluded that identifying the estuary as water quality limited is consistent with the requirements of 40 C.F.R. 130.7.

In addition, the State's TMDLs include wasteload allocations for all urban stormwater discharges in the urbanized portion of the Los Angeles River watershed. These wasteload allocations cover stormwater discharges directly into the segments for which TMDLs are adopted as well as stormwater discharges to segments that are tributary to TMDL segments. The State's rationale for this wasteload allocation approach is that (1) trash discharges from all urban stormwater outlets in the Los Angeles River watershed flow downstream and contribute to impairment in the segments for which TMDLs were adopted, and (2) trash discharges from all stormwater outlets to waters tributary to TMDL waters need to be controlled in order to meet the TMDLs and associated water quality standards (letter dated July 29, 2002). Moreover, the information compiled by the Regional Board indicates that most tributary streams are themselves impaired due to trash (see Staff Report, pp. 12, 17 and letter dated July 29, 2002). EPA concludes that this approach to setting wasteload allocations is permissible because the State has made a reasonable finding that it would be infeasible to meet the TMDLs without including all of the adopted wasteload allocations. Moreover, the State is authorized to adopt this approach because of the requirement in Clean Water Act Section 303(d)(1)(C) that TMDLs be established at levels necessary to implement applicable water quality standards. Absent allocations to upstream sources, the State would lack the assurance that the TMDL for downstream listed waters would result in the attainment of water quality standards.

TMDL Checklist

State: California
Pollutant(s): trash/litter

Water bodies: Los Angeles River Watershed
Date of State Submission: July 15, 2002; July 16, 2002; July 29, 2002
EPA Reviewers: Sharon Lin and David Smith

Review Criteria	Comments
1. Submittal Letter: Letter indicates final TMDL(s) for specific water(s)/pollutant(s) were adopted by state and submitted to EPA for approval under 303(d).	Letters dated July 15, 2002, July 16, 2002, and July 29, 2002. TMDLs were adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) through resolution 01-013 on September 19, 2001, and by the State Water Resources Control Board (State Board) through resolution 2002-0038 on February 19, 2002. The TMDL was approved by the State Office of Administrative Law on July 16, 2002. The State adopted trash TMDLs for each segment within the Los Angeles River watershed listed on the 1998 Section 303(d) list for trash (Staff report, p. 12 and letter dated July 29, 2002). The State also adopted a trash TMDL for the Los Angeles River Estuary based on its findings that the Estuary is water quality limited due to trash (clarification letter dated July 29, 2002). The State indicated that it would have included the Estuary on the 1998 list if currently available documentation had been available at the time of the listing decision (letter dated July 29, 2002). EPA has concluded that the State's identification of the Estuary as impaired due to trash and determination that a TMDL should be established for the Estuary segment as part of the watershed TMDLs are reasonable and consistent with the requirements of Section 303(d). In addition, we note that the TMDL submission identified designated beneficial uses for each of the waters addressed in the TMDL and indicated that State water quality standards apply to each of them (TMDL Report, table 1, pp. 8-11).
2. Water Quality Standards Attainment: TMDL(s) and associated allocations are set at levels adequate to result in attainment of applicable standards.	TMDL Report, dated September 19, 2001 and Basin Plan Amendment Summary. The TMDLs are designed to implement the existing narrative water quality standards for Floating Material and for Solid, Suspended, or Settleable Material in the Basin Plan for the Los Angeles Regional Water Quality Control Board (TMDL Report, p. 12). The State interpreted these narrative WQS to include trash and found that trash is settleable or floating material that causes impairment of designated beneficial uses.

	The State permissibly concluded that attainment of the specified numeric target and associated TMDLs, load allocations, and wasteload allocations, that call for the effective elimination of any trash discharges, will result in elimination of the adverse effects associated with trash in the water and bring about attainment of the applicable narrative standards.
3. Numeric Target(s): Submission describes applicable water quality standards, including beneficial uses, applicable numeric and/or narrative criteria. Numeric water quality target(s) for TMDL(s) identified, and adequate basis for target(s) as interpretation of water quality standards is provided.	TMDL Report dated September 19, 2001, pp. 4-12, 16 and Basin Plan Amendment Summary. TMDLs implement narrative WQS for Floating Material and Solid, Suspended, or Settleable Material. The TMDL Report analysis concludes that excessive trash can adversely affect beneficial uses including recreation and aquatic habitat and that even small amounts of trash can cause adverse impacts. (see TMDL Report, pp. 12-16). Based on the evidence that even a small quantity of trash could adversely affect beneficial uses, the State set a numeric target of zero trash in the River (see TMDL Report, pp. 12-13 and Response to Comments, September 7, 2001, pp. 8-9). The State's approach is a permissible and environmentally protective approach for accounting for uncertainty in the relationship between pollutant loading levels and attainment of water quality standards, as required by CWA Section 303(d)(1)(C), especially in the absence of information which supports establishment of a higher numeric target. The Regional Board TMDL document describes this approach in the numeric target, TMDLs, and margin of safety sections (TMDL Report, sections III and IV, see also transcript of proceedings, Regional Board public hearing, January 25, 2001, pp. 11-13, September 19, 2001, pp. 54-58). EPA notes that littering and disposal of trash in waterways are already prohibited by local ordinances in the areas covered by these TMDLs.
4. Source Analysis: Point, nonpoint, and background sources of pollutants of concern are described, including the magnitude and location of sources. Submittal demonstrates all significant sources have been considered.	TMDL Report, pp. 17. The TMDL analysis considered existing information concerning the sources of trash impairing the River. Source analysis identifies all potential sources and determined that point source urban runoff is the dominant source of trash (Staff Report pp. 14-17). The source analysis provides an effective basis for targeting trash generation in the watershed and appropriate controls to prevent the trash impairment in the watershed, and clearly provides a sound basis for baseline monitoring in order to obtain representative trash generation rate. The problem statement and source analysis sections of the TMDL staff report indicate that trash also reaches water bodies through wind action and direct disposal (pp. 14-17). These sources are considered nonpoint

	sources because they are not the result of trash deposition in waterways through storm drain or other discharge points. The staff report indicates that trash is found in all reaches of the River, its tributaries, the estuary, and the 3 lakes for which TMDLs were established (Staff Report pp. 14-17, see also letter dated July 29. 2002).
5. Allocations: Submittal identifies appropriate wasteload allocations for point sources and load allocations for nonpoint sources. If no point sources are present, wasteload allocations are zero. If no nonpoint sources are present, load allocations are zero.	TMDL Report, p. 17-18 and Basin Plan Amendment Summary, see also letter of July 29, 2002. The TMDLs include both specific wasteload allocations and a general load allocation. <u>Wasteload Allocations</u> The basin plan amendment specifies the "wasteload allocations" for municipal permittees and Caltrans in table 7-2.2. The specific wasteload allocations apply to stormwater runoff regulated under two stormwater NPDES permits: - Municipal permittees including discharges covered by the Los Angeles County Municipal Stormwater Permit and Long Beach Municipal Stormwater Permit - Caltrans Stormwater Permit. Storm drains have been identified as the major source of trash in the Los Angeles River (Staff Report, pp. 16-17). Therefore, in order to meet the numeric target of zero, the TMDLs conclude permissibly that final wasteload allocations are zero. The State adopted wasteload allocations for all stormwater discharges in the urbanized portion of the watershed as defined on page 3 of the staff report (clarification letter of July 29, 2002). This approach is permissible because the State found evidence that significant amounts of trash are discharged into waters that flow to the segments for which TMDLs are adopted. These trash discharges flow into the impaired segments; therefore, the State found it is necessary to adopt WLAs for all trash discharges in the urbanized portion of the watershed in order to ensure that the TMDLs and associated water quality standards can be attained. <u>Load Allocations</u> The basin plan amendment containing the TMDL decisions includes a table describing the elements of the adopted TMDLs (table 7-2.1). This table indicates the "load allocations" are "phased reduction for a period of 10 years, from existing baseline load to zero (0)." The load allocation is expressed as a gross allotment which applies to trash loading from windblown trash and direct deposit of trash to water bodies. Trash loading from

	nonpoint sources was found to be relatively insignificant in comparison with point source loadings (Staff report, p. 17 and letter dated July 29, 2002). The expression of the LA as a gross allotment is consistent with the provisions of 40 C.F.R. 130.2(g). The TMDLs incorporate a phased approach to implementation of the TMDLs and associated allocations (see Staff Report, sections VII-VIII). Based on the information in the TMDL Report, Basin Plan Amendment, and clarifying letter of July 29, 2002, EPA concludes that the TMDLs include as appropriate wasteload and load allocations which are consistent with the TMDLs and with the provisions of the Clean Water Act and federal regulations. The State's TMDL acknowledges the presence of trash discharges from both point and nonpoint sources. "TMDL" is defined in the federal regulations as the sum of all wasteload allocations for point sources and load allocations for nonpoint sources and natural background (40 CFR 130.2(i)). There are no naturally occurring sources of trash because the State defines trash to include only "man-made litter" and excludes naturally occurring vegetation matter (Staff Report, p. 2). Therefore, the State has treated the load allocation as a gross allotment accounting for nonpoint sources of trash discharges, consistent with the provisions of 40 CFR 130.2(g), which suggests load allocations may be expressed as gross allotments. The State's TMDL focuses permissibly, and in EPA's view properly, on point source loadings of trash based on its finding that point source loadings are the dominant source of trash discharges to the water bodies..
6. Link Between Numeric Target(s) and Pollutant(s) of Concern: Submittal describes relationship between numeric target(s) and identified pollutant sources. For each pollutant, describes analytical basis for conclusion that sum of wasteload allocations, load allocations, and margin of safety does not exceed the loading capacity of the receiving water(s).	Because the numeric target, TMDL, and allocations are each zero trash in the Los Angeles River and the other TMDL waters, it was unnecessary to provide a sophisticated linkage analysis or separate estimate of loading capacity. As described above, the TMDL analysis' conclusion that there is zero assimilative capacity for trash delivery to the River constitutes a permissible approach absent appropriate studies or research identifying the ability of aquatic life to tolerate trash and identifying a level of trash that could be present while ensuring attainment of all designated beneficial uses of the Los Angeles River. Moreover, the record indicates that even at small quantities, trash/debris can have adverse environmental impacts on aquatic life, wildlife, humans and the aesthetic enjoyment of the waterbody (Staff Report, p. 12).

7. Margin of Safety: Submission describes explicit and/or implicit margin of safety for each pollutant.	Despite the State's efforts to identify research or study results which could assist in setting a non-zero numeric target and associated TMDL, no such studies were found in the preparation of this TMDL or provided by commenters. Given this key source of uncertainty, the analysis provides an implicit margin of safety by setting the TMDL at zero trash in the River. EPA considers this a permissible way of dealing with the fact that, on the one hand, there is very little quantifiable data on trash impact on the environment and no such information specific to the Los Angeles River, but on the other hand, there is clear indication in the record supporting the State's determination that small amounts of trash may result in significant adverse effects on aquatic life, wildlife, humans and the aesthetic enjoyment of the waterbody (Staff report, pp. 12-13, Response to Comments, September 7, 2001, pp. 8-9).
8. Seasonal Variations and Critical Conditions: Submission describes method for accounting for seasonal variations and critical conditions in the TMDL(s)	The Source Analysis and Problem Statement sections describe seasonal variations in trash generation patterns. However, because the TMDL and numeric target are set at zero throughout the year, the TMDL adequately accounts for seasonal variations and critical conditions without need for detailed analysis.
9. Public Participation: Submission documents provision of public notice and public comment opportunity; and explains how public comments were considered in the final TMDL(s).	Regional Board documents: Regional Board Resolution 01-013, September 19, 2001; Notice of the hearings was published in the Los Angeles Times on June 19, 20, and 21, 2001 for a September 13, 2001 hearing. This hearing was rescheduled for September 19, 2001 and notice of this change was published in the Los Angles Times on September 6, 2001. Transcripts of public hearings, January 25, 2001, and September 19, 2001, and summary of responses to public comments on November 25, 2000 and June 18, 2001 drafts of the TMDL; Seven public workshops and ten meetings with individual stakeholders and agencies (meetings were held with every individual stakeholder who requested one). State Board documents: State Board Resolution 2002-0038, February 19, 2002. Public workshop on February 6, 2002. State Board Response to Comments received during the State Board Approval Process. The Regional Board and State Board both provided public notice and opportunities to comment on the TMDL through mailings to the Basin Plan mailing lists, by holding many public meetings, and by holding several public hearings to hear public comments on the TMDL. Several public comments were received in writing and in oral testimony. The State demonstrated how it considered these comments in its final decision by providing reasonably detailed responsiveness summaries

	which include responses to each comment.
10. Technical Analysis: Submission provides appropriate level of technical analysis supporting TMDL elements.	The TMDL analysis provides a thorough review and summary of available information about trash/debris impact and trash generation in the specific areas of concern. We conclude the State was reasonably diligent in its technical analysis of trash generation in the watershed and its analysis of viable approaches for setting a protective trash TMDL. Neither the State nor public commenters identified research or study results which provided an analytical basis for setting the TMDL at a level higher than zero at this time.
11. Monitoring Plan: EPA encourages states to identify monitoring plan and schedule for considering revisions to TMDLs that will be implemented over time.	Baseline monitoring program will collect watershed specific and land use representative data on trash generation for the first 2 years. The implementation plan requires a 10% reduction from the baseline trash quantity for the subsequent 12 implementation years. Compliance monitoring will help ensure that the WLAs are achieved.
12. Reasonable Assurances (for waters affected by both point and nonpoint sources): Where point source(s) receive less stringent wasteload allocations because nonpoint source reductions are expected and reflected in load allocations, record provides reasonable assurances that nonpoint implementation actions are sufficient to result in attainment of load allocations in a reasonable period of time. Reasonable assurances may be provided through use of regulatory, non-regulatory, or incentive based implementation mechanisms as appropriate.	This provision is not applicable because there are no point sources which receive less stringent wasteload allocations based on expected nonpoint source reductions.

Winston H. Hickox
Secretary for Environmental Protection

Los Angeles Region

320 W. 4th Street, Suite 200, Los Angeles, CA 90013
Phone (213) 576-6600 FAX (213) 576-6640

Gray Davis
Governor

TO: David W. Smith
USEPA, Region IX

FROM: Jonathan Bishop

DATE: July 29, 2002

SUBJECT: Los Angeles River Watershed and Ballona Creek Trash TMDLs

This memo is intended to provide clarification on specific aspects of the Los Angeles River Trash TMDL.

1. A TMDL was established for the reaches of the Los Angeles River, tributaries and lakes listed on the 1998 303(d) list as described on page 12, paragraph 3, of the staff report. In addition, a TMDL was established for the Los Angeles River estuary in the City of Long Beach. As described on page 12, paragraph 2 of the report, staff found that the impairment in the estuary due to trash is "even more acute in Long Beach where debris flushed down by the upper reaches collects."

   The impairment in the estuary was well documented during TMDL development, as shown in the attached pictures taken from the banks of the estuary and the Long Beach Harbor. The Los Angeles River estuary would have been included in the 1998 303(d) list if the attached photographic evidence had been available at the time of the listing.

2. A TMDL was established for the Ballona Creek (listed in the Basin Plan as Ballona Creek and Ballona creek to estuary and for the Ballona Creek Wetlands.

3. As described in Section V of the staff report, both point sources and non-point sources of trash were identified. The identified point sources were the municipal storm drains that drain the urban portion of the watershed and the Caltrans storm drain system. As described on page 17, paragraph 3 of the staff report, urban runoff was determined to be the dominant source of trash, as evidenced by the amount of trash that accumulates at the base of the storm drains. Non-point sources were identified as wind blown trash and direct deposit of trash into the water. Since the numeric target is zero, implicitly both the Load Allocation and the Waste Load Allocation must be zero. This clearly was our intent. As described in Table 7-2.1 of the Basin Plan Amendment the "Load Allocations" are zero. However, as the non-point sources

Staff Report Supporting Approval of TMDLs:
Ballona Creek and Ballona Wetland, California, TMDLs for Trash
July 30, 2002

Background

The Los Angeles Regional Water Quality Control Board (Regional Board) and California Water Resources Control Board (State Board) listed Ballona Creek and Ballona Wetland as water quality limited due to trash in California's 1998 Clean Water Act Section 303(d) list. Consistent with the requirements of Clean Water Act Section 303(d)(1), the Regional Board staff developed the TMDLs for these waters. These TMDLs were adopted by the Regional Board and the State Board on September 19, 2001 and February 19, 2002, respectively. Because the State of California was unable to complete adoption of these TMDLs by the March 22, 2002 consent decree deadline specified in *Heal the Bay, et al. v. Browner,* Northern District of California, C 98-4825 SBA, (March 22, 1999), EPA established TMDLs for trash for these waterbodies on March 19, 2002 in order to fulfill its obligations under the decree. The decree required EPA to establish these TMDLs if the State failed to adopt and submit the TMDLs in time to meet the deadline set in the decree. Because the State did not adopt and submit final TMDLs in time to meet the decree schedule, EPA was obliged to establish them at that time. EPA's TMDLs were based largely on the TMDLs for trash adopted by the Regional Board.

California adopted and submitted for EPA approval TMDLs for trash for Ballona Creek and Ballona Wetland on July 15, 2002. EPA is approving these TMDLs because they meet the requirements of Clean Water Act Section 303(d) and federal regulations at 40 CFR 130.2 and 130.7.

TMDL Review

EPA reviewed the State TMDL submittal package to ensure that all required TMDL elements have been adequately addressed. EPA's review is presented in the attached checklist, which determines that all required TMDL elements and an adequate level of technical justification for each element are included.

The TMDL submittal for Ballona Creek and Wetland includes TMDLs for the water body segments which were listed due to trash impairment on the 1998 Section 303(d) list.

In addition, the State's TMDLs include wasteload allocations for all urban stormwater discharges in the Ballona Creek watershed. These wasteload allocations cover stormwater discharges directly into the segments for which TMDLs are adopted as well as stormwater discharges to segments that are tributary to TMDL segments. The State's rationale for this wasteload allocation approach is that (1) trash discharges from all urban stormwater outlets in the Ballona Creek watershed flow downstream and contribute to impairment in the segments for which TMDLs were adopted, and (2) trash discharges from all stormwater outlets to waters tributary to TMDL waters need to be controlled in order to meet the TMDLs and

associated water quality standards (letter dated July 29, 2002). Moreover, the information compiled by the Regional Board indicates that most tributary streams are themselves impaired due to trash (see Staff Report, pp. 7, 11-12 and letter dated July 29, 2002). EPA concludes that this approach to setting wasteload allocations is permissible because the State has made a reasonable finding that it would be infeasible to meet the TMDLs without including all of the adopted wasteload allocations. Moreover, the State is authorized to adopt this approach because of the requirement in Clean Water Act Section 303(d)(1)(C) that TMDLs be established at levels necessary to implement applicable water quality standards. Absent controls on upstream sources, the State would lack the assurance that the TMDL for downstream waters would result in the attainment of water quality standards.

TMDL Checklist

State: California
Pollutant(s): trash/litter

Waterbodies: Ballona Creek and Wetland
Date of State Submission: July 15, 2002; July 18, 2002, July 29, 2002
EPA Reviewer: Sharon Lin and David Smith

Review Criteria	Comments
1. Submittal Letter: Letter indicates final TMDL(s) for specific water(s)/pollutant(s) were adopted by state and submitted to EPA for approval under 303(d).	Letters dated July 15, 2002, July 18, 2002, July 29, 2002. TMDL was adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) through resolution 01-014 on September 19, 2001, and by the State Water Resources Control Board (State Board) through resolution 2002-0039 on February 19, 2002. The TMDL was approved by the State Office of Administrative Law on July 18, 2002. The State adopted trash TMDLs for Ballona Creek (listed in the Basin Plan as Ballona Creek and Ballona Creek to estuary) and Ballona Wetland (letter dated July 29, 2002). These segments are listed on the 1998 CWA Section 303(d) list for trash (Staff Report p. 1). We note that the TMDL submission identified designated beneficial uses for each of the waters addressed in the TMDL and indicated that State water quality standards apply to each of them (TMDL Report, table 1, pp. 4-6).
2. Water Quality Standards Attainment: TMDL(s) and associated allocations are set at levels adequate to result in attainment of applicable standards.	TMDL Report, dated September 19, 2001 and Basin Plan Amendment Summary. The TMDLs are designed to implement the existing narrative water quality standards for Floating Material and Solid, Suspended, or Settleable Material in the Basin Plan for the Los Angeles Regional Water Quality Control Board (TMDL Report, p. 7). The State interpreted these narrative WQS to include trash and found that trash is settleable or floating material that causes impairment of designated beneficial uses (Staff Report, pp. 7-8). The State permissibly concluded that attainment of the specified numeric target and associated TMDLs, load allocations, and wasteload allocations, that call for the effective elimination of any trash discharges, will result in elimination of the adverse effects associated with trash in the water and bring about attainment of the applicable narrative standards.
3. Numeric Target(s): Submission describes applicable water quality standards, including	TMDL Report dated September 19, 2001, pp. 4-7, 11; and Basin Plan Amendment Summary. TMDLs

beneficial uses, applicable numeric and/or narrative criteria. Numeric water quality target(s) for TMDL identified, and adequate basis for target(s) as interpretation of water quality standards is provided.	implement narrative WQS for Floating Material and Solid, Suspended, or Settleable Material. The TMDL Report analysis concludes that excessive trash can adversely affect beneficial uses including recreation and aquatic habitat and that even small amounts of trash can cause adverse impacts (see TMDL Report, pp. 7-11). Based on the evidence that even a small quantity of trash could adversely affect beneficial uses, the State set a numeric target of zero trash in the Creek and wetland (see TMDL Report, pp. 11-12). The State's approach is a permissible and environmentally protective approach for accounting for uncertainty in the relationship between pollutant loading levels and attainment of water quality standards, as required by CWA Section 303(d)(1)(C), especially in the absence of information which supports establishment of a higher numeric target. The Regional Board TMDL document describes this approach in the numeric target, TMDL, and margin of safety sections (TMDL Report, Sections III and IV, see also transcript of proceedings, Regional Board public hearing, January 25, 2001, p. 11-13, September 19, 2001, p. 54-58). EPA notes that littering and disposal of trash in waterways are already prohibited by local ordinances in the areas covered by these TMDLs.
4. Source Analysis: Point, nonpoint, and background sources of pollutants of concern are described, including the magnitude and location of sources. Submittal demonstrates all significant sources have been considered.	TMDL Report, pp. 7-12. The TMDL analysis considered existing information concerning the sources of trash impairing the Ballona Creek and wetland. Source analysis identifies all potential sources and determined that point source urban runoff is the dominant source of trash (Staff Report, pp. 11-12). The source analysis provides an effective basis for targeting trash generation in the watershed and appropriate controls to prevent the trash impairment in the watershed, and clearly provides a sound basis for baseline monitoring in order to obtain representative trash generation rate. The problem statement and source analysis sections of the TMDL Staff Report indicated that trash also reaches water bodies through wind action and direct disposal (pp. 11-12). These sources are considered nonpoint sources because they are not the result of trash deposition in waterways through storm drains or other discharge points. The Staff Report indicates that trash is found in all reaches of the creek and its tributaries (Staff Report, p. 8 and letter dated July 29, 2002).

5. Allocations: Submittal identifies appropriate wasteload allocations for point sources and load allocations for nonpoint sources. If no point sources are present, wasteload allocations are zero. If no nonpoint sources are present, load allocations are zero.	TMDL Report, p. 12 and Basin Plan Amendment Summary, see also letter dated July 29, 2002. The TMDL includes both specific wasteload allocations and a general load allocation. <u>Wasteload Allocations</u> The basin plan amendment specifies the "wasteload allocations" for municipal permittees and Caltrans in table 7-3.2. The specific wasteload allocations apply to stormwater runoff regulated under stormwater NPDES permits for: - Municipal permittees, including discharges regulated under the Los Angeles County stormwater permit - Caltrans stormwater permit Storm drains have been identified as the major source of trash in the Ballona Creek and wetland (Staff Report, pp. 11-12). Therefore, in order to meet the numeric target of zero, the TMDL concludes permissibly that final wasteload allocations for all stormwater discharges in the urbanized portion of the watershed as defined on page 3-4 of the staff report (see also letter dated July 29, 2002). This approach is permissible because the State found evidence that significant amounts of trash are discharged into waters that flow to the segments for which TMDLs are adopted. These trash discharges flow into the impaired segments; therefore, the State found it is necessary to adopt WLAs for all trash discharge sources in the urbanized portion of the watershed in order to ensure that the TMDLs and associated water quality standards can be attained. <u>Load Allocations</u> The basin plan amendment containing the TMDL decisions includes a table describing the elements of the adopted TMDLs (table 7-3.1). This table indicates the "load allocations" are "phased reduction for a period of 10 years, from existing baseline load to zero (0)." The load allocation is expressed as a gross allotment which applies to trash loading from windblown trash and direct deposit of trash to water bodies. Trash loading from nonpoint sources was found to be relatively insignificant in comparison with point source loadings (Staff report, p. 11 and letter dated July 29, 2002). The expression of the LA as a gross allotment is consistent with the provisions of 40 C.F.R. 130.2(g). The TMDLs incorporate a phased approach to implementation of the TMDLs and associated allocations

	(see Staff Report, sections VII-VIII). Based on the information in the TMDL Report, Basin Plan Amendment, and clarifying letter of July 29, 2002, EPA concludes that the TMDLs include as appropriate wasteload and load allocations which are consistent with the TMDLs and with the provisions of the Clean Water Act and federal regulations. The State's TMDL acknowledges the presence of trash discharges from both point and nonpoint sources. "TMDL" is defined in the federal regulations as the sum of all wasteload allocations for point sources and load allocations for nonpoint sources and natural background (40 CFR 130.2(i)). There are no naturally occurring sources of trash because the State defines trash to include only "man-made litter" and excludes naturally occurring vegetation matter (Staff Report, p. 2). Therefore, the State has treated the load allocation as a gross allotment accounting for nonpoint sources of trash discharges, consistent with the provisions of 40 CFR 130.2(g), which suggests load allocations may be expressed as gross allotments. The State's TMDL focuses permissibly, and in EPA's view properly, on point source loadings of trash based on its finding that point source loadings are the dominant source of trash discharges to the water bodies.
6. Link Between Numeric Target(s) and Pollutant(s) of Concern: Submittal describes relationship between numeric target(s) and identified pollutant sources. For each pollutant, describes analytical basis for conclusion that sum of wasteload allocations, load allocations, and margin of safety does not exceed the loading capacity of the receiving water(s).	Because the numeric target, TMDL, and allocation are each zero trash in the Ballona Creek and wetland, it was unnecessary to provide a sophisticated linkage analysis or separate estimate of loading capacity. As described above, the TMDL analysis' conclusion that there is zero assimilative capacity for trash delivery to the Creek constitutes a permissible approach absent appropriate studies or research identifying the ability of aquatic life to tolerate trash identifying the level of trash which can be present while ensuring attainment of all designated beneficial uses of the Ballona Creek and wetland. Moreover, the record indicates that even at small quantities, trash/debris can have adverse environmental impact on aquatic life, wildlife, humans and the aesthetic enjoyment of the waterbody (Staff Report, pp. 7-8).
7. Margin of Safety: Submission describes explicit and/or implicit margin of safety for each pollutant.	Despite the State's efforts to identify research or study results which could assist in setting a non-zero numeric target and associated TMDL, no such studies were found in the preparation of this TMDL or provided by commenters. Given this key source of uncertainty, the analysis provides an implicit margin of safety by setting the TMDL at zero trash in the Creek and wetland. EPA considers this a permissible way of dealing with the fact that, on the one hand, there is very little quantifiable data.

	on trash impact on the environment and no such information specific to the Ballona Creek and wetland, but on the other hand, there is clear indication in the record supporting the State's determination that small amounts of trash may result in significant adverse effects on aquatic life, wildlife, humans and the aesthetic enjoyment of the waterbody (Staff report, pp. 7-8, Response to Comments, September 7, 2001, p. 13).
8. Seasonal Variations and Critical Conditions: Submission describes method for accounting for seasonal variations and critical conditions in the TMDL(s)	The Source Analysis and Problem Statement sections describe seasonal variations in trash generation patterns. However, because the TMDL and numeric target are set at zero throughout the year, the TMDL adequately accounts for seasonal variations and critical conditions without need for detailed analysis.
9. Public Participation: Submission documents provision of public notice and public comment opportunity; and explains how public comments were considered in the final TMDL(s).	Regional Board documents: Regional Board Resolution 01-014, September 19, 2001; Notice of the hearings were published in the Los Angeles Times on June 21, 22, and 23, 2001 for September 13, 2001 hearing. The hearing was rescheduled for September 19, 2001 and notice of this change was published in the Los Angeles Times on September 6, 2001. Transcript of public hearings: September 19, 2001. Summary of response to comments on June 22, 2001 modifications to the draft Ballona Creek and wetland trash TMDL. In conjunction with Los Angeles River Trash TMDL, Regional Board conducted seven public workshops and ten meetings with individual stakeholders (meetings were held with each individual stakeholder who requested one). State Board documents: State Board Response to Comments received during the State Board Approval Process. Workshop on February 6, 2002. State Board Resolution 2002-0039 on February 19, 2002. The Regional Board and State Board both provided public notice and opportunities to comment on the TMDL through mailings to the Basin Plan mailing lists, by holding many public meetings, and by holding several public hearings to hear public comments on the TMDL. Several public comments were received in writing and in oral testimony. The State demonstrated how it considered these comments in its final decision by providing reasonably detailed responsiveness summaries which include responses to each comment.
10. Technical Analysis: Submission provides appropriate level of technical analysis supporting TMDL elements.	The TMDL analysis provides a thorough review and summary of available information about trash/debris impact and trash generation in the specific areas of concern. We conclude the State was reasonably diligent in its technical analysis of trash generation in the

	watershed and its analysis of viable approaches for setting a protective trash TMDL. Neither the State nor public commenters identified research or study results which provided an analytical basis for setting the TMDL at a level higher than zero at this time.
11. Monitoring Plan: EPA encourages states to identify monitoring plan and schedule for considering revisions to TMDLs that will be implemented over time.	Baseline monitoring program will collect watershed specific and land use representative data on trash generation for the first 2 years. The implementation plan requires a 10% reduction from the baseline trash quantity for the subsequent 12 implementation years. Compliance monitoring will ensure that the WLAs are achieved.
12. Reasonable Assurances (for waters affected by both point and nonpoint sources): Where point source(s) receive less stringent wasteload allocations because nonpoint source reductions are expected and reflected in load allocations, implementation plan provides reasonable assurances that nonpoint implementation actions are sufficient to result in attainment of load allocations in a reasonable period of time. Reasonable assurances may be provided through use of regulatory, non-regulatory, or incentive based implementation mechanisms as appropriate.	This provision is not applicable because there are no point sources which receive less stringent wasteload allocations based on expected nonpoint source reductions.

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Basin Plan Amendments-TMDLs

From drop-down menus below, you may select either a watershed, a pollutant or a staff name to REFINE your selection. To go back to the list of ALL TMDL records, please select either All Watersheds, All Pollutants or All Staff from the drop-down menus. You can also SORT the list by clicking on the TITLE of each column which has a hyperlink. Click on the RESOLUTION NO. for each individual record to view detailed project information.

Select by Watershed | Select by Pollutant | Select by Staff Name

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Show all Total Maximum Daily Load (TMDL) records

Last update: Nov 29, 2010

Found **54** TMDL record(s)

No.	Resolution No.	Watershed	Pollutant	Resolution Name	Staff Contact	Status	New Posting (last 30 days)
1	R10-010	Santa Monica Bay	Debris	Santa Monica Bay Nearshore Debris TMDL	Stefanie Hada (213) 576-6804	In Development	
2	R10-008	Dominguez Channel	Toxics	Machado Lake Toxics TMDL	Rebecca Veiga Nascimento (213) 576-6784	Approved by Regional Board on Sep 2, 2010	
3	R10-007	Los Angeles River	Bacteria	Los Angeles River Bacteria TMDL	Man Voong (213) 576-6690	Approved by Regional Board on Jul 8, 2010	
4	R10-006	Santa Clara River	Bacteria	Santa Clara River Bacteria TMDL	Yanlie Chu (213) 576-6681	Approved by Regional Board on Jul 8, 2010	
5	R10-003	Los Angeles River	Metals	Reconsideration of Los Angeles River Metals TMDL	Jenny Newman (213) 576-6691	Approved by Regional Board on May 6, 2010	
6	R09-006	Misc Ventura Coastal	Multiple	McGrath Lake PCBs, Pesticides and Sediment Toxicity TMDL	Elisha Wakefield (213) 576-6763	Approved by Regional Board on Oct 1, 2009	
7	R09-005	LA Co. Coastal Streams	Multiple	Colorado Lagoon Pesticides, PAH's, PCB, Metals etc TMDL	Thanhloan Nguyen (213) 576-6689	Approved by Regional Board on Oct 1, 2009	
8	Not Assigned	Calleguas Creek	Toxicity	Calleguas Creek, its Tributaries, and Mugu Lagoon Toxicity, Chlorpyrifors, and Diazinon TMDL	Kangshi Wang (213) 576-6780	Approved by Regional Board on Oct 1, 2009	
9	Not Assigned	Ventura River	Algae	Ventura River Algae TMDL	Kangshi Wang (213) 576-6780	In Development	
10	Not Assigned	Dominguez Channel	Multiple	Los Angeles and Long Beach Harbors Toxic and Metals TMDLs	L. B. Nye (213) 576-6785	In Development	
11	Not Assigned	Malibu Creek	Nutrients	Malibu Creek Nutrient TMDL	L. B. Nye (213) 576-6785	In Development	
12	2008-012	Santa Clara River	Chloride	Reconsideration of the Upper Santa Clara River Chloride TMDL Implementation Plan & Revise Chloride WQ Objectives	Yanlie Chu (213) 576-6681	TMDL In Effect on Apr 6, 2010	
13	2008-009	Calleguas Creek	Nutrients	Revision of WLAs for Calleguas Creek Nitrogen TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Oct 15, 2009	

14	2008-007	Malibu Creek	Trash	Malibu Creek Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Jul 7, 2009
15	2008-006	Dominguez Channel	Nutrients	Machado Lake Nutrient TMDL	Rebecca Velga Nascimento (213) 576-6784	TMDL In Effect on Mar 11, 2009
16	2007-017	Misc Ventura Coastal	Bacteria	Harbor Beaches of Ventura County Bacteria TMDL	Man Voong (213) 576-6690	TMDL In Effect on Dec 18, 2008
17	2007-016	Calleguas Creek	Salts	Calleguas Creek Watershed Salts TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Dec 2, 2008
18	2007-015	Ballona Creek	Metals	Ballona Creek Metals TMDL	Jenny Newman (213) 576-6691	TMDL In Effect on Oct 29, 2008
19	2007-014	Los Angeles River	Metals	Los Angeles Metals TMDL	Jenny Newman (213) 576-6691	TMDL In Effect on Oct 29, 2008
20	2007-012	Los Angeles River	Trash	Trash TMDL for the Los Angeles River Watershed	Ginachi I. Amah (213) 576-6685	TMDL In Effect on Sep 23, 2008
21	2007-010	San Gabriel River	Trash	Legg Lake Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Mar 6, 2008
22	2007-009	Santa Clara River	Trash	Lake Elizabeth, Munz Lake, Lake Hughes Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Mar 6, 2008
23	2007-008	Ventura River	Trash	Ventura River Estuary Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Mar 6, 2008
24	2007-007	Calleguas Creek	Trash	Revolon Slough & Beardsley Wash Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Mar 6, 2008
25	2007-006	Dominguez Channel	Trash	Machado Lake Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Mar 6, 2008
26	2006-016	Santa Clara River	Salts	Upper Santa Clara River Chloride TMDL Implementation Plan Re-Consideration	Yanjie Chu (213) 576-6681	TMDL In Effect on Jun 12, 2008
27	2006-014	San Gabriel River	Metals	San Gabriel River Metals and Selenium TMDL	Jenny Newman (213) 576-6691	Approved by Regional Board on Jul 13, 2006
28	2006-013	Los Angeles River	Trash	Proposed Resolution to set aside the Los Angeles River Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Jul 17, 2006
29	2006-012	Calleguas Creek	Metals	Calleguas Creek Watershed Metals TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Mar 26, 2007
30	2006-011	Ballona Creek	Bacteria	Ballona Creek, Ballona Estuary, and Sepulveda Channel Bacteria TMDL	Man Voong (213) 576-6690	TMDL In Effect on Apr 27, 2007
31	2006-009	Marina del Rey	Bacteria	Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL Implementation Plan	Man Voong (213) 576-6690	Approved by Regional Board on Apr 6, 2006
32	2006-008	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Wet Weather Bacteria TMDL Implementation Plan for JG7	Renee Purdy (213) 576-6622	Approved by Regional Board on Apr 6, 2006
33	2006-007	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Wet Weather Bacteria TMDL Implementation Plan for JG5 and JG6	Renee Purdy (213) 576-6622	Approved by Regional Board on Apr 6, 2006
34	2006-006	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Wet Weather Bacteria TMDL Implementation Plan for JG2 and JG3	Renee Purdy (213) 576-6622	Approved by Regional Board on Apr 6, 2006
35	2006-005	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Wet Weather Bacteria TMDL Implementation Plan for JG1 and JG4	Renee Purdy (213) 576-6622	Approved by Regional Board on Apr 6, 2006
36	2005-012	Marina del Rey	Toxics	Marina del Rey Harbor Toxics TMDL	Elisha Wakefield (213) 576-6763	TMDL In Effect on Mar 22, 2006
37	2005-010	Calleguas Creek	Toxics	Calleguas Creek OC Pesticides & PCBs TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Mar 24, 2006

38	2005-009	Calleguas Creek	Toxicity	Calleguas Creek Toxicity TMDL	Kangshi Wang (213) 576-6780	TMDL In Effect on Mar 24, 2006
39	2005-008	Ballona Creek	Toxics	Ballona Creek Estuary Toxic Pollutants	Jenny Newman (213) 576-6691	TMDL In Effect on Jan 11, 2006
40	2004-023	Ballona Creek	Trash	Ballona Creek Trash TMDL-Revision	Eric Wu (213) 576-6683	TMDL In Effect on Aug 11, 2005
41	2004-019R	Malibu Creek	Bacteria	Malibu Creek Bacteria TMDL	Theresa L. Rodgers (213) 576-6789	TMDL In Effect on Jan 24, 2006
42	2004-011	Los Angeles Harbor	Bacteria	Los Angeles Harbor Bacteria TMDL	L. B. Nye (213) 576-6785	TMDL In Effect on Mar 10, 2005
43	2004-004	Santa Clara River	Salts	Upper Santa Clara River Chloride TMDL	Yanjie Chu (213) 576-6681	TMDL In Effect on May 4, 2005
44	2003-016	Los Angeles River	Nutrients	Los Angeles River Nutrient TMDL (Revision of Interim WLAs)	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Sep 27, 2004
45	2003-012	Marina del Rey	Bacteria	Marina del Rey Back Basins Bacteria TMDL	Man Voong (213) 576-6690	TMDL In Effect on Mar 18, 2004
46	2003-011	Santa Clara River	Nutrients	Santa Clara River Nutrients TMDL	Yanjie Chu (213) 576-6681	TMDL In Effect on Mar 23, 2004
47	2003-009	Los Angeles River	Nutrients	Los Angeles River Nutrients TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Mar 23, 2004
48	2002-022	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Wet Weather Bacteria TMDL	Renee Purdy (213) 576-6622	TMDL In Effect on Jul 15, 2003
49	2002-017	Calleguas Creek	Nutrients	Calleguas Creek Nitrogen TMDL	Thanhloan Nguyen (213) 576-6689	TMDL In Effect on Jul 16, 2003
50	2002-004	Santa Monica Bay	Bacteria	Santa Monica Bay Beaches Dry Weather Bacteria TMDL	Renee Purdy (213) 576-6622	TMDL In Effect on Jul 15, 2003
51	2001-014	Ballona Creek	Trash	Ballona Creek Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Aug 28, 2002
52	2001-013	Los Angeles River	Trash	Los Angeles River Trash TMDL	Eric Wu (213) 576-6683	TMDL In Effect on Aug 28, 2002
53	2000-010	San Gabriel River	Trash	San Gabriel East Fork Trash TMDL (Revision of Implementation Schedule) - see 1999-015	Eric Wu (213) 576-6683	TMDL In Effect on Apr 17, 2001
54	1999-015	San Gabriel River	Trash	San Gabriel East Fork Trash TMDL	Sam Unger (213) 576-6607	TMDL In Effect on Apr 17, 2001

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FACT SHEET

SUPPORTING AMENDMENTS TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (ORDER NO. 01-182; NPDES PERMIT NO. CAS004001) TO INCORPORATE WASTE LOAD ALLOCATIONS FOR TRASH PURSUANT TO THE LOS ANGELES RIVER WATERSHED TRASH TMDL

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Introduction

The Los Angeles Regional Water Quality Control Board (Regional Board) staff proposes a limited reopening of the LA County Municipal Separate Storm Sewer System (MS4) Permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) and associated provisions for discharges from the MS4 to the Los Angeles River and its tributaries as required by federal regulation and state law.[1]

Summary of LA River Trash TMDL

The LA River Trash TMDL was established to address the documented impairments in the Los Angeles River Watershed due to trash that were identified on the State's Clean Water Act Section 303(d) List of impaired waters, and to ultimately achieve the narrative water quality objectives contained in the Basin Plan for both "Floating Material" and "Solid, Suspended, or Settleable Materials" that require:

> *"Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses";* and
>
> *"Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses."*

The TMDL requires progressive annual reductions in discharges of trash from the MS4 from an established baseline for each permittee identified as a responsible jurisdiction in the TMDL, until the final numeric target of zero trash discharge is attained. The compliance deadlines for the interim waste load allocations are at the end of each storm period (October 1 to September 30). Compliance with the final waste load allocations is required by September 30, 2016. The proposed permit modifications rely upon the translation of Basin Plan Tables 7-2.2 into

[1] Tributaries to the Los Angeles River include but are not limited to Pacoima Wash, Tujunga Wash, Burbank Western Channel, Verdugo Wash, Arroyo Seco, the Rio Hondo, and Compton Creek.

jurisdiction-specific waste load allocations (see Appendix-1 hereto). Appendix 1 has been translated into effluent limitations contained in Appendix 7-1 of the permit by calculating the corresponding three-year rolling average.

TMDL History

The Los Angeles River Trash TMDL was initially adopted by the Regional Board on September 19, 2001. Twenty-two cities[2] ("Cities") sued the Regional Board and State Board to set aside the TMDL, stopping progress towards halting the thousands of tons of garbage that is discharged to the Los Angeles River and its tributaries. The trial court entered an order deciding some claims in favor of the Regional Board and State Board and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the Boards, except with respect to CEQA compliance (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392).[3]

The Court of Appeal rejected the following claims litigated by the Cities:

a. The Court rejected the Cities' claim that the target of zero trash is unattainable and inordinately expensive. (135 Cal.App.4th at 1413 and 1427-1430.)

b. The Court rejected the Cities' claim that an assimilative capacity study was required before the Boards could determine how much trash, a pollutant that does not assimilate, would violate the narrative objectives. (135 Cal.App.4th at 1409-1413.)

[2] The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier.

[3] The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities' claims.

c. The Court rejected the Cities' claim that the Boards were required, but failed, to conduct a cost/benefit analysis and consideration of economic factors. (135 Cal.App.4th at 1415-1418.)

d. The Court rejected the Cities' claim that the Boards were prohibited from establishing a TMDL for the Los Angeles River Estuary until it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)

e. The Court rejected the Cities' claims that TMDLs for storm water may not require agencies to perform better than the "maximum extent practicable", and must allow compliance through best management practices. (135 Cal.App.4th at 1427-1430.)

f. The Court rejected the Cities' claim that the Boards were required to implement load allocations for nonpoint sources of trash pollution. (135 Cal.App.4th at 1430-1432.)

g. The Court rejected the Cities' claim that the Boards failed to adhere to the data collection and analysis required by federal and state law (135 Cal.App.4th at 1433-34.)

h. The Court rejected the Cities' claim that the Boards relied on nonexistent, illegal, and irrational uses to be made of the Los Angeles River. (135 Cal.App.4th at 1432-33.)

i. The Court rejected the Cities' claim that the Boards violated the Administrative Procedures Act (APA). (135 Cal.App.4th at 1434-35.)

The Court did find, however, that the Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the Boards should have performed an EIR level of analysis. (135 Cal.App.4th at 1420-26.) The Court therefore declared the Trash TMDL void, and issued a writ of mandate that ordered the Boards to

set aside and not implement the TMDL, until it has been brought into compliance with California Environmental Quality Act.

As a result of the appellate court's decision, in 2006 the Regional Board set aside its 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). After conducting the required CEQA analysis, the Regional Board readopted the Los Angeles River Watershed Trash TMDL on August 9, 2007 (Resolution No. 2007-0012).[4] This TMDL was subsequently approved by the State Water Resources Control Board (Resolution No. 2008-0024), the Office of Administrative Law (File No. 2008-0519-02 S), and the United States Environmental Protection Agency, and became effective on September 23, 2008.

*Summary of Proposed Action*The Regional Board proposes to incorporate the interim and final WLAs, expressed as annual reductions in discharges of trash from individual jurisdictional areas within the Los Angeles River Watershed, into the LA County MS4 Permit. Additionally, the Regional Board proposes to incorporate provisions that specify alternative means of determining compliance with the interim and final WLAs. These include:

(i) a technology based approach whereby BMPs meeting the design standard of "full capture" may be properly installed and maintained to demonstrate compliance with the WLAs,

(ii) a numeric effluent limitation based approach whereby "partial capture" BMPs and institutional controls not meeting the design standard of "full capture" may be implemented in drainage areas, in which case

[4] The Regional Board first adopted the Los Angeles River Trash TMDL in September 2001 (Resolution R01-013). As a result of a court decision, in 2006 the Regional Board set aside its 2001 action incorporating the TMDL into the Basin Plan (Resolution R06-013) (*City of Arcadia et al. v. Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392). In 2007, the Regional Board readopted the TMDL with the revised CEQA analysis ordered by the court (Resolution R07-012).

compliance with the WLA shall be demonstrated by measuring actual reductions in trash discharges in these areas.

Either or both approaches may be used within a jurisdictional area.

The incorporation of the interim and final WLAs established in the TMDL is consistent with the iterative process of implementing BMPs employed in the current LA County MS4 Permit in that compliance with the final WLAs may be achieved over the course of nine years. However, because the waterbodies in the Los Angeles River Watershed are impaired due to trash discharges from the MS4, it is necessary to establish more specific provisions in order to (i) ensure measurable reductions in trash discharges resulting in progressive water quality improvements during the iterative process and (ii) establish a final date for completing implementation of BMPs and, ultimately, achieving WLAs and water quality standards.

The Los Angeles River Watershed Trash TMDL was lawfully adopted as an amendment to the Los Angeles Region's Basin Plan and required compliance with interim WLAs as of September 30, 2008. Most Basin Plan provisions, including TMDLs adopted as amendments to the Basin Plan, are not self-implementing. Therefore, this limited re-opener of the MS4 Permit to incorporate the WLAs allows the implementation and enforcement of these WLAs as required by federal and state laws and regulations.

Background: Summary of Impairments and TMDL Elements

Trash in waterways causes significant water quality problems. Small and large floatables inhibit the growth of aquatic vegetation, decreasing habitat and spawning areas for fish and other living organisms. Wildlife living in rivers and in riparian areas can be harmed by ingesting or becoming entangled in floating trash. Except for large items, settleables are not always obvious to the eye. They include glass, cigarette butts, rubber, and construction debris, among other

things. Settleables can be a problem for bottom feeders and can contribute to sediment contamination. Some debris (e.g. diapers, medical and household waste, and chemicals) are a source of bacteria and toxic substances. Floating debris that is not trapped and removed will eventually end up on the beaches or in the open ocean, keeping visitors away from our beaches and degrading coastal waters.

Trash is a serious and pervasive water quality problem in the Los Angeles River Watershed. The Regional Board has determined that current levels of trash exceed the existing water quality objectives contained in the Basin Plan that are necessary to protect the beneficial uses of the river. Regional Board staff regularly observes trash in the waterways of the Los Angeles River Watershed. Non-profit organizations such as Heal the Bay, Friends of the Los Angeles River (FoLAR) and others organize volunteer clean-ups periodically, and document the amount of trash collected. Data on quantities of trash removed from waterways and downstream beaches are provided in the Administrative Record for the Los Angeles River Trash TMDL.

Long Beach collects large amounts of trash at the mouth of the Los Angeles River, as much of the trash carried down the Los Angeles River ends up at the river's mouth in Long Beach. Debris tonnage at the mouth of the Los Angeles River is listed in Table 1.

Table 1. Storm Debris Collection Summary for Long Beach (tons)[5]

Storm Year	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
1994-95	436	509	3,576	702	5,224
1995-96	504	344	3,100	645	4,593

[5] City of Long Beach *L.A. River Debris Summary* (as of June 2006).

Storm Year	First Quarter (July-Sept.)	Second Quarter (Oct.-Dec.)	Third Quarter (Jan.-March)	Fourth Quarter (April-June)	Total
1996-97	350	2,361	601	681	3,993
1997-98	647	3,650	4,016	977	9,290
1998-99	565	720	532	1,274	3,091
1999-00	781	176	1,664	1,223	3,844
2000-01	757	581	2,625	474	4,437
2001-02	424	739	288	407	1,858
2002-03	430	752	2,564	884	4,630
2003-04	299	779	607	951	2,636
2004-05	273	4,390	6,176	1,416	12,255
2005-06	561	495	862	670	2,591

Trash discharged to waterbodies discourages recreational activity, degrades aquatic habitat, threatens wildlife through ingestion and entanglement, and also poses risks to human health. Existing beneficial uses impaired by trash in the Los Angeles River are contact recreation (REC-1) and non-contact recreation (REC-2); warm fresh water habitat (WARM); wildlife habitat (WILD); estuarine habitat (EST) and marine habitat (MAR); rare, threatened or endangered species (RARE); migration of aquatic organisms (MIGR) and spawning, reproduction and early development of fish (SPWN); commercial and sport fishing (COMM); wetland habitat (WET); and cold freshwater habitat (COLD).

The Regional Board adopted a trash TMDL for the Los Angeles River Watershed to eliminate the documented water quality impairment resulting from significant amounts of trash discharged to the Los Angeles River and its tributaries, and by doing so to restore the beneficial uses of the river. The TMDL establishes a numeric target of zero discharge of trash, and identifies discharges from the MS4 as the major source of trash to the Los Angeles River and its tributaries.

To achieve the numeric target of zero discharge of trash, the TMDL sets interim and final wasteload allocations (WLAs) for trash discharges in the Los Angeles River Watershed, expressed as progressive annual percentage reductions from a predetermined baseline WLA assigned to each responsible jurisdiction, until the final waste load allocation of zero discharge is allocated in 2014. The TMDL allows for compliance with these annual percentage reductions to be determined based on a two-year rolling average of the interim waste load allocations in the second year of implementation, and based on a three-year rolling average in subsequent years, resulting in a final compliance date of 2016.

Co-permittees under the LA County MS4 Permit that are identified as responsible jurisdictions in the Los Angeles River Trash TMDL include the County of Los Angeles, the County of Los Angeles Flood Control District, and the Cities of Alhambra, Arcadia, Bell, Bell Gardens, Bradbury, Burbank, Calabasas, Carson, Commerce, Compton, Cudahy, Downey, Duarte, El Monte Glendale, Hidden Hills, Huntington Park, Irwindale, La Cañada Flintridge, Los Angeles, Lynwood, Maywood, Monrovia, Montebello, Monterey Park, Paramount, Pasadena, Pico Rivera, Rosemead, San Fernando, San Gabriel, San Marino, Santa Clarita, Sierra Madre, Signal Hill, Simi Valley, South El Monte, South Gate, South Pasadena, Temple City, and Vernon. The City of Long Beach and the California Department of Transportation (Caltrans) are also identified as responsible jurisdictions in the trash TMDL, but their MS4 discharges are regulated under separate permits.[6]

[6] The City of Long Beach's MS4 permit (NPDES No. CAS004003) will be re-opened at a later date to include the trash TMDL provisions. A statewide permit (NPDES No. CAS000003) issued by the State Board covers MS4 discharges from areas under the jurisdiction of Caltrans. This permit will be renewed in the near future. The Regional Board will notify the State Board of the need to incorporate all TMDL WLAs in the Los Angeles Region that apply to Caltrans along with the provisions necessary to ensure compliance. Notwithstanding, the Storm Water Monitoring Plan for Caltrans District 7 already contains implementation measures for the purpose of complying with the trash TMDL requirements.

The Los Angeles River Trash TMDL specifies under "Implementation" that the WLAs will be implemented through MS4 permits. TMDLs are not self-executing, but instead rely upon further orders or actions to adjust pollutant restrictions on individual dischargers. Federal regulations require that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation (40 CFR 122.44(d)). Similarly, state law requires both that the Regional Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply "any more stringent effluent standards or limitations necessary to implement water quality control plans..." (Wat. Code §§ 13263, 13377).

Statutory History and Requirements

Clean Water Act Section 303(d): Impaired Waters and TMDLs

The CWA §303(d)(1)(A) requires each State to conduct a biennial assessment of its waters, and identify those waters for which technology based effluent limitations are not stringent enough to implement water quality standards. These waters are identified as impaired waters on the State's 303(d) list of water quality limited segments. The CWA also requires States to establish a priority ranking for waters on the 303(d) list and to develop and implement TMDLs for these waters.

"A TMDL defines the specified maximum amount of a pollutant which can be discharged or 'loaded' into [impaired waters] from all combined sources" and still allow the waterbody to meet water quality standards (*Dioxin/Organochlorine Center v. Clarke* (9th Cir. 1995) 57 F.3d 1517, 1520). A TMDL allocates the acceptable pollutant load to point and nonpoint sources. The elements of a TMDL are described in 40 CFR 130.2 and 130.7. A TMDL is defined as "the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background" (40 CFR 130.2).

Upon establishment of TMDLs by the State or the U.S. EPA, the State is required to incorporate the TMDLs into the State Water Quality Management Plan (40 CFR 130.6 (c) (1), 130.7). The Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serves as the State Water Quality Management Plan governing the watersheds under the jurisdiction of the Regional Board. When adopting TMDLs as a part of its Basin Plan, the Regional Board includes, as part of the TMDL, a program for implementation of the wasteload allocations for point sources and load allocations for nonpoint sources.

Essentially, TMDLs serve as a backstop provision of the CWA designed to implement water quality standards when other provisions have failed to achieve water quality standards.

Clean Water Act Section 402(p): NPDES Permits for MS4s

The federal Clean Water Act (CWA) generally prohibits the "discharge of any pollutant," 33 U.S.C. § 1311(a), from a "point source" into waters of the United States. 33 U.S.C. § 1362(12)(A). An entity can, however, obtain a National Pollutant Discharge Elimination System (NPDES) permit that allows conditionally for the discharge of some pollutants. 33 U.S.C. § 1342(a)(1). The CWA defines point sources as "discernible, confined and discrete conveyances, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure" such as a pipe, ditch, container, rolling stock, concentrated animal feeding operation, landfill leacheate collections system, vessel or other floating craft from which pollutants are or may be discharged. 33 U.S.C. § 1362; 40 CFR 122.2.

In 1987, the U.S. Congress enacted the Water Quality Act recognizing both the environmental threats posed by storm water runoff and the U.S. EPA's problems in implementing regulations for storm water discharges (NRDC II, 966 F.2d at 1296). These Amendments to the CWA established new statutory requirements to control industrial and municipal storm water discharges to waters of the United States (CWA § 402(p).) The amendments require NPDES permits for storm water discharges from Municipal Separate Storm Sewer Systems (MS4s) to waters of the United States, and classify MS4s as a "point source".

The NPDES permits for MS4s (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit [unauthorized] non-storm water discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants from storm water to the maximum extent

practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (See CWA §402(p)(3)(B).)

On November 16, 1990, pursuant to CWA § 402(p), the U.S. EPA promulgated regulations at 40 CFR 122.26 which established requirements for MS4 discharges under the NPDES program.

Generally, discharges of pollutants that are covered under a NPDES permit must comply with (i) effluent limitations necessary to achieve compliance with technology based standards **as well as** (ii) **any more stringent effluent limitation "necessary to meet water quality standards"** (emphasis added) (33 U.S.C. § 1311(b)(1)(C)). In the case of MS4 NPDES discharge permits, federal courts have ruled that the CWA grants the permitting agency discretion to determine what pollutant controls are appropriate for discharges from MS4s. The federal courts held that the permitting agency has discretionary authority under "33 U.S.C. § 1342(p)(2)(E) to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants, or to require less than strict compliance with state water-quality standards, such as a BMP approach" (*Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir., 1999)). Under 33 U.S.C. § 1342(p)(3)(B)(iii), the permitting authority has the choice to include either best management practices or numeric effluent limitations in the permits. NRDC II, 966 F.2d at 1308 ("Congress did not mandate a minimum standards approach or specify that [the] EPA develop minimal performance requirements.").

Even early in the regulatory program for MS4s, the U.S. EPA stated that if the Permittee(s) fails to implement adequate BMPs to prevent exceedance of the receiving water objectives, the permitting authority "may have to consider other

approaches to water quality protection" (61 Fed. Reg. 43761; *Interim Permitting Approach*, Response #6, EPA 833-D-96-00, 1996; Order WQ 91-03).

State Regulatory Authority

In California, trash that is discharged to waterbodies is regulated by Regional Boards through their Basin Plans. In the Basin Plans, trash is identified as both a "floatable material" and a "solid, suspended or settleable material." The Basin Plans establish narrative water quality objectives for both, stating in general terms that *waters shall not contain these materials in concentrations that cause nuisance or adversely affect beneficial uses.* These narrative objectives are consistent with water quality criteria recommended under CWA section 304(a) by the U.S. EPA (1986).

The Regional Boards implement these narrative objectives for trash through a variety of mechanisms depending upon the primary source of the trash discharges. Until recently, attempts were made to implement these narrative objectives for trash primarily through standard provisions in NPDES permits for discharges from MS4s (discussed below). Where an individual waterbody is identified as impaired due to trash, *additional* regulatory requirements are established in a TMDL and incorporated into the Basin Plan, as described earlier.

The State of California is one of forty-five States that have been granted authority under the CWA to implement the NPDES permitting program in lieu of US EPA. The Porter-Cologne Act (California Water Code) authorizes the State Board, through the nine regional boards, to issue NPDES permits, and regulate and control the discharge of pollutants into waters of the State. Regional Board-issued NPDES permits must contain provisions consistent with the State Water Quality Management Plan (Wat. Code § 13263).

Related State Administrative Actions

The State Board has affirmed that NPDES MS4 permits must prohibit discharges that cause or contribute to violations of water quality standards contained in Basin Plans or Statewide Water Quality Control Plans (See WQ 98-01, at p. 8).

In 1999, the State Board issued standard receiving water limitations language to be included in municipal storm water permits across the State consistent with this affirmation (Order WQO 99-05, which amended Order WQO 98-01).

The State Water Board had ruled earlier that municipal storm water permits must include effluent limitations necessary to achieve water quality standards (State Board Orders WQ 91-03 and WQ 91-04)[7]. The State Board concluded that these may be non-numerical, but also pointed out that if the Permittee(s) fails to implement adequate BMPs to prevent exceedance of the receiving water objectives, the regional boards may have to consider other approaches to water quality protection (Order WQ 91-03).

Later, the State Board in Order WQ 2001-15 stated that "where urban runoff is causing or contributing to exceedances of water quality standards, it is appropriate to require improvements to BMPs that address those exceedances" (Order WQ 2001-15, p. 8). Recently, the State Board concluded that the regional boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of **either numeric or non-numeric** effluent limitations and should support their determination in the permit findings (Order WQ 2009-0008).

LA County MS4 Permit History

To comply with the CWA, the Regional Board issued the first storm water permit ("predecessor permit") on June 18, 1990, to the municipalities (Permittees) in Los Angeles County (Order No. 90-079; NPDES Permit No. CA0061654).

[7] In Order WQ 91-04, the State Board reviewed a complaint brought by the environmental community that the 1990 LA County MS4 Permit lacked numerical effluent limits and violated federal law.

The LA County MS4 Permit was reissued in 1996, and the current iteration of the permit was adopted on December 13, 2001 (Order No. 01-182; NPDES Permit No. CAS004001). The LA County MS4 Permit (Order No. 01-182) was amended by Order No. R4-2006-0074 on September 14, 2006. Another amendment to the Los Angeles County MS4 permit was made on August 9, 2007 by Order No. R4-2007-0042. Currently, Order No. 01-182 as amended by Order R4-2007-0042 is the Los Angeles County MS4 permit in effect.

Because of the complexity and networking of the municipal separate storm sewer system and drainage facilities within and tributary to the County of Los Angeles, the Regional Board adopted a countywide approach in permitting discharges from the MS4. The permit requires Permittees to implement timely and comprehensive programs in the areas of public involvement and participation, industrial/commercial inspection, development planning, development construction, public agency activities, and to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the U.S. In addition, it states that discharges from the MS4 to waters of the U.S., including Los Angeles River and its tributaries, may not cause or contribute to exceedances of water quality objectives.

Regulatory Scheme for Control of Trash Discharges

Consistent with U.S. EPA expectations, the trash control requirements in the first municipal stormwater permit were general and included documenting existing best management practices (BMPs), designing a stormwater monitoring program, and developing plans to optimize existing BMPs and implement additional BMPs. With each subsequent permit, there has been an increasing level of specificity in requirements to control trash, as shown in Table 2.

Table 2. Evolution of Permit Requirements for Control of Trash Discharges

Requirements	Early Permits (Pre-TMDL)	2nd Generation Permits (Pre-TMDL)	Recent Permits
Catch Basin (CB) Prioritization	None	None	Based on trash generation
CB Cleanout Frequency	1x during summer season	1x prior to storm season	1-4x per year based on prioritization
Additional CB Cleanouts	As necessary	When 40% full	When 25% full
Other CB Requirements	None	None	Trash excluders or equivalent at high priority CBs
Street Sweeping Prioritization	None	None	Based on trash generation
Street Sweeping Frequency	1x per month; where feasible, more frequently in high trash areas	Based on traffic volume	Based on trash generation
Open Channel Maintenance	1x per year prior to storm season	1x per year prior to storm season	1x per year prior to storm season
Parking Lot Sweeping	1x per month	1x per month	2x per month
TMDL requirements for impaired waterbodies	None	None	Yes

This evolution in requirements is linked to the identification of waterbodies as impaired due to trash. The "second generation" municipal stormwater permits, which were developed around the same time as the first determination of trash impairments, reflected an increase in specificity beyond what was done in the earlier stormwater permits. Those developed later, in conjunction with the first trash TMDLs, have been further refined in terms of their requirements to control discharges of trash.

The current LA County MS4 permit contains standard provisions for controlling trash discharges from the storm drain system, including but not limited to:

- Public Information and Participation Program (PIPP) in Part 4.B, including requirements for pollutant-specific outreach on trash in the Los Angeles River Watershed beginning in February 2003;
- Industrial/Commercial Facilities Control Program in Part 4.C, including requirements for permittees to (i) inspect critical sources and (ii) require operators to implement additional controls to reduce pollutants in runoff to CWA section 303(d) impaired waters; and
- Public Agency Activities Program in Part 4.F, including requirements for storm drain operation and management, streets and roads maintenance, and parking facilities management.

In drainage areas subject to the Los Angeles River Trash TMDL, the current permit requires permittees to continue the implementation of specified catch basin inspections and cleaning until trash TMDL implementation measures are adopted. Additionally, for any special event that can be reasonably expected to generate substantial quantities of trash and litter, permittees are still required to properly manage trash and litter generated, as a condition of the special use permit issued for that event. At a minimum, the municipality who issues the permit for the special event shall arrange for either temporary screens to b e placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event.

Permittees were required to place trash receptacles at all transit stops within their jurisdiction that have shelters by August 1, 2002, and at all other transit stops within their jurisdiction by February 3, 2003. Permittees are required to maintain all trash receptacles as necessary. The Principal Permittee, in cooperation with Permittees, is also required to continue coordinating outreach programs that focus on trash in the Los Angeles River.

Current Status and Basis for Action

While the Los Angeles County Department of Public Works reported a "30% decrease in roadway trash on unincorporated County roads and a 50% decrease in trash entering catchbasins since adoption of the current National Pollutant Discharge Elimination System (NPDES) Permit"[8], these standard provisions described above have not adequately controlled trash discharges to the Los Angeles River. As a result, trash in the Los Angeles River continues to be a serious problem, causing continued impairments to recreational and aquatic life beneficial uses of the river.

Nineteen years have passed since adoption of the first MS4 permit for Los Angeles County, while eight years have passed since adoption of the current MS4 permit. There has been ample time for Permittees to implement the standard provisions of the permit to control trash discharges to the Los Angeles River and to apply the iterative approach set forth in the Part I.B. of the 2001 Permit in order to address the trash impairments in the Los Angeles River watershed. Yet, water quality impairments due to trash discharges from the MS4 to the Los Angeles River and its tributaries remain a serious public health and environmental problem.

Additionally, over the last 19 years, much has been learned about the nature of urban runoff and stormwater and BMP performance, both nationally and regionally. During the early years of the stormwater regulatory program, the State Board recognized that a prudent approach was one that implemented BMPs to reduce sources and control pollutants from MS4 and continued to collect monitoring data on the characteristics of urban runoff and stormwater (Order WQ 91-03). However, with extensive data on the characteristics of stormwater and BMP performance, numeric effluent limitations for discharges of trash have

[8]Comment letter from County of Los Angeles, Department of Public Works, May 15, 2000, p. 1.

become feasible since it is possible to determine a BMP equivalent of the numeric target.[9]

As noted above, the TMDL requires progressive annual reductions in the amount of trash that may be discharged from a jurisdiction in the watershed. Section 122.44(d)(1)(vii)(B) requires that NPDES permits include conditions that are "consistent with the assumptions and requirements" of available waste load allocations. Therefore, Staff reviewed the structure of the WLAs and the requirements of the Trash TMDL before crafting the proposal for incorporation. Based on the TMDL and the manner in which the waste load allocations are expressed, staff concluded that the most obvious and logical manner of incorporating the Trash WLAs would involve the adoption of conditions in the permit that require annual reductions in the amount of trash that may be discharged by each jurisdiction. By definition the specification of a limit on the quantity of a pollutant that may be discharged from a specific location is in fact a numerically expressed "effluent limitation", as that term is defined in Water Code section 13385.1. While a variety of mechanisms might be considered to maneuver around the result, staff considers that the effect of any of those efforts would be to essentially water down the salient provisions of the TMDL to render them less- or unenforceable, beyond the current receiving water limitations and iterative approach that has not achieved compliance with water quality standards. Staff also considers the vast resources the Regional Board has devoted to this particular TMDL over the last 8 years with the intent of finally signaling the start to the end of the significant trash water quality problems that have been unresolved since the 1998 placement of the Los Angeles River on the 303(d) list.

In view of the above, Regional Board staff concludes that it is necessary and feasible to include the interim and final WLAs contained in the Los Angeles River Watershed Trash TMDL into the permit as numeric effluent limitations to ensure

[9] For example, installation of full capture BMPs in forty percent of a responsible jurisdiction's drainage area translates to a forty-percent reduction in the pre-assigned baseline waste load allocations. Since the

timely and measurable reductions in trash discharges to eliminate the existing water quality impairment. This is consistent with the recent State Board Order that concluded that, "whether a future municipal storm water permit requirement appropriately implements a storm water wasteload allocation will need to be decided based on the regional water quality control board's findings supporting either the numeric or non-numeric effluent limitations contained in the permit" (Order WQ 2009-0008).

Potential Options for Trash WLA Compliance

The Regional Board has determined that these WLAs may be achieved in several ways. Compliance approaches for the trash TMDLs can be broadly classified into the "full capture" approach, "institutional controls," and the "partial capture" approach. These approaches can be applied individually or in combination throughout the watershed to meet TMDL requirements.

The full capture approach involves the installation of "full-capture[10]" trash control systems in drainage areas of the affected watershed. All drainage areas where such an approach is employed are considered to be in compliance with the zero numeric target. This means that no further implementation actions are necessary, provided the system or device is appropriately sized for the subwatershed in which it is implemented and that it is properly maintained. This approach is consistent with the traditional storm water approach where dischargers are authorized to rely upon the use of best management practices. Full capture systems are specific structural best management practices that have been determined to meet the requirements of the TMDL. The use of such systems obviates the obligation on the part of the permittee to determine the actual amount of trash loading that the permittee may be causing, as compliance with

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waste load allocations are assigned as percent reductions, they can be directly translated from BMP implementation.

[10] For the purpose of the trash TMDLs, a full capture device is defined as "*any single device or series of devices that traps all particles retained by a 5mm mesh screen with a design treatment capacity of ≥ the peak flow rate resulting from a one-year, one-hour storm in the sub-drainage area.*"

the effluent limitations is determined by the fact of the installation and maintenance of the systems, not by the actual effluent quality.

Institutional controls are trash control measures taken by jurisdictional agencies that do not require any construction or installations. These are more typically referred to as "non-structural best management practices." Examples include street sweeping, public education, and clean out of catch basins that discharge to storm drains. Since the efficacy of institutional controls cannot be accurately assessed with an measure of certainty, where compliance with the effluent limitations relies upon institutional controls it must be determined by a method that assesses the trash discharges and reductions that are actually occurring in the watershed. The TMDL specifies that this may be achieved by comparing the allowable discharge against the total estimated discharge of trash from storm events, using a mass-based equation.[11] Compliance is deemed to have been attained when the estimated discharge is equal to or less than the allowable load.

The partial capture approach involves the use of other structural trash control devices (best management practices) that do not meet the "full-capture" performance requirements. For the partial capture approach, the degree of compliance with the zero target is determined by the demonstrated performance of the devices in question. Alternatively, where a device's performance is not known, compliance can be determined in the same manner as that used for institutional controls.

[11] The discharge is estimated using a mass balance equation. Discharge = [DGR x Days since last street sweeping] - [trash obtained from catch basin cleanouts]. The DGR (daily generation rate) is the average amount of trash deposited within a specified drainage area over a 24-hour period. Annual re-calculation of the DGR is intended to serve as a measure of the effectiveness of institutional controls or source reduction measures.

Alternatives Considered

The Regional Board staff considered the following alternatives for making enforceable the Los Angeles River Trash TMDL WLAs.

a. No Action Option – Given the limited scope of the action, which is to progressively reduce the discharge of trash from the MS4 to the Los Angeles River and its tributaries, and the costs associated with non-action or non-enforcement of the Los Angeles River Trash WLAs, the proposed action is reasonable and necessary. Furthermore, the Los Angeles River Trash TMDL required compliance with the interim WLAs beginning in September 2008. The Regional Board is obligated by federal regulation (40 CFR 122.44(d)) to ensure that NPDES permits are consistent with the assumptions and requirements of any available waste load allocation and by state law to ensure that the provisions of the Basin Plan, including TMDLs, are implemented in waste discharge requirements (WDRs) (Wat. Code § 13263). Failing to incorporate the waste load allocations into the permit at this time would be contrary to the federal goal of making surface waters 'fishable and swimmable' and the legislative intent of the Porter-Cologne Water Quality Control Act to attain the highest water quality that is reasonable.

b. MS4 Storm Water Quality Management Program (SQMP) – An MS4 Storm Water Permittee's SQMP is its primary documentation for utilizing the iterative adaptive approach using BMPs or other methods to manage the quality of storm water discharges in order to comply with receiving water limitations. MS4 Permittees in the Los Angeles River Watershed have had more than a decade and a half to effectively implement provisions of the permit to control trash discharges. The fact that discharges of trash to the Los Angeles River and its tributaries still cause or contribute to exceedances of water quality standards and impair beneficial uses, and that the Los Angeles River was first listed as impaired for trash on the 1998 303(d) list, that the Regional Board originally adopted WLAs for trash discharges in 2001, and re-adopted WLAs for trash discharges in

2007, demonstrates the need for greater action and strict enforcement of the WLAs. Permittees have not consistently submitted Receiving Water Limits Compliance Reports as required by the permit when there has been a determination of a violation of receiving water limitations (e.g., reported exceedances at permit monitoring stations), despite recurring exceedances of water quality standards. As noted earlier, few Permittees have documented revisions to the SQMP to address chronic exceedances of water quality standards. The existing iterative approach in the permit, which lacks enforceable milestones, would be inconsistent with the provisions and intent of the TMDL.Therefore this approach, which allows iterative yet enforceable compliance over a specific period of time is more appropriate

c. Incorporate TMDL Provisions at Permit Reissuance – Waiting until permit reissuance would prevent full implementation of the TMDL's regulatory requirements for several years after compliance is required. Therefore, the Regional Board is reopening the existing permit during its administrative extension, instead of reissuing the permit at this time.

d. (Proposed Alternative) Limited Reopener to Incorporate WLAs as Numeric Effluent Limitations with Alternative Compliance Approaches – Federal regulation requires that NPDES permits must be consistent with the assumptions and requirements of any available waste load allocation (40 CFR 122.44(d)(1)(vii)(B)). State law requires both that the Regional Board implement its Basin Plan when adopting waste discharge requirements (WDRs) and that NPDES permits apply "any more stringent effluent standards or limitations necessary to implement water quality control plans..." (Wat. Code §§ 13263, 13377). The Ninth Circuit Court of Appeals in *Defenders of Wildlife v. Browner* ruled that the Clean Water Act grants the permitting agency discretion either to require "strict compliance" with water quality standards through the imposition of numeric effluent limitations, or to employ an iterative approach toward compliance with water quality standards, by requiring improved BMPs over time (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159). In a precedential decision, the State Board acknowledged that the holding in *Browner*

allows the issuance of MS4 permits that limit their provisions to BMPs that control pollutants to the MEP, and which do not require compliance with water quality standards. However, the State Board has concluded and the Regional Board agrees that "where urban runoff is causing or contributing to exceedances of water quality standards, it is appropriate to require improvements to BMPs that address those exceedances" (Order WQ 2001-15, p. 8). In a recent decision, the State Board concluded that TMDLs should not be academic exercises, should be given substantive effect, and the regional boards should determine the most appropriate approach to implementing WLAs for MS4 discharges in the form of either numeric or non-numeric effluent limitations and should support their determination in the permit findings (Order WQ 2009-0008).

Regional Board staff concludes that in the case of the Trash TMDL, given its history, the resources devoted to its establishment, the continuing nature of the impairment, and the structure of the TMDL's waste load allocations, it is appropriate to establish effluent limitations that will result in measurable reductions in the pollutants discharged from the MS4 to receiving waters within a specified time frame, consistent with the TMDL's WLAs and implementation schedule.

Recommended Action

Staff recommends (d.) reopening the LA County MS4 permit in a limited manner to make modifications, including a new section, Part 7. Total Maximum Daily Load Provisions, to incorporate the Los Angeles River Trash WLAs, and revisions to Parts 4.F.5(b) (Standard Provisions) and 5 (Definitions). The changes are the addition of waste load allocations, for responsible jurisdictions identified in the Los Angeles River Watershed Trash TMDL, to achieve a progressive reduction in trash discharges from the MS4 to the Los Angeles River and its tributaries. Compliance with these WLA will address the impairment of beneficial uses that occurs as a result of these discharges.

The proposed modifications herein contain more specific requirements in the form of measurable interim and final effluent limitations to eliminate discharges of trash from the MS4 to the Los Angeles River and its tributaries in order to achieve water quality standards. This Order incorporates applicable WLAs that have been adopted by the Regional Board and have been approved by the State Board, Office of Administrative Law and the U.S. EPA. The conditions that implement the TMDL WLAs in the Order are expressed as effluent limitations in a manner consistent with the assumptions and requirements of the TMDL from which they are derived.

The re-opener provisions in Part 6.I.1 identify the authority and procedures for the Board to modify the permit. The proposed consideration by the Regional Board to incorporate the Los Angeles River Trash TMDL interim and final TMDL WLAs complies with these provisions and, specifically, with subparagraph (b) "to incorporate ... amendments to the Basin Plan". Per 40 CFR 122.62(a)(7) the Regional Board may reopen a permit when required by the "reopener" conditions in a permit.

Opportunity for Public Comment

Regional Board staff held a workshop on July 29, 2009, to inform Permittees and other interested persons how the Los Angeles River Trash TMDL will be incorporated into the LA MS4 Order. Comments were solicited during this workshop and up to two weeks following. These comments were considered by staff in formulating the draft permit modifications. Responses to these comments and comments received on the draft provisions, findings and fact sheet will be prepared prior to the Board hearing. In addition, the notice of the proposed Regional Board's proceedings to incorporate the Los Angeles River Watershed Trash TMDL's WLAs into the Los Angeles County MS4 Permit which was circulated on September 30, 2009, provided a 30-day comment period for interested parties. The Regional Board Hearing on this matter, which is scheduled for December 10, 2009, provides further opportunity for stakeholders to comment.

APPENDIX 1

Table 1a: Los Angeles River Watershed Trash TMDL Waste Load Allocations per Storm Year,expressed as allowable discharge relative to baseline Waste Load Allocations (gallons of uncompressed volume)

	End of Storm Year – September 30				
Permittee	2010 (40%)	2011 (30%)	2012 (20%)	2013 (10%)	2014 (0%)
Alhambra	15961	11971	7981	3990	0
Arcadia	20043	15032	10022	5011	0
Bell	6410	4808	3205	1603	0
Bell Gardens	5400	4050	2700	1350	0
Bradbury	1711	1283	855	428	0
Burbank	37036	27777	18518	9259	0
Calabasas	9002	6752	4501	2251	0
Carson	2733	2050	1366	683	0
Commerce	23493	17620	11747	5873	0
Compton	21276	15957	10638	5319	0
Cudahy	2374	1781	1187	594	0
Downey	15625	11719	7813	3906	0
Duarte	4884	3663	2442	1221	0
El Monte	16883	12662	8442	4221	0
Glendale	56126	42094	28063	14031	0
Hidden Hills	1465	1099	733	366	0
Huntington Park	7664	5748	3832	1916	0
Irwindale	4941	3706	2470	1235	0
La Cañada Flintridge	13398	10049	6699	3350	0
Los Angeles	549938	412454	274969	137485	0
Los Angeles County	124089	93067	62045	31022	0
Lynwood	11280	8460	5640	2820	0
Maywood	2452	1839	1226	613	0
Monrovia	18675	14006	9337	4669	0
Montebello	20148	15111	10074	5037	0
Monterey Park	15560	11670	7780	3890	0
Paramount	10981	8236	5490	2745	0
Pasadena	44799	33599	22400	11200	0
Pico Rivera	5581	4186	2791	1395	0
Rosemead	10922	8192	5461	2731	0
San Fernando	5579	4184	2789	1395	0
San Gabriel	8137	6103	4069	2034	0
San Marino	5756	4317	2878	1439	0
Santa Clarita	360	270	180	90	0
Sierra Madre	4644	3483	2322	1161	0
Signal Hill	3774	2830	1887	943	0
Simi Valley	55	41	27	14	0
South El Monte	6400	4800	3200	1600	0
South Gate	17562	13171	8781	4390	0
South Pasadena	5963	4472	2981	1491	0
Temple City	7029	5272	3514	1757	0
Vernon	18881	14161	9441	4720	0

Table 1b: Los Angeles River Watershed Trash TMDL Waste Load Allocations per Storm Year, expressed as allowable discharge relative to baseline Waste Load Allocations (pounds of drip-dry weight)

Permittee	End of Storm Year – September 30				
	2010 (40%)	2011 (30%)	2012 (20%)	2013 (10%)	2014 (0%)
Alhambra	27504	20628	13752	6876	0
Arcadia	37214	27911	18607	9304	0
Bell	10135	7601	5067	2534	0
Bell Gardens	9348	7011	4674	2337	0
Bradbury	4864	3648	2432	1216	0
Burbank	68156	51117	34078	17039	0
Calabasas	20892	15669	10446	5223	0
Carson	4083	3062	2042	1021	0
Commerce	34192	25644	17096	8548	0
Compton	34542	25907	17271	8636	0
Cudahy	4024	3018	2012	1006	0
Downey	27403	20552	13701	6851	0
Duarte	9475	7106	4737	2369	0
El Monte	27307	20480	13653	6827	0
Glendale	117399	88049	58700	29350	0
Hidden Hills	4328	3246	2164	1082	0
Huntington Park	12372	9279	6186	3093	0
Irwindale	7164	5373	3582	1791	0
La Cañada Flintridge	29499	22124	14749	7375	0
Los Angeles	1029000	771750	514500	257250	0
Los Angeles County	260722	195542	130361	65181	0
Lynwood	18587	13940	9293	4647	0
Maywood	4220	3165	2110	1055	0
Monrovia	40395	30296	20198	10099	0
Montebello	33483	25112	16741	8371	0
Monterey Park	28182	21137	14091	7046	0
Paramount	17796	13347	8898	4449	0
Pasadena	83006	62254	41503	20751	0
Pico Rivera	9020	6765	4510	2255	0
Rosemead	18951	14213	9476	4738	0
San Fernando	9231	6923	4615	2308	0
San Gabriel	14575	10931	7287	3644	0
San Marino	11659	8744	5829	2915	0
Santa Clarita	930	698	465	233	0
Sierra Madre	10077	7558	5038	2519	0
Signal Hill	5688	4266	2844	1422	0
Simi Valley	138	103	69	34	0
South El Monte	9728	7296	4864	2432	0
South Gate	28933	21700	14467	7233	0
South Pasadena	11343	8507	5671	2836	0
Temple City	12728	9546	6364	3182	0
Vernon	26726	20044	13363	6681	0

Appendix 7-1

Interim and Final Effluent Limitations for Trash for Permittees Identified as Responsible Jurisdictions in the Los Angeles River Watershed Trash TMDL

Table 1a: Los Angeles River Watershed Trash Effluent Limitations[1] per Storm Year[2] (gallons of uncompressed trash)

Permittees	2010 (50%)	2011 (40%)	2012 (30%)	2013 (20%)	2014 (10%)	2015 (3.3%)	2016[3] (0%)
Alhambra	19952	15961	11971	7981	3990	1317	0
Arcadia	25054	20043	15032	10022	5011	1654	0
Bell	8013	6410	4808	3205	1603	529	0
Bell Gardens	6750	5400	4050	2700	1350	446	0
Bradbury	2139	1711	1283	855	428	141	0
Burbank	46295	37036	27777	18518	9259	3055	0
Calabasas	11253	9002	6752	4501	2251	743	0
Carson	3416	2733	2050	1366	683	225	0
Commerce	29367	23493	17620	11747	5873	1938	0
Compton	26596	21276	15957	10638	5319	1755	0
Cudahy	2968	2374	1781	1187	594	196	0
Downey	19532	15625	11719	7813	3906	1289	0
Duarte	6105	4884	3663	2442	1221	403	0
El Monte	21104	16883	12662	8442	4221	1393	0
Glendale	70157	56126	42094	28063	14031	4630	0
Hidden Hills	1832	1465	1099	733	366	121	0
Huntington Park	9580	7664	5748	3832	1916	632	0
Irwindale	6176	4941	3706	2470	1235	408	0
La Cañada Flintridge	16748	13398	10049	6699	3350	1105	0
Los Angeles	687423	549938	412454	274969	137485	45370	0
Los Angeles County	155112	124089	93067	62045	31022	10237	0
Lynwood	14101	11280	8460	5640	2820	931	0
Maywood	3065	2452	1839	1226	613	202	0
Monrovia	23344	18675	14006	9337	4669	1541	0
Montebello	25185	20148	15111	10074	5037	1662	0
Monterey Park	19450	15560	11670	7780	3890	1284	0
Paramount	13726	10981	8236	5490	2745	906	0
Pasadena	55999	44799	33599	22400	11200	3696	0
Pico Rivera	6977	5581	4186	2791	1395	460	0
Rosemead	13653	10922	8192	5461	2731	901	0
San Fernando	6974	5579	4184	2789	1395	460	0
San Gabriel	10172	8137	6103	4069	2034	671	0
San Marino	7196	5756	4317	2878	1439	475	0
Santa Clarita	451	360	270	180	90	30	0
Sierra Madre	5806	4644	3483	2322	1161	383	0
Signal Hill	4717	3774	2830	1887	943	311	0
Simi Valley	69	55	41	27	14	5	0
South El Monte	8000	6400	4800	3200	1600	528	0
South Gate	21952	17562	13171	8781	4390	1449	0
South Pasadena	7454	5963	4472	2981	1491	492	0
Temple City	8786	7029	5272	3514	1757	580	0
Vernon	23602	18881	14161	9441	4720	1558	0

[1] Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

[2] Storm year is defined as October 1 to September 30 herein.

[3] Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

Table 1b: Los Angeles River Watershed Trash Effluent Limitations[4] per Storm Year[5] (pounds of drip-dry trash)

Permittees	2010 (50%)	2011 (40%)	2012 (30%)	2013 (20%)	2014 (10%)	2015 (3.3%)	2016[6] (0%)
Alhambra	34381	27504	20628	13752	6876	2269	0
Arcadia	46518	37214	27911	18607	9304	3070	0
Bell	12669	10135	7601	5067	2534	836	0
Bell Gardens	11686	9348	7011	4674	2337	771	0
Bradbury	6080	4864	3648	2432	1216	401	0
Burbank	85195	68156	51117	34078	17039	5623	0
Calabasas	26115	20892	15669	10446	5223	1724	0
Carson	5104	4083	3062	2042	1021	337	0
Commerce	42741	34192	25644	17096	8548	2821	0
Compton	43178	34542	25907	17271	8636	2850	0
Cudahy	5031	4024	3018	2012	1006	332	0
Downey	34254	27403	20552	13701	6851	2261	0
Duarte	11844	9475	7106	4737	2369	782	0
El Monte	34134	27307	20480	13653	6827	2253	0
Glendale	146749	117399	88049	58700	29350	9685	0
Hidden Hills	5411	4328	3246	2164	1082	357	0
Huntington Park	15465	12372	9279	6186	3093	1021	0
Irwindale	8956	7164	5373	3582	1791	591	0
La Cañada Flintridge	36874	29499	22124	14749	7375	2434	0
Los Angeles	1286250	1029000	771750	514500	257250	84893	0
Los Angeles County	325903	260722	195542	130361	65181	21510	0
Lynwood	23234	18587	13940	9293	4647	1533	0
Maywood	5275	4220	3165	2110	1055	348	0
Monrovia	50494	40395	30296	20198	10099	3333	0
Montebello	41854	33483	25112	16741	8371	2762	0
Monterey Park	35228	28182	21137	14091	7046	2325	0
Paramount	22245	17796	13347	8898	4449	1468	0
Pasadena	103757	83006	62254	41503	20751	6848	0
Pico Rivera	11275	9020	6765	4510	2255	744	0
Rosemead	23689	18951	14213	9476	4738	1563	0
San Fernando	11539	9231	6923	4615	2308	762	0
San Gabriel	18219	14575	10931	7287	3644	1202	0
San Marino	14574	11659	8744	5829	2915	962	0
Santa Clarita	1163	930	698	465	233	77	0
Sierra Madre	12596	10077	7558	5038	2519	831	0
Signal Hill	7110	5688	4266	2844	1422	469	0
Simi Valley	172	138	103	69	34	11	0
South El Monte	12160	9728	7296	4864	2432	803	0
South Gate	36167	28933	21700	14467	7233	2387	0
South Pasadena	14179	11343	8507	5671	2836	936	0
Temple City	15910	12728	9546	6364	3182	1050	0
Vernon	33407	26726	20044	13363	6681	2205	0

[4] Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

[5] Storm year is defined as October 1 to September 30 herein.

[6] Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Frank Kuo

Frank Kuo makes the following declaration and statement under oath:

I, Frank Kuo, Facilities Project Manager II in the Watershed Management Division of Los Angeles County's Department of Public Works, am responsible for implementing the subject law.

I declare that it is my information or belief that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached to the subject test claim), Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL (total maximum daily loads)], requires, in subsection c.3., (on Permit page 49), that:

> "c. Permittees not subject to a trash TMDL shall:
>
> - - -
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [Emphasis added.]

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) was not, and currently is not, required under federal law.

I declare that it is my information or belief that federal law applies to Permittees subject to TMDL, as noted, on page 9, in the subject Permit:

> "Section 303(d) of the (federal) CWA (Clean Water Act) requires that the State identify a list of water-impaired bodies and develop

and implement Total Maximum Daily Loads (TMDLs) for those water bodies (33 U.S.C. Section 1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, [and] still meet applicable water quality standards and protect beneficial uses."

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), requiring Los Angeles County to place and maintain trash receptacles at all transit stops within its jurisdiction, except for the Los Angeles River and Ballona Creek Watershed Management areas, was not required under prior law.

I declare that it is my information or belief that Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), including:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles
3. Designing receptacle pad improvement, if needed
4. Constructing and installing trash receptacle units
5. Collecting trash and maintaining receptacles

I declare that it is my information or belief that the [above] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), and cost the County of Los Angeles in

excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the test claim legislation as amended herein require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

8/28/03
ALHAMBRA, CA.
Date and Place

Signature

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Aras Ahmed

Aras Ahmed makes the following declaration and statement under oath:

I, Aras Ahmed, Associate Civil Engineer, in the Programs Development Division of Los Angeles County's Department of Public Works, am responsible for the initial implementation of the subject program.

I declare that it is my information or belief that the California Regional Water Quality Control Board's Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, (attached to the subject test claim), Part 4 [Special Provisions], Section F. [Public Agency Activities Program], 5. [Storm Drain Operation and Management], c. [Permittees not Subject to a trash TMDL (total maximum daily loads)], requires, in subsection c.3., (on Permit page 49), that:

> "c. Permittees not subject to a trash TMDL shall:
>
> ---
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary." [Emphasis added.]

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.) was not, and currently is not, required under federal law.

I declare that it is my information or belief that federal law applies to Permittees subject to TMDL, as noted, on page 9, in the subject Permit:

"Section 303(d) of the (federal) CWA (Clean Water Act) requires that the State identify a list of water-impaired bodies and develop and implement Total Maximum Daily Loads (TMDLs) for those water bodies (33 U.S.C. Section 1313(d)(1)). A TMDL specifies the maximum amount of a pollutant that a water-body can receive, [and] still meet applicable water quality standards and protect beneficial uses."

I declare that it is my information or belief that the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), requiring Los Angeles County to place and maintain trash receptacles at all transit stops within its jurisdiction, except for the Los Angeles River and Ballona Creek Watershed Management areas, was not required under prior law.

I declare that it is my information or belief that Los Angeles County has no user fee authority to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has not received federal, state, or other external funding to recover County costs incurred in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

I declare that it is my information or belief that Los Angeles County has complied with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.), including:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles
3. Designing receptacle pad improvement, if needed
4. Constructing and installing trash receptacle units
5. Collecting trash and maintaining receptacles

I declare that it is my information or belief that the [above] duties are reasonably necessary in complying with the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit

Number CAS004001, Part 4, Section F.5.c.3.), and cost the County of Los Angeles in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that I have prepared the attached schedule, detailing costs incurred by Los Angeles County in implementing the California Regional Water Quality Control Board's mandate (Executive Order Number 01-182, as issued on December 13, 2001, in Permit Number CAS004001, Part 4, Section F.5.c.3.).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the test claim legislation as amended herein require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

8/28/03
ALHAMBRA, CA
Date and Place

Signature

Cost Schedule Attachment
Declaration of Aras Ahmed

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

December 13, 2001 – October 31, 2002

1. Identifying all transit stops within the jurisdiction

Job code (X3003087,
Installation of NPDES trash receptacles) $ 19,989.17

August 1, 2002 – January 12, 2003

2. Selecting the proper trash receptacle design, evaluating proper placement of trash receptacles, specification and drawing preparation

Job code (X3003087) $ 38,461.87

August 1, 2002 – January 12, 2003

3. Preliminary engineering works (Construction contract preparation and specification reviewing process, Bid advertising and awarding process)

Job code (X3003087) $ 19,662.02

January 12, 2003 – April 11, 2003

4. Constructing and installing trash receptacle units
describe contract and amount

Fabrication and installation of 366 units	$214,003.86
1,615 sf of concrete pad used	$ 16,751.72
Total Cost	$230,755.58

Construction Management

Job code (X3003087) $ 34,628.31

5. Trash collection and receptacle maintenance

Force Account cost for maintaining and Collecting trash in FY 2002-03 $ 3,513.94

Maintenance contractor cost for maintaining and collecting trash in FY 2002-03
321 units x $22.50 per week x 13 weeks $ 93,892.50

6. Projected Cost for on-going maintenance in FY 2003-04

321 units x $22.50 per week x 52 weeks $375,570.00

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
California Regional Water Quality Control Board
Executive Order Number 01-182, December 13, 2001
Permit Number CAS004001, Part 4, Section F. 5. c. 3.
Transit Trash Receptacles

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/30/03; Los Angeles, CA
Date and Place

Carl Kaye
Signature

Total Maximum Daily Loads (TMDL) QUESTIONS & ANSWERS

Q: What is a TMDL?

A: A TMDL is a written plan that describes how an impaired water body will meet water quality standards, it contains:
- a measurable feature to describe attainment of the water quality standard(s)
- a description of required actions to remove the impairment
- an allocation of responsibility among dischargers to act in the form of actions or water quality conditions for which each discharger is responsible.

Section 303(d) of the federal Clean Water Act requires states to develop TMDLs for impaired waterbodies.

Q: How does a TMDL differ from other pollution management efforts?

A: A TMDL requires that loads from all pollution sources within an impaired watershed be allocated. Other efforts focus on loads from a few, identifiable sources. TMDLs also generally require that a number of programs and agencies work together to achieve the desired level of pollution control. Other efforts are often limited to a single program or entity.

Q: What is the difference between point and nonpoint sources of pollution and how does this relate to TMDLs?

A: Point sources release pollutants from discrete conveyances, such as a discharge pipe from a factory and are defined in statute. Nonpoint sources release pollutants from landscape scale features and include such features as parking lot runoff, agricultural field runoff, and dust and air pollution from human activities (considered everything that is not covered under the point source definition). TMDLs must allocate loads for both point and nonpoint sources.

Q: What is an "impaired water body" and how many are there in California?

A: Informally, an impaired water body is any water that is not meeting the water quality standards that have been established for that water. Formally, an impaired water body is one that is not attaining water quality standards after technology based discharge limits on point sources are implemented. Section 303(d) of the federal Clean Water Act requires each state to maintain a list of impaired waterbodies and revise the list from time to time (currently in even numbered years) California has 509 water bodies listed.

Q: What are the costs of preparing a TMDL?

A: Cost vary depending on the complexity of the TMDL. Estimates range to over $1 million for a complex TMDL that includes the implementation plan.

Q: How do you know which TMDL to do first?

A: The Clean Water Act requires the states to develop rankings for TMDLs. California, ranks TMDLs as high, medium or low priority based on a number of factors including the severity of the impairments and the importance of the specific beneficial uses. Regional Boards develop schedules that set the order for TMDL completion. These schedules are contained in the Regional Boards Watershed Management Initiative work plans.

Q: What steps are involved in producing a TMDL?

A: There are five steps in producing a TMDL:

1) *Stakeholder involvement: Stakeholders are people (e.g., general public, business interests, government entities, local agencies, citizens, etc.) concerned about a particular water body. They become involved in TMDL development through local groups working with Regional Water Quality Control Board staff. Their interests range from pursuing the science to support TMDLs to figuring out how to implement new management approaches.*

2) *Water body assessment: Pollution sources and loads are determined, and their overall effect on the water body is assessed.*

3) *Develop allocations: Based on the assessment, pollutant loads are allocated for each source. A TMDL may address a single pollutant or many pollutants. The allocations must be designed so that the water body will attain the applicable water quality standards.*

4) *Develop an implementation plan: The plan describes the approach and activities required to ensure that the allocations are met.*

5) *Amend the Basin Plan: Before a TMDL is enforceable it must be incorporated into the appropriate Basin Plan by amending the Basin Plan in accordance with state law. If TMDLs are not incorporated into Basin Plans, they have no legal standing under state law and cannot be enforced by Regional Boards. A Basin Plan amendment requires approval by the appropriate Regional Board, the State Water Resources Control Board (State Board), the Office of Administrative Law, and the U.S. Environmental Protection Agency Region 9. A public hearing process is used for the Regional Board and State Board steps in the process.*

Q: If TMDLs have been required since 1972, why don't all of California's impaired waterbodies have completed and approved TMDLs?

A: The federal Clean Water Act was established in 1972. In the early stages of implementing the Act, attention was placed on getting technology based controls in place. Technology controls are equipment and facilities that produce a minimum uniform level of pollution control. A great deal of attention was placed on getting sewage treatment plants built and operating at the minimum desired levels. Only after the technology controls were largely in place did attention begin to focus on other requirements of the Act, including TMDLs. Today, California maintains an extensive program to manage sewage treatment and other point sources and has begun to address the TMDL requirements.

P/FD121(APRIL 2001)

"If you have questions concerning a specific waterbody, please visit our website "swrcb.ca.gov" or telephone the Regional Water Quality Control Board for your area (please see below) and ask to speak to the TMDL coordinator."

California Regional Quality Control Boards

North Coast Region (1)
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
(707) 576-2220

San Francisco Bay Region (2)
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2300

Central Coast Region (3)
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401-5427
(805) 549-3147

Los Angeles Region (4)
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6600

Central Valley Region (5)
3443 Routier Road, Suite A
Sacramento, CA 95827-3098
(916) 255-3000

Fresno Branch Office (5)
3614 East Ashlan Avenue
Fresno, CA 93726
(559) 445-5116

Redding Branch Office (5)
415 Knollcrest Drive, Suite 100
Redding, CA 96002
(530) 224-4845

Lahontan Region (6)
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
(530) 542-5400

Victorville Branch Office (6)
15428 Civic Drive, Suite 100
Victorville, CA 92392
(760) 241-6583

Colorado River Basin Region (7)
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
(760) 346-7491

Santa Ana Region (8)
3737 Main Street, Suite 500
Riverside, CA 92501-3339
(909) 782-4130

San Diego Region (9)
9771 Clairemont Mesa Blvd., Suite A
San Diego, CA 92124-1324
(858) 467-2952

DS GA
JB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

August 1, 2002

Ms. Celeste Cantú
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

2002 AUG -5 P 2:43
RECEIVED

Dear Ms. Cantú:

Thank you for submitting the Basin Plan Amendments containing total maximum daily loads (TMDLs) for trash and associated implementation plans for Los Angeles River Watershed and Ballona Creek and Wetland. The TMDL and implementation plan submittal, which contained portions of the State Board and Regional Board administrative records, was dated July 15, 2002. The State Office of Administrative Law concurrence memoranda were received on July 16 and July 18, 2002. Finally, the State provided a letter clarifying several aspects of its decisions on July 29, 2002. The State adopted TMDLs for the following water bodies:

Los Angeles River Reaches 1, 2, 3, 4, and 5;
Los Angeles River Estuary;
Tujunga Wash (Hansen Dam to Los Angeles River);
Burbank Western Channel;
Verdugo Wash Reaches 1 and 2;
Arroyo Seco Reaches 1 and 2;
Rio Hondo Reach 1;
Peck Road Lake;
Echo Park Lake;
Lincoln Park Lake;
Ballona Creek; and
Ballona Wetland.

Based on EPA's review of the TMDL submittal under Section 303(d), I have concluded that the TMDLs adequately address the pollutant of concern and, upon implementation, will result in attainment of the water quality standards adopted by the State. These TMDLs include wasteload and load allocations as needed, take into consideration seasonal variations and critical conditions, and provide adequate margins of safety. The State has provided adequate opportunities for public review and comment on the TMDL and demonstrated how public comments were considered in the final TMDLs. All required elements are adequately addressed; therefore, the TMDLs are hereby approved pursuant to Clean Water Act Section 303(d)(2).

The TMDL submittal also contains a detailed plan for implementing the trash TMDLs. Current federal regulations do not define TMDLs as containing implementation plans; therefore, EPA is not taking action on the implementation plan provided with the TMDLs. However, EPA appreciates the State's commitment to working with the regulated entities to implement the TMDLs. EPA concurs with the State's conclusion that the TMDLs are reasonable and achievable using currently available technology as described in the TMDL implementation plans. EPA commends the Regional Board's commitment to review the TMDLs and associated data and information upon (1) the completion of baseline monitoring for the TMDL; and (2) attainment of a 50 percent reduction in trash generation.

As you are aware, on March 19, 2002, EPA established TMDLs for trash for the Los Angeles River Watershed and Ballona Creek and Wetland in order to meet the March 22, 2002 consent decree deadline specified in the *Heal the Bay, et al v. Browner* lawsuit. The approved State TMDLs for trash for Los Angeles River Watershed and Ballona Creek and Wetland now supercede the TMDLs established by EPA in March; therefore, the State's TMDLs are now the applicable TMDLs for Clean Water Act purposes.

We would like to continue working with you and the Regional Boards to ensure that future TMDLs are adopted and submitted to EPA on schedule and, in particular, ensure that TMDLs required under the consent decrees are adopted by the State in time to meet the relevant deadlines.

The enclosed review discusses the basis for this decision in greater detail. I appreciate the State and Regional Boards' work to complete and adopt these TMDLs and look forward to our continuing partnership in TMDL development. If you have questions concerning this approval, please call me at (415) 972-3572 or David Smith at (415) 972-3416.

Sincerely,

Alexis Strauss
Director
Water Division

1 August 2002

enclosures

cc: Dennis Dickerson

http://www.epa.gov/region9/water/tmdl/final.html
Last updated on Friday, March 19, 2010

Region 9: Water Program

Monitoring, Assessment and TMDLs

Monitoring, Assessment and Total Maximum Daily Loads (TMDLs) Quick Finder

Monitoring & TMDLs Home	EPA-lead TMDLs, in progress	California TMDLs	Pacific Islands TMDLs
303(d) lists	Monitoring	Hawai'i TMDLs	
EPA-established TMDLs	Arizona TMDLs	Nevada TMDLs	

EPA-Established TMDLs

Recent Updates

Lost River Nutrients & pH TMDLs

National Links

EPA's National TMDL Web site

Although most TMDLs are adopted by states, territories, or authorized tribes, and then approved by EPA, EPA also establishes TMDLs in some cases if:

- EPA disapproves TMDLs submitted by states, territories, or authorized tribes,
- States, territories, or authorized tribes do not submit TMDLs in a timely manner,
- EPA is required to do so pursuant to litigation settlements or judicial orders, or
- States ask EPA to establish TMDLs for particular water bodies.

You will need Adobe Reader to view some of the files on this page. See EPA's PDF page to learn more about PDF, and for a link to the free Adobe Reader.

The following are TMDLs which have been completed by EPA as part of legal requirements under lawsuit settlement consent decrees. EPA-established TMDLs covering other bodies of water will be added as they become available.

Albion River Sediment TMDL

Final TMDL (PDF) (49 pp, 139 K)
The following figure is not included in the document:

- figure 1 (PDF) (poster 35 x 23 inches, 1 pg, 565K)

Summary of Comments and Responses (PDF) (15 pp, 30K)

Ballona Creek and Wetland Trash TMDL

EPA established this TMDL on March 19, 2002. On August 1, 2002, EPA approved the TMDL submitted by the State of California, which supercedes the EPA-established TMDL.

- State-adopted TMDLs for Ballona Creek and Wetland Trash TMDL EXIT Disclaimer

Big River Sediment TMDL

Final TMDL (PDF) (51 pg, 142K)
The following figure is not included in the document:

- figure 1 (PDF) (1 pg, 337 K)

Summary of Comments and Responses (PDF) (10 pp, 30K)

Calleguas Creek Chloride TMDL

Final TMDL (PDF) (35 pp, 317K)
Technical Support Document (PDF) (72 pp, 420K)

- Appendix Figure A-1 (PDF) (1 pg, 5 MB)
- Appendix Table 1 (PDF) (9 pp, 44K)
- Appendix Table 2 (PDF) (2 pp , 73K)
- Appendix Table 3 (PDF) (2 pp, 16K)
- Appendix Table 4 (PDF) (3 pp, 13K)
- Appendix Table 5 (PDF) (3 pp, 13K)

Summary of Comments and Responses (PDF) (47 pp, 104K)

Eel River (Lower) Sediment and Temperature TMDLs

Final TMDL (PDF) (83 pp, 1.7M)
Comment Responsiveness Summary (PDF) (16 pp, 107K)

- Appendix A: Development and Application of the Q2ESHADE Temperature Modeling System to the Lower Eel River, September 2006 (PDF) (84 pp, 2.5M)
- Appendix B: Airborne Thermal Infrared Remote Sensing, Eel River, CA, October 2005 (PDF) (28 pp, 1M)
- Appendix C: Sediment Source Assessment for the Lower Eel River Watershed, September 2007 (PDF) (32 pp, 440K)

Eel River (North Fork) Sediment and Temperature TMDLs

Final TMDL (PDF) (50 pp, 615K)

- Figure 3-1 (PDF) (1 pg, 1.2 MB)
- Figure 3-2, 3-3, 3-4, 3-5 (PDF) (5 pp, 145K)
- Figure 3-6 (PDF) (1 pg, 36K)
- Figure 3-7 (PDF) (1 pg, 34K)

Response to Comments (PDF) (14 pp, 36K)

Eel River (Middle Fork) Sediment and Temperature TMDLs

Final TMDL (PDF) (58 pp, 299K)

- Figures (PDF) (7 pp, 605K)

- Appendix A (PDF) (21 pg, 1.4 MB)
- Appendix B: USFS Sediment Source Analysis
  - Landslide Assessment (PDF) (23 pp, 104K)
    - Tables for Landslide assessment (PDF) (14 pp, 29K)
    - Maps (PDF) (2 pp, 1.4 MB)

- Small Source Study (PDF) (37 pp, 287K)

Summary of comments and responses (PDF) (11 pg, 63K)

Eel River (South Fork) Sediment and Temperature TMDLs

Final TMDL (PDF) (62 pp, 273K)

The following figures are not included in the document:

- Figure 5 (PDF) (1 pg, 441K)
- Figure 6 (PDF) (1 pg, 80K)
- Figure 7 (PDF) (1 pg, 447K)
- Figure 13 (PDF) (1 pg, 129K)
- Figure 14 (PDF) (1 pg, 461K)
- Figure 15 (PDF) (1 pg, 465K)

Eel River (Middle Main) Sediment and Temperature TMDLs

Final TMDL (PDF) (55 pp, 557K)

- Figures & Maps (PDF) (10 pp, 853 K)
- Appendix A (PDF): Q2ESHADE Temperature Modeling System (93 pp, 9 MB - very large file)
- Appendix B (PDF): Sediment Source Analysis (p13 pp, 445K)

Eel River (Upper Main) Sediment and Temperature TMDLs

Final TMDL (PDF) (70 pp, 981K)

- Figure 1 (PDF): Major features of the Upper Eel TMDL area (1 pg. map., 128K)
- Figure 2 (PDF): Adult Steelhead Returns to Van Arsdale (1 pg. map, 22K)
- Figure 3 (PDF): Stream Temperature Modeling Results (1 pg. map, 192K)
- Figures 4 & 5 (PDF): Modeled Stream Temperatures from Van Arsdale to Outlet Creek (1 pg, 52K)
- Tables III & IV (PDF): Tomki Creek Shade effects on Stream Temperature (1 pg, 42K)
- Appendix A (Technical Appendix) (PDF): Development and Application of the Q2ESHADE Temperature Modeling System to the Upper Main Eel River (74 pp, 2,648K)
- Appendix B (PDF): Sediment Source Analysis for the Upper Eel River Sediment TMDL (40 pp, 1,122K)
- Appendix C (PDF): Sediment Tables for the Entire Watershed and Subwatersheds (29 pp, 847K)

Upper Main Eel Temperature and Sediment TMDLs Comment Responsiveness Summary (PDF) (19 pp, 306K)

Garcia River Sediment TMDL

Final TMDL (PDF) (51 pg, 129K)
Summary of Comments and Responses (PDF) (24 pp,59K)
Additional Comments (PDF) (5 pp, 13K)
Response to Peer Review Comments (PDF) (2 pp, 5K)

Gualala River Sediment TMDL

Final TMDL (PDF) (22 pp, 108K)
Summary of Comments and Responses (11 pg, 26K)

Los Cerritos Channel Metals TMDLs

EPA established the Los Cerritos Channel Metals TMDLs for Copper, Lead and Zinc on March 17, 2010.

- Final Los Cerritos Channel Metals TMDLs (PDF) (54 pp, 976K)
- Los Cerritos Channel Metals TMDLs Appendices (PDF) (41 pp, 1.4M)
- Response to Comments Part 1, December 2008 Public Notice (PDF) (47 pp, 228K)
- Response to Comments Part 2, November 2009 Pubic Notice (PDF) (18 pp, 90K)
- Existing NPDES permits within the watershed (XLS) (1 pp, 64K)

Los Angeles River Watershed Trash TMDL

EPA established this TMDL on March 19, 2002. On August 1, 2002, EPA approved the TMDL submitted by the State of California, which supercedes the EPA-established TMDL.

- State-adopted TMDLs for Los Angeles River Watershed Trash TMDL EXIT Disclaimer

Lost River Nutrients and pH TMDLs

EPA established these nutrient TMDLs on December 30, 2008.

- Final TMDL for Lost River, California Nutrients (PDF) (110 pp, 3.5M)
- Appendix A - Report on Lost River Model for TMDL Development, August 2005 (PDF) (234 pp, 4.8M)
- Comment Responsiveness Summary (PDF) (106 pp, 454K)

Some technical support documents are provided here since they are referenced in the TMDLs and provide additional clarification.

- Lost River Modeling Scenario 1D - Variable Load Reduction TMDL Except for Impoundments, 6/22/05 (PDF) (69 pp, 3M)
- Email from Mustafa Faizullabhoy of TetraTech regarding load calculations, 8/29/06 (PDF) (2 pp, 15K)

Mad River Sediment and Turbidity TMDLs

Final TMDL (PDF) (112 pp, 1.74M)
Comment Responsiveness Summary (PDF) (52 pp, 511K)
Sediment Source Analysis (PDF) (173 pp, 13.3M)

- Plate 1 - Subwatersheds (3 pp, 3M)
- Plate 2 - GMA Sampling Sites (3 pp, 1.9M)
- Plate 3 - Mean Annual Precipitation (3 pp, 2.6M)
- Plate 4 - Anadromous Distribution (1 pp, 1.8M)
- Plate 5 - Land Ownership (1 pp, 1.4M)
- Plate 6 - Geology (3 pp, 5.4M)
- Plate 7 - Transportation (3 pp, 3.0M)
- Plate 8 - Percent Slope (3 pp, 2.8M)

- Plate 9 - Landslides pre-1975 (3 pp, 2.9M)
- Plate 10 - Landslides post-1975 (3 pp, 3.8M)

Malibu Creek Nutrient and Bacteria

Cover Letter (PDF) (transmittal of final TMDLs to the State of California) (2 pp, 55K)
Final TMDL for Nutrients (PDF) (53 pp, 626K)

- Appendix (PDF) (17 pp, 654K)

Final TMDL for Bacteria (PDF) (42 pp, 1.1 MB)

Response to Comments

- City of Calabasas (Nutrients and Bacteria (PDF) (3 pp, 27K))
- Heal the Bay (Bacteria (PDF) (14 pp, 85K); Nutrients (PDF) (32 pp, 1.2 MB))
- Los Angeles County Sanitation District (Nutrients (PDF) (8 pp, 62K))
- Los Angeles County Department of Public Works (Bacteria (PDF) (5 pp, 30K); Nutrients (PDF) (5 pp, 37K))
- City of Malibu (Bacteria (PDF) (9 pp, 72K); Nutrients (PDF) (11 pg, 128K))
- Los Angeles Regional Water Quality Control Board (Bacteria (PDF) (9 pp, 94K); Nutrients (PDF) (8 pp, 141K))
- Las Virgenes Municipal Water District (Nutrients (PDF) (26 pp, 863K))
- City of Westlake Village (Bacteria (PDF) (4 pp, 28 K PDF); Nutrients (PDF) (3 pp, 52K))

Mattole River Sediment TMDL

Final TMDL (PDF) (44 pp, 433K)

- Figure 1-1 (PDF) (1 pg, 930K)
- Figure 4-2 (PDF) (1.15 MB)
- Figure 4-3 (PDF) (1.16 MB)

Summary of Comments and Responses (PDF) (114K)

Navarro River Sediment and Temperature TMDLs

Final TMDL (PDF) (45 pp, 1.3 MB)
Technical Addendum (PDF) (1 pg, 418K)
Summary of Comments and Responses (PDF) (1 pg, 137K)

Noyo River Sediment TMDL

Final TMDL (PDF) (47 pp, 799K)

Pinto Creek Copper TMDL

Final TMDL (PDF) (47 pp, 155K)
Appendices (PDF) (53 pp, 628K)
Summary of Comments and Responses (PDF) (35 pp, 93K)

Redwood Creek Sediment TMDL

Final TMDL (PDF) (72 pp, 5M) with watershed map (PDF) (1 pg, 226K)
Comment Responsiveness Summary (36 pp, 87KB)

San Diego Creek, Newport Bay Sediment TMDL

EPA established TMDLs for sediment, nitrogen, and phosphorus for Newport Bay and San Diego Creek, CA on April 13, 1998. EPA subsequently approved slightly revised TMDLs submitted by the State of California for sediment, nitrogen, and phosphorus for Newport Bay and San Diego Creek on April 16, 1999. These State-adopted TMDLs supercede the TMDLs previously established by EPA.

State-adopted TMDLs for Los Angeles River Watershed Trash TMDL EXIT Disclaimer

San Diego Creek, Newport Bay Toxics TMDL

Final TMDL Document (PDF) (89 pp, 1.4 MB)
Technical Support Documents:

- Part A: Relevant Maps (PDF) (11 pg, 1.5 MB)
- Part B: Freshwater Flow and Seasonal Variations (PDF) (6 pp, 316K)
- Part C: Organophosphate (OP) Pesticides (PDF) (22 pp, 75K)
- Part D: Selenium (PDF) (25 pp, 596K)
- Part E: Metals (PDF) (32 pp, 542K)
- Part F: Organochlorine Compounds (PDF) (20 pp, 135K)
- Part G: Chromium and Mercury (PDF) (11 pg, 59K)
- Part H: Decision Document (PDF) (37 pp, 303K)
- Part I: Responsiveness Summary (PDF) (50 pp, 179K)

Santa Clara River Chlorides TMDL

Final TMDL (PDF) (22 pp, 144K)
Response to Comments (PDF) (12 pp, 98K)

San Gabriel River Metals TMDLs

EPA has established the San Gabriel River Metals TMDLs in lieu of California because of deadlines associated with consent decree. The response to comments document is also available.

- Final San Gabriel River TMDLs for Metals and Selenium (PDF) (60 pp, 800K)
- San Gabriel TMDL Figures (PDF) (13 pp, 2M)
- Response to Comments (PDF) (44 pp, 258K)

Extra technical support documents are also provided here since they are referenced in the Draft TMDLs and therefore they may give additional clarification.

- Dry - Weather Modeling Report (PDF) (37 pp, 1.5MB)
  - Appendix A (PDF) (4 pp, 108K)
- Wet - Weather Modeling Report (PDF) (31 pp, 1MB)
  - Appendix A – Hydrology Calibration (PDF) (35 pp, 764K)
  - Appendix B – Water Quality Parameters (PDF) (5 pp, 130K)

- Appendix C – Water Quality Analyses for Storm Events (PDF) (4 pp, 38K)
- Appendix D – Water Quality Analyses at Historical Mass Emission Stations (PDF) (17 pp, 175K)

Ten Mile River Sediment TMDL

Final TMDL (PDF) (89 pp, 956K)
Summary of Comments and Responses (PDF) (18 pp, 196K)

Trinity River Sediment TMDL

Final TMDL (PDF) (81 pg, 365K)
The following figures are not included in the document:

- figure 1-1 (PDF) (1 pg, 444K)
- figure 1-2 (PDF) (1 pg, 362K)
- figure 1-3 (PDF) (1 pg, 300K)
- figure 1-4 (PDF) (1 pg, 354K)
- figure 1-5 (PDF) (1 pg, 189K)

Comment Responsiveness Summary (PDF) (61 pg, 180K)

Trinity River (South Fork) Sediment TMDL

Final TMDL (PDF) (75 pp, 201K)
The following figures are not included in the document:

- figure 1 (PDF) (1 pg, 122K)
- figure 2 (PDF) (1 pg, 257K)
- figure 3 (PDF) (1 pg, 464K)
- figure 4 (PDF) (1 pg, 196K)
- figure 5 (PDF) (1 pg, 149K)
- figure 6 (PDF) (1 pg, 188K)

Comment Responsiveness Summary (34 pp, 112K)

Van Duzen River Sediment TMDL

Final TMDL (PDF) (73 pp, 680K)
The following figures are not included in the document:

- figure 1.1 (PDF) (1 pg, 150K)
- figure 21 (PDF) (1 pg, 130K)
- figure 22 (PDF) (1 pg, 125K)

Impaired Waters and Total Maximum Daily Loads

Quick Finder

Air Deposition	NPDES Permits	TMDL Regulations	Water Quality Standards
Healthy Watersheds	TMDL Guidance	TMDL Technical Resources	Water Quality Trading
Integrated Reporting (ATTAINS)	TMDL Litigation	Water Quality Inventory Report to Congress	Watershed Academy Webcasts
Nonpoint Source Pollution	TMDL Recent Additions	Water Quality Monitoring and Assessment	Watershed Central

Under section 303(d) of the Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by states, territories, or authorized tribes. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters. A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Features

- (New) November 15, 2010 Memorandum re. Integrated Reporting and Listing Decisions Related to Ocean Acidification
- Northeast States' CWA Section 319(g) Management Conference
- TMDLs At Work
- TMDL Program Results Analysis
- Chesapeake Bay TMDL
- 2010 Integrated Report Guidance Available (PDF) (11 pp, 122K, About PDF)

Please help us to improve this site by taking a quick survey

Basic Information

- National Summary of Impaired Waters and TMDLs
- Geographic Information Systems (GIS) Data Downloads

303(d) Impaired Waters and TMDL Laws and Regulations

- 303(d) Clean Water Act
- 303(d) Impaired Waters and TMDL Regulations
- 303(d) Impaired Waters and TMDL Guidance Documents

TMDL Technical Resources

- Draft Daily Loads Technical Document (PDF) (62 pp, 971K, About PDF)
- Load Duration Curves (PDF) (74 pp, 3.3MB, About PDF)
- Summary of 17 TMDLs with Stormwater Sources (PDF) (59 pp, 601K, About PDF)
- Water Quality Trading
- More Resources...

Example TMDLs

- Pathogens
- Nutrients
- Sediment
- Mercury
- Metals (other than mercury)
- More Example TMDLs...

Where You Live

- TMDLs At Work
- MyEnvironment
- WATERS Expert Query
- Surf Your Watershed

Evolving Issues

- TMDL Program Results Analysis
- Mercury TMDL Resources
- Stormwater Resources
- Ocean Acidification

Other Resources

- Working With Partners
- Related Links Directory
- Meetings and Trainings

135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

Court of Appeal, Fourth District, Division 1, California.
CITY OF ARCADIA et al., Plaintiffs and Appellants,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.

No. D043877.
Jan. 26, 2006.
Rehearing Denied Feb. 17, 2006.
Review Denied April 19, 2006.

Background: Cities filed petition for writ of mandate and complaint for declaratory and injunctive relief against state and regional water boards to challenge water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river. The Superior Court, San Diego County, No. GIC803631, Wayne L. Peterson and Linda B. Quinn, JJ., partially granted cities' petition and granted declaratory relief, but did not invalidate trash TMDL on specified grounds. Water boards and cities appealed.

Holdings: The Court of Appeal, McConnell, P.J., held that:
(1) water boards' decision not to conduct an assimilative capacity study before adopting zero trash TMDL was within their expertise rather than trial court's;
(2) water boards sufficiently complied with statute requiring consideration of economic factors before adopting and approving zero trash TMDL;
(3) regional water board's environmental checklist with regard to approving zero trash TMDL was deficient for purposes of California Environmental Quality Act (CEQA);
(4) water boards' adoption and approval of zero trash TMDL did not violate federal standards; and
(5) adoption and approval of zero trash TMDL did not fail to comply with requisite scientific standards.

Judgment affirmed in part, reversed in part; order affirmed.

West Headnotes

[1] Mandamus 250 69

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k69 k. Legislative powers. Most Cited Cases

Review of judgment partially granting cities' petition for writ of mandate to challenge adoption by state and regional water boards of planning document setting a target of zero trash discharge from municipal storm drains into river was limited to traditional mandamus, inasmuch as water boards' actions were quasi-legislative. West's Ann.Cal.C.C.P. § 1085.

[2] Mandamus 250 69

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k69 k. Legislative powers. Most Cited Cases

Acts of an administrative agency that are quasi-legislative in nature are not reviewable by administrative mandamus; rather, review of a quasi-legislative action is limited to traditional mandamus.

[3] Mandamus 250 168(2)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k168 Evidence
250k168(2) k. Presumptions and burden of proof. Most Cited Cases

Mandamus 250 172

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k172 k. Scope of inquiry and powers of court. Most Cited Cases

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135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

Under statute authorizing writs of mandate, review is limited to an inquiry into whether the action was arbitrary, capricious, or entirely lacking in evidentiary support, and the petitioner has the burden of proof to show that the decision is unreasonable or invalid as a matter of law. West's Ann.Cal.C.C.P. § 1085.

[4] Mandamus 250 ⚿187.9(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.9 Review
250k187.9(1) k. Scope and extent in general. Most Cited Cases

In mandamus proceedings, the appellate court reviews the record de novo except where the trial court made foundational factual findings, which are binding on appeal if supported by substantial evidence.

[5] Environmental Law 149E ⚿689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and impact statements. Most Cited Cases

Abuse of discretion applies to review of California Environmental Quality Act issues. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[6] Environmental Law 149E ⚿689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and impact statements. Most Cited Cases

On review of California Environmental Quality Act (CEQA) issues, the reviewing court's task on appeal is the same as the trial court's; the reviewing court therefore conduct its review independent of the trial court's findings. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[7] Environmental Law 149E ⚿192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards' decision not to conduct an assimilative capacity study before adopting a target of zero trash discharge from municipal storm drains into river was within their expertise rather than the trial court's; Clean Water Act did not require regional boards to conduct an assimilative capacity study before adopting the zero trash total maximum daily loads (TMDL), and the evidence adequately supported boards' decision. Clean Water Act, § 303, 33 U.S.C.A. § 1313.

[8] Environmental Law 149E ⚿192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards were not required to conduct a cost/benefit analysis before adopting and approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river; by its plain terms, statute authorizing such analysis did not apply at the TMDL stage. West's Ann.Cal.Water Code § 13267.

[9] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

Statutes 361 ⚿188

361 Statutes

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135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

The court's primary aim in construing any law is to determine the legislative intent, and in doing so, the court looks first to the words of the statute, giving them their usual and ordinary meaning.

[10] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

Adoption of a trash total maximum daily loads (TMDL) under Clean Water Act does not, by itself, prohibit any conduct or require any actions; instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual National Pollution Discharge Elimination System (NPDES) permits or establishing nonpoint source controls. Clean Water Act, § 303, 33 U.S.C.A. § 1313.

[11] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards sufficiently complied with statute requiring consideration of economic factors before adopting and approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river; boards' trash TMDL included the estimated costs of several types of compliance methods and a cost comparison of capital costs and costs of operation and maintenance, and consideration of economic factors under statute did not require analysis of every conceivable compliance method or combinations thereof, or the fiscal impacts on permittees. West's Ann.Cal.Water Code § 13241.

[12] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards could include estuary of river along with river when adopting and approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river; plain language of Clean Water Act did not preclude boards from exercising their discretion to simultaneously submit to the Environmental Protection Agency (EPA) the identification of an impaired water body and a TMDL for it. Clean Water Act, § 303(d)(2), 33 U.S.C.A. § 1313(d)(2).

[13] Environmental Law 149E 218

149E Environmental Law
149EV Water Pollution
149Ek215 Administrative Agencies and Proceedings
149Ek218 k. Notice and comment. Most Cited Cases

State and regional water boards sufficiently identified estuary of river along with river, so as to put all parties on notice when adopting and approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river, pursuant to Clean Water Act; although trash TMDL list did not include estuary, trash TMDL listed and discussed the beneficial uses of the estuary, and administrative record contained several pictures of trash deposited in estuary during high flows. Clean Water Act, § 303, 33 U.S.C.A. § 1313.

[14] Environmental Law 149E 595(3)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(3) k. Waters and water courses; dams and flood control. Most Cited Cases

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135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

Regional water board failed to comply with California Environmental Quality Act (CEQA) requirements when it prepared an environmental checklist with regard to approving a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river, in lieu of an environmental impact report (EIR) or its functional equivalent; basin planning process of state and regional water boards was a certified regulatory program, neither checklist nor trash TMDL included an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures. West's Ann.Cal.Pub.Res.Code § 21159.
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 831 et seq.; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.

[15] Environmental Law 149E ⚿585

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek585 k. In general. Most Cited Cases

California Environmental Quality Act (CEQA) requires a governmental agency to prepare an environmental impact report (EIR) whenever it considers approval of a proposed project that may have a significant effect on the environment. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[16] Environmental Law 149E ⚿589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in general. Most Cited Cases

Environmental Law 149E ⚿590

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek590 k. Mitigation measures. Most Cited Cases

Environmental Law 149E ⚿594

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek594 k. Negative declaration; statement of reasons. Most Cited Cases

Under the California Environmental Quality Act (CEQA), if there is no substantial evidence a project may have a significant effect on the environment, or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no environmental impact report (EIR) is required. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[17] Environmental Law 149E ⚿589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in general. Most Cited Cases

Environmental Law 149E ⚿615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and sufficiency. Most Cited Cases

The California Environmental Quality Act (CEQA) requires the preparation of an environmental impact report (EIR) whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact; thus, if substantial evidence in the record supports a fair argument that significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified. West's Ann.Cal.Pub.Res.Code § 21000 et

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135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

seq.

[18] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical exclusion; exemptions in general. Most Cited Cases

State regulatory programs that meet certain environmental standards and are certified by the Secretary of the California Resources Agency are exempt from the requirements of California Environmental Quality Act (CEQA) for preparation of environmental impact reports (EIRs), negative declarations, and initial studies; environmental review documents prepared by such programs may be used instead of environmental documents that CEQA would otherwise require. West's Ann.Cal.Pub.Res.Code § 21080.5.

[19] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical exclusion; exemptions in general. Most Cited Cases

The guidelines for implementation of the California Environmental Quality Act (CEQA) do not directly apply to a certified regulatory program's environmental document; however, when conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA. 14 CCR § 15000 et seq.

[20] Declaratory Judgment 118A 201

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak201 k. Officers and official acts in general. Most Cited Cases

Declaratory Judgment 118A 204

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak204 k. State officers and boards. Most Cited Cases

In cities' challenge to state and regional water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river, judgment should not have included declaratory relief as to non-navigable waters, where water boards conceded that trash TMDL only applied to navigable waters, leaving no present controversy with regard to non-navigable waters.

[21] Declaratory Judgment 118A 61

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak61 k. Necessity. Most Cited Cases

The fundamental basis of declaratory relief is the existence of an actual, present controversy.

[22] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river did not violate federal "maximum extent practicable" and "best management practices" standards under Clean Water Act; record failed to show that zero limit was unattainable, burden was on cities challenging the TMDL to establish impossibility, and, in any event, federal statute applicable to establishing a TMDL did not suggest that practicality was a consideration. Clean Water Act, § 303(d)(1)(C), 33 U.S.C.A. § 1313(d)(1)(C).

[23] Appeal and Error 30 756

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135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145
(Cite as: 135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373)

30 Appeal and Error
30XII Briefs
30k756 k. Form and requisites in general. Most Cited Cases

Appeal and Error 30 761

30 Appeal and Error
30XII Briefs
30k761 k. Points and arguments. Most Cited Cases

Appeal and Error 30 1079

30 Appeal and Error
30XVI Review
30XVI(K) Error Waived in Appellate Court
30k1079 k. Insufficient discussion of objections. Most Cited Cases

Parties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows the appellate court to treat the appellant's issue as waived.

[24] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river did not require water boards to identify load allocations and implementation measures for nonpoint sources of trash discharge; Clean Water Act did not require that states adopt a regulatory system for nonpoint sources. Clean Water Act, § 303, 33 U.S.C.A. § 1313.

[25] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river was not improper under Clean Water Act, notwithstanding stated beneficial uses of river that included allegedly illegal use of river for recreation and bathing by homeless people seeing shelter there; swimming and bathing by homeless were only two among numerous other beneficial uses that were not challenged. Clean Water Act, § 303(d)(1)(A), 33 U.S.C.A. § 1313(d)(1)(A).

[26] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily maximum load and limited segments. Most Cited Cases

State and regional water boards' adoption and approval of a zero trash total maximum daily loads (TMDL) discharge from municipal storm drains into river did not fail to comply with requisite scientific analysis under Clean Water Act; project evaluated trash loading at two drainage basins, and trash TMDL relied on several studies to conclude that urban runoff was the dominant source of trash. Clean Water Act, § 303, 33 U.S.C.A. § 1313.

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McCONNELL, P.J.

***1401** This case concerns the serious environmental problem of litter discharged from municipal storm drains into the Los Angeles River, and efforts of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) and the State Water Resources Control Board (State Board) [FN1] to ameliorate the problem through the adoption and approval of a planning document setting a target of zero trash discharge within a multi-year implementation period.

FN1. We refer to these entities together as the Water Boards.

The Water Boards appeal a judgment partially granting a petition for writ of mandate brought by the City of Arcadia and 21 other cities (Cities),[FN2] who ***1402** agree trash pollution must be remedied but oppose the target of zero trash as unattainable and inordinately expensive. The Water Boards challenge the court's findings that an assimilative capacity study is a required element of its action; a cost-benefit analysis and consideration of economic factors are required under state law and are not met; the zero trash target is inapplicable to the Los Angeles River Estuary (Estuary) because it does not appear on the state's list of impaired waters; and, the Water Boards failed to comply with the California Environmental Quality Act (CEQA) by not preparing an Environmental Impact report (EIR) or its functional equivalent.

FN2. In addition to Arcadia the Cities include Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina and Whittier.

The Water Boards also contend the court erred by granting the Cities declaratory relief on their claim the Trash total maximum daily load (TMDL) does not apply to "nonwaters," meaning areas that do not drain into navigable waters such as the Los Angeles River or tributaries, as the parties agreed during this proceeding that the trash TMDL applies only to navigable waters.

The Cities also appeal, contending the trial court erred by not invalidating the Trash TMDL on the additional grounds the Water Boards failed to provide for deemed compliance with the target of zero trash through certain methods; failed to implement load allocations for nonpoint sources of trash pollution; failed to adhere to the data collection and analysis required by federal and state law; relied on nonexistent, illegal and irrational uses to be made of the Los Angeles River; and, violated the Administrative Procedures Act (APA).

We conclude the Cities' appeal lacks merit. As to the Water Boards' appeal, we conclude the court properly invalidated the planning document on the ground of noncompliance with CEQA, and we affirm the judgment insofar as it is based on that ground. We reverse the judgment to the extent it is based on other grounds. Further, we hold the court erred by granting declaratory relief on the nonwaters issue as there was no controversy when the court ruled.

****379** BACKGROUND INFORMATION

I

Statutory and Regulatory Scheme

The "quality of our nation's waters is governed by a 'complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities.' " ***1403**(*City of Burbank v. State Water Resources Control Bd.* 2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862 (*City of Burbank*).) An overview of applicable law is required to place the facts here in context.

A

Federal Law

In 1972 Congress enacted amendments to the Federal Water Pollution Control Act (Pub.L. No.

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92-500 (Oct. 18, 1972) 86 Stat. 816; 33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean Water Act. (*City of Burbank, supra,* 35 Cal.4th at pp. 619-620, 26 Cal.Rptr.3d 304, 108 P.3d 862.) Its stated goal is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters" by eliminating the discharge of pollutants into navigable waters. (33 U.S.C. § 1251(a).)

The Clean Water Act places "primary reliance for developing water quality standards on the states." (*Scott v. Hammond* (7th Cir.1984) 741 F.2d 992, 994.) It requires each state to develop such standards and review them at least once every three years for required modifications. (33 U.S.C. § 1313(a), (c)(1).) The standards must include designated uses such as recreation, navigation or the propagation of fish, shellfish and wildlife; water quality criteria sufficient to protect the designated uses; and an antidegradation policy. (40 C.F.R. §§ 131.6, 131.10-131.12 (2003).) The water quality criteria "can be expressed in narrative form or in a numeric form, e.g., specific pollutant concentrations." (*Florida Public Interest Research Group Citizen Lobby, Inc. v. EPA* (11th Cir.2004) 386 F.3d 1070, 1073.) "Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, 'no toxic pollutants in toxic amounts' would be a narrative description." (*City of Burbank, supra,* 35 Cal.4th at p. 622, fn. 4, 26 Cal.Rptr.3d 304, 108 P.3d 862.)

The Clean Water Act focuses on two possible sources of pollution: point sources and nonpoint sources. "Point source" means "any discernable, confined and discrete conveyance" such as a pipe, ditch, channel, tunnel, or conduit. (33 U.S.C. § 1362(14).) The Clean Water Act does not define nonpoint source pollution, but it has been described as " ' "nothing more [than] a [water] pollution problem not involving a discharge from a point source." ' " (*Defenders of Wildlife v. EPA* (10th Cir.2005) 415 F.3d 1121, 1123-1124.) [FN3]

FN3. According to the Environmental Protection Act (EPA), nonpoint source pollution is caused by rainfall or snowmelt moving over and through the ground, and includes excess fertilizers, herbicides, and insecticides from agricultural lands and residential areas; oil, grease and toxic chemicals from urban runoff and energy production; sediment from improperly managed construction sites, crop and forest land, and eroding stream banks; salt from irrigation practices and acid drainage from abandoned mines; and bacteria and nutrients from livestock, pet wastes and faulty septic systems. (http:// www. epa. gov/ owow/ nps/ qa. html.)

1404** "Congress dealt with the problem of point source pollution using the National Pollution Discharge Elimination System [NPDES] permit process. Under this approach, compliance rests on technology-*380** based controls that limit the discharge of pollution from any point source into certain waters unless that discharge complies with the [Clean Water] Act's specific requirements." (*San Francisco Bay-Keeper v. Whitman* (2002) 297 F.3d 877, 880; 33 U.S.C. § 1311(b)(1)(A).) " 'Nonpoint sources, because of their very nature, are not regulated under the NPDES [program]. Instead, Congress addressed nonpoint sources of pollution in a separate portion of the [Clean Water] Act which encourages states to develop areawide waste treatment management plans.' " (*Pronsolino v. Marcus* (N.D.Cal.2000) 91 F.Supp.2d 1337, 1348, citing 33 U.S.C. § 1288; see also 33 U.S.C. § 1329.)

"When the NPDES system fails to adequately clean up certain rivers, streams or smaller water segments, the [Clean Water] Act requires use of a water-quality based approach. States are required to identify such waters ... [and] rank [them] in order of priority, and based on that ranking, calculate levels of permissible pollution called 'total maximum daily loads' or 'TMDLs.' " (*San Francisco BayKeeper v. Whitman, supra,* 297 F.3d at p. 880; 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b) (2003).) "This list of substandard waters is known as the '303(d) list' (section 303 of the Clean Water Act having been codified as [title 33 United States Code] section 1313)." (*City of Arcadia v. EPA* (9th Cir.2005) 411 F.3d 1103, 1105 (*City of Arcadia II*).)

"A TMDL defines the specified maximum amount of a pollutant which can be discharged or 'loaded' into the waters at issue from all combined sources." (*Dioxin/Organochlorine Center v. Clarke* (9th Cir.1995) 57 F.3d 1517, 1520.) "A TMDL must be 'established at a level necessary to implement the applicable water quality standards....' [Citation.] A

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TMDL assigns a *waste load allocation* ... to each point source, which is that portion of the TMDL's total pollutant load, which is allocated to a point source for which an NPDES permit is required. [Citation.] Once a TMDL is developed, effluent limitations in NPDES permits must be consistent with the [waste load allocations] in the TMDL." (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1095-1096, 1 Cal.Rptr.3d 76; *Dioxin/Organochlorine Center v. Clarke*, at p. 1520.) [FN4] A TMDL requires a ***1405** "margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." (33 U.S.C. § 1313(d)(1)(C).)

FN4. The Clean Water Act "does not define total maximum daily load. EPA's regulations break it into a 'waste[ ]load allocation' for point sources and a 'load allocation' for nonpoint sources." (*Pronsolino v. Marcus, supra*, 91 F.Supp.2d at p. 1344, fn. 8; 40 C.F.R. § 130.2(g)-(i) (2005).)

The EPA may allow states to adopt and administer NPDES permit programs (*Pronsolino v. Marcus, supra*, 91 F.Supp.2d at p. 1347, fn. 10), and it has authorized California to administer such a program. (54 Fed.Reg. 40664 (Oct. 3, 1989).)

B

State Law

California implements the Clean Water Act through the Porter-Cologne Act (Wat.Code, § 13000 et seq.), which was promulgated in 1969. Under the Porter-Cologne Act, nine regional boards regulate the quality of waters within their regions under the purview of the State Board. (Wat.Code, §§ 13000, 13100, 13200, 13241, 13242.)

****381** Regional boards must formulate and adopt water quality control plans, commonly called basin plans, which designate the beneficial uses to be protected, water quality objectives and a program to meet the objectives. (Wat.Code, §§ 13050, subd. (j), 13240.) " 'Water quality objectives' means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area." (*Id.*, § 13050, subd. (h).)

The EPA must approve or disapprove a state's TMDL within 30 days of its submission. (33 U.S.C. § 1313(d)(2).) If the EPA disapproves a state's submission, it must establish its own TMDL within 30 days of the disapproval. (*Ibid.*)

II

Trash TMDL

The Los Angeles River is a 51-mile flood control channel, largely concrete-lined, which runs through the City of Los Angeles and surrounding municipalities in Los Angeles County and terminates at the Pacific Ocean. In 1990 the Regional Board issued an NPDES storm water permit to the Los Angeles County Department of Public Works as the principal permittee and 84 cities as copermittees, to address various chemical pollutants discharged into the region's water bodies (Municipal NPDES Permit).

***1406** In 1994 the Regional Board adopted a revised water quality control plan, or basin plan (1994 Basin Plan), which includes narrative water quality objectives. It provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses," and "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." (Italics omitted.) Beneficial uses of the Los Angeles River and surrounds include wildlife and marine habitat, including habitat for endangered species, and recreational activities such as fishing, walking, hiking, jogging, bicycling, horseback riding, bird watching and photography.

In 1996 and 1998 the Regional Board identified certain reaches of the Los Angeles River on the state's "303(d) list" as being impaired by trash, primarily through storm water runoff in thousands of municipal storm drains. [FN5] On September 19, 2001, the Regional Board adopted a resolution to amend its 1994 Basin Plan to incorporate a TMDL for trash in the Los Angeles River (Trash TMDL). Despite many objections from affected municipalities, the Trash TMDL sets a numeric target of zero trash as "even a single piece of trash can be detrimental, and no level of trash is acceptable in waters of the state." [FN6] "The numeric target is staff's interpretation of the narrative water quality objective [in ****382** the 1994 Basin Plan], including an implicit margin of safety."

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FN5. The Regional Board defines "trash" as "man-made litter" within the meaning of Government Code section 68055.1, subdivision (g), which provides: " 'Litter' means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other produce packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing."

FN6. The Regional Board adopted a Trash TMDL in January 2001, which also had a target of zero trash. It reconsidered the matter on September 19, 2001, "to provide clarifying language and greater flexibility in implementing the [Trash] TMDL."

The reduction of trash is to be phased over a 14-year period, including an optional two-year baseline monitoring period. In lieu of baseline monitoring, cities may accept a default baseline allocation of "640 gallons of uncompressed trash per square mile per year," a value based on data the City of Calabasas provided. The Trash TMDL provides for a "review of the current target [of zero trash] ... once a reduction of 50% has been achieved and sustained," "based on the findings of future studies regarding the threshold levels needed for protecting beneficial uses."

Under the Trash TMDL, cities may use a variety of compliance methods, including "[e]nd-of-pipe full capture structural controls," "partial capture ***1407** control systems" and "[i]nstitutional controls." Cities using a full-capture system meeting certain criteria will be deemed in compliance with the zero target if the systems are properly maintained and maintenance records are available for the Regional Board's inspection.

On December 21, 2001, the Regional Board issued an order under Water Code section 13267 to the County of Los Angeles and copermittees under the Municipal NPDES Permit to submit baseline monitoring plans by February 1, 2002, and to monitor trash in the Los Angeles River between January 2002 and December 2003, with a final report due February 2004.[FN7] The Regional Board intends to use resulting data to "refine" the default baseline waste load allocations in the Trash TMDL.

FN7. In *City of Arcadia v. EPA* (N.D.Cal.2003) 265 F.Supp.2d 1142, 1156 (*City of Arcadia I*), the court noted the Los Angeles County Department of Public Works has assumed responsibility for the baseline monitoring burden for all municipalities to which the Trash TMDL applies. The Trash TMDL states that "[e]ach of the permittees and co-permittees are responsible for monitoring land uses within their jurisdiction," but "monitoring responsibilities may be delegated to a third-party monitoring entity such as the [Department of Public Works]."

In February and July 2002, the State Board and the Office of Administrative Law, respectively, approved the Trash TMDL. In August 2002 the EPA approved it and announced it supersedes an interim TMDL for trash the EPA adopted in March 2002 as a result of a consent decree in litigation between environmental groups and the EPA. (*City of Arcadia I, supra*, 265 F.Supp.2d 1142, 1147.)[FN8]

FN8. In *City of Arcadia I, supra*, 265 F.Supp.2d at page 1153, the City of Arcadia and other cities unsuccessfully challenged the EPA's approval of the Trash TMDL on the ground it was unauthorized to do so after adopting its own TMDL. In *City of Arcadia II, supra*, 411 F.3d at pages 1106-1107, the court affirmed the lower court's dismissal of the case.

III

Procedural History

The Cities are within the Regional Board's jurisdiction and are permittees under the 2001 Municipal NPDES Permit. In July 2002 the Cities filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the Water Boards. They filed the action in the Los Angeles County Superior Court, but the parties stipulated to its transfer to the San Diego County Superior Court.

The second amended petition alleges numerous grounds on which the Trash TMDL violates the Clean

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Water Act or the Porter-Cologne Act, and the court adjudicated some issues in favor of each party. It found the ***1408** Water Boards improperly (1) failed to conduct an analysis of the Los Angeles River's assimilative capacity; (2) failed to conduct a cost-benefit analysis or ****383** consider economic factors under Water Code sections 13267 and 13241; (3) purported to apply the Trash TMDL to the Estuary even though it is not listed on the state's 1998 303(d) list as impaired; and (4) failed to prepare a required EIR or its functional equivalent under CEQA. The court issued a writ of mandate commanding the Water Boards to set aside the amendment to the 1994 Basin Plan and the Trash TMDL to the extent it was based on the above findings and to not take any further steps to implement it. The court denied the Water Boards' motion to vacate the judgment or grant a new trial, and judgment was entered on December 24, 2003.

The Cities later moved for an order that the prohibitory terms of the writ of mandate and judgment not be stayed on appeal. (Code Civ. Proc., § 1110b.) The court granted the motion, and further ordered that "to preserve the status quo and prevent injustice to [the Cities], the ... implementation schedule and compliance dates, and all milestones contained in the [Trash TMDL] shall be tolled effective December 24, 2003, through and until a final determination has been rendered on the pending appeal." The Water Boards appealed that order, and in accordance with the parties' stipulation we consolidated it with the other appeals.

DISCUSSION

WATER BOARDS' APPEAL

I

Standard of Review

[1][2] The Water Boards contend a deferential standard of review applies to our review of their action under Code of Civil Procedure section 1085, and the Cities claim an independent standard applies under Code of Civil Procedure section 1094.5. Code of Civil Procedure section 1094.5, the administrative mandamus statute, applies when "the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal." (Code Civ. Proc., § 1094.5, subd. (a).) "Acts of an administrative agency that are quasi-legislative in nature, e.g., establishment of regulations to carry out a statutory policy or direction, are not reviewable by administrative mandamus." (8 Witkin, Cal. Procedure (4th ed. 1997) Extraordinary Writs, § 268, pp. 1067-1068.) Rather, review of a quasi-legislative action is limited to traditional mandamus. (*Id.* at p. 1068.)

[3][4] ***1409** The trial court correctly found this proceeding is for traditional mandamus because the Regional Board's adoption and the State Water Board's approval of the Trash TMDL was quasi-legislative. Under Code of Civil Procedure section 1085, " ' "review is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support," ' ... [and][t]he petitioner has the burden of proof to show that the decision is unreasonable or invalid as a matter of law. [Citation.] We review the record de novo except where the trial court made foundational factual findings, which are binding on appeal if supported by substantial evidence." (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 814, 13 Cal.Rptr.3d 259.)

The Cities' reliance on Water Code section 13330 is misplaced. It provides that "[a]ny party aggrieved by a final decision or order of a regional board *for which the state board denies review* may obtain review of the decision or order of the regional****384** board in the superior court (*id.*, § 13330, subd. (b), italics added), and "[e]xcept as otherwise provided herein, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section" (*id.*, § 13330, subd. (d)). Given the language italicized above, Water Code section 13330 necessarily applies to an administrative appeal of a quasi-judicial action under Code of Civil Procedure section 1094.5. Here, an appeal to the State Board was unnecessary because the Trash TMDL was ineffective without its approval. (Wat.Code, § 13245.) Indeed, the State Board notified the Cities in March 2001 that it "lacks statutory authority to accept petitions for review of water quality control plan (basin plan) amendments adopted" by regional boards.

[5][6] As to CEQA issues, the parties agree an abuse of discretion standard applies. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1199, 24 Cal.Rptr.3d 543.) Abuse of discretion "is established if the agency has not proceeded in a manner required by law or if the

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determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5.) "Our task on appeal is 'the same as the trial court's.' [Citation.] Thus, we conduct our review independent of the trial court's findings." *(Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602, fn. 3, 35 Cal.Rptr.2d 470.)

II

Assimilative Capacity Study

The trial court invalidated the Trash TMDL based in part on the Cities' argument an "assimilative capacity study" is a required element of a TMDL and none was performed here. In its statement of decision, the court ***1410** explained "[i]t is unreasonable to conclude that the beneficial uses of the [Los Angeles] River could not be maintained with some 'target' other than zero. Of course, it is possible the River would not support a greater target, however, without a study it is yet undetermined."

[7] The Water Boards contend the trial court erred by substituting its own judgment for that of the Water Boards on the issue of whether the adoption of the Trash TMDL should have been preceded by a scientific study of the assimilative capacity of the Los Angeles River. They assert the matter was best suited for their determination rather than the court's and the evidence adequately supports their decision. We agree with the Water Boards.

During the notice and comment period, the Regional Board received numerous complaints that a zero Trash TMDL is infeasible, or at least unwarranted without a scientific assimilative capacity study, or load capacity study, showing a zero limit is the only means of protecting beneficial uses. For instance, the City of Los Angeles worried that "[i]f there's one gum wrapper in the [Los Angeles] River, you can get sued."

The Regional Board responded to one complaint as follows: "For more typical pollutants, the loading parameters are flow and pollutant concentration. For this pollutant [trash], flow does not serve to dilute the pollutant, but merely serves as a transport mechanism. Therefore, the typical loading calculation does not apply to trash." The Regional Board took the position that since littering is unlawful, a target of zero trash in the Los Angeles River is the only defensible position. It also explained that its staff "found no study to document that there is an acceptable level of trash that will cause no harm to aquatic life," and absent such a study it was compelled to adopt a zero target.

****385** At a Regional Board hearing, Dr. Mark Gold, executive director of Heal the Bay, testified he was unaware of any assimilative capacity study having been performed anywhere on trash. He explained, "Basically it's a physical object. It's trash. It's not something that breaks down and becomes part of the environment in many, many cases. And so honestly, it probably won't reach any sort of threshold of being a scientific study of any value."

At a State Board hearing Dave Smith, an EPA team leader working with the Regional Board on the trash issue, testified "it would be difficult to design [an assimilative capacity] study and come up with firm answers." He also explained that both the Regional Board and the State Board "have conducted pretty diligent efforts to find research studies, reports, that look at the affects of trash on the aquatic environment," and neither they nor the EPA could find any literature to support a target of more than zero trash.

***1411** Alex Helperin, of the Natural Resources Defense Council, testified at a Regional Board hearing that "[e]ven small quantities [of trash] can maim and kill wildlife, [which] becomes entangled in it or ingest[s] it. [Trash] [c]an obstruct and repel boaters and contract recreators and compromise the aesthetic quality that's essential to the recognized aspect of non-contact recreation beneficial use for the Los Angeles River."

The administrative record includes numerous photographs of copious amounts of trash deposited in the Los Angeles River watershed through storm water drains. Dennis Dickerson, the Executive Officer of the Regional Board, testified he took photographs of trash in the Long Beach area shortly after storms, and among them are photographs of "water birds foraging among the trash." One photograph is of a bird with a cigarette butt in its mouth and another is of a fish trapped in a plastic six-ring can holder.

In arguing an assimilative capacity study is required *before* adopting a TMDL, the Cities rely principally on an EPA document issued January 7, 2000, entitled "Guidance for Developing TMDLs in California" (2000 EPA Guidance). It states: "The TMDL

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document must describe the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity (loading capacity) of the water[ ]body for the pollutant of concern.... [¶] The loading capacity is the critical quantitative link between the applicable water quality standards (as interpreted through numeric targets) and the TMDL. Thus, a maximum allowable pollutant load must be estimated to address the site-specific nature of the impairment.... [¶] The loading capacity section must discuss the methods and data used to estimate loading capacity. A range of methods can be used...." (Emphasis omitted.)

The 2000 EPA Guidance, however, contains the following disclaimer: "[I]t does not impose legally-binding requirements on the EPA, the State of California, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate and consistent with the requirements of section 303(d) [of the Clean Water Act] and EPA's regulations."

Smith, of the EPA, testified at a Regional Board hearing that he wrote the 2000 EPA Guidance and the Trash TMDL "fully complies with the Clean Water Act, its regulations and [the 2000 EPA Guidance]." Smith explained the "TMDL process specifically contemplates making decisions under uncertainty," and "[i]t does so by providing that a margin of safety has to be **386 incorporated in every TMDL to account for the uncertainty in the analysis." Smith said states are required "to move forward to make TMDL decisions *1412 based on available information and data, not to wait again and again and again for better information to come forward." Generally, " 'considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer.' " (*United States v. Mead Corp.* (2001) 533 U.S. 218, 227-228, 121 S.Ct. 2164, 150 L.Ed.2d 292.)

In *Natural Resources Defense Council v. Muszynski* (2d Cir.2001) 268 F.3d 91 (*Muszynski*), the plaintiff asked the court to invalidate a TMDL that the EPA had approved to control phosphorus pollution in drinking water, on the ground a margin of safety of only 10 percent was insufficient to account for uncertainty regarding the effects of phosphorus on water quality. The plaintiff argued "that no scientific or mathematical basis prescribed this percentage as opposed to any other." (*Id.* at p. 102.) The EPA countered that "because 'there is no "standard" or guideline for choosing a specific margin of safety, best professional judgment and the available information are used in setting [it].' " (*Ibid.*) The *Muszynski* court agreed with the EPA, explaining: "While the [margin of safety] may ... be set with an uncomfortable degree of discretion, requiring that EPA [or authorized regional board] show a rigorous scientific methodology *dictates one course of action as opposed to another and would effectively prevent the agency from acting in situations where action is required in the face of a clear public health or environmental danger but the magnitude of that danger cannot be effectively quantified.* '[A]s long as Congress delegates power to an agency to regulate on the borders of the unknown, courts cannot interfere with reasonable interpretations of equivocal evidence.' [Citation.] ... [S]imply to reject EPA's efforts to implement the [Clean Water Act] because it must respond to real water quality problems without the guidance of a rigorously precise methodology would essentially nullify the exercise of agency discretion in the form of 'best professional judgment.' " (*Muszynski, supra,* 268 F.3d at pp. 102-103, italics added.)

Further, in *Muszynski, supra,* 268 F.3d 91, 103, the court noted "that approval of the Phase I [margin of safety] was based, in part, on the limited information available. The EPA approval contemplates revision of the [margin of safety] as more information becomes available: 'As additional reservoir data and loading data become available, Phase I model assumptions are being reexamined under Phase II.' "

We conclude federal law does not require the Regional Board to conduct an assimilative capacity study before adopting the Trash TMDL. Moreover, the evidence amply shows that because of the nature of trash, including Styrofoam containers and other materials that are undiluted by water, in contrast to chemical pollutants, and the dangers to wildlife of even small amounts of trash, an assimilative capacity study would be difficult to conduct and of little value at the outset. For instance, given the ill effects of trash in a *1413 water body it is unlikely such a study would determine the Los Angeles River may be loaded with a certain percentage of trash without affecting beneficial uses, particularly since a TMDL must include a mar-

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gin of safety that "takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." (33 U.S.C. § 1313(d)(1)(C).) In any event, the Trash TMDL requires the Regional Board to reconsider the zero trash target after a 50 percent reduction of trash is achieved, and no party suggests a trash reduction of at least 50 percent is unwarranted or unattainable. Because of **387 this escape hatch, compliance with a zero trash target may never actually be mandated. The Water Boards' decision not to conduct or require an assimilative capacity study is within their expertise, not the court's, and we defer to them on the issue.

III

Cost-Benefit Analysis and Economic Considerations

[8] The Water Boards next contend the court erred by finding the Trash TMDL is invalid because they violated state law by not conducting a cost-benefit analysis (Wat.Code, § 13267) or considering economic factors (*id.* at § 13241) before adopting and approving it.

A

Water Code Section 13267

A regional board is authorized to investigate the quality of waters in its region (Wat.Code, § 13267, subd. (a)), and when it requires a polluter to furnish "technical or monitoring program reports," the "burden, including costs, of these reports shall bear a reasonable relationship to the need for the report[s] and the benefits to be obtained from the reports." (Wat.Code, § 13267, subd. (b)(1).) The court found the Regional Board adopted the Trash TMDL under the authority of Water Code section 13267, as the document mentions the statute several times and "expressly requires monitoring plans and submission of data to establish baselines for trash discharges."

The Water Boards persuasively contend Water Code section 13267 is inapplicable, and references to that statute in the Trash TMDL are to contemplated future orders. For instance, the Trash TMDL states "[b]aseline monitoring will be required via [Water Code] Section 13267," and the submission of baseline monitoring plans will be due "30 days after receipt of the Executive Officer's request as authorized by [Water Code] Section 13267." *1414 It also states that "future storm water permits will be modified to incorporate the Waste Load Allocations and to address monitoring and implementation of this [Trash] TMDL."

Further, the Trash TMDL states "the permittee [under the Municipal NPDES permit] will submit a monitoring plan with the proposed monitoring sites and at least two alternative monitoring locations for each site. The plan must include maps of the drainage and storm drain data for each proposed and alternate monitoring location. The monitoring plan(s) will be submitted to the Regional Board within 30 days after receipt of the Executive Officer's letter requesting such a plan. Such a request is authorized pursuant to [Water Code] [s]ection 13267.... The Regional Board's Executive Officer will have full authority to review the monitoring plan(s), to modify the plan, to select among the alternate monitoring sites, and to approve or disapprove the plan(s)."

Additionally, the Water Boards submit that the December 21, 2001, order the Regional Board issued under Water Code section 13267 to the County of Los Angeles and copermittees under the Municipal NPDES permit regarding baseline monitoring and reporting would have been "useless and unnecessary" had the Trash TMDL itself required monitoring and reporting, and since there was no appeal of the December 21 order to the State Board within 30 days (Wat.Code, § 13320, subd. (a)) the cost-benefit analysis issue is not subject to appellate review. We note that the December 21 order, but not the Trash TMDL, warns that under Water Code section 13268 the "failure to conduct the required monitoring and/or to provide the required information in a timely manner **388 may result in civil liability imposed by the Regional Board in an amount not to exceed ... $1000."

[9][10] "Our primary aim in construing any law is to determine the legislative intent. [Citation.] In doing so we look first to the words of the statute, giving them their usual and ordinary meaning." (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501, 247 Cal.Rptr. 362, 754 P.2d 708.) We agree that by its plain terms Water Code section 13267 is inapplicable at the TMDL stage, and thus the court erred by invalidating the Trash TMDL on this ground. The monitoring and reports are required by the December 21, 2001 order, not the Trash TMDL, and the reduction of trash will be implemented by other NPDES permits. "TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the

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required plans." (*Pronsolino v. Nastri* (9th Cir.2002) 291 F.3d 1123, 1129.) "A TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source ***1415** controls." (*City of Arcadia I, supra,* 265 F.Supp.2d at p. 1144.) A "TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and water[ ]bodies." (*Id.* at p. 1145.)

B

Water Code Section 13241

[11] Water Code section 13241 provides that "[e]ach regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance." In establishing water quality objectives a regional board is required to consider several factors, including "[e]conomic considerations." (Wat.Code, § 13241, subd. (d).)

The Water Boards contend Water Code section 13241 is inapplicable because the Trash TMDL does not establish water quality objectives, but merely implements, under Water Code section 13242, the existing narrative water quality objectives in the 1994 Basin Plan. It provides that waters shall not contain floating materials, including solids, or suspended or settleable materials in concentrations that adversely affect beneficial uses. The Cities counter that the Trash TMDL effectively establishes new water quality objectives, because when the 1994 Basin Plan was adopted a TMDL for trash was not contemplated and thus economic considerations of such a TMDL were not considered. Further, the Trash TMDL imposes for the first time a numeric limit for trash and significantly increases the costs of compliance.

We need not, however, decide whether the Trash TMDL adopts new or revised water quality objectives within the meaning of Water Code section 13241, because even if the statute is applicable, the Water Boards sufficiently complied with it.[FN9] Water Code section 13241, subdivision (d) does not define "economic considerations" or specify a particular manner of compliance, and thus, as the Water Boards assert, the matter is within a regional ****389** board's discretion. It appears there is no reported opinion analyzing the "economic considerations" phrase of this statute. In *City of Burbank, supra,* 35 Cal.4th at page 625, 26 Cal.Rptr.3d 304, 108 P.3d 862, the court, without discussion, concluded that in adopting Water Code section 13241 the Legislature intended "that a regional board consider the *cost of compliance* [with numeric pollutant restrictions] when setting effluent limitations in a wastewater discharge permit." (Italics added.)

> FN9. For the same reason, we are not required to reach the Water Boards' assertion that to any extent the California Supreme Court's recent opinion in *City of Burbank, supra,* 35 Cal.4th 613, 26 Cal.Rptr.3d 304, 108 P.3d 862, applies to a TMDL, it precludes them from considering economic factors in establishing the Trash TMDL.

***1416** The Trash TMDL discusses the costs of gathering and disposing of trash at the mouth of the Los Angeles River watershed during the rainy seasons between 1995 and 1999. It also states: "Cleaning up the river, its tributaries and the beaches is a costly endeavor. The Los Angeles County Department of Public Works contracts out the cleaning of over 75,000 catchments (catch basins) for a total cost of slightly over $1 million per year, billed to 42 municipalities.... [¶] Over 4,000 tons of trash are collected from Los Angeles County beaches annually, at a cost of $3.6 million to Santa Monica Bay communities in fiscal years 1988-1989 alone. In 1994 the annual cost to clean the 31 miles of beaches (19 beaches) along Los Angeles County was $4,157,388."

The Trash TMDL also discusses the costs of various types of compliance measures, and explains the "cost of implementing this TMDL will range widely, depending on the method that the Permittees select to meet the Waste Load Allocations. Arguably, enforcement of existing litter ordinances could be used to achieve the final Waste Load Allocations at minimal or no additional cost. The most costly approach in the short-term is the installation of full-capture structural treatment devices on all discharges into the river. However, in the long term this approach would result in lower labor costs and may be less expensive than some other approaches."

The Trash TMDL defines catch basin inserts as "the least expensive structural treatment device in the short term," at a cost of approximately $800 each. It

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cautions, however, that because catch basin inserts "are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping." The Trash TMDL estimates that if the approximately 150,000 catch basins throughout the watershed were retrofitted with inserts, capital costs would be $120 million over 10 years, maintenance and operation costs would be $330 million over 10 years, and maintenance and operation costs after full implementation would be $60 million per year.

Further, the Trash TMDL discusses the full capture vortex separation system (VSS), which "diverts the incoming flow of storm[ ]water and pollutants into a pollutant separation and containment chamber. Solids within the separation chamber are kept in continuous motion, and are prevented from blocking the screen so that water can pass through the screen and flow downstream. This is a permanent device that can be retrofitted for oil separation as well. Studies have shown that VSS [units] remove virtually all of the trash contained in treated water. The cost of installing a VSS is assumed to be high, so limited funds will place a cap on the number of units which can be installed during any single fiscal year."

***1417** The Trash TMDL estimates the retrofitting of the entire Los Angeles River watershed with low capacity VSS units would be $945 million in capital costs and $813 million in operation and maintenance costs over 10 years, and $148 million in annual operation and maintenance costs after full implementation. The installation of large capacity VSS units would run ****390** approximately $332 million in capital costs and $41 million in operation and maintenance costs over 10 years, and $7.4 million per year in operation and maintenance costs after full implementation. The yearly cost of servicing one VSS unit is estimated to be $2,000. The Trash TMDL explains that "outfitting a large drainage with a number of large VSS [units] may be less costly than using a larger number of small VSS [units]. Maintenance costs decrease dramatically as the size of the system increases." The Trash TMDL also contains a cost comparison of catch basin inserts and low capacity and large capacity VSS units.

Additionally, the Trash TMDL estimates the costs for end-of-pipe nets at between $10,000 and $80,000, depending on the length of the pipe network. It explains that " '[r]elease nets' are a relatively economical way to monitor trash loads from municipal drainage systems. However, in general they can only be used to monitor or intercept trash at the end of a pipe and are considered to be partial capture systems, as nets are usually sized at a 1/2" to 1" mesh."

The Cities assert that "a 'consideration' of economics should have included a discussion of the economic *impacts* associated with the vortex separation systems. Alternatively, the Water Boards could have analyzed other methods of compliance, such as a series of [best management practices], including increased street sweeping, catch basin inserts, release nets, or some other combination of [best management practices] that should have been evaluated for purposes of allowing the municipalities to be in deemed compliance with the zero [Trash] TMDL." (Italics added.) As stated, though, the Trash TMDL does include the estimated costs of several types of compliance methods and a cost comparison of capital costs and costs of operation and maintenance. The Cities cite no authority for the proposition that a consideration of economic factors under Water Code section 13241 must include an analysis of every conceivable compliance method or combinations thereof or the fiscal impacts on permittees.

Given the lack of any definition for "economic considerations" as used in Water Code section 13241, and our deference to the Water Boards' expertise, we conclude the Trash TMDL's discussion of compliance costs is adequate ***1418** and does not fulfill the arbitrary or capricious standard. Accordingly, the Trash TMDL is not invalid on this ground.[FN10]

> FN10. The Cities also assert that under federal law an economic analysis is a prerequisite to the adoption of a TMDL. They rely on 40 Code of Federal Regulations, part 130.6(c)(4), but it pertains to nonpoint sources of pollution that need not be addressed in a TMDL, as discussed further below. The portion of the regulation covering TMDLs does not mention economics (*id.*, § 130.6(c)(1)). Parts 130.6(5) and (6) of 40 Code of Federal Regulations discuss economics, but in the context of the area wide planning process under section 208(b)(2) of the Clean Water Act (33 U.S.C. § 1288(b)(2)), which is inapplicable here.

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According to the Water Boards, the Southern California Association of Governments is the designated area-wide planning agency.

IV

Los Angeles River Estuary

[12] Additionally, the Water Boards challenge the court's finding they abused their discretion by attempting to include the Estuary in the Trash TMDL, as the Estuary is not on the state's 1998 303(d) list of impaired waters. The Water Boards contend a water body's formal listing on the state's 303(d) list is not a prerequisite to formulating a TMDL for it. Rather, an agency may simultaneously submit to the EPA the *identification* of a ****391** water body as impaired and a corresponding TMDL.

The Clean Water Act provides: "Each state shall identify those waters within its boundaries for which the effluent limitations ... are not stringent enough to implement any water quality standards applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters." (33 U.S.C. § 1313(d)(1)(A).) Further, it provides that "[e]ach state shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load...." (*Id.* at § 1313(d)(1)(C).) These provisions do not prohibit a regional board from identifying a water body and establishing a TMDL for it at essentially the same time, or indicate that formal designation on a state's 303(d) list is a prerequisite to a TMDL.

Further, 33 United States Code section 1313(d)(2) provides: "Each State shall submit to the [EPA] Administrator from time to time, ... for his [or her] approval the waters identified *and* the loads established under paragraphs (1)(A) [and] ... (1)(C) ... of this subsection. The [EPA] Administrator shall either approve or disapprove such identification *and* load not later than thirty days after the date of submission." (Italics added.) This clarifies that a regional board may simultaneously identify an impaired water body and establish a TMDL for it.

***1419** In *San Francisco BayKeeper v. Whitman, supra,* 297 F.3d 877, 884-885, the court held an agency has no *duty* to submit a TMDL at the same time it identifies an impaired water body, noting the development of a TMDL "to correct the pollution is obviously a more intensive and time-consuming project than simply identifying the polluted waters, as the EPA has indicated." (*Id.* at p. 885.) The Water Boards assert the case does not deprive an agency from exercising its *discretion* to simultaneously submit to the EPA the identification of an impaired water body and a TMDL for it. Given the plain language of 33 United States Code section 1313(d)(2), we agree. Moreover, "[s]tates remain at the front line in combating pollution" (*City of Arcadia II, supra,* 411 F.3d at p. 1106), and "[s]o long as the [s]tate does not attempt to adopt more *lenient* pollution control measures than those already in place under the [Clean Water] Act, [it] does not prohibit state action." (*Id.* at p. 1107.)

[13] Alternatively, the Cities complain the Regional Board did not sufficiently identify the Estuary as being impaired and included in the Trash TMDL until after its adoption and approval by the State Board and Office of Administrative Law and the completion of all public hearings. On July 29, 2002, the Regional Board sent the EPA a memorandum "to provide clarification on specific aspects" of the Trash TMDL. It stated that a "TMDL was established for the reaches of the Los Angeles River, tributaries and lakes listed on the [state's] 1998 303(d) list," and "[i]n addition, a TMDL was established for the Los Angeles River [E]stuary in the City of Long Beach. As described on page 12, paragraph 2 of the [staff] report, staff found that the impairment in the [E]stuary due to trash is 'even more acute in Long Beach where debris flushed down by the upper reaches collects.' [¶] The impairment in the [E]stuary was well documented during TMDL development," and it "would have been included in the 1998 303(d) list if the attached photographic evidence had been available at the time of the listing."

The Trash TMDL lists the reaches of the Los Angeles River "that are impaired by trash, and listed on the [state's] 303(d) ****392** list." The list does not include the Estuary. The Water Boards assert that even so, it was always obvious the Estuary is impaired and included in the Trash TMDL. The Trash TMDL states it is "for the Los Angeles River Watershed," and "watershed" is defined as "a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water." (Merriam-Webster's Collegiate Dict. (10th ed.1996) p. 1336.) "Estuary" is defined as "a water passage where

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the tide meets a river current," especially "an arm of the sea at the lower end of a river." (*Id.* at p. 397.)

The Trash TMDL describes the watershed as beginning at the "western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach," and it also states the watershed continues from "Willow Street all ***1420** the way through the [E]stuary." An amici curiae brief by Santa Monica BayKeeper, Inc., Heal the Bay, Inc., and Natural Resources Defense Council, Inc. (collectively BayKeeper), asserts Queensway Bay is the site of the Estuary, and no party has challenged the assertion. Further, the Trash TMDL lists and discusses the beneficial uses of the Estuary, including habitat for many species of birds, some endangered, and fish. It also states beneficial uses "are impaired by large accumulations of suspended and settled debris throughout the river system," and in particular "estuarine habitat" is impaired. Further, the administrative record contains several pictures of trash deposited in the Estuary during high flows, depicting "the variety of ways through which trash ... becomes an integral part of wildlife, affecting all plant and animal communities in the process."

The Trash TMDL's identification of the Estuary as impaired could have been clearer, but we conclude it was sufficient to put all affected parties on notice, and does not meet the arbitrary-and-capricious standard. Further, although the identification of impaired water bodies requires a priority ranking (33 U.S.C. § 1313(d)(2)), and the Trash TMDL does not prioritize the Estuary's need for a TMDL, we agree with amici BayKeeper that any error in the Water Boards' procedure was not prejudicial because the Trash TMDL shows amelioration of the trash problem in the entire Los Angeles River watershed is highly important, and it is unlikely the Water Boards would single out the Estuary for lower priority or that inclusion of the Estuary would disturb their existing priorities.

V
CEQA

[14] The Water Boards challenge the sufficiency of the evidence to support the trial court's finding that the amendment adding the Trash TMDL to the 1994 Basin Plan does not comport with CEQA. The court found the Regional Board's environmental checklist was deficient and there is sufficient evidence of a fair argument that the project may have a significant effect on the environment, thus necessitating an EIR or its functional equivalent. We conclude the court was correct.

A
General Legal Principles

"CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the ***1421** imposition of feasible mitigation measures or through the selection of feasible alternatives." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233, 32 Cal.Rptr.2d 19, 876 P.2d 505.) CEQA mandates that public agencies refrain from approving projects with significant environmental effects if ****393** there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

[15][16][17] CEQA is implemented through initial studies, negative declarations and EIR's. (*Sierra Club v. State Bd. of Forestry, supra,* 7 Cal.4th at p. 1229, 32 Cal.Rptr.2d 19, 876 P.2d 505.) "CEQA requires a governmental agency [to] prepare an [EIR] whenever it considers approval of a proposed project that *'may* have a *significant* effect on the environment.' " (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas, supra,* 29 Cal.App.4th at p. 1601, 35 Cal.Rptr.2d 470.) "If there is no substantial evidence a project 'may have a significant effect on the environment' or the initial study identifies potential significant effects, but provides for mitigation revisions which make such effects insignificant, a public agency must adopt a negative declaration to such effect and, as a result, no EIR is required. [Citations.] However, the Supreme Court has recognized that CEQA requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.' [Citations.] Thus, if substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified." (*Id.* at pp. 1601-1602, 35 Cal.Rptr.2d 470.)

" 'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of his-

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toric or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (Cal.Code Regs., tit. 14, § 15382.)

B

Certified Regulatory Program

[18] "State regulatory programs that meet certain environmental standards and are certified by the Secretary of the California Resources Agency are exempt from CEQA's requirements for preparation of EIRs, negative declarations, and initial studies. [Citations.] Environmental review documents prepared by certified programs may be used instead of environmental documents that CEQA would otherwise require. [Citations.] Certified regulatory ***1422** programs remain subject, however, to other CEQA requirements." (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2005) § 21.2, p. 1076; Pub. Resources Code, § 21080.5.) Documents prepared by certified programs are considered the "functional equivalent" of documents CEQA would otherwise require. (*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p. 113, 65 Cal.Rptr.2d 580, 939 P.2d 1280; 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra,* § 21.10, p. 1086 ["the documentation required of a certified program essentially duplicates" that required for an EIR or negative declaration].)

An "agency seeking certification must adopt regulations requiring that final action on the proposed activity include written responses to significant environmental points raised during the decisionmaking process. [Citation.] The agency must also implement guidelines for evaluating the proposed activity consistently with the ****394** environmental protection purposes of the regulatory program. [Citation.] The document generated pursuant to the agency's regulatory program must include alternatives to the proposed project and mitigation measures to minimize significant adverse environmental effects [citation], and be made available for review by other public agencies and the public [citation]." (*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p. 127, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

[19] The guidelines for implementation of CEQA (Cal.Code Regs., tit. 14, § 15000 et seq.) do not directly apply to a certified regulatory program's environmental document. (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra,* § 21.10, p. 1086.) However, "[w]hen conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA." (*Ibid.*)

In a certified program, an environmental document used as a substitute for an EIR must include "[a]lternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment," and a document used as a substitute negative declaration must include a "statement that the agency's review of the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion." (Cal.Code Regs., tit. 14, § 15252, subd. (a).)

The basin planning process of the State Board and regional boards is a certified regulatory program (Cal.Code Regs., tit. 14, § 15251, subd. (g)), and ***1423** the regulations implementing the program appear in the California Code of Regulations, title 23, sections 3775 to 3782. A regional board's submission of a plan for State Board approval must be accompanied by a brief description of the proposed activity, a completed environmental checklist prescribed by the State Board, and a written report addressing reasonable alternatives to the proposed activity and mitigation measures to minimize any significant adverse environmental impacts. (*Id.,* § 3777, subd. (a).)

C

Environmental Documentation

The Regional Board's environmental documentation in lieu of documents CEQA ordinarily requires consists of a checklist and the Trash TMDL. The checklist asked a series of questions regarding whether implementation of the Trash TMDL would cause environmental impacts, to which the Regional Board responded "yes," "maybe" or "no." "Yes" or "maybe" answers required an explanation. The checklist described beneficial impacts pertaining to

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plant and animal life, water quality and recreation. The checklist denied the project would have any environmental impact on land, including soil displacement, air, noise, natural resources or traffic, and thus it included no discussion of those factors. The checklist concluded "the proposed Basin Plan amendment [adding the Trash TMDL] could not have a significant effect on the environment."

The Regional Board obviously intended its documentation to be the functional equivalent of a negative declaration. Nonetheless, on appeal the Water Boards claim for the first time that the Regional ****395** Board's environmental review process is tiered, and its documentation meets the requirements of a first tier EIR under Public Resources Code section 21159. They assert the court's criticism of the checklist is baseless "because it ignores the concept of tiered environmental review and specific provisions for pollution control performance standards."

" 'Tiering' refers 'to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately *site-specific* EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is: [¶] ... [f]rom a general plan, policy, or program EIR to a ... site-specific EIR.' " (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 285, 126 Cal.Rptr.2d 615.) "[C]ourts have allowed first tier EIR's to defer detailed analysis to subsequent project EIR's." ***1424**(*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 532, 98 Cal.Rptr.2d 334.)

Public Resources Code section 21159, which allows expedited environmental review for mandated projects, provides that an agency "shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance.... The environmental analysis shall, at a minimum, include, all of the following: [¶] (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance. [¶] (2) An analysis of reasonably foreseeable mitigation measures. [¶] (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation." (Pub. Resources Code, § 21159, subd. (a).) The Water Boards submit they complied with the statute, and the "tier two environmental review is the responsibility of the local agencies who will determine how they intend to comply with the performance standards" of the Trash TMDL.

Issues not presented to the trial court are ordinarily waived on appeal. (*Royster v. Montanez* (1982) 134 Cal.App.3d 362, 367, 184 Cal.Rptr. 560.) In any event, we conclude the checklist and Trash TMDL are insufficient as either the functional equivalent of a negative declaration [FN11] or a tiered EIR. Moreover, an EIR is required since the Trash TMDL itself presents substantial evidence of a fair argument that significant environmental impacts may occur. "Because a negative declaration ends environmental review, the fair argument test provides a low threshold for requiring an EIR." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 399, 10 Cal.Rptr.3d 451.)

> FN11. A negative declaration may not be based on a " 'bare bones' " approach in a checklist. (*Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793, 797, fn. 2, 88 Cal.Rptr.2d 455, and cases cited therein.) A "certified program's statement of no significant impact must be supported by documentation *showing* the potential environmental impacts that the agency examined in reaching its conclusions," and "[t]his documentation would be similar to an initial study." (2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 21.11, pp. 1088-1089, italics added.) Because we conclude an EIR is required, we need not expand on how the checklist and Trash TMDL fail to satisfy negative declaration requirements or their functional equivalent.

****396** The Trash TMDL discusses various compliance methods or combinations thereof that permittees may employ, including the installation of catch basin inserts and VSS units. The Trash TMDL estimates that if the catch basin method is used exclusively, approximately 150,000 catch basins throughout the watershed would require retrofitting at a cost

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of approximately $120 million. It explains, however, that the "ideal way to capture trash deposited into a storm[ ]drain system would be to install a VSS unit. This device diverts *1425 the incoming flow of storm[ ]water and pollutants into a pollution separation and containment chamber." Only VSS units or similar full-capture devices will be deemed fully compliant with the zero trash target. The Trash TMDL estimates the cost of installing low capacity VSS units would be $945 million and the cost of installing large capacity VSS units would be $332 million.

The checklist and the Trash TMDL, however, ignore the temporary impacts of the construction of these pollution controls, which logically may result in soils disruptions and displacements, an increase in noise levels and changes in traffic circulation. Further, the Trash TMDL explains that since catch basin inserts "are not a full capture method, they must be monitored frequently and must be used in conjunction with frequent street sweeping." The checklist and the Trash TMDL also ignore the effects of increased street sweeping on air quality, and possible impacts caused by maintenance of catch basin inserts, VSS units and other compliance methods.

Indeed, the County of Los Angeles wrote to the Regional Board that "cleanout of structural controls, such as [catch basin inserts] and VSSs, naturally will increase existing noise levels due to vehicle and vacuuming noises." The City of Los Angeles advised that the Trash TMDL would result in increased maintenance vehicle traffic and "substantial air emissions or deterioration of ambient air quality," increased noise, increased use of natural resources and adverse impacts on existing transportation systems.

The Water Boards contend those comments are merely "unsubstantiated opinion and speculation by biased project opponents." Substantial evidence is not "[a]rgument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly inaccurate or erroneous." (Pub. Resources Code, § 21082.2, subd. (c).) However, letters and testimony from government officials with personal knowledge of the anticipated effects of a project on their communities "certainly supports a fair argument that the project may have a significant environmental impact." (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 542, 230 Cal.Rptr. 867.) Again, however, the Trash TMDL itself satisfies the fair argument criterion.

Even if the Water Boards had relied on Public Resources Code section 21159 at the trial court, the environmental documents do not meet its minimum requirements. Neither the checklist nor the Trash TMDL includes an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures, and in fact the Water Boards develop no argument as to how they ostensibly complied with the statute. While we agree a tiered environmental analysis is appropriate here, the Regional Board did not prepare a first-level EIR or its functional equivalent. We reject the Water Boards' argument the Regional Board did all it *1426 could because there "is no way to examine project level impacts that are entirely dependent upon the speculative possibilities of how subsequent**397 decision[ ]makers may choose to comply" with the Trash TMDL. Tier two project-specific EIR's would be more detailed under Public Resources Code section 21159.2, but the Trash TMDL sets forth various compliance methods, the general impacts of which are reasonably foreseeable but not discussed.

As a matter of policy, in CEQA cases a public agency must explain the reasons for its actions to afford the public and other agencies a meaningful opportunity to participate in the environmental review process, and to hold it accountable for its actions. (*Federation of Hillside & Canyon Assns. v. City of Los Angeles, supra,* 126 Cal.App.4th 1180, 1198, 24 Cal.Rptr.3d 543.) The Water Boards' CEQA documentation is inadequate, and remand is necessary for the preparation of an EIR or tiered EIR, or functional equivalent, as substantial evidence raises a fair argument the Trash TMDL may have significant impacts on the environment. The court correctly invalidated the Trash TMDL on CEQA grounds.[FN12]

FN12. The Water Boards also contend the trial court erred by staying the implementation schedule for the Trash TMDL pending this appeal. The matter is moot given our holding on the CEQA issue.

VI

Declaratory Relief

[20] In its statement of decision, the trial court explained the Cities "contend [the Water Boards] improperly attempted to control the watershed in-

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cluding the 'entire 584 square miles' of incorporated and unincorporated areas of the County [of Los Angeles], and nowhere in the [Trash] TMDL or the [1994] Basin Plan Amendment did [they] assert that the numeric Waste Load Allocations ... are to apply to the entire 584 square miles of watershed." The court, however, explained the Water Boards "concede the [Trash] TMDL only applies to navigable waters by asserting [they] didn't intend to control non-navigable waters," and it found "the parties are in agreement that the trash load allocations apply to the portion of the subject watershed as defined on pages 3575 and 3584 of the Administrative Record [pages of the Trash TMDL] and the Waste Load Allocations do not apply to non-waters."

The statement of decision nonetheless states the court granted the Cities' "relief as requested" as to "regulation of non-waters." In their third cause of action, the Cities sought a judicial declaration that the amendment to the 1994 Basin Plan and the Trash TMDL are invalid because they violate federal and state law. The judgment declared unenforceable a July 29, 2002, letter from ***1427** the Regional Board to the EPA that stated the "Waste Load Allocations apply to the entire urbanized portion of the watershed.... The urbanized portion of the watershed was calculated to encompass 584 square miles of the total watershed."

[21] "The fundamental basis of declaratory relief is the existence of an *actual, present controversy.*" (5 Witkin, Cal. Procedure, *supra,* Pleadings, § 817, p. 273.) Because the parties agreed during this proceeding there was no *present* controversy, the judgment should not have included declaratory relief on the nonwaters issue.

CITIES' APPEAL

I

Concepts of "Maximum Extent Practicable" and "Best Management Practices"

[22] The Cities contend a zero target for trash in the Los Angeles River is unattainable,****398** and thus the Trash TMDL violates the law by not deeming compliance through the federal "maximum extent practicable" and "best management practices" standards, which are less stringent than the numeric target of zero. The Cities rely on 33 United States Code section 1342(p)(3)(B)(iii), under which an NPDES permit for a municipal discharge into a storm drain "shall require controls to reduce the discharge of pollutants to the *maximum extent practicable,* including management practices, control techniques and system, design and engineering methods, and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants." (Italics added.) [FN13] "Best management practices" are generally pollution control measures set forth in NPDES permits. (*BIA, supra,* 124 Cal.App.4th at p. 877, 22 Cal.Rptr.3d 128.)

> FN13. The Clean Water Act and applicable regulations do not define the maximum extend practicable standard. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 889, 22 Cal.Rptr.3d 128 (*BIA*).) In *BIA*, the NPDES permit at issue defined the standard as "a highly flexible concept that depends on balancing numerous factors." (*Ibid.*)

The Cities assert that "as the [r]ecord reflects, compliance with the 'zero' [Trash] TMDL ... is impossible," and the Water Boards "themselves recognize that 'zero' is an impossible standard to meet." Contrary to the Cities' suggestion, the Water Boards made no implied finding or concession of impossibility. Rather, the record shows that members of the Water Boards questioned whether a zero trash target is actually attainable. A zero limit on ***1428** trash within the meaning of the Trash TMDL *is* attainable because there are methods of deemed compliance with the limit. The record does not show the limit is unattainable, and the burden was on the Cities as opponents of the Trash TMDL to establish impossibility. Further, the impossibility issue is not germane at this juncture, as the matter is at the planning stage with an interim goal of a 50 percent reduction in trash, a goal everyone agrees is necessary and achievable.

In any event, the trial court found 33 United States Code section 1342(p)(3)(B)(iii) inapplicable to the adoption of a TMDL. The court also found state and federal laws authorize regional boards to "use water quality, and not be limited to practicability as the guiding principle for developing limits [in a TMDL] on pollution." Further, the court noted the Cities presented no authority for their proposition the Regional Board is required to adopt a storm water TMDL that is achievable.

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We agree with the court's assessment. The statute applicable to establishing a TMDL, 33 United States Code section 1313(d)(1)(C), does not suggest that practicality is a consideration. To the contrary, a regional board is required to establish a TMDL "at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety." (33 U.S.C. § 1313(d)(1)(C).) The NPDES permit provision, 33 United States Code 1342(p)(3)(B), is inapplicable because, again, we are only considering the propriety of the Trash TMDL, a precursor to NPDES permits implementing it. Under the Trash TMDL, the numeric target will be reconsidered after several years when a reduction in trash of 50 percent is achieved, and thus it is presently unknown whether compliance with a trash limit of zero will ever actually be mandated.

[23] To bolster their position the Cities rely on **3933 United States Code section 1329(a)(1)(C)). It provides, however, that in a state's assessment report for a *nonpoint* source management program, the state must "describe[ ] the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source." (*Ibid.*) In *BIA, supra,* 124 Cal.App.4th at page 887, 22 Cal.Rptr.3d 128, we rejected the argument the statute shows Congress intended to apply a maximum extent practicable standard to point source discharges as well as nonpoint discharges. The Cities say they disagree with *BIA*, but they develop no argument revealing any flaw in the opinion. "[P]arties are required *1429 to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's ... issue as waived." (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448, 37 Cal.Rptr.2d 126.)

The Cities' reliance on *Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159, for the proposition that municipalities, unlike private companies, may not be required to strictly comply with numeric discharge limits is likewise misplaced. *Defenders of Wildlife v. Browner* involves a challenge to an NPDES permit, not the adoption of a TMDL. Further, the court there rejected the argument that "the EPA [or authorized regional or state board] may not, under the [Clean Water Act], require strict compliance with state water-quality standards, through numerical limits or otherwise." (*Id.* at p. 1166.) The court explained: "Although Congress did not require municipal storm-sewer discharges to comply strictly with [numerical effluent limitations], [section] 1342(p)(3)(B)(iii) [of United States Code, title 33] states that '[p]ermits for discharges from municipal storm sewers ... shall require ... *such other provisions as the* [*EPA*] *Administrator ... determines appropriate for the control of such pollutants.*' (Emphasis added.) That provision gives the EPA discretion to determine what pollution controls are appropriate.... [¶] Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards.... Under 33 United States Code section 1342(p)(3)(B)(iii), the EPA's choice to include either management practices or numeric limitations in the permits was within its discretion." (*Id.* at pp. 1166-1167.)

In *BIA*, this court similarly held that 33 United States Code section 1342(p)(3)(B)(iii) does not divest a regional board's discretion to impose an NPDES permit condition requiring compliance with state water quality standards more stringent than the maximum-extent-practicable standard. (*BIA, supra,* 124 Cal.App.4th at pp. 871, 882-885, 22 Cal.Rptr.3d 128; see also Wat.Code, § 13377 [waste discharge requirements shall meet federal standards and may also include "more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance"].) Thus, even if the analysis in *Defenders of Wildlife v. Browner* or *BIA* arguably has any application to a TMDL, the opinions do not help the Cities.

Additionally, the Cities' reliance on a November 2002 EPA memorandum on establishing TMDLs and issuing NPDES **400 permits is misplaced, as it postdates the Regional Board's adoption of the Trash TMDL and its approval by the State Board and the EPA. Further, the memorandum states it *1430 is not binding, and "indeed, there may be other approaches that would be appropriate in particular situations.

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When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by applicable requirements of the [Clean Water Act] and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation."

II

Nonpoint Sources of Pollution

[24] The Cities contend the court should have invalidated the Trash TMDL on additional grounds, including the Water Boards' failure to identify load allocations and implementation measures for nonpoint sources of trash discharge. The Cities assert the Water Boards are required to adopt implementation measures "for the homeless and aerial sources of trash, [and] also for the other nonpoint sources of trash consisting of State and federal facilities, and other facilities not yet subject to NPDES Permits." The Cities submit that the Clean Water Act does not allow the Water Boards "to effectively impose the burden of the load allocation from all nonpoint sources solely on municipalities."

The Cities further claim the Water Boards acted arbitrarily and capriciously by imposing a trash target of zero on municipalities, but imposing a " 'de minimus' requirement on non-point source discharges." The Cities cite the July 29, 2002, letter from the Regional Board to the EPA, clarifying that it identified nonpoint sources of trash pollution "as wind blown trash and direct deposit of trash into the water," but "as the non-point sources were determined to be de-minimus, we did not believe it necessary to outline a reduction schedule for non-point sources." Contrary to the Cities' position, the Regional Board did not adopt a "de minimus" load allocation for nonpoint sources. Rather, as the trial court found, the Regional Board found the trash pollution from nonpoint sources is de minimus compared to trash pollution from point sources. The TMDL states the "major source of trash in the [Los Angeles River] results from litter, which is intentionally or accidentally discarded in the watershed drainage areas."

In arguing the Trash TMDL is required to include a specific load allocation for nonpoint sources of pollution, the Cities rely on the 2000 EPA Guidance, which provides: "Load allocations for nonpoint sources *may* be expressed as specific allocations for specific discharges or as 'gross allotments' to nonpoint source discharger categories. Separate nonpoint source allocations *should* be established for background loadings. Allocations may be based on a variety ***1431** of technical, economic, and political factors. The methodology used to set allocations *should* be discussed in detail." (Italics added.)

The 2000 EPA Guidance, however, states it does not impose legally binding requirements. Further, the load allocation for nonpoint sources is implicitly zero for trash. Federal regulations define a TMDL as the sum of waste load allocations for point sources, load allocations for nonpoint sources and natural backgrounds. (40 C.F.R. § 130.2(i) (2003).) Since "a TMDL defines the specified maximum amount of a pollutant which can be discharged into a body of water from all sources combined" ****401**(*American Wildlands v. Browner* (10th Cir.2001) 260 F.3d 1192, 1194), and the Trash TMDL specifies a zero numeric target for trash in Los Angeles River, load allocations are necessarily zero as well as waste load allocations.

Additionally, the Cities cite no authority for the proposition the Water Boards are required to identify an implementation program for nonpoint pollution sources. Again, "[w]here a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, 86 Cal.Rptr. 906, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3, 98 Cal.Rptr. 217, 490 P.2d 537; *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1693, fn. 2, 44 Cal.Rptr.2d 575.)

In any event, although the Clean Water Act focuses on both point and nonpoint sources of pollution, it is settled that the measure "does not require states to take regulatory action to limit the amount of non-point water pollution introduced into its waterways. While the [Clean Water Act] requires states to designate water standards and identify bodies of water that fail to meet these standards, ' "nothing in the [Clean Water Act] demands that a state adopt a regulatory system for nonpoint sources." ' " (*Defenders of Wildlife v. EPA, supra,* 415 F.3d at pp. 1124-1125, citing *American Wildlands v. Browner, supra,* 260 F.3d 1192, 1197 ["In the [Clean Water] Act, Congress has chosen not to give the EPA the authority to regulate nonpoint

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source pollution"]; *Appalachian Power Co. v. Train* (4th Cir.1976) 545 F.2d 1351, 1373 ["Congress consciously distinguished between point source and nonpoint source discharges, giving EPA authority under the [Clean Water] Act to regulate only the former"]; *City of Arcadia I, supra,* 265 F.Supp.2d at p. 1145 ["For nonpoint sources, limitations on loadings are not subject to a federal nonpoint source permitting program, and therefore any nonpoint source reductions can be enforced ... only to the extent that a state institutes such reductions as regulatory requirements pursuant to state ***1432** authority"].) "Nonpoint sources, because of their very nature, are not regulated under the NPDES [program]. Instead, Congress addressed nonpoint sources of pollution in a separate portion of the [Clean Water] Act which encourages states to develop areawide waste treatment management plans." (*Pronsolino v. Marcus, supra,* 91 F.Supp.2d at p. 1348, citing 33 U.S.C. § 1288; see also 33 U.S.C. § 1329.)

We conclude the court correctly ruled on this issue.

III

Uses To Be Made of Watershed

[25] The Cities next contend the Trash TMDL is invalid because the Water Boards "improperly relied on nonexistent, illegal and irrational 'uses to be made' of the [Los Angeles] River." (Emphasis omitted.) The Cities complain that the Trash TMDL states a purported beneficial use of one of numerous reaches of the river on the state's 303(d) list is "recreation and bathing, in particular by homeless people who seek shelter there," and the State Board chairman questioned the legality of such uses. The Cities also assert there is no evidence to support the Trash TMDL's finding that swimming is an actual use of the river in any location.

The Cities rely on section 303(d)(1)(A) of the Clean Water Act (33 U.S.C. § 1313(d)(1)(A)), which provides that in identifying impaired waters for its 303(d) list, states "shall establish a priority ranking for such waters, taking into account the severity of the pollution and the *uses to be made* of such waters." (Italics added.)****402** The Cities assert "an 'illegal' use cannot be a 'use to be made' for the water body."

Additionally, the Cities cite Water Code section 13241, which requires regional boards to establish water quality objectives in water quality control plans by considering a variety of factors, including "[p]ast, present, and probable future beneficial uses of water." (Wat.Code, § 13241, subd. (a).) They assert the "Water Boards acted contrary to law by basing the [Trash] TMDL on any uses of the [Los Angeles] River other than the actual 'uses to be made' of the River." (Emphasis omitted.)

The Cities, however, make no showing of prejudice. Swimming and bathing by the homeless are only two among numerous other beneficial uses that the Cities do not challenge, and there is no suggestion the numeric target of zero trash in the Los Angeles River would have been less stringent without consideration of the factors the Cities raise.

***1433** IV

Scientific Methodology

[26] Further, the Cities contend the Trash TMDL is invalid on the additional ground that before adopting and approving it the Water Boards failed to comply with the requisite data collection and analysis. The Cities rely on a federal regulation providing that "[s]tates must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters." (40 C.F.R. § 130.4(a) (2003).) "The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data" in developing, among other things, TMDLs. (*Id.,* § 130.4(b).)

The trial court rejected the Cities' position, finding they failed to establish the Water Boards' scientific data is inadequate or scientifically invalid. The court explained the Water Boards "have not failed to conduct ongoing studies, as they say, how else would [they] know the River is impaired by trash[?] And the Record reveals studies relied upon by the Boards."

This argument is a variation on the assimilative capacity study issue, and we similarly reject it. As the Water Boards point out, "trash is different than other pollutants.... The complex modeling and analytical effort that may be necessary for typical pollutants that may be present in extremely low concentrations have no relevance to calculating a trash TMDL." Further,

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the Trash TMDL does discuss sources of trash in the Los Angeles River. It states the "City of Los Angeles conducted an Enhanced Catch Basin Cleaning Project in compliance with a consent decree between the [EPA], the State of California, and the City of Los Angeles. The project goals were to determine debris loading rates, characterize the debris, and find an optimal cleaning schedule through enhancing basin cleaning. The project evaluated trash loading at two drainage basins[.]" It goes on to discuss the amounts and types of trash collected in the drainage basins between March 1992 and December 1994. The Cities cite no authority for the notion the Water Boards may not rely on data collected by another entity.

The Trash TMDL also states "[s]everal studies conclude that urban runoff is the dominant source of trash. The large amounts of trash conveyed by the urban storm water to the Los Angeles River is evidenced by the amount of ... trash that accumulates at the base of storm drains."

****403 *1434** Alternatively, the Cities contend a TMDL is not suitable for trash calculation. They rely on 33 United States Code section 1313(d)(1)(C), which provides: "Each State shall establish for [impaired] waters ... the total maximum daily load, for those pollutants which the [EPA] Administrator identifies ... as *suitable for such calculation.* Such load shall be established at a level *necessary* to implement the applicable water quality standards with seasonal variations and a margin of safety." (Italics added.)

The Cities also cite a 1978 EPA regulation that states a TMDL is "suitable for ... calculation" only under "proper technical conditions." (43 Fed.Reg. 60662, 60665 (Dec. 28, 1978) (italics omitted).) "Proper technical conditions" require "the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL." (*Id.* at p. 60662.) The Cities assert the proper technical conditions do not exist, referring to the Trash TMDL's comment that "[e]xtensive research has not been done on trash generation or the precise relationship between rainfall and its deposition in waterways."

The Cities ignore the EPA's determination that a TMDL *may* be calculated for trash as a pollutant. It approved the Regional Board's Trash TMDL, and had previously approved a trash TMDL for the East Fork of the San Gabriel River. (See Cal.Code Regs., tit. 23, § 3933.) Thus, the Cities' view that the 1978 EPA regulation prohibits a TMDL for trash is unfounded. TMDL's for trash are relatively new, and there is no evidence that in 1978 the EPA contemplated their establishment.

We find irrelevant the Cities' discussion of the EPA's proposed July 2000 TMDL "rule," as their federal register citation is not a regulation and merely concerns the 2003 withdrawal of a rule that never took effect. (68 Fed.Reg. 13608, 13609 (Mar. 19, 2003) ["The July 2000 rule was controversial from the outset"].) In August 2001 the EPA delayed implementation of the July 2000 rule for further consideration, noting that some local government officials argued "some pollutants are not suitable for TMDL calculation." (66 Fed.Reg. 41817, 41819 (Aug. 9, 2001).) Nothing is said, however, about whether a trash TMDL is unsuitable for calculation, and again, the EPA has approved such TMDLs. The withdrawal of the proposed July 2000 rule left the existing rule regarding the establishment of a TMDL in place. (33 U.S.C. § 1313(d)(1)(C).)

V

APA Requirements

Lastly, the Cities contend the trial court erred by finding the Water Boards did not violate the APA. They assert the July 29, 2002, "clarification ***1435** memorandum" from the Regional Board to the EPA makes substantive changes to the Trash TMDL regulation-the inclusion of the Estuary in the Trash TMDL and designating an allocation of zero for nonpoint pollution sources-violates the notice and hearing provisions of the APA. The Cities also contend the Trash TMDL and the clarification memorandum "establish[ ] a regulation in violation of the APA's elements of 'clarity,' 'consistency,' and 'necessity,' as defined in [Government] Code section 11349."

The APA (Gov.Code, §§ 11340 et seq., 11370) "establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action [citations]; issue a complete text of the proposed regulation with a statement of the reasons for it [citation]; give interested parties an opportunity to comment on ****404** the proposed regulation [citation]; respond in writing to public comments [citations]; and forward a file of all materials on which the agency relied in the regu-

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latory process to the Office of Administrative Law [citation], which reviews the regulation for consistency with the law, clarity, and necessity [citations]." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568, 59 Cal.Rptr.2d 186, 927 P.2d 296.) "One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law's requirements so that they can conform their conduct accordingly [citation]." (*Id.* at pp. 568-569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)

The APA does not apply to "the adoption or revision of state policy for water quality control" unless the agency adopts a "policy, plan, or guideline, or any revision thereof." (Gov.Code, § 11353, subds.(a), (b)(1).) The Water Boards contend that while the Trash TMDL and amendment adding it to the 1994 Basin Plan are policies or plans covered by the APA, the clarification memorandum is not because it does not revise the terms of the Trash TMDL.

We are not required to reach the issue, because assuming the APA is applicable the Cities' position lacks merit. As to the Estuary, we have determined the Trash TMDL sufficiently notified affected parties of its inclusion in the document as an impaired water body. Further, we have determined the load allocation for nonpoint sources of trash pollution is also necessarily zero, and the Trash TMDL is not required to include implementation measures for nonpoint sources. Accordingly, the clarification memorandum is not germane. [FN14]

FN14. We deny the Water Boards' June 16, 2005, request for judicial notice.

***1436** DISPOSITION

The judgment is affirmed insofar as it is based on the Trash TMDL's violation of CEQA, and on a rejection of each of the issues the Cities raised in their appeal. The judgment is reversed insofar as it is based on the Trash TMDL's lack of an assimilative capacity study, inclusion of the Estuary as an impaired water body, and a cost-benefit analysis under Water Code section 13267 or the consideration of economic factors under Water Code section 13241, and also insofar as it grants declaratory relief regarding the purported inclusion of non-navigable waters in the Trash TMDL.

The court's postjudgment order staying the Trash TMDL's implementation schedule is affirmed. The parties are to bear their own costs on appeal.

WE CONCUR: McINTYRE and IRION, JJ.

Cal.App. 4 Dist.,2006.
City of Arcadia v. State Water Resources Control Bd.
135 Cal.App.4th 1392, 38 Cal.Rptr.3d 373, 36 Envtl. L. Rep. 20,025, 06 Cal. Daily Op. Serv. 797, 2006 Daily Journal D.A.R. 1145

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265 F.Supp.2d 1142
(Cite as: 265 F.Supp.2d 1142)

C

United States District Court,
N.D. California.
CITY OF ARCADIA, et al., Plaintiffs,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al., Defendants,
and
Natural Resources Defense Council, et al., Defendants-Intervenors.

No. C 02-5244 SBA.
May 16, 2003.

Cities brought action challenging Environmental Protection Agency's (EPA) promulgation of total maximum daily load (TMDL) for trash in river and subsequent approval of state's trash TMDLs. Environmental groups intervened as parties defendant. On EPA's motion to dismiss, the District Court, Armstrong, J., held that: (1) EPA had authority to approve state-submitted TMDLs, even after EPA had established its own TMDLs; (2) procedure used by EPA in approving state's TMDLs was not itself "final agency action;" and (3) cities' action was not ripe for review.

Motion granted.

West Headnotes

[1] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution
149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily Maximum Load and Limited Segments. Most Cited Cases

Environmental Law 149E 196

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek196 k. Discharge of Pollutants. Most Cited Cases

For nonpoint sources, limitations on loadings are not subject to federal nonpoint source permitting program under Clean Water Act (CWA), and therefore any nonpoint source reductions can be enforced against those responsible for pollution only to extent that state institutes such reductions as regulatory requirements pursuant to state authority. Federal Water Pollution Control Act Amendments of 1972, § 303(d), as amended, 33 U.S.C.A. § 1313(d); 40 C.F.R. §§ 130.2(g-i), 130.7(c)(1).

[2] Federal Civil Procedure 170A 1832

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)5 Proceedings
170Ak1827 Determination
170Ak1832 k. Matters Considered in General. Most Cited Cases

In adjudicating motion to dismiss for lack of subject matter jurisdiction, court is not limited to pleadings, and may properly consider extrinsic evidence. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[3] Federal Courts 170B 34

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk29 Objections to Jurisdiction, Determination and Waiver
170Bk34 k. Presumptions and Burden of Proof. Most Cited Cases

In adjudicating motion to dismiss for lack of subject matter jurisdiction, court presumes lack of jurisdiction until plaintiff proves otherwise. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[4] Environmental Law 149E 192

149E Environmental Law
149EV Water Pollution

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149Ek187 Water Quality Standards or Plans
149Ek192 k. Daily Maximum Load and Limited Segments. Most Cited Cases

Environmental Protection Agency (EPA) maintained authority under Clean Water Act (CWA) to approve state-submitted total maximum daily loads (TMDL), even after EPA had established its own TMDLs. Federal Water Pollution Control Act Amendments of 1972, § 303, as amended, 33 U.S.C.A. § 1313.

[5] Environmental Law 149E 661

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek661 k. Finality. Most Cited Cases

Procedure used by Environmental Protection Agency (EPA) in approving state's total maximum daily load (TMDL) for trash in river was not "final agency action," and thus procedure itself was not subject to review pursuant to Administrative Procedure Act (APA), Regulatory Flexibility Act (RFA), or Small Business Regulatory Enforcement Fairness Act (SBREFA). 5 U.S.C.A. § 551(13).

[6] Federal Civil Procedure 170A 1742(2)

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)2 Grounds in General
170Ak1742 Want of Jurisdiction
170Ak1742(2) k. Particular Cases and Grounds. Most Cited Cases

Unripe claims are subject to dismissal for lack of subject matter jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[7] Environmental Law 149E 662

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek662 k. Ripeness. Most Cited Cases

Cities' action seeking judicial review of Environmental Protection Agency's (EPA) approval of state's total maximum daily loads (TMDL) for trash in river was not ripe for review, despite cities' contentions that they would bear economic costs in complying with TMDLs, where TMDLs did not presently impose any obligations on cities and were subject to revision before such obligations would be imposed, costs imposed by TMDLs would be borne by permittees, not cities, judicial intervention would likely interfere with further administrative action by state, and delaying review would enable court to more completely review TMDL program.

*1143 Noam I. Duzman,Richard Montevideo, Robert S. Bower, Rutan & Tucker LLP, Costa Mesa, CA, for plaintiffs.

Charles M. O'Connor, AUSA & Chief, Environmental & Natural Resources, United States Attorney's Office, San Francisco, CA, S. Randall Humm, Pamela Tonglao, U.S. Department of Justice, Environmental & Natural Resources Div., Washington, DC, for defendants.

David S. Beckman, Anjali I. Jaiswal for defendants-intervenors.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, DENYING AS MOOT PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, AND DISMISSING ACTION

ARMSTRONG, District Judge.

Plaintiffs City of Arcadia and other California cities (collectively, "Plaintiffs") bring this action against defendants United States Environmental Protection Agency ("EPA"), the EPA Administrator, and the EPA Region IX Administrator (collectively, "Defendants") for injunctive and declaratory relief. The Natural Resources Defense Council, Santa Monica BayKeeper, and Heal the Bay (collectively, "Intervenors") have intervened as defendants.

Now before the Court are Defendants' Motion to Dismiss Second Amended Complaint (the "Motion to Dismiss"), in which Intervenors join, and Plaintiffs' Motion for Summary Adjudication of Issues (the "Motion for Partial Summary Judgment"). Having read and considered the papers submitted and being fully informed, the Court GRANTS the Motion to Dismiss, DENIES AS MOOT the Motion for Partial Summary Judgment, and DISMISSES this action.[FN1]

FN1. These matters are suitable for disposi-

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tion without a hearing. *See* Fed.R.Civ.P. 78; Civ. L.R. 7-1(b).

I. BACKGROUND [FN2]

FN2. Over the years the Court has had the pleasure and privilege of reading some excellent moving papers. Some of these submissions stand out as truly superlative. Defendants' opening and reply briefs for their Motion to Dismiss are shining examples of such superlative submissions. In these briefs Defendants discuss three areas of federal law generally regarded as highly complex-environmental regulation, administrative law, and justiciability-in direct, succinct, well-supported, and powerfully illuminating fashion. Whereas a poor presentation of the statutory and regulatory framework and Defendants' arguments might have required the Court to spend hours to apprehend their arguments, the high quality of Defendants' writing enabled the Court to grasp them in a matter of minutes. Defendants' briefs also thankfully avoid leveling the sorts of thinly veiled (or, at times, not-at-all-veiled) *ad hominem* attacks that unfortunately pervade too much legal writing nowadays. The Court thus commends Defendants' counsel for their outstanding writing and expresses its appreciation for it.

A. *Statutory and Regulatory Background*

1. *Water Pollution Control Under the Clean Water Act*

The Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387, utilizes two fundamental approaches to control water pollution: technology-based regulations and water quality standards. Technology-based ***1144** regulations seek to reduce pollution by requiring a discharger to effectuate equipment or process changes, without reference to the effect on the receiving water; water quality standards fix the permissible level of pollution in a specific body of water regardless of the source of pollution.

The National Pollutant Discharge Elimination System ("NPDES") permit program is a key means of implementing both technology-based requirements and water quality standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)(1); 40 C.F.R. § 122.44(a), (d)(1). An NPDES permit establishes specific limits of pollution for an individual discharger. A discharge of pollutants (other than dredged or fill material) from any "point source," which is defined as "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged," 33 U.S.C. § 1362(14), into the waters of the United States is prohibited unless that discharge complies with the discharge limits and other requirements of an NPDES permit. *Id.* §§ 1311(a), 1362(12). At present, 45 states, including California, are authorized to administer the NPDES permit program. State Program Status, *at* http:// cfpub.epa.gov/npdes/statestats.cfm? program_id=45 & view=general. In the remaining states, EPA issues the permits. 33 U.S.C. § 1342(a).

2. *Total Maximum Daily Loads ("TMDLs")*

Section 303(d) of the CWA and EPA's implementing regulations require states to identify and prioritize waterbodies where technology-based effluent limitations and other required controls are insufficiently stringent to attain water quality standards. *See* 33 U.S.C. § 1313(d); 40 C.F.R. § 130.7(b). States must develop a "total maximum daily load," or "TMDL," for each pollutant of concern in each waterbody so identified. A TMDL represents the maximum amount of pollutant "loading" that a waterbody can receive from all combined sources without exceeding applicable state water quality standards. Although the term "total maximum daily load" is not expressly defined in the CWA, EPA's regulations define a TMDL for a pollutant as the sum of: (1) the "wasteload allocations," which is the amount of pollutant that can be discharged to a waterbody from point sources, (2) the "load allocations," which represent the amount of a pollutant in a waterbody attributable to nonpoint sources or natural background, and (3) a margin of safety. 40 C.F.R. §§ 130.2(g)-(i), 130.7(c)(1).

Under CWA Section 303(d)(2), EPA is required to review and approve or disapprove TMDLs established by states for impaired waters within thirty days of submission. 33 U.S.C. § 1313(d)(2). If EPA disapproves a state TMDL submission, EPA must issue its own TMDL for that waterbody within thirty days. *Id.*

3. *Implementation of TMDLs*

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TMDLs established under Section 303(d)(1) of the CWA function primarily as planning devices and are not self-executing. *Pronsolino v. Nastri*, 291 F.3d 1123, 1129 (9th Cir.2002) ("TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans.") (citing *Alaska Ctr. for the Env't v. Browner*, 20 F.3d 981, 984-85 (9th Cir.1994)). A TMDL does not, by itself, prohibit any conduct or require any actions. Instead, each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls. *See, e.g., Sierra Club v. Meiburg*, 296 F.3d 1021, 1025 (11th Cir.2002) ("Each TMDL serves as the goal for the level of that pollutant in the waterbody to which that TMDL applies.... The theory is that individual-discharge permits ***1145** will be adjusted and other measures taken so that the sum of that pollutant in the waterbody is reduced to the level specified by the TMDL."); *Idaho Sportsmen's Coalition v. Browner*, 951 F.Supp. 962, 966 (W.D.Wash.1996) ("TMDL development in itself does not reduce pollution.... TMDLs inform the design and implementation of pollution control measures."); *Pronsolino*, 291 F.3d at 1129 ("TMDLs serve as a link in an implementation chain that includes ... state or local plans for point and nonpoint source pollution reduction ...."); *Idaho Conservation League v. Thomas*, 91 F.3d 1345, 1347 (9th Cir.1996) (noting that a TMDL sets a goal for reducing pollutants). Thus, a TMDL forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant discharges and waterbodies.

[1] For point sources, limitations on pollutant loadings may be implemented through the NPDES permit system. 40 C.F.R. § 122.44(d)(1)(vii)(B). EPA regulations require that effluent limitations in NPDES permits be "consistent with the assumptions and requirements of any available wasteload allocation" in a TMDL. *Id.* For nonpoint sources, limitations on loadings are not subject to a federal nonpoint source permitting program, and therefore any nonpoint source reductions can be enforced against those responsible for the pollution only to the extent that a state institutes such reductions as regulatory requirements pursuant to state authority. *Pronsolino v. Marcus*, 91 F.Supp.2d 1337, 1355-56 (N.D.Cal.2000), *aff'd sub nom. Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir.2002).

4. California Water Quality Control Statutory and Regulatory Framework

California effectuates the foregoing requirements of the CWA primarily through institutions and procedures set out in certain provisions of the California Water Code (the "Water Code"), including those of the California Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code § 13000 *et seq.* These Water Code provisions established the State Water Resources Control Board (the "State Board") within the California Environmental Protection Agency to formulate and adopt state policy for water quality control. Cal. Water Code §§ 174-186, 13100, 13140. The State Board is designated as the state water pollution control agency for all purposes stated in the CWA and is the agency authorized to exercise powers delegated to it under the CWA. 33 U.S.C. § 1313; Cal. Water Code § 13160.

The Porter-Cologne Act established nine California Regional Water Quality Control Boards (individually, a "Regional Board"; collectively, the "Regional Boards"), Cal. Water Code §§ 13200, 13201, which operate under the purview of the State Board, *see id.* § 13225. Each Regional Board is comprised of nine members, *id.* § 13201, and is required to appoint an executive officer, *id.* § 13220(c), to whom the Regional Board may delegate all but some of its powers and duties, *id.* § 13223. Each Regional Board is required to formulate and adopt water quality control plans for all areas within the region. *Id.* § 13240. The State Board may approve such plan, or it may return it to the Regional Board for further submission and resubmission to the State Board. *Id.* § 13245. It must act on any water quality control plan within 60 days of a Regional Board's submission of such plan to the State Board, or 90 days after resubmission of such plan. *Id.* § 13246. A water quality control plan will not become effective unless and until it is approved by the State Board, followed by approval by the state's Office of Administrative Law ("OAL") in accordance with the appropriate procedures.***1146** *Id.* § 13245; Cal. Gov't Code §§ 11340.2, 11349.3, 11353(b)(5).

The State Board is required to formulate, adopt, and revise general procedures for the formulation, adoption, and implementation of water quality control plans by the Regional Boards. Cal. Water Code § 13164. The State Board may adopt water quality control plans for purposes of the CWA that include the

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regional water quality control plans submitted by the Regional Boards. *See id.* § 13170. Such plans, when adopted by the State Board, supersede any regional water quality control plans for the same waters to the extent of any conflict. *Id.*

B. *Factual Summary and Procedural History*

1. *The Consent Decree*

The events underlying the instant action were set in motion by the disposition of *Heal the Bay, Inc., et al. v. Browner, et al.*, No. C 98-4825 SBA ("*Heal the Bay*"), an action previously before this Court. In *Heal the Bay,* an individual and two environmental groups (which groups are now two of the three Intervenors in the instant action) brought a civil action against EPA, the EPA Administrator, and the EPA Region IX Administrator. Their suit primarily concerned EPA's alleged failure to perform its alleged duty under the CWA either to approve or to disapprove TMDLs submitted to EPA by the state of California.

On March 23, 1999, the Court filed an Amended Consent Decree (the "Consent Decree") [FN3] in which "EPA agree[d] to ensure that a TMDL [would] be completed for each and every pairing of a [Water Quality Limited Segment, as defined in 40 C.F.R. 130.2(j),] and an associated pollutant in the Los Angeles Region" set forth in an attachment to the Consent Decree by specified deadlines. (Consent Decree ¶¶ 2a, 2b, 3, 3c.) [FN4] Pursuant to the Consent Decree, for each pairing EPA was required either to approve a TMDL submitted by California by a specified deadline or, if it did not approve a TMDL by the date specified, to establish a TMDL within one year of the deadline, unless California submitted and EPA approved a TMDL prior to EPA's establishing the TMDL within the one-year period. (*Id.* ¶ 3a.) By March 24, 2002, EPA was required either to have approved a state-submitted TMDL for trash in the Los Angeles River or to have established the TMDL itself. (*Id.* ¶¶ 2d, 3a; *id.* Att. 2, 3.) [FN5]

FN3. No original consent decree was entered. Rather, according to Defendants' representations in their opening brief, the Consent Decree incorporated amendments from an original proposal at the urging of proposed intervenors California Association of Sanitation Agencies and California Alliance of POTWs. (*See* Mot. to Dismiss at 6.)

FN4. The Court takes judicial notice of the existence of the Consent Decree and the contents thereof. *See, e.g., Egan v. Teets,* 251 F.2d 571, 577 n. 10 (9th Cir.1957) (holding that district court was entitled to take judicial notice of prior proceedings involving same petitioner before same district court). The Consent Decree is filed as Docket No. 25 in *Heal the Bay,* No. C 98-4825 SBA.

FN5. Defendants contend that the relevant deadline was March 22, 2002, (Mot. to Dismiss at 6), and Plaintiffs echo this contention in their Second Amended Complaint, (Second Am. Compl. ¶ 25). Review of the terms of the Consent Decree, however, reveal that the deadline was a different date. The Consent Decree defines "effective date" as the date on which the Consent Decree is entered. (*Id.* ¶ 2d.) Although the Court signed the Consent Decree on March 22, 1999, (*id.* at 29), it was not entered on the docket until March 24, 1999. Under the terms of Attachments 2 and 3 of the Consent Decree, TMDLs for trash for all Water Quality Limited Segments the Los Angeles River were to be submitted by California within two years of the effective date-March 24, 2001. (*Id.* Atts. 2, 3.) Since EPA was required to ensure that a TMDL was in place within one year of California's deadline to submit a proposed TMDL, (*id.* ¶ 3a), the deadline for final approval or establishment of a TMDL was March 24, 2002.

Nevertheless, based on the evidence tendered by EPA, it is clear that EPA believed that the deadline was March 22, 2002. (*See* Decl. of David W. Smith in Supp. of EPA's Mot. to Dismiss, Ex. B at 2.) As is evident from the discussion below, this discrepancy is immaterial to the Court's analysis of the merits of the Motion to Dismiss.

1147 2. *EPA's Issuance of TMDLs and Approval of State-submitted TMDLs

One of the responsibilities of the Regional Board for the Los Angeles region (the "Los Angeles Regional Board") is to develop TMDLs under the CWA

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for waterbodies in Los Angeles and Ventura Counties. (Decl. of Dennis Dickerson in Supp. of EPA's Mot. to Dismiss (the "Dickerson Declaration") ¶ 2.) With few exceptions, TMDLs are developed as draft TMDLs by Los Angeles Regional Board staff and then submitted to the board to be adopted as amendments to the Los Angeles Regional Board's Water Quality Control Plan, which is known as the Basin Plan. (*Id.*) Basin Plan amendments are then submitted to the State Board, and then subsequently to the OAL; after they have been approved by both of these agencies, they are submitted to EPA. (*Id.*)

On September 19, 2001, the Los Angeles Regional Board adopted TMDLs for trash for the Los Angeles River watershed. (*Id.* ¶ 3.) "Trash" was defined as man-made litter, as defined in California Government Code § 68055.1(g). (*Id.* Ex. A at 2). These TMDLs (the "State Trash TMDLs") were approved by the State Board on February 19, 2002, by OAL on July 16, 2002, and ultimately by EPA by letter dated August 1, 2002. (*Id.* ¶ 3, Ex. C; Second Am. Compl. for Injunctive & Declaratory Relief ("SAC") ¶¶ 27, 30.) Prior to its approval of the State Trash TMDLs, however, EPA issued its own TMDLs for trash for the Los Angeles River Basin (the "EPA Trash TMDLs") on March 19, 2002. (SAC ¶ 26; Decl. of David W. Smith in Supp. of EPA's Mot. to Dismiss (the "Smith Declaration") Ex. B.) The EPA's August 1, 2002, letter approving the State Trash TMDLs announced that they "supercede[d]" the EPA Trash TMDLs. (SAC ¶ 31; Smith Decl. ¶ 7, Ex. C.)

3. TMDLs Now in Effect and Implementation Provisions

Under the provisions of the TMDLs now in effect-the State Trash TMDLs-the numeric target is zero trash in the Los Angeles River. (Dickerson Decl. Ex. A at 16, 29.) Based on this target, California has determined that the wasteload allocations for trash in the Los Angeles River also must be zero. (*Id.*)

To achieve this goal, California has provided, along with the State Trash TMDLs, implementation provisions that specify a phasing-in of progressive reductions in municipal stormwater wasteload allocations over a ten-year period, following completion of a two-year initial baseline monitoring period. (*Id.* Ex. A at 21.) While the baseline monitoring program is taking place, cities will be deemed to be in compliance with the wasteload allocations provided that all of the trash that is collected during this period is disposed of in compliance with all applicable regulations. (*Id.* Ex. A at 27.) A baseline monitoring report is due to the Los Angeles Regional Board by February 15, 2004. (*Id.* ¶ 6.) [FN6]

> FN6. Plaintiffs have filed Plaintiffs' Objections to Declarations of David W. Smith and Dennis Dickerson Offered by Defendants in Support of Defendants' Motion to Dismiss Second Amended Complaint ("Plaintiffs' Objections"). Plaintiffs' Objections challenge the admissibility of, *inter alia,* the statements in paragraph 6 of the Dickerson Declaration. The Court considers and resolves the objections to these statements in note 20, *infra.* Although Plaintiffs have objected to all the statements in paragraph 6, careful review of the arguments advanced in these objections reveals that they are not in fact objecting to the statement in paragraph 6 that "[t]he baseline monitoring report is due to the [Los Angeles] Regional Board by February 15, 2004." (Dickerson Decl. ¶ 6; *see* Pls.' Objections at 3-4.) To the extent that Plaintiffs are in fact objecting to this statement, however, the Court OVERRULES their objections to this statement for the reasons set forth in note 20, *infra.*

*1148 The State Trash TMDLs and incremental wasteload allocations will be implemented through the Los Angeles stormwater permit, which the Los Angeles Regional Board will need to amend to incorporate specific, enforceable permit requirements. (*Id.* ¶ 8.) [FN7] The implementation provisions in the TMDLs allow permittees to "employ a variety of strategies to meet the progressive reductions in their Waste Load Allocations" and maintain that they "are free to implement trash reduction in any manner they choose." (*Id.* Ex. A at 29.) The wasteload reduction strategies are broadly classified as either end-of-pipe full capture structural controls, partial capture control systems, and/or institutional controls. (*Id.*) The provisions state that permittees will be deemed to be in compliance with the final wasteload allocation for their associated drainage areas if they utilize "full capture systems" that are adequately sized and maintained and maintenance records are available for inspection by the Los Angeles Regional Board. (*Id.* Ex. A at 30.)

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FN7. Under heading II.2 of Plaintiffs' Objections, Plaintiffs object to the statements in paragraph 8 of the Dickerson Declaration relating to the Los Angeles Regional Board's understanding of how the State Trash TMDLs will be implemented. (Pls.' Objections at 4.) All of the grounds on which Plaintiffs object are meritless. First, Plaintiffs contend that the statements are objectionable as "extra-record evidence." Such evidence, however, may be considered by the Court in connection with a motion to dismiss for lack of subject matter jurisdiction. *See Ass'n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778 (9th Cir.2000). Since Defendants contend that Plaintiffs' challenges to the merits of EPA's approval of the State Trash TMDLs are unripe, and since the Court considers how these TMDLs will be implemented at least in part for this purpose, this evidence is properly before the Court. Second, Plaintiffs contend that the statements constitute inadmissible hearsay. These statements, however, do not contain or even implicitly rely on any out-of-court statement by one other than Mr. Dickerson for the truth of the matter stated.

> Third, Plaintiffs claim that the statements lack foundation, although they do not explain what they mean by this. To the extent Plaintiffs are asserting that the declarant lacks personal knowledge of the Los Angeles Regional Board's intentions, that assertion is refuted by the fact that Mr. Dickerson has been Executive Officer of the board since 1997. (Dickerson Decl. ¶ 1.) Fourth, Plaintiffs insist that "the statements are objectionable and inadmissible as the best evidence of the implementation requirements vis-à-vis the TMDLs, is set forth in the TMDLs themselves, as well as in the terms of other enforceable documents, documenting the actions taken by the [Los Angeles] Regional Board, such as the terms of the Municipal Storm Water Permit referenced in the declaration." (Pls.' Objections at 4.) This objection misunderstands the nature of the "best evidence" rule; that rule applies *only* where the witness attempts to testify as to the *contents of a writing, recording, or photograph. See* Fed.R.Evid. 1002. Such is not the case here. Moreover, this objection reflects a fundamental misunderstanding of the nature of TMDLs. TMDLs are *not* self-executing; they require the appropriate state to issue regulations implementing them. It is also not clear what Plaintiffs mean by their assertion that documents "documenting the actions taken by the Regional Board" constitute "enforceable documents." Finally, Plaintiffs assail the statements at issue as "not competent." (*Id.*) Plaintiffs do not explain what they mean by this objection. The Court thus disregards it. Accordingly, the Court OVERRULES the objections under Heading II.2 of Plaintiffs' Objections.

1149 4. *The Instant Action

Plaintiffs filed their initial complaint on June 28, 2002, in the United States District Court for the Central District of California. On August 30, 2002, they filed an amended complaint. On October 30, 2002, the case was transferred to this Court, the United States District Court for the Northern District of California. Pursuant to the parties' stipulation and the Court's Order thereon, Plaintiffs filed a Second Amended Complaint for Injunctive and Declaratory Relief (the "SAC" or "Complaint") on December 12, 2002.

The SAC is the operative complaint for purposes of the Motion to Dismiss and the Motion for Partial Summary Judgment. The SAC purports to assert three claims for relief. The First Claim for Relief is ostensibly brought pursuant to a provision of the Administrative Procedure Act (the "APA"), 5 U.S.C. § 706, (SAC at 34), although certain allegations thereunder also invoke the CWA, the Regulatory Flexibility Act (the "RFA"), and the Small Business Regulatory Enforcement Fairness Act of 1996 (the "SBREFA"), (*id.* ¶¶ 84-85).[FN8] The First Claim for Relief alleges several violations of the APA: (1) EPA acted without authority and acted arbitrarily and capriciously by establishing the EPA Trash TMDLs prior to receiving for review the State Trash TMDLs, (SAC ¶ ¶ 78-79); (2) EPA acted without authority and arbitrarily and capriciously by reviewing and approving the State Trash TMDLs because EPA had already established the EPA Trash TMDLs, (*id.* ¶¶ 80, 83); (3) EPA acted arbitrarily and capriciously and in excess of its jurisdiction with regard to the manner by

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which it established the EPA Trash TMDLs, (*id.* ¶¶ 81-82); (4) the collective actions of California and EPA relating to issuance of the EPA Trash TMDLs and subsequent approval of the State Trash TMDLs constitute a "*de facto* TMDL procedure" that is arbitrary, capricious, and contrary to law, (*id.* ¶¶ 84-86); [FN9] and (5) EPA acted arbitrarily and capriciously by approving the State Trash TMDLs because those TMDLs were "patently defective" and established not in accordance with the procedures of the CWA and California law, (*id.* ¶ 87).[FN10] The Second Claim for Relief challenges*1150 the validity of two alleged agency actions, the EPA Trash TMDLs and the "*de facto* TMDL procedure," under the APA, 5 U.S.C. § 551 *et seq.*; the RFA, 5 U.S.C. § 601 *et seq.*; and the SBREFA, 5 U.S.C. § 801 *et seq.* (SAC at 40; *id.* ¶¶ 89-99.) The violations alleged under the Second Claim for Relief, however, appear to relate mostly to procedural requirements under the RFA and the SBREFA. (*See id.* ¶¶ 91-93, 95-98 (invoking 5 U.S.C. §§ 601(5), 601(6), 603, 604(a), 604(b), 605(b), and 611).) [FN11] The Third Claim for Relief is derivative of the first two claims. It seeks a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, as to which party's interpretation of the law is correct and a judicial determination of Plaintiffs' rights and duties. (*Id.* ¶¶ 100-105.)

FN8. With respect to the First Claim for Relief, the SAC comes perilously close to violating Federal Rule of Civil Procedure 8(a)'s mandate of providing "a *short and plain* statement of the claim showing that the pleader is entitled to relief ...." Fed.R.Civ.P. 8(a) (emphasis added). In particular, Plaintiffs' practice of indicating that the First Claim for Relief is based exclusively on the APA, (SAC at 34), yet at the same time claiming in the allegations thereunder that the actions at issue violate other statutes, (*id.* ¶¶ 84-85), is confusing. Aside from potentially misleading Defendants as to the nature of the claims against them, it has required the Court to spend needless additional time and effort scrutinizing the allegations of the SAC because the Court cannot trust the accuracy of the headings of the SAC. The practice is especially reprehensible because the Court has already been forced to spend undue time and effort identifying and parsing out the five independent, discrete claims for relief that are set out in stream-of-consciousness fashion in the allegations underlying the "First Claim for Relief"-which heading necessarily suggests a *single* claim. *See infra.*

FN9. This alleged *de facto* TMDL procedure is also claimed to violate the CWA, the RFA, and the SBREFA. (*Id.* ¶¶ 84-85.)

FN10. Although not clearly stated, this last claim (claim (5)) within the First Claim for Relief appears to challenge the *merits* of EPA's approval of the State Trash TMDLs, as opposed to, for example, challenging EPA's authority to approve *any* state-submitted TMDLs after it issued the EPA Trash TMDLs, (*see id.* ¶¶ 80, 83). Presumably, this last claim encompasses challenges to, for example, EPA's approval of the State Trash TMDLs where these TMDLs covered "unlisted" waters. (*See id.* ¶¶ 42, 49, 62.) Defendants appear to have also construed this claim as challenging the merits of EPA's approval of the State Trash TMDLs, and they move to dismiss this claim as unripe. (*See* Mot. to Dismiss at 20-24.) Plaintiffs appear to concur in Defendants' construction of this claim. (*See* Pls.' Opp. Br. at 16-20.) Accordingly, the Court construes this last claim as challenging the merits of EPA's approval of the State Trash TMDLs.

FN11. This is yet another example of Plaintiffs' objectionable drafting of the SAC. In particular, the paragraph alleging improper agency action supposedly giving rise to the Second Claim for Relief, paragraph 96, identifies four bases on which the CWA, the APA, the RFA, and the SBREFA were violated. (*Id.* ¶ 96.) Of these four bases, however, only the first (denoted reason "(a)") appears to have anything to do with the APA; the remaining three ("(b)," "(c)," and "(d)") appear to relate solely to provisions of the RFA and SBREFA, at least based on the allegations of the previous paragraphs under the heading "Second Claim for Relief." (*Id.; compare id.* (*e.g.*, alleging that EPA failed to perform an initial screening of the EPA Trash TMDLs to determine whether they would have a significant economic impact on a substantial number of small entities) *with id.*

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¶¶ 91-93, 95 (*e.g.*, alleging that RFA requires agencies to screen all proposed rules and identify whether such rules would have such an impact, (*id.* ¶ 92))).

> The Court is thus left with the distinct impression that either Plaintiffs have been careless in drafting the Second Claim for Relief or they have invoked various statutes and inserted a number of allegations in scattershot fashion in the hope that something will slip by Defendants undetected and "stick." Aside from arguably violating Rule 8(a), this practice is unfair not only to Defendants, but also to the Court, because it makes the Court's resolution of Defendants' arguments considerably more difficult. (Nor is the Court interested in any supporting evidence or clarification from Plaintiffs' counsel regarding the nature of their claims that is not in the four corners of the SAC or incorporated therein by reference. The SAC speaks for itself on that score.) Based on its review of the SAC, the Court construes the allegations underlying the Second Claim for Relief as alleging violation of the APA, the RFA, and the SBREFA only with respect to EPA's alleged failure to provide Plaintiffs with notice and an opportunity for comment with regard to the *de facto* TMDL procedure, discussed *infra*, and the establishment of the EPA Trash TMDLs; the Court construes them to allege violation of the RFA and the SBREFA, but not the APA, with regard to the remaining allegations under the heading of "Second Claim for Relief." (*See* SAC ¶ 96.)

On January 13, 2003, Defendants and Intervenors filed answers to the SAC. On that same day, Defendants also filed the instant Motion to Dismiss, which seeks dismissal of the entire action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Intervenors filed Intervenors' Notice in Support of Defendants' Motion to Dismiss on February 3, 2003, indicating in brief fashion that they agreed with the arguments in the Motion to Dismiss and therefore supported the motion. On March 10, 2003, Plaintiffs filed their Motion for Partial Summary Judgment.

Most of the plaintiffs in the instant action are currently plaintiffs in a California state court action against the Los Angeles Regional Board and the State Board challenging the legality of the State Trash TMDLs. (*Id.* ¶ 33.) Three other lawsuits have similarly been filed challenging either ***1151** California's establishment of the State Trash TMDLs or EPA's approval of the same. (*Id.*)

II. LEGAL STANDARD

A. *Rule 12(b)(1)*

[2][3] Federal Rule of Civil Procedure 12(b)(1) authorizes a party to seek dismissal of an action for lack of subject matter jurisdiction. "When subject matter jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 499 (9th Cir.2001). " 'A plaintiff suing in a federal court must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect be corrected by amendment.' " *Id.* (quoting *Smith v. McCullough*, 270 U.S. 456, 459, 46 S.Ct. 338, 70 L.Ed. 682 (1926)). In adjudicating such a motion, the court is not limited to the pleadings, and may properly consider extrinsic evidence. *See Ass'n of Am. Med. Colleges v. United States*, 217 F.3d 770, 778 (9th Cir.2000). The court presumes lack of jurisdiction until the plaintiff proves otherwise. *See Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir.1989).

B. *Rule 12(b)(6)*

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a claim. *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir.2001). A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *accord Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.1997). The complaint is construed in the light most favorable to the plaintiff, and all properly pleaded factual allegations are taken as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 23 L.Ed.2d 404 (1969); *see also Everest & Jennings, Inc. v. Am. Motorists Ins. Co.*, 23 F.3d 226, 228 (9th

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Cir.1994). "Dismissal is proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Navarro*, 250 F.3d at 731. In adjudicating a motion to dismiss, the court need not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.1981).

When the complaint is dismissed for failure to state a claim, "leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib., Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986). Leave to amend is properly denied "where the amendment would be futile." *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir.1992).

III. DISCUSSION

Defendants have filed a Motion to Dismiss; Plaintiffs have filed a Motion for Partial Summary Judgment. The Motion for Partial Summary Judgment seeks adjudication of issues pertaining to Plaintiffs' challenge to the procedural legitimacy of the State Trash TMDLs. Because the Court grants the Motion to Dismiss (as discussed below), it does not reach the merits of the Motion for Partial Summary Judgment and therefore denies it as moot. Accordingly, the following discussion pertains***1152** only to the Motion to Dismiss, except where noted.

At the outset, the Court notes that it need not analyze all the arguments presented in Defendants' opening brief because Plaintiffs concede that certain of their claims are moot. In particular, Defendants contend in their opening brief for the Motion to Dismiss that the EPA Trash TMDLs no longer have any force or effect because EPA has announced that the State Trash TMDLs "supercede" the EPA Trash TMDLs; consequently, Defendants maintain, Plaintiffs' claims that EPA lacked authority to establish the EPA Trash TMDLs, (SAC ¶ 78-79), and that the procedures by which EPA established them were unlawful, (*id.* ¶¶ 81-82, 90, 94, 96-97, 99), are moot. (Mot. to Dismiss at 12-15.) In their opposition brief, Plaintiffs express satisfaction with Defendants' assurances that the EPA Trash TMDLs are no longer (and can never be) in effect and therefore "withdraw their claims directly challenging the validity of EPA's TMDLs ...." (Pls.' Opp. Br. at 4 n. 6.) Defendants acknowledge this withdrawal in their reply brief. (Defs.' Reply Br. at 1.) As a result, the Court GRANTS the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) with regard to claims (1) and (3) (SAC ¶¶ 78-79 and SAC ¶¶ 81-82, respectively) within the First Claim for Relief of the SAC identified in Part I.B.4 of this Order, *supra*. The Court also GRANTS the Motion to Dismiss pursuant to Rule 12(b)(1) with regard to the Second Claim for Relief of the SAC to the extent it challenges the validity of the EPA Trash TMDLs. (*See* SAC ¶¶ 90, 94, 96-97, 99.) The Court now addresses the parties' arguments in relation to the remaining claims.

A. *Challenge to EPA's Authority to Approve the State Trash TMDLs*

Plaintiffs claim that EPA lacked authority to approve the State Trash TMDLs because it had already established the EPA Trash TMDLs. (SAC ¶¶ 80, 83.) Defendants move to dismiss this claim pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Mot. to Dismiss at 19-20.) Defendants contend that EPA in fact has a statutory *obligation* under 33 U.S.C. § 1313 to review any proposed TMDLs submitted by a state and either approve them or disapprove them. (*Id.*) Defendants assert that nothing in the CWA or otherwise divests EPA of jurisdiction to approve a state-submitted TMDL once EPA has issued its own TMDLs, and in fact, recognizing such a principle would thwart Congressional intent to vest states with the primary responsibility of implementing the CWA's provisions. (*Id.* at 20.) Plaintiffs counter (in less than straightforward fashion) that by allowing California to submit the State Trash TMDLs to EPA after EPA established the EPA Trash TMDLs, EPA effectively "remanded" a "TMDL submission" to California, and EPA lacked authority to "remand" this submission and subsequently approve California's "resubmission." (*See* Pls.' Opp. Br. at 15-16.) [FN12]

> FN12. Plaintiffs also argue that EPA lacked authority to approve the State Trash TMDLs because these TMDLs cover "unlisted" waters; according to Plaintiffs, EPA has authority only to approve TMDLs for "listed" waters. (*Id.* at 14-15.) As Defendants correctly point out, this argument goes to the merits of EPA's approval of the State Trash TMDLs, not to the issue of whether EPA had any authority to approve any state-submitted

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> TMDLs after issuing its own TMDLs-the issue raised by this claim. (Defs.' Reply Br. at 10 n. 9.) Plaintiffs' argument is relevant only to their own Motion for Partial Summary Judgment, not to the arguments raised in the Motion to Dismiss.

[4] Plaintiffs' counterargument is meritless. No authority supports the conclusion that EPA lacks authority to approve ***1153** state-submitted TMDLs after EPA has established its own TMDLs, nor does this conclusion logically follow from the proposition that EPA is required to approve or disapprove a state-submitted TMDL within 30 days of submission. Moreover, as Defendants astutely note, recognizing such a principle "would lead to absurd results. Under this scenario, once EPA establishes a TMDL, the State could never update it or modify it based on changed circumstances." (Mot. to Dismiss at 20.) Finally, like Defendants, (*see* Defs.' Reply Br. at 10), the Court is at a loss to understand what Plaintiffs mean by their contention that EPA "remanded" the EPA Trash TMDLs to California for revision and resubmission. Nothing in the allegations of the Complaint remotely suggest any sort of sending back of TMDLs to California for revision or additional development. And even if there were such a "remand," it does not follow that EPA lacked authority to approve the State Trash TMDLs.

For these reasons, the Court GRANTS the Motion to Dismiss with respect to claim (2) within the First Claim for Relief, (SAC ¶¶ 80, 83), *see supra* Part I.B.4. Additionally, it is evident that Plaintiffs cannot amend the SAC to allege facts sufficient to rehabilitate this claim because it is meritless as a matter of law. Accordingly, this claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE.

B. *The "De Facto TMDL Procedure"*

Under claim (4) within their First Claim for Relief, *see supra* Part I.B.4, and the Second Claim for Relief, Plaintiffs challenge the "*de facto* TMDL procedure," [FN13] which they consider to consist of:

> FN13. Plaintiffs do not expressly use the phrase "*de facto* TMDL procedure" in the SAC. Instead, they refer to this procedure as the "TMDL Procedure" and contend that EPA has effected a "*de facto* adoption" of the "TMDL Procedure." (SAC ¶ 85.) For ease of reference, the Court will refer to what Plaintiffs call the "TMDL Procedure" as the "*de facto* TMDL procedure."

> the establishment by the [Los Angeles] Regional Board of the TMDL, followed by the preparation and notice of the TMDL by USEPA, followed by the approval of the TMDL by the State Board, followed by the "establishment" by USEPA of the EPA TMDL, followed by the determination by USEPA to review and/or approve the subsequently submitted State TMDL, and to thereafter find the USEPA established TMDL is "superceded" ....
> (SAC ¶ 85.) Plaintiffs assert that this procedure violates the APA, the RFA, and the SBREFA. (*Id.* ¶¶ 84-85, 96-98.) Plaintiffs allege not only that they have previously suffered from the effectuation of the *de facto* TMDL procedure, but also that they will suffer from the effectuation of the procedure in the future. (*See id.* ¶¶ 84-86.)

Defendants move to dismiss these claims by pointing out that the APA and the RFA, which was amended by the SBREFA, permit challenges *only* to "final agency action." (Mot. to Dismiss at 16-19.) [FN14] They explain that the APA defines "agency action" to include "the whole or a part of any agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." (*Id.* at 16) (quoting 5 U.S.C. § 551(13).) (They do not indicate whether this definition applies to the RFA and SBREFA as well.) Defendants assert that what Plaintiffs characterize as a *de* ****1154** facto* TMDL procedure is not an "agency action," much less a final agency action, but in fact a sequence of events; as such, they maintain, the procedure cannot give rise to a challenge under the APA or under the RFA, as amended by the SBREFA.

> FN14. Defendants also contend that the RFA, as amended by the SBREFA, provides a narrow and exclusive means of judicial review that is not available here due to the nature of Plaintiffs' challenge to the *de facto* TMDL procedure. (*See id.* at 16.)

Plaintiffs respond to Defendants' arguments somewhat curiously. Despite vehemently asserting that Defendants' arguments are incorrect, they do not dispute that a challenge will lie only to final agency action. Instead, they contend that the *de facto* TMDL procedure "led up to and resulted in 'final agency

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action,' " (Pls.' Opp. Br. at 22), namely the August 1, 2002, approval of the State Trash TMDLs. Plaintiffs also argue at great length that their challenge to this procedure is not moot because it falls under the "capable of repetition, yet evading review" exception to the mootness doctrine. (*Id.* at 22-25.)

[5] Defendants' arguments are persuasive, and Plaintiffs' responses are both uncompelling and nonresponsive. As Defendants correctly note, (*see* Defs.' Reply Br. at 4-5), Plaintiffs' suggestion that they are challenging EPA's approval of the State Trash TMDLs, as opposed to the so-called "TMDL procedure," is belied by the allegations of the SAC: by their plain language, the allegations of paragraphs 84 through 86 and paragraphs 96 through 98 challenge the "TMDL procedure," (SAC 84-86, 96-98); Plaintiffs' challenge to EPA's approval of the State Trash TMDLs is set out in paragraph 87, (*see id.* ¶ 87), the justiciability of which challenge is discussed in Part III.C of this Order, *infra*. Plaintiffs do not demonstrate how the "procedure" is "the whole or a part of any agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act" or falls within any other definition, statutory or otherwise, of final agency action.[FN15] Indeed, as Defendants also correctly note, (*see* Defs.' Reply Br. at 4-5), Plaintiffs' assertion that the TMDL procedure *consummated in* final agency action, namely EPA's approval of the State Trash TMDLs, is an implicit admission that the "procedure" itself is not final agency action. Nor do Plaintiffs make any effort to distinguish or refute any of the authorities cited by Defendants in support of their arguments. Finally, as Defendants yet again correctly point out, Plaintiffs' mootness argument is nonresponsive because Defendants do not contend that this claim is moot. (*Id.* at 8.)[FN16]

> FN15. Even though the Court has not been able to locate a statutory definition of "agency action" for purposes of the RFA and SBREFA, Plaintiffs have put forward no argument to suggest that it should be given a meaning substantially different than that provided in the APA. The Court sees no reason to conclude that "agency action" should be given a significantly more expansive definition than that provided for purposes of the APA.
>
> FN16. Plaintiffs do not respond to Defendants' argument that judicial review is unavailable under the RFA, as amended by the SBREFA, for alleged violations of 5 U.S.C. § 603. (Mot. to Dismiss at 18.) The Court agrees with Defendants that the implication of this lack of response is that any opposition to this argument is waived. (*See* Defs.' Reply Br. at 3-4.) The Court disagrees with Defendants, however, that Plaintiffs have failed to respond to Defendants' arguments that the *de facto* TMDL procedure does not constitute "final agency action" under the RFA, as amended by the SBREFA; but the Court finds their response to this argument meritless for the reasons stated above.

In sum, it is apparent that the alleged *de facto* TMDL procedure, consisting of the various events identified in paragraph 85 of the SAC, is not subject to challenge under the APA, RFA, or SBREFA because it is not final agency action within the meaning of those statutes. *Cf. Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990) (rejecting challenge to alleged land withdrawal***1155** review program on grounds that alleged program was not final agency action within meaning of APA). Accordingly, the Court GRANTS Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) with respect to claim (4) within the First Claim for Relief, (SAC ¶¶ 84-86). The Court also GRANTS Defendants' motion pursuant to Rule 12(b)(6) with regard to the Second Claim for Relief. Given that the Second Claim for Relief challenges the validity of the EPA Trash TMDLs and the alleged *de facto* TMDL procedure alone, and given that Plaintiffs have withdrawn their challenge to the validity of the EPA Trash TMDLs, the Second Claim for Relief is now dismissed in its entirety.

It is further evident that Plaintiffs cannot amend the SAC to allege facts sufficient to rehabilitate these claims because they are not actionable as a matter of law. Accordingly, both claim (4) within the First Claim for Relief and the Second Claim for Relief are DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE.

C. *Ripeness of Plaintiffs' Challenge to EPA's Approval of State Trash TMDLs*

Plaintiffs' remaining claim (aside from the Third Claim for Relief, which is dependent on the First and

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Second Claims for Relief) challenges the merits of EPA's approval of the State Trash TMDLs. (*See id.* ¶ 87.) Defendants move to dismiss this claim as unripe for judicial review. Specifically, Defendants contend that the issues are not yet sufficiently developed to be fit for judicial review under the APA because Plaintiffs' existing NPDES permit imposes no obligations on Plaintiffs in connection with the State Trash TMDLs and because the Los Angeles Regional Board intends to revisit these TMDLs at the end of the monitoring period. (Mot. to Dismiss at 21-23.) Defendants further contend that Plaintiffs will not suffer any immediate hardship if review is withheld because EPA's approval of the State Trash TMDLs imposes no present, affirmative duties on Plaintiffs and requires no immediate changes in Plaintiffs' conduct. (*Id.* at 23-24.)

Plaintiffs respond by arguing that they have suffered "injury in fact," both economic and non-economic. (Pls.' Opp. Br. at 16-17.) Citing to the text of the State Trash TMDLs, a copy of which is appended to the Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss (the "Montevideo Declaration") as Exhibit 3, Plaintiffs claim that they are impacted by these TMDLs:

> [B]y the terms of the TMDL itself, most Plaintiffs are directly impacted by its terms and presently have express monitoring obligations to comply with, not to mention pending compliance dates requiring annual reductions in trash. Moreover, the TMDL calls out very specific and expensive implementation measures, including possible implementation through full capture vortex systems totaling $109.3 million for all affected entities within the County [of Los Angeles] by the end of Year 1, and a total of $2,053,100,000 for the first 12 years of implementation. Even the Trash TMDL itself concludes that "Trash abatement in the Los Angeles River system may be expensive."

(Pls.' Opp. Br. at 18 (citing Montevideo Decl., Ex. 3 (State Trash TMDLs)) (internal citations and emphasis omitted).) Similarly, Plaintiffs maintain that "to come into compliance by the Compliance Dates, [they] must begin employing strategies now to meet the progressive reductions in Waste Load Allocations required by the State Trash TMDL[s]." (*Id.* at 19.) ***1156** Plaintiffs further allege that the NPDES permit that applies to all of Plaintiffs provides that the State Trash TMDLs are "effective and enforceable." (*Id.* at 18 (citing Montevideo Decl., Ex. 5, at 10 ¶ 14).) Citing paragraph 36 of the SAC, they also contend that they have suffered from the TMDLs' being in effect because they are exposed to "unwarranted enforcement action and third party citizen suits." (*Id.*) Finally, Plaintiffs contend that they have suffered "procedural injuries," to wit, their being "forced to submit comments to two different levels of government (the State of California and the EPA) on two sets of TMDL over a series of many months and several hearings." (*Id.* at 20.)

Defendants dispute all of Plaintiffs' arguments in their reply. Defendants note that "Plaintiffs point to no present effect of the TMDLs on their day-to-day conduct." (Defs.' Reply Br. at 12.) They point out that, contrary to Plaintiffs' contention, Plaintiffs in fact have no monitoring obligations with which to comply because the Los Angeles County Department of Public Works has assumed that responsibility for all of Plaintiffs. (*Id.*) Defendants clarify that the first compliance date under the TMDLs is not until 2006, and the TMDLs identify several potential compliance options without mandating the use of any particular measure. (*Id.*) They further note that Plaintiffs fail to respond to the record evidence that the Los Angeles Regional Board will revisit the TMDLs at the conclusion of the monitoring period, that is, prior to the first compliance deadline, and that such reconsideration has been considered a rational basis for delaying judicial review. (*Id.* at 13 (citing *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 735, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998), and *Municipality of Anchorage v. United States*, 980 F.2d 1320, 1323 (9th Cir.1992)).) Finally, Defendants assail Plaintiffs' reliance on the aforementioned statement in Plaintiffs' NPDES permit because this statement does not establish that the State Trash TMDLs are effective or enforceable against *Plaintiffs*. (*Id.*)

[6] The "ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57 n. 18, 113 S.Ct. 2485, 125 L.Ed.2d 38 (1993). Unripe claims are subject to dismissal for lack of subject matter jurisdiction. *See Ass'n of Am. Med. Colleges v. United States*, 217 F.3d 770, 784 n. 9 (9th

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Cir.2000). In determining whether a case is ripe for review, a court must consider two main issues: "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149, 87 S.Ct. 1507 (1967). To address these issues in the context of a challenge to the lawfulness of administrative action, the Supreme Court has identified three factors to consider: "(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998).

[7] In light of these three factors, the Court finds this claim unripe for review. First, delayed review would cause, at most, minimal hardship to the parties. Indeed, Plaintiffs have not demonstrated that they will suffer *any* hardship if review is delayed. Despite their preoccupation with various official pronouncements that the State Trash TMDLs are "effective" and "enforceable," Plaintiffs cannot point to a single future event or condition that is fairly certain to occur and will adversely ***1157** impact *Plaintiffs* themselves.[FN17] That is because the TMDLs do not presently impose any obligations on Plaintiffs and because they are subject to revision before such obligations will be imposed. Nor do Plaintiffs provide any evidence or explanation whatever of the "unwarranted enforcement action and third party citizen suits" to which they claim to be exposed.

> FN17. The Court notes parenthetically that Plaintiffs' invocation of "injury in fact" in their opposition brief, (Pls.' Opp. Br. at 16-17), is inapposite. Injury-in-fact is a concept that relates to the issue of standing, not ripeness. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Plaintiffs appear to confuse Defendants' arguments as relating to standing, not ripeness. (Pls.' Opp. Br. at 20 ("Federal courts have long recognized procedural injuries, as well as actual injuries, as an alternative basis for standing.").) Nevertheless, the Court construes Plaintiffs' allegations of "injury in fact" as allegations of hardship.

Equally unsupported is Plaintiffs' contention that they will bear economic costs in complying with the State Trash TMDLs. The sole evidentiary basis of this allegation, set out in paragraph 35 of the SAC and discussed more thoroughly in Plaintiffs' Opposition, is the estimates provided in the text of the TMDLs themselves. (*See* SAC ¶ 35; Pls.' Opp. Br. at 18.) But this matter is inadmissible hearsay because it is offered by an out-of-court declarant, *i.e.*, the Los Angeles Regional Board, for the truth of the matter stated, *i.e.*, that the TMDLs will in fact impose these costs.[FN18] Yet even if this evidence were admissible, it would be insufficient to support Plaintiffs' contention that they will suffer economic injury: the cited portions of the State Trash TMDLs provide estimates of costs to be borne by "permittees"; there is no indication that these costs will be borne by *Plaintiffs* in particular. (*See* Montevideo Decl., Ex. 3, at 37, 40, *cited in* Pls.' Opp. Br. at 18.) Similarly, Plaintiffs provide no evidentiary support for the bald contention in their opposition brief that *Plaintiffs* must begin employing "strategies" now to meet the progressive reductions in wasteload allocations required by the State Trash TMDLs. (Pls.' Opp. Br. at 19.)

> FN18. The author of the State Trash TMDLs appears to be the Los Angeles Regional Board. (*See* Montevideo Decl., Ex. 3.) Since the Los Angeles Regional Board is an entity created by state law and is subordinate to a state agency, the State Board, the text of the State Trash TMDLs is arguably ascribable to the State Board and the state of California as well.
>
> But these statements cannot be attributed to EPA by virtue of its approval of the State Trash TMDLs. Plaintiffs have laid no legal or evidentiary foundation tending to show that EPA's mere approval of the *TMDLs themselves* implies that EPA further agreed with or endorsed as accurate California's estimates of the costs of compliance provided with those TMDLs.

Even if Plaintiffs will be forced to comply with obligations imposed by the State Trash TMDLs and will suffer costs therefrom, the first Compliance Point is not until Year 3 of the implementation period, which runs from October 1, 2005, to September 30,

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2006. (*See* Montevideo Decl., Ex. 3, at 28.) Thus, as a practical matter, Plaintiffs have three years to reach the specified Compliance Point. They have "ample opportunity later to bring [their] legal challenge at a time when harm is more imminent and more certain." *Ohio Forestry Ass'n,* 523 U.S. at 734, 118 S.Ct. 1665. Accordingly, Plaintiffs cannot be heard to complain that they will suffer hardship if review is withheld at the present time.[FN19]

> FN19. To the extent that Plaintiffs identify past events that are not alleged to recur in the future, such as Plaintiffs' allegedly having to submit comments to two levels of government, for the purpose of demonstrating hardship, those events are irrelevant because Plaintiffs are solely seeking *prospective* relief (aside from attorney's fees and costs of suit).

1158** Second, judicial intervention would likely interfere with further administrative action on the part of the state of California. Plaintiffs have not refuted Defendants' evidence that the Los Angeles Regional Board will be revisiting the State Trash TMDLs at the end of the monitoring period. [FN20] It is thus possible that the compliance1159** dates or compliance points will be altered or abolished altogether. The State Board may submit new TMDLs to EPA for review and potential approval well before the compliance dates in the State Trash TMDLs. And even if the State Trash TMDLs remain mostly intact, it is certainly possible that the State Board will approve additional regulations that alleviate much of the burden on Plaintiffs. Again, Plaintiffs must bear in mind that it is the state of California, not the federal government, that is charged with implementing the State Trash TMDLs.

> FN20. Plaintiffs' Objections challenge the admissibility of, *inter alia,* the portion of Defendants' evidence tending to show that the Los Angeles Regional Board will be revisiting the State Trash TMDLs at the end of the monitoring period, namely relevant statements in paragraphs 6 and 12 of the Dickerson Declaration. (The statements in paragraph 7 of the Dickerson Declaration and Exhibit C thereto also constitute such evidence, (*see* Mot. to Dismiss at 22), although Plaintiffs do not object to those statements.)

Plaintiffs challenge the statements in paragraph 6 of the Dickerson Declaration on five grounds. First, Plaintiffs contend that these statements are irrelevant "to the issue in question." (Pls.' Objections at 3.) The Court is unclear about what Plaintiffs mean by "the issue in question," but at any rate, the Court overrules this objection because these statements are indeed relevant to an important issue relating to ripeness: whether the Los Angeles Regional Board will revisit the State Trash TMDLs at the end of the monitoring period. Second, Plaintiffs assert that the statements are inadmissible hearsay because they seek "to introduce statements from parties other than the declarant, into evidence." (*Id.*) This argument fails because the statements are not offered for the truth of the matter stated by persons or parties other than Mr. Dickerson. That the Los Angeles Regional Board's *discussed* (*i.e.,* verbally articulated) the possibility of reopening the TMDLs in the future does not implicate hearsay concerns, *see United States v. Ballis,* 28 F.3d 1399, 1405 (5th Cir.1994); and the board's orders to its staff are more akin to written or verbal acts.

Third, Plaintiffs assail the statements as "incompetent" because "the opinions and views of individual Regional Board members is [*sic*] not relevant or admissible evidence of the actions or positions of the entire Board." (Pls.' Objections at 3 (emphasis omitted).) But nowhere are the "opinions and views" of the individual Regional Board members set out in the statements in paragraph 6. Fourth, Plaintiffs claim that these statements are "not the best evidence of the position of the entire Regional Board, as the views and positions of an entire Board can only be discerned from the meeting minutes and resolutions which confirm the actions of the public body." (*Id.* (emphasis omitted).) But the "views and positions" of the board are not set out therein. Fifth, Plaintiffs argue that the statements should be excluded as "extra-record evidence." This objection is meritless because the statements are relevant to the ripeness of Plaintiffs' challenge

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to EPA's approval of the State Trash TMDLs, and the Court may appropriately look beyond the pleadings in evaluating a motion to dismiss pursuant to Rule 12(b)(1).

In sum, Plaintiffs appear to have construed the statements in paragraph 6 of the Dickerson Declaration as stating that the Los Angeles Regional Board intends to *revise* the State Trash TMDLs after completion of the monitoring period, and they have evidently made their objections with this understanding in mind. Careful review of these statements reveals, however, that these statements demonstrate only that board staff have been ordered to report on the TMDLs and make recommendations on whether or not to revise the TMDLs based on the result of the monitoring. Thus, the import of the statements in paragraph 6 is that *the board will be in a position to revisit, and potentially reconsider, the TMDLs at the end of the monitoring period,* not that they have actually decided to revise the TMDLs. Accordingly, and for the reasons stated above, the Court OVERRULES the objections under heading II.1 in Plaintiffs' Objections.

Although Plaintiffs have objected to the admissibility of the statements in paragraph 12 of the Dickerson Declaration, the Court does not rely on those statements in evaluating issues of ripeness. The Court finds that the statements in paragraphs 6 and 7 of the Dickerson Declaration are sufficient to support a conclusion that the Los Angeles Regional Board will be revisiting-which is not to be confused with an intent to revise-the State Trash TMDLs at the end of the monitoring period. Accordingly, the Court OVERRULES AS MOOT the objections under heading II.5 in Plaintiffs' Objections.

Finally, the Court has reviewed the remaining objections in Plaintiffs' Objections. The Court does not rely on any of the matter to which Plaintiffs have objected other than those under headings II.1 and II.2 in evaluating the Motion to Dismiss. Accordingly, the Court OVERRULES AS MOOT the remaining objections in Plaintiffs' Objections.

Finally, the Court would benefit from further factual development of the issues presented. For example, Plaintiffs allege that in approving the State Trash TMDLs, EPA failed "to use 'best science' and [failed] to carefully consider suggestions on how to structure the TMDL program to be more effective and flexible to ensure workable solutions, with such failure resulting in an inequitable share of the burden [of pollution reduction] being placed on municipalities, such as Plaintiffs herein, to attain water quality standards." (SAC ¶ 47.) Since TMDLs are not self-executing, but require issuance of state regulations for implementation, delaying review will enable the Court to determine more easily and accurately whether the TMDL program could in fact have been structured more flexibly and whether Plaintiffs are bearing an inequitable share of the burden of pollution reduction.

In light of the Court's evaluation of the foregoing three factors, the Court concludes that Plaintiffs' claim is unripe for judicial review. Accordingly, Plaintiffs' claim (5) within the First Claim for Relief, (*id.* ¶ 87), is DISMISSED pursuant to Rule 12(b)(1) due to the Court's lack of subject matter jurisdiction. Since the Court lacks jurisdiction over this claim, it lacks authority to grant Plaintiffs leave to amend the claim; accordingly, the claim is dismissed WITHOUT LEAVE TO AMEND in this action. Finally, because the Court necessarily does not reach the merits of the claim, the dismissal is WITHOUT PREJUDICE.

D. *Third Claim for Relief*

Plaintiffs' Third Claim for Relief is wholly predicated on their first two claims for relief. Because these two claims for relief are dismissed, the Third Claim for Relief is DISMISSED on the same bases, and to the same extent, as the two claims (and sub-claims thereunder) are dismissed.

E. *Motion for Partial Summary Judgment*

Plaintiffs' Motion for Partial Summary Judgment seeks summary judgment in Plaintiffs' favor on the issues of (1) whether Defendants had authority and jurisdiction to approve the State Trash TMDLs to the extent that they covered unlisted waters and (2)

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whether Defendants had authority and jurisdiction to approve the State Trash TMDLs given that they had previously established the EPA Trash TMDLs. For the reasons stated above, the Court grants the Motion to Dismiss. Accordingly, the Motion for Partial Summary Judgment is DENIED AS MOOT. For the same reason, the Court OVERRULES AS MOOT Intervenors' Evidentiary Objections to Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss [FN21] and Plaintiffs' Objections to ***1160** Declaration of Anjali I. Jaiswal and Exhibits.

> FN21. Although the Montevideo Declaration relates both to Plaintiffs' opposition to the Motion to Dismiss and to Plaintiffs' Motion for Partial Summary Judgment, Intervenors' objections to the Montevideo Declaration are made in connection with their opposition to the Motion for Partial Summary Judgment. Accordingly, the Court considers their objections solely for that purpose.

IV. CONCLUSION

Plaintiffs have no reason or right to be before this Court, at least at this time. All of their claims are moot, meritless, or unripe. Plaintiffs' challenges to the EPA Trash TMDLs were quite obviously mooted out the minute that EPA approved the State Trash TMDLs. Indeed, given that Plaintiffs readily withdrew these challenges based solely on Defendants' representations in their moving papers that the EPA Trash TMDLs are void, (Pls.' Opp. Br. at 4 n. 6), the Court wonders why Plaintiffs proceeded to file a lawsuit on this basis. Plaintiffs' challenge to EPA's authority to approve the State Trash TMDLs following its establishment of the EPA Trash TMDLs and their challenge to the "*de facto* TMDL procedure" are so patently meritless that the Court fails to understand why Plaintiffs decided to assert these claims in the first place. Finally, Plaintiffs' challenges to the "merits" of the State Trash TMDLs may very well be valid, but in the absence of any indication that they will suffer imminent hardship, these claims are premature.

The Court does not suggest by any means that Plaintiffs have acted in bad faith by continuing to prosecute this action after EPA approved the State Trash TMDLs. But after receiving Defendants' opening brief for their Motion to Dismiss, Plaintiffs should have recognized that their claims could not be maintained at present, if at all. The arguments in their opposition brief appear to reflect more of a "win at all costs" approach than considered judgment. And while the Court does not doubt that Plaintiffs would appreciate a judicial declaration as to the validity of the State Trash TMDLs, the Court lacks jurisdiction to grant such relief where Plaintiffs are not in jeopardy of imminent harm and future events could obviate the controversy.

Accordingly,

IT IS HEREBY ORDERED THAT:

1. The Motion to Dismiss Second Amended Complaint [Docket No. 18] is GRANTED, such that:

a. The First Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED, as follows:

i. The claim that EPA acted without authority and acted arbitrarily and capriciously by establishing the EPA Trash TMDLs prior to receiving for review the State Trash TMDLs, (SAC ¶¶ 78-79), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;

ii. The claim that EPA acted without authority and arbitrarily and capriciously by reviewing and approving the State Trash TMDLs because EPA had already established the EPA Trash TMDLs, (SAC ¶¶ 80, 83), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;

iii. The claim that EPA acted arbitrarily and capriciously and in excess of its jurisdiction with regard to the manner by which it established the EPA Trash TMDLs, (SAC ¶¶ 81-82), is DISMISSED WITHOUT LEAVE TO AMEND and ***1161** WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;

iv. The claim that the collective actions of California and EPA relating to issuance of the EPA Trash TMDLs and subsequent approval of the

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State Trash TMDLs constitute a "*de facto* TMDL procedure" that is arbitrary, capricious, and contrary to law, (SAC ¶¶ 84-86), is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;

v. The claim that EPA acted arbitrarily and capriciously by approving the State Trash TMDLs because those TMDLs were "patently defective" and established not in accordance with the procedures of the CWA and California law, (SAC ¶ 87), is DISMISSED WITHOUT LEAVE TO AMEND in this action and WITHOUT PREJUDICE as unripe and, thus, for lack of subject matter jurisdiction;

b. The Second Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED, as follows:

i. To the extent the Second Claim for Relief challenges the validity of the EPA Trash TMDLs, the claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE as moot and, thus, for lack of subject matter jurisdiction;

ii. To the extent the Second Claim for Relief challenges the validity of the alleged *de facto* TMDL procedure, the claim is DISMISSED WITHOUT LEAVE TO AMEND and WITH PREJUDICE for failure to state a claim upon which relief can be granted;

c. The Third Claim for Relief in the Second Amended Complaint for Injunctive and Declaratory Relief is DISMISSED on the same bases, and to the same extent, as the First and Second Claims for Relief are dismissed, given that the Third Claim for Relief is derivative of the first two claims.

2. Plaintiffs' Motion for Summary Adjudication of Issues [Docket No. 28] is DENIED AS MOOT.

3. Plaintiffs' Objections to Declarations of David W. Smith and Dennis Dickerson Offered by Defendants in Support of Defendants' Motion to Dismiss Second Amended Complaint [Docket No. 31] are OVERRULED on the merits with respect to the objections under headings II.1 and II.2 therein and OVERRULED AS MOOT with respect to all remaining objections.

4. Intervenors' Evidentiary Objections to Declaration of Richard Montevideo in Support of Plaintiffs' Motion for Summary Adjudication of Issues, and in Opposition to Defendants' Motion to Dismiss [Docket No. 43] are OVERRULED AS MOOT.

5. Plaintiffs' Objections to Declaration of Anjali I. Jaiswal and Exhibits [Docket No. 47] are OVERRULED AS MOOT.

IT IS FURTHER ORDERED THAT this action is DISMISSED in its entirety. The Clerk shall enter judgment in favor of defendants accordingly. All deadlines and events presently calendared are VACATED.*1162 The Clerk shall close the file and terminate any pending matters.

IT IS SO ORDERED.

N.D.Cal.,2003.
City of Arcadia v. U.S. Environmental Protection Agency
265 F.Supp.2d 1142

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Supreme Court of California
CITY OF BURBANK, Plaintiff and Appellant,
v.
STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Appellants.
City of Los Angeles, Plaintiff and Respondent,
v.
State Water Resources Control Board et al., Defendants and Appellants.

Nos. S119248, B151175, B152562.
April 4, 2005.
Rehearing Denied June 29, 2005.[FN*]

FN* Brown, J., did not participate therein.

Background: Cities filed petitions for writs of mandate challenging pollutant limitations in wastewater discharge permits issued by regional water quality control boards. The Superior Court, Los Angeles County, Nos. BS060957 and BS060960,Dzintra I. Janavs, J., set aside permits. Regional board and state water resources control board appealed. The Court of Appeal consolidated the cases and reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Kennard, J., held that:
(1) regional board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, and
(2) when imposing more stringent pollutant restrictions that those required by federal law, regional board may take economic factors into account.

Judgment of Court of Appeal affirmed, and matter remanded.

Brown, J., filed concurring opinion.

Opinion, 4 Cal.Rptr.3d 27, superseded.

West Headnotes

[1] Environmental Law 149E 165

149E Environmental Law
149EV Water Pollution
149Ek163 Constitutional Provisions, Statutes, and Ordinances
149Ek165 k. Purpose. Most Cited Cases

Clean Water Act is a comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Federal Water Pollution Control Act Amendments of 1972, § 101 et seq., as amended, 33 U.S.C.A. § 1251 et seq.

[2] Environmental Law 149E 197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and limitations. Most Cited Cases

States 360 18.31

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.31 k. Environment; nuclear projects. Most Cited Cases

Regional water quality control board may not consider economic factors as justification for imposing pollutant restrictions in wastewater discharge permit which are less stringent than applicable federal standards, despite statute directing board to take such factors into consideration, because the federal constitutional supremacy clause requires state law to yield to federal law. U.S.C.A. Const. Art. 6, cl. 2; Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 301(a), (b)(1)(B, C), 402(a)(1, 3), as amended, 33 U.S.C.A. §§ 1251 et seq., 1311(a), (b)(1)(B, C), 1342(a)(1, 3); West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.
See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 68, 69; 8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 23:54; Cal. Jur. 3d, Pollution

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and Conservation Laws, § 126.

[3] Statutes 361 ⚿181(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(1) k. In general. Most Cited Cases

Statutes 361 ⚿184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

When construing any statute, the court's task is to determine the Legislature's intent when it enacted the statute so as to adopt the construction that best effectuates the purpose of the law.

[4] States 360 ⚿18.5

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.5 k. Conflicting or conforming laws or regulations. Most Cited Cases

Under the federal Constitution's supremacy clause, a state law that conflicts with federal law is without effect. U.S.C.A. Const. Art. 6, cl. 2.

[5] Environmental Law 149E ⚿197

149E Environmental Law
149EV Water Pollution
149Ek194 Permits and Certifications
149Ek197 k. Conditions and limitations. Most Cited Cases

When imposing more stringent pollutant restrictions in a wastewater discharge permit than those required by federal law, a regional water quality control board may take into account the economic effects of doing so. Federal Water Pollution Control Act Amendments of 1972, §§ 101 et seq., 101(b), 510, as amended, 33 U.S.C.A. §§ 1251 et seq., 1251(b), 1370; West's Ann.Cal.Water Code §§ 13000 et seq., 13241(d), 13263, 13377.

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KENNARD, J.

***618** **864** Federal law establishes national water quality standards but allows the states to enforce their own water quality laws so long as they comply with federal standards. Operating within this federal-state framework, California's nine Regional Water Quality Control Boards establish water quality policy. They also issue permits for the discharge of treated wastewater; these permits specify the maximum allowable concentration of chemical pollutants in the discharged wastewater.

The question here is this: When a regional board issues a permit to a wastewater treatment facility, must the board take into account the facility's costs of complying with the board's restrictions on pollutants in the wastewater to be discharged? The trial court ruled that California law required a regional board to weigh the economic burden on the facility against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Court of Appeal disagreed. On petitions by the municipal operators of three wastewater treatment facilities, we granted review.

We reach the following conclusions: Because both California law and federal law require regional boards to comply with federal clean water standards, and because the supremacy clause of the United States Constitution requires state law to yield to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than the applicable federal standards require. When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic **865** factors, including the wastewater discharger's cost of compliance. We remand this case for further proceedings to determine whether the pollutant limitations in the permits challenged here meet or exceed federal standards.

*619 I. STATUTORY BACKGROUND

The quality of our nation's waters is governed by a "complex statutory and regulatory scheme ... that implicates both federal and state administrative responsibilities." (*PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704, 114 S.Ct. 1900, 128 L.Ed.2d 716.) We first discuss California law, then federal law.

A. California Law

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat.Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) [FN1] Its goal is "to attain the highest water ***307** quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board). [FN2]

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FN1. Further undesignated statutory references are to the Water Code.

FN2. The Los Angeles water region "comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages." (§ 13200, subd. (d).)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§ 13050, subd. (j).) Basin plans must be consistent with "state policy for water quality control." (§ 13240.)

B. Federal Law

[1] In 1972, Congress enacted amendments (Pub.L. No. 92-500 (Oct. 18, 1972) 86 Stat. 816) to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), which, as amended in 1977, is commonly known as the Clean ***620** Water Act. The Clean Water Act is a "comprehensive water quality statute designed 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' " (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology, supra,* 511 U.S. at p. 704, 114 S.Ct. 1900, quoting 33 U.S.C. § 1251(a).) The Act's national goal was to eliminate by the year 1985 "the discharge of pollutants into the navigable waters" of the United States. (33 U.S.C. § 1251(a)(1).) To accomplish this goal, the Act established "effluent limitations," which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological, and other constituents"; these effluent limitations allow the discharge of pollutants only when the water has been satisfactorily treated to conform with federal water quality standards. (33 U.S.C. §§ 1311, 1362(11).)

Under the federal Clean Water Act, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act. (33 U.S.C. § 1370.) This led the California Legislature in 1972 to amend the state's Porter-Cologne Act "to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act." (§ 13372.)

****866** Roughly a dozen years ago, the United States Supreme Court, in *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 112 S.Ct. 1046, 117 L.Ed.2d 239, described the distinct roles of the state and federal agencies in enforcing water quality: "The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: 'to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.' 33 U.S.C. § 1251(a). Toward *****308** this end, [the Clean Water Act] provides for two sets of water quality measures. 'Effluent limitations' are promulgated by the [Environmental Protection Agency (EPA)] and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources.[FN3] See §§ 1311, 1314. '[W]ater quality standards' are, in general, promulgated by the States and establish the desired condition of a waterway. See § 1313. These standards supplement effluent limitations 'so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' *EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).

FN3. A "point source" is "any discernable, confined and discrete conveyance" and includes "any pipe, ditch, channel ... from which pollutants ... may be discharged." (33 U.S.C. § 1362(14).)

***621** "The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, [the Clean Water Act] requires, *inter alia,* that state authorities periodically review water quality standards and secure the EPA's approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the

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Act authorizes the EPA to promulgate water quality standards for the State. 33 U.S.C. § 1313(c)." (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.)

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

With this federal and state statutory framework in mind, we now turn to the facts of this case.

II. FACTUAL BACKGROUND

This case involves three publicly owned treatment plants that discharge wastewater under NPDES permits issued by the Los Angeles Regional Board.

The City of Los Angeles owns and operates the Donald C. Tillman Water Reclamation Plant (Tillman Plant), which serves the San Fernando Valley. The City of Los Angeles also owns and operates the Los Angeles-Glendale Water Reclamation Plant (Los Angeles-Glendale Plant), which processes wastewater from areas within the City of Los Angeles and the independent cities of Glendale and Burbank. Both the Tillman Plant and the Los Angeles-Glendale Plant discharge wastewater directly into the Los Angeles River, now a concrete-lined flood control channel that runs through the City of Los Angeles, ending at the Pacific Ocean. The State Board and the Los Angeles Regional Board consider the Los Angeles River to be a navigable water of the United States for purposes of the federal Clean Water Act.

The third plant, the Burbank Water Reclamation Plant (Burbank Plant), is owned and operated by the City of Burbank,***309** serving residents and businesses within that city. The Burbank Plant discharges wastewater into the Burbank Western Wash, which drains into the Los Angeles River.

*622 All three plants, which together process hundreds of millions of gallons of sewage **867 each day, are tertiary treatment facilities; that is, the treated wastewater they release is processed sufficiently to be safe not only for use in watering food crops, parks, and playgrounds, but also for human body contact during recreational water activities such as swimming.

In 1998, the Los Angeles Regional Board issued renewed NPDES permits to the three wastewater treatment facilities under a basin plan it had adopted four years earlier for the Los Angeles River and its estuary. That 1994 basin plan contained general narrative criteria pertaining to the existing and potential future beneficial uses and water quality objectives for the river and estuary.[FN4] The narrative criteria included municipal and domestic water supply, swimming and other recreational water uses, and fresh water habitat. The plan further provided: "All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." The 1998 permits sought to reduce these narrative criteria to specific numeric requirements setting daily maximum limitations for more than 30 pollutants present in the treated wastewater, measured in milligrams or micrograms per liter of effluent.[FN5]

FN4. This opinion uses the terms "narrative criteria" or descriptions, and "numeric criteria" or effluent limitations. Narrative criteria are broad statements of desirable water quality goals in a water quality plan. For example, "no toxic pollutants in toxic amounts" would be a narrative description. This contrasts with numeric criteria, which detail specific pollutant concentrations, such as parts per million of a particular substance.

FN5. For example, the permits for the Tillman and Los Angeles-Glendale Plants limited the amount of fluoride in the discharged wastewater to 2 milligrams per liter and the amount of mercury to 2.1 micrograms per liter.

The Cities of Los Angeles and Burbank (Cities) filed appeals with the State Board, contending that achievement of the numeric requirements would be too costly when considered in light of the potential

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benefit to water quality, and that the pollutant restrictions in the NPDES permits were unnecessary to meet the narrative criteria described in the basin plan. The State Board summarily denied the Cities' appeals.

Thereafter, the Cities filed petitions for writs of administrative mandate in the superior court. They alleged, among other things, that the Los Angeles Regional Board failed to comply with sections 13241 and 13263, part of California's Porter-Cologne Act, because it did not consider the economic burden on the Cities in having to reduce substantially the pollutant content of their discharged wastewater. They also alleged that compliance with the pollutant restrictions set out in the NPDES permits issued by the regional ***623** board would greatly increase their costs of treating the wastewater to be discharged into the Los Angeles River. According to the City of Los Angeles, its compliance costs would exceed $50 million annually, representing more than 40 percent of its entire budget for operating its four wastewater treatment plants and its sewer system; the City of Burbank estimated its added costs at over $9 million annually, a nearly 100 percent increase above its $9.7 million annual budget for wastewater treatment.

****310** The State Board and the Los Angeles Regional Board responded that sections 13241 and 13263 do not require consideration of costs of compliance when a regional board issues a NPDES permit that restricts the pollutant content of discharged wastewater.

The trial court stayed the contested pollutant restrictions for each of the three wastewater treatment plants. It then ruled that sections 13241 and 13263 of California's Porter-Cologne Act required a regional board to consider costs of compliance not only when it adopts a basin or water quality plan but also when, as here, it issues an NPDES permit setting the allowable pollutant content of a treatment plant's discharged wastewater. The court found no evidence that the Los Angeles Regional Board had considered economic factors at either stage. Accordingly, the trial court granted the Cities' petitions for writs of mandate, and it ordered the Los Angeles Regional Board to vacate the contested restrictions on pollutants in the wastewater discharge permits issued to the three municipal plants here and to conduct hearings ***868** to consider the Cities' costs of compliance before the board's issuance of new permits. The Los Angeles Regional Board and the State Board filed appeals in both the Los Angeles and Burbank cases.[FN6]

> FN6. Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that (1) the Los Angeles Regional Board failed to show how it derived from the narrative criteria in the governing basin plan the specific numeric pollutant limitations included in the permits; (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages; and (4) the permits improperly specified the manner of compliance.

The Court of Appeal, after consolidating the cases, reversed the trial court. It concluded that sections 13241 and 13263 require a regional board to take into account "economic considerations" when it adopts water quality standards in a basin plan but not when, as here, the regional board sets specific pollutant restrictions in wastewater discharge permits intended to satisfy those standards. We granted the Cities' petition for review.

*624 III. DISCUSSION

A. Relevant State Statutes

The California statute governing the issuance of *wastewater permits* by a regional board is section 13263, which was enacted in 1969 as part of the Porter-Cologne Act. (See 26 Cal.Rptr.3d pp. 306-307, 108 P.3d p. 865, *ante*.) Section 13263 provides in relevant part: "*The regional board,* after any necessary hearing, *shall prescribe requirements as to the nature of any proposed discharge* [of wastewater]. *The requirements* shall implement any relevant water quality control plans that have been adopted, and *shall take into consideration* the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and *the provisions of Section 13241.*" (§ 13263, subd. (a), italics added.)

Section 13241 states: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to

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some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

***311** "(a) Past, present, and probable future beneficial uses of water.

"(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

"(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

"(d) *Economic considerations.*

"(e) The need for developing housing within the region.

"(f) The need to develop and use recycled water." (Italics added.)

The Cities here argue that section 13263's express reference to section 13241 requires the Los Angeles Regional Board to consider section 13241's listed factors, notably "[e]conomic considerations," before issuing NPDES permits requiring specific pollutant reductions in discharged effluent or treated wastewater.

[2] ***625** Thus, at issue is language in section 13263 stating that when a regional board "prescribe[s] requirements as to the nature of any proposed discharge" of treated wastewater it must "take into consideration" certain factors including "the provisions of Section 13241." According to the Cities, this statutory language requires that a regional board make an independent evaluation of the section 13241 factors, including "economic considerations," before restricting the pollutant content in an NPDES permit. This was the view expressed in the trial court's ruling. The Court of Appeal rejected that view. It held that a regional board need consider the section 13241 factors only when it adopts a basin or water quality plan, but not when, as in this case, it issues a wastewater discharge **869 permit that sets specific numeric limitations on the various chemical pollutants in the wastewater to be discharged. As explained below, the Court of Appeal was partly correct.

B. Statutory Construction

[3] When construing any statute, our task is to determine the Legislature's intent when it enacted the statute "so that we may adopt the construction that best effectuates the purpose of the law." (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268, 121 Cal.Rptr.2d 203, 47 P.3d 1069.) In doing this, we look to the statutory language, which ordinarily is "the most reliable indicator of legislative intent." (*Hassan, supra,* at p. 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.)

As mentioned earlier, our Legislature's 1969 enactment of the Porter-Cologne Act, which sought to ensure the high quality of water in this state, predated the 1972 enactment by Congress of the precursor to the federal Clean Water Act. Included in California's original Porter-Cologne Act were sections 13263 and 13241. Section 13263 directs regional boards, when issuing wastewater discharge permits, to take into account various factors, including those set out in section 13241. Listed among the section 13241 factors is "[e]conomic considerations." (§ 13241, subd. (d).) The plain language of sections 13263 and 13241 indicates the Legislature's intent in 1969, when these statutes were enacted, that a regional board consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043, 12 ***312** Cal.Rptr.3d 343, 88 P.3d 71.) Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. But unlike the former two statutes, section 13377 was ***626** not enacted until 1972, shortly after Congress, through adoption of the Federal Water Pollution Control Act Amendments, established a comprehensive water quality policy for the nation.

[4] Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the

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permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3)). Because section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards.[FN7] Such a construction of section 13263 would not only be inconsistent with federal law, it would also be inconsistent with the Legislature's **870 declaration in section 13377 that all discharged wastewater must satisfy federal standards.[FN8] This was also the conclusion of the Court of Appeal. Moreover, under the federal Constitution's supremacy clause (art. VI), a state law that conflicts with federal law is " 'without effect.' " (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923, 12 Cal.Rptr.3d 262, 88 P.3d 1.) To comport with the principles of federal supremacy, California law cannot authorize this *627 state's regional boards to allow the discharge of pollutants into the navigable waters of the United States in concentrations ***313 that would exceed the mandates of federal law.

> FN7. The concurring opinion misconstrues both state and federal clean water law when it describes the issue here as "whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions *that meet the clean water standards in more cost-effective and economically efficient ways.*" (Conc. Opn. of Brown, J., *post,* 26 Cal.Rptr.3d p. 314, 108 P.3d at p. 871, some italics added.) This case has nothing to do with meeting federal standards in more cost effective and economically efficient ways. State law, as we have said, allows a regional board to consider a permit holder's compliance cost to *relax* pollutant concentrations, as measured by numeric standards, for pollutants in a wastewater discharge permit. (§§ 13241 & 13263.) Federal law, by contrast, as stated above in the text, "prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1311(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the [federal] act's *clean water standards, regardless of cost* (see *id.*, §§ 1311(a), (b)(1)(B) & (C), 1342(a)(1) & (3))." (Italics added.)
>
> FN8. As amended in 1978, section 13377 provides for the issuance of waste discharge permits that comply with federal clean water law "together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." We do not here decide how this provision would affect the cost-consideration requirements of sections 13241 and 13263 when more stringent effluent standards or limitations in a permit are justified for some reason independent of compliance with federal law.

Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account "economic considerations," such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act. We therefore remand this matter for the trial court to resolve that issue.

C. Other Contentions

The Cities argue that requiring a regional board at the wastewater discharge permit stage to consider the permit holder's cost of complying with the board's restrictions on pollutant content in the water is consistent with federal law. In support, the Cities point to certain provisions of the federal Clean Water Act. They cite section 1251(a)(2) of title 33 United States Code, which sets, as a national goal "*wherever attainable,*" an interim goal for water quality that protects fish and wildlife, and section 1313(c)(2)(A) of the same title, which requires consideration, among other things, of waters' "*use and value* for navigation" when revising or adopting a "water quality standard."

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(Italics added.) These two federal statutes, however, pertain not to permits for wastewater discharge, at issue here, but to establishing water quality standards, not at issue here. Nothing in the federal Clean Water Act suggests that a state is free to disregard or to weaken the federal requirements for clean water when an NPDES permit holder alleges that compliance with those requirements will be too costly.

[5] At oral argument, counsel for amicus curiae National Resources Defense Council, which argued on behalf of California's State Board and regional water boards, asserted that the federal Clean Water Act incorporates state water policy into federal law, and that therefore a regional board's consideration of economic factors to justify greater pollutant concentration in discharged wastewater would conflict with the federal act even if the specified pollutant restrictions were not less stringent than those required under federal law. We are not persuaded. The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent*" than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit ***628** a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.

Also at oral argument, counsel for the Cities asserted that if the three municipal wastewater treatment facilities ceased releasing their treated wastewater into the concrete channel that makes up the Los Angeles River, it would (other than during the rainy season) contain no water at all, and thus would not be a "navigable water" of the ****871** United States subject to the Clean Water Act. (See *Solid Waste Agency v. United States Army Corps of Engineers* (2001) 531 U.S. 159, 172, 121 S.Ct. 675, 148 L.Ed.2d 576 ["The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."].) It is unclear when the Cities first raised this issue. The Court of Appeal did not discuss it in its opinion, and the Cities did not seek rehearing on this ground. (See Cal. Rules of Court, rule *****314** 28(c)(2).) Concluding that the issue is outside our grant of review, we do not address it.

CONCLUSION

Through the federal Clean Water Act, Congress has regulated the release of pollutants into our national waterways. The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards. When enacted in 1972, the goal of the Federal Water Pollution Control Act Amendments was to *eliminate* by the year 1985 the discharge of pollutants into the nation's navigable waters. In furtherance of that goal, the Los Angeles Regional Board indicated in its 1994 basin plan on water quality the intent, insofar as possible, to remove from the water in the Los Angeles River toxic substances in amounts harmful to humans, plants, and aquatic life. What is not clear from the record before us is whether, in limiting the chemical pollutant content of wastewater to be discharged by the Tillman, Los Angeles-Glendale, and Burbank wastewater treatment facilities, the Los Angeles Regional Board acted only to implement requirements of the federal Clean Water Act or instead imposed pollutant limitations that exceeded the federal requirements. This is an issue of fact to be resolved by the trial court.

DISPOSITION

We affirm the judgment of the Court of Appeal reinstating the wastewater discharge permits to the extent that the specified numeric limitations on chemical pollutants are necessary to satisfy federal Clean Water Act requirements for treated wastewater. The Court of Appeal is directed to remand this ***629** matter to the trial court to decide whether any numeric limitations, as described in the permits, are "more stringent" than required under federal law and thus should have been subject to "economic considerations" by the Los Angeles Regional Board before inclusion in the permits.

WE CONCUR: GEORGE, C.J., BAXTER, WERDEGAR, CHIN, and MORENO, JJ.

Concurring Opinion by BROWN, J.

I write separately to express my frustration with the apparent inability of the government officials involved here to answer a simple question: How do the federal clean water standards (which, as near as I can determine, are the state standards) prevent the state from considering economic factors? The majority concludes that because "the supremacy clause of the United States Constitution requires state law to yield

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to federal law, a regional board, when issuing a wastewater discharge permit, may not consider economic factors to justify imposing pollutant restrictions that are *less stringent* than applicable federal standards require." (Maj. opn., *ante,* 26 Cal.Rptr.3d at p. 306, 108 P.3d at p. 864.) That seems a pretty self-evident proposition, but not a useful one. The real question, in my view, is whether the Clean Water Act prevents or prohibits the regional water board from considering economic factors to justify pollutant restrictions that *meet* the clean water standards in more cost-effective and economically efficient ways. I can see no reason why a federal law-which purports to be an example of cooperative federalism-would decree such a result. I do not think the majority's reasoning is at fault here. Rather, the agencies involved seemed to have worked hard to make this simple question impenetrably obscure.

A brief review of the statutory framework at issue is necessary to understand my concerns.

*****315 **872 I. Federal Law**

"In 1972, Congress enacted the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), commonly known as the Clean Water Act (CWA) [Citation.] ... [¶] Generally, the CWA 'prohibits the discharge of any pollutant except in compliance with one of several statutory exceptions. [Citation.]' ... The most important of those exceptions is pollution discharge under a valid NPDES [National Pollution Discharge Elimination System] permit, which can be issued either by the Environmental Protection Agency (EPA), or by an EPA-approved state permit program such as California's. [Citations.] NPDES permits are valid for five years. [Citation.] [¶] Under the CWA's NPDES permit program, the states are required to develop *water quality standards.* [Citations.] A water quality standard 'establish[es] the desired condition of a waterway.' [Citation.] A water quality standard for any ***630** given waterway, or 'water body,' has two components: (1) the designated beneficial uses of the water body and (2) the *water quality criteria* sufficient to protect those uses. [Citations.] [¶] Water quality criteria can be either *narrative* or *numeric.* [Citation.]" (*Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1092-1093, 1 Cal.Rptr.3d 76.)

With respect to satisfying water quality standards, "a polluter must comply with *effluent limitations.* The CWA defines an effluent limitation as 'any restriction established by a State or the [EPA] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.' [Citation.] 'Effluent limitations are a means of *achieving* water quality standards.' [Citation.] [¶] NPDES permits establish effluent limitations for the polluter. [Citations.] CWA's NPDES permit system provides for a two-step process for the establishing of effluent limitations. First, the polluter must comply with *technology-based effluent limitations,* which are limitations based on the best available or practical technology for the reduction of water pollution. [Citations.] [¶] Second, the polluter must also comply with more stringent *water quality-based effluent limitations* (WQBEL's) where applicable. In the CWA, Congress 'supplemented the "technology-based" effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.' " [Citation.] [¶] The CWA makes WQBEL's applicable to a given polluter whenever WQBEL's are 'necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations....' [Citations.] Generally, NPDES permits must conform to state water quality laws insofar as the state laws impose more stringent pollution controls than the CWA. [Citations.] Simply put, WQBEL's implement water quality standards." (*Communities for a Better Environment v. State Water Resources Control Bd., supra,* 109 Cal.App.4th at pp. 1093-1094, 1 Cal.Rptr.3d 76, fns. omitted.)

This case involves water quality-based effluent limitations. As set forth above, "[u]nder the CWA, states have the primary role in promulgating water quality standards." (*Piney Run Preservation Ass'n v. Commrs. of Carroll Co.* (4th Cir.2001) 268 F.3d 255, 265, fn. 9.) "Under the CWA, the water quality standards referred to in section 301 [see 33 U.S.C. § 1311] are primarily the states' handiwork."*****316** (*American Paper Institute, Inc. v. U.S. Envtl. Protection Agency* (D.C.Cir.1993) 996 F.2d 346, 349 (*American Paper*).) In fact, upon the 1972 passage of the CWA, "[s]tate water quality standards in effect at the time ... were deemed to be the initial water quality benchmarks for CWA purposes.... The states were to revisit and, if ***631** necessary, revise those initial standards at

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least once every three years." (*American Paper,* at p. 349.) Therefore, "once a water quality standard has been promulgated, section 301 of the CWA requires all NPDES permits for point sources to incorporate discharge limitations necessary to satisfy that standard." (*American Paper,* at p. 350.) Accordingly, it appears that in most instances, **873 state water quality standards are identical to the federal requirements for NPDES permits.

II. State Law

In California, pursuant to the Porter-Cologne Water Quality Control Act (Wat.Code, § 13000 et seq.; Stats.1969, ch. 482, § 18, p. 1051; hereafter Porter-Cologne Act), the regional water quality control boards establish water quality standards-and therefore federal requirements for NPDES permits-through the adoption of water quality control plans (basin plans). The basin plans establish water quality objectives using enumerated factors-including economic factors-set forth in Water Code section 13241.

In addition, as one court observed: "The Porter-Cologne Act ... established nine regional boards to prepare water quality plans (known as basin plans) and issue permits governing the discharge of waste. (Wat.Code, §§ 13100, 13140, 13200, 13201, 13240, 13241, 13243.) The Porter-Cologne Act identified these permits as 'waste discharge requirements,' and provided that the waste discharge requirements must mandate compliance with the applicable regional water quality control plan. (Wat.Code, §§ 13263, subd. (a), 13377, 13374.)[¶] Shortly after Congress enacted the Clean Water Act in 1972, the California Legislature added Chapter 5.5 to the Porter-Cologne Act, for the purpose of adopting the necessary federal requirements to ensure it would obtain EPA approval to issue NPDES permits. (Wat.Code, § 13370, subd. (c).) As part of these amendments, the Legislature provided that the state and regional water boards 'shall, as required or authorized by the [Clean Water Act], issue waste discharge requirements ... which apply and ensure compliance with all applicable provisions [of the Clean Water Act], together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.' (Wat.Code, § 13377.) Water Code section 13374 provides that '[t]he term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the [Clean Water Act].' [¶] California subsequently obtained the required approval to issue NPDES permits. [Citation.] Thus, the waste discharge requirements issued by the regional water boards ordinarily also serve as NPDES permits under federal law. (Wat.Code, § 13374.)" (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875, 22 Cal.Rptr.3d 128.)

*632 Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)-the body responsible to enforce the statutory framework-failed to comply with its statutory mandate.

***317 For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.

Moreover, the Board acknowledges that it has neglected other statutory provisions that might have provided an additional opportunity to air these concerns. As set forth above, pursuant to the CWA, "[t]he states were to revisit and, if necessary, revise those initial standards at least once every three years-a process commonly known as triennial review. [Citation.] Triennial reviews consist of public hearings in which current water quality standards are examined to assure that they 'protect the public health or welfare, enhance the quality of water and serve the purposes' of the Act. [Citation.] Additionally, the CWA **874 directs states to consider a variety of competing policy concerns during these reviews, including a waterway's 'use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agri-

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cultural, industrial, and other purposes.' " (*American Paper, supra,* 996 F.2d at p. 349.)

According to the Cities, "[t]he last time that the narrative water quality objective for toxicity contained in the Basin Plan was reviewed and modified was 1994." The Board does not deny this claim. Accordingly, the Board has failed its duty to allow public discussion-including economic considerations-at the required intervals when making its determination of proper water quality standards.

What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.

***633** Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante,* 26 Cal.Rptr.3d at pp. 311-312, 108 P.3d at pp. 869-870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits****318** designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[FN1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.[FN2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

FN1. (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95-4, Sept. 21, 1995) 1995 WL 576920.)

FN2. Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

***634** Accordingly, I cannot conclude that the majority's decision is wrong. The analysis ****875** may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands," [FN3] I write separately to set forth my concerns and concur in the judgment-*dubitante.*[FN4]

FN3. Marvin Gaye (1971) "Inner City Blues."

FN4. I am indebted to Judge Berzon for this

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useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

Cal.,2005.
City of Burbank v. State Water Resources Control Bd.
35 Cal.4th 613, 108 P.3d 862, 26 Cal.Rptr.3d 304, 60 ERC 1470, 35 Envtl. L. Rep. 20,071, 05 Cal. Daily Op. Serv. 2861, 2005 Daily Journal D.A.R. 3870

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***633** Our decision today arguably allows the Board to continue to shirk its statutory duties. The majority holds that when read together, Water Code sections 13241, 13263, and 13377 do not allow the Board to consider economic factors when issuing NPDES permits to satisfy federal CWA requirements. (Maj. opn., *ante,* 26 Cal.Rptr.3d at pp. 311-312, 108 P.3d at pp. 869-870.) The majority then bifurcates the issue when it orders the Court of Appeal "to remand this matter to the trial court to decide whether any numeric limitations, as described in the permits, are 'more stringent' than required under federal law and thus should have been subject to 'economic considerations' by the Los Angeles Regional Board before inclusion in the permits." (*Id.* at p. 314, 108 P.3d at p. 871.)

The majority overlooks the feedback loop established by the CWA, under which federal standards are linked to state-established water quality standards, including narrative water quality criteria. (See 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. § 122.44(d)(1) (2004).) Under the CWA, NPDES permit requirements include the state narrative criteria, which are incorporated into the Board's basin plan under the description "no toxins in toxic amounts." As far as I can determine, NPDES permits****318** designed to achieve this narrative criteria (as well as designated beneficial uses) will usually implement the state's basin plan, while satisfying federal requirements as well.

If federal water quality standards are typically identical to state standards, it will be a rare instance that a state exceeds its own requirements and economic factors are taken into consideration.[FN1] In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. The likely outcome of the majority's decision is that the Cities will be economically burdened to meet standards imposed on them in a highly questionable manner.[FN2] In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views.

FN1. (But see *In the Matter of the Petition of City and County of San Francisco, San Francisco Baykeeper et al.* (Order No. WQ 95-4, Sept. 21, 1995) 1995 WL 576920.)

FN2. Indeed, given the fact that "water quality standards" in this case are composed of broadly worded components (i.e., a narrative criteria and "designated beneficial uses of the water body"), the Board possessed a high degree of discretion in setting NPDES permit requirements. Based on the Board's past performance, a proper exercise of this discretion is uncertain.

Based on the facts of this case, our opinion today appears to largely retain the status quo for the Board. If the Board can actually demonstrate that only the precise limitations at issue here, implemented in only one way, will achieve the desired water standards, perhaps its obduracy is justified. That case has yet to be made.

***634** Accordingly, I cannot conclude that the majority's decision is wrong. The analysis ****875** may provide a reasonable accommodation of conflicting provisions. However, since the Board's actions "make me wanna holler and throw up both my hands," [FN3] I write separately to set forth my concerns and concur in the judgment-*dubitante.*[FN4]

FN3. Marvin Gaye (1971) "Inner City Blues."

FN4. I am indebted to Judge Berzon for this

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useful term. (See *Credit Suisse First Boston Corp. v. Grunwald* (9th Cir.2005) 400 F.3d 1119 (conc. opn. of Berzon, J.).)

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