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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE CONSOLIDATED INCORRECT
REDUCTION CLAIM
Los Angeles Regional Quality Control Board
Order No. 01-182, Permit CAS004001,
Part 4F5c3
Municipal Stormwater and Urban Runoff
Discharges

Case Nos.: 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, and 20-0304-I-11, and 20-0304-I-13

**COUNTY OF LOS ANGELES’
COMMENTS ON DRAFT PROPOSED
DECISION; DECLARATION OF DAVID
W. BURHENN**

**COMMENTS OF THE COUNTY OF LOS ANGELES
ON DRAFT PROPOSED DECISION**

I. INTRODUCTION

This is a Consolidated Incorrect Reduction Claim (IRC) filed by Claimant County of Los Angeles challenging the State Controller’s (Controller’s) disallowance of costs incurred in installing and maintaining trash receptacles in Los Angeles County, a state mandate in the 2001 municipal stormwater permit issued to Claimants. Claimants Cities of Claremont, Downey, Glendora, Pomona, Santa Clarita and Signal Hill have joined in this Consolidated Claim. Commission staff’s Draft Proposed Decision proposes to uphold the Controller’s decision that Proposition A and Proposition C funds used by Claimants to install or maintain the trash receptacles are revenues that should be offset against the claims. The Proposed Decision bases this conclusion on the contention that reimbursement for state mandates is restricted solely to proceeds of taxes that are subject to Claimants’ appropriations limitations.

Respectfully, the Proposed Decision is in error. California Constitution article XIII B, section 6 (“section 6”) requires reimbursement for all state mandates funded through local taxes. The Constitution does not require the taxes to have been levied “by or for” the Claimant within the meaning of article XIII B, as long as those taxes are designated for Claimant’s use. Article XIII B, section 6 also does not require those taxes to be subject to the Claimants’ appropriations limit. Whereas article XIII B, section 1 addresses the limitation of government appropriations from proceeds of taxes, section 6 addresses reimbursement for the expenditure of taxes.

The Proposed Decision’s construction of section 6 is erroneous for the following reasons:

- (1) It is contrary to the plain meaning of section 6 itself and has never been adopted by any court;
- (2) It imposes a restriction on section 6 that is not present in section 6’s language and was not intended by the voters; and
- (3) Is an unlawful retroactive application of the Parameters and Guidelines (“Ps & Gs”).

For these reasons, as set forth more fully below, the Proposed Decision should be modified and Claimants’ Consolidated Incorrect Reduction Claim be granted.

II. THE PROPOSED DECISION IS CONTRARY TO THE PLAIN MEANING OF SECTION 6

A. Article XIII B, Section 6

Article XIII B, section 6(a) of the California Constitution provides in pertinent part:

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 such local government for the cost of such program or increased level of service

Section 6 was added to the Constitution through the adoption of Proposition 4, a voter initiative measure. As the California Supreme Court held in *County of Fresno v. State of California* (1991) 53 Cal.3d 482, article XIII B, section 6 is meant to protect taxes received by local governments. “Specifically, it was designed to protect the tax revenue of local governments from state mandates that would require expenditure of such revenues.” *Id.* at 487. As a constitutional provision, section 6 must “receive a liberal, practical common-sense construction which will meet changed conditions and the growing needs of the people.” *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 245.¹

B. Section 6 Contains No Reference to Article XIII B, Section 1, Appropriations Limits, or Proceeds of Taxes and It Would Be Error for the Commission to Imply One

It is undisputed that Claimants used local sales and use tax revenues to pay for the installation and maintenance of trash receptacles, a state mandate within the meaning of article XIII B, section 6. The use of these funds fell within the literal meaning of this section: a state agency mandated a new program or higher level of services for which Claimants used local tax revenue to pay. It would be error for the Commission to imply additional conditions that are not present.

“In interpreting a voter initiative . . . [the court and the Commission] apply the same principles that govern statutory construction. . . . Thus, ‘we turn first to the language of the [initiative], giving the words their ordinary meaning. The [initiative’s] language must also be construed in the context of the statute as a whole and the [initiative’s] overall . . . scheme.’ Absent ambiguity, we presume that the voters intend the meaning apparent on the face of the initiative measure . . . and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language.” *Professional Engineers in California Government v. Kempton* (2007) 40 Cal 4th 1016, 1037 (citations omitted).

¹ The Proposed Decision’s Executive Summary’s statement that section 6 is to be strictly construed is erroneous (Executive Summary at 6). The Executive Summary cites to *County of Sonoma v. Commission on State Mandates* and *City of San Jose v. State of California*, but in those cases the court said that constitutional provisions that would limit the Legislature’s authority to reallocate funds should be construed strictly because, in California, the Legislature has power to act unless the Constitution restricts it. *See City of San Jose*, 45 Cal.App.4th at 1810. A court should not therefore imply a restriction not covered by the language used. *Id.* That is not the case here. The Commission is not being called upon to determine if Section 6 restricts the Legislature’s power. Instead the Commission is being called upon to implement the will of the people to “protect the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task.” *County of Fresno*, 55 Cal.3d at 487.

In construing section 6, the Commission's "paramount task is to ascertain the intent of those who enacted it. To determine that intent, we 'look first to the language of the constitutional text, giving the words their ordinary meaning.'" *Professional Engineers*, 40 Cal 4th at 1037, quoting *Thompson v. Dept. of Corrections* (2001) 25 Cal.4th 117, 122.

Here, section 6's words are clear: whenever the Legislature or any state agency mandates a new program or higher level of service, the state shall provide a subvention of funds. There is no language tying this obligation to any other section of article XIII B, including section 1 (addressing appropriation limits) or section 8(c) (defining "proceeds of taxes"). As section 6's words are clear, they must be given their ordinary meaning and the Commission should not add to or rewrite it.

The independent scope of section 6 is evidenced by the structure of Proposition 4 itself. Proposition 4 contained eleven sections:

Section 1 set forth the requirement that the total annual "appropriations subject to limitation" of the state and each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in article XIII B.

Section 2 provided that revenues received by an entity of government in excess of that amount which is appropriated by such entity shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

Section 3 provided for adjustments to the appropriations limit for any fiscal year.

Section 4 provided that the appropriations limit may be established or changed by the electors of such entity, subject to constitutional and statutory voting requirements.

Section 5 provided that each entity of government may establish certain contingency, emergency, unemployment, reserve, retirement, sinking fund, trust or other similar funds as it deems reasonable and proper.

Section 6 contained the obligation to provide the subvention of funds at issue here.

Section 7 provided that nothing in article XIII B shall be construed to impair the ability of the state or any local government to meet its obligations with respect to existing or future bonded indebtedness.

Section 8 contained definitions. As pertinent here, section 8(b) defined a local government's "appropriations subject to limitation" to mean "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (*other than subventions made pursuant to Section 6 of this Article*) exclusive of refunds of taxes." (Emphasis added.) Section 8(c) defined "proceeds of taxes," to "include, but not be restricted to, all tax revenues and proceeds of an entity of government from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the cost reasonably

borne by such entity in providing the regulation, product or service, and (ii) the investment of tax revenues. With respect to any local government, “proceeds of taxes” include “subventions received from the state, *other than pursuant to Section 6 of this article*, and, with respect to the state, proceeds of taxes shall exclude such subventions.” (Emphasis added.)

Section 9 set forth certain exclusions from the definition of “appropriations subject to limitation” such as debt service, appropriations required for purposes of complying with mandates of the courts or federal government, and certain appropriations of special districts.

Section 10 set forth article XIII B’s effective date.

Section 11 stated that, if any appropriations category shall be added to or removed from the appropriation subject to limitations pursuant to any final judgment of any court, the appropriations limit shall be adjusted accordingly and, if any section is held to be invalid or unconstitutional, the remaining portions of the article shall not be affected but shall remain in full force and effect.

As can be seen by this review, Proposition 4’s definitions of “appropriations subject to limitations” and “proceeds of taxes” specifically exclude subventions made pursuant to section 6. The Proposed Decision, however, turns this exclusion on its head. It concludes that, unless the funds expended were to be “appropriations subject to limitation,” or “proceeds of taxes,” a local government cannot obtain a subvention of funds under section 6. Thus, the Proposed Decision makes the subvention subject to the appropriations limit by proposing that no reimbursement can be obtained unless the funds are first subject to the appropriations limitation or proceeds of taxes. In other words, under the Proposed Decision the subvention must be counted against the appropriations limitation and included in “proceeds of taxes” because a Claimant cannot obtain a subvention of funds under section 6 unless those funds had first been counted against the appropriations limitation. This is directly contrary to the specific language of article XIII B, sections 8(b) and (c).

Any further doubt about section 6’s independence from Sections 1 and 8 of article XIII B is dispelled by the Voter Pamphlet that accompanied the initiative. “Where there is ambiguity in the language of the measure, “[b]allot summaries and arguments may be considered when determining the voters’ intent and understand of a ballot measure.” *Professional Engineers*, 40 Cal 4th at 1037, quoting *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 673 n. 14. Here, while Claimant submits that there was no ambiguity in the language of Proposition 4, neither the ballot summary nor the arguments in favor of the proposition linked Section 6’s obligations to the appropriations limit sections.

Proposition 4 was accompanied in a Voter Pamphlet with a ballot summary prepared by the Legislative Analyst and arguments in favor and against the Proposition. The Legislative Analyst first undertook a lengthy discussion of the appropriation limit sections, including the types of appropriations that would and would not be included in the limit (Proposition 4 Voter Pamphlet, (“Voter Pamphlet”) pages 16 and 20, Exhibit A to Declaration of David W. Burhenn (“Burhenn Decl.”), filed herewith.

The Legislative Analyst then discussed section 6 separately, without reference to the other sections. The Legislative Analyst concluded that, “[f]inally, the initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates.” Voter Pamphlet, pages 20-21, Burhenn Decl. Exh. A. The Legislative Analyst made no reference to Section 1 or any other section of Proposition 4, and made no reference to conditioning the obligation in section 6 on the funds being subject to the appropriations limit or being “proceeds of taxes” within the meaning of the other sections.

The arguments in support of Proposition 4 also treated the obligations in section 6 separately. After discussing the limits on state and local government spending, the arguments in favor of Proposition 4 stated, “ADDITIONALLY, this measure “(1) WILL NOT allow the state government to force programs on local governments without the state paying for them.” (Voter Pamphlet, p. 18, Burhenn Decl. Exh. A.) (Emphasis in original.) Proposition 4’s proponents did not condition this payment obligation on Proposition 4’s other sections.

Thus, the plain and ordinary meaning of section 6, as well as the Voter Pamphlet for the proposition which incorporated it into the Constitution, do not condition the subvention obligation on the funds having first been subject to the Claimants’ appropriations limit or the funds falling within the definitions of “appropriations subject to limitation” and “proceeds of taxes.” It would be error for the Commission to add these requirements when they are not present in the language itself or referenced in the Voter Pamphlet that accompanied the initiative.

C. No Court Has Ever Conditioned A Subvention of Funds Pursuant to Section 6 on Expenditures Having First Been Subject to a Claimant’s Appropriations Limit or Having Been “Proceeds of Taxes” Within the Meaning of Article XIII B, Sections 1, 8(b) or 8(c)

No court in any case has ever denied a subvention of funds under section 6 on the grounds that the taxes used were not included within the Claimant’s appropriations limitation within the meaning of article XIII B, sections 1 and 8(b) or did not fall within the meaning of “proceeds of taxes” under article XIII B, section 8(c).

When the courts construe article XIII B, they cite the different purposes underlying the article’s different sections. When the courts have addressed the appropriations limit in section 1, they cite the article’s intent to limit government appropriations. Thus in *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, where the court was called upon to determine if the tax allocation of a bond issue for a redevelopment agency’s use was to be included in the appropriations limitation, 169 Cal.App.3d at 30-31, the court cited the intent of article XIII B to place limitations on state and local government appropriations, *Id.* at 29.

Likewise, in *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, where the issue was whether special assessments and federal grants were to be included within the appropriations limit, *id.* at 445, the court noted that article XIII B was intended to place limitations on the growth of appropriations at both the state and local government level. *Id.* at 446.

Where courts have been called upon to construe the meaning of section 6, however, the courts have emphasized the limitations article XIII A has placed on local government's ability to assess taxes, not the appropriations limit of article XIII B. Thus in *County of Fresno, supra*, the Court was called upon to determine the facial constitutionality of Government Code § 17556(d), which provided that the Commission shall not find costs mandated by the state if a local government has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service. The court found that Government Code § 17556(d) was facially constitutional, noting that section 6 was meant to protect taxes received by local governments. "Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." 53 Cal. 3d at 487.

In *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, the court had before it the issue of whether a state statute authorizing counties to charge cities and other local entities for the cost of booking persons in the county jail was a mandate for which the cities were entitled to a subvention of funds. Finding that the statute was not, the court noted that "section 6 was included in Article XIII B in order to protect shrinking tax revenues of local government from state mandates which would require expenditure of such revenues." *Id.* at 1807, citing *County of Fresno*, 53 Cal. 3d at 487.

In *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, the court addressed whether a state statute requiring redevelopment agencies to contribute a portion of their tax proceeds to a local Educational Revenue Augmentation Fund ("ERAF") constituted a reimbursable state mandate under section 6. *Id.* at 269. Though the court noted that article XIII B's sections evidenced a general intent to limit government expenditures, *id.* at 271, its decision turned on the fact that the court was addressing the shifting of costs, not a new program or higher level of service, finding that section 6 does not prohibit shifting of costs between local governmental entities. *Id.* at 279-280. Citing *County of Fresno*, the court held that subvention is required only when the costs in question can be recovered from tax revenues, and here there were other funds from which the contributions could be made. *Id.* at 280-281 ("It follows that the ERAF legislation did not impose costs on redevelopment agencies that can be recovered solely from tax revenues within the meaning of the California Constitution, Article XIII B and thus under the reasoning of *County of Fresno v. State of California* . . . the ERAF legislation did not impose a reimbursable state mandate.")

In *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, another case involving an ERAF, Sonoma County sought reimbursement for its share of property taxes that was placed into an ERAF for distribution to school districts. The court found that the county was not entitled to reimbursement for this change in the allocation of property tax revenues as it did not result in a reimbursable "cost" within the meaning of section 6. *Id.* at 1269. In finding that no "cost" was incurred by the county, the court noted that "the county's tax revenues were not expended." *Id.* at 1283. The court said "contrary to the conclusion of the trial court, it is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." *Id.* at 1283, citing *County of Fresno*.

In *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, the issue was whether the reallocation of tax increment revenue used to fund the redevelopment

agency was a “cost” within the meaning of section 6. First, the court discussed the general purposes behind article XIII B, *id.* at 985. Then, finding that section 6 requires subvention only when the costs can be recovered solely from tax revenues, the court, citing *County of Fresno*, held that the reallocation was not a “cost” under Section 6 because the redevelopment agency’s tax increment revenues were not taxes but one step removed. *Id.* at 987. In other words, the court followed *County of Fresno* and based its conclusion on whether the costs came from tax revenues. *Id.*²

Thus, contrary to the Proposed Decision (Proposed Decision at 47), no case has held that reimbursement under section 6 is required only when the expenditures of limited tax proceeds are counted against the local government’s appropriations limit. When the issue involves section 1 of article XIII B, the courts note the article’s intent to limit government appropriations. When the issue involves section 6, however, the courts rest their decisions on the limitations on local governments taxing authority, not whether the funds that were expended were subject to the appropriations limits or fall within section 8(c)’s definition of “proceeds of taxes.”³

III. THE OBLIGATION TO PROVIDE A SUBVENTION OF FUNDS FOR STATE MANDATES EXISTED PRIOR TO SECTION 6; THE PROPOSED DECISION’S CONSTRUCTION OF SECTION 6 ERRONEOUSLY CONCLUDES THAT THE VOTERS INTENDED TO LIMIT, AS OPPOSED TO REAFFIRM, THAT OBLIGATION

A. The State’s Obligation to Provide a Subvention of Funds for State Mandates Existed Prior to Proposition 4

The state’s obligation to provide a subvention of funds for state mandates, commonly known as the “SB 90” program, existed prior to the adoption of Proposition 4. The concept first originated with the Property Tax Relief Act of 1972 (Senate Bill 90, Stats. 1972, Chapter 1406). That bill enacted Rev. and Tax. Code section 2164.3, which provided that the state shall pay each county, city, and special district an amount to reimburse the county, city or special district for the costs mandated by any new state-mandated new program or increased level of service. Stats. 1972, c, 1406, § 14.7

² In *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, the Court referenced the taxing and spending limitations that articles XIII A and XIII B impose, 1 Cal. 5th at 763, but did not tie reimbursement under section 6 to the spending limitations. In *Dept. of Finance*, the Court addressed whether the trash receptacle obligation, as well as certain inspection obligations, were state, as opposed to federal, mandates. 1 Cal. 5th at 770-772.

³ Contrary to the assertion in the Proposed Decision (Proposed Decision at 47), the courts in *County of Sonoma v. Commission on State Mandates* and *County of Los Angeles v. Commission on State Mandates*, did not hold that reimbursement under section 6 is only required to the extent that a local government incurs increased expenditures of tax proceeds that are counted against the local government’s appropriations limit. Those courts simply gave such expenses as an example of a “cost” that would entitle the local government to reimbursement pursuant to section 6. *County of Sonoma*, 84 Cal.App.4th at 1284; *County of Los Angeles*, 110 Cal.App. 4th at 1185. They did not hold that it was a requirement.

In 1975, the Legislature repealed section 2164.3 and added section 2231 to the Revenue and Taxation Code. Section 2231 provided that the state shall reimburse each local agency for all “costs mandated by the state,” as defined in newly added Section 2207 of the Revenue and Taxation Code. Section 2207 provided that “costs mandated by the state” meant any increased cost which a local agency or school district was required to incur as a result of any law enacted after January 1, 1973, which mandated a new program or increased level of service of an existing program; any executive order issued after January 1, 1973, which mandated a new program; or any executive order issued January 1, 1973, which implemented or interpreted a state statute or by such implementation or interpretation increased program levels. Stats 1975, c. 486, § 1.8 (Rev. and Tax. Code Section 2207) and § 7 (Rev. and Tax. Code Section 2231). Significantly, this obligation was not limited by any definition of “proceeds of taxes,” or “appropriations subject to limitation,” because no such limitations had been adopted.

In 1977, Sections 2207 and 2231 were amended to create specific provisions for school districts. Stats 1977, c. 1135, §§ 4 through 7. The state’s obligation to provide a subvention of funds to local agencies remained the same and, again, was not conditioned upon any “proceeds of taxes,” or “appropriations subject to limitations.”⁴

B. The Proposed Decision’s Construction of Section 6 Erroneously Concludes that the Voters Intended to Limit, as Opposed to Reaffirm, the Obligation to Provide a Subvention of Funds for State Mandates

In 1979, the voters adopted Proposition 4. One purpose of the proposition was to limit government spending. To accomplish that purpose, section 1 was enacted which provided a limit on total annual appropriations. Section 8 provided definitions for the “appropriations subject to limitation.”

Proposition 4 also contained section 6. By this inclusion, the proponents of the initiative sought to assure that the state’s obligation to provide a subvention of funds for state mandated activities would be enshrined in the Constitution and not subject to change by legislative amendment.

Nothing in Proposition 4, however, indicated that the proponents of the initiative intended to limit the scope of the state’s previous obligation to provide a subvention of funds. Nothing in the Voter Pamphlet that accompanied Proposition 4 tied section 6 to the requirements of section 1 or to the definitions of “appropriations subject to limitation” or “proceeds of taxes” in sections 8(b) and (c). Instead, after discussing limits on state and local government spending, the arguments in favor of Proposition 4 stated, “ADDITIONALLY, this measure “(1) WILL NOT allow the state government to force programs on local governments without the state paying for them.” (Voter Pamphlet, p. 18, Burhenn Decl. Exhibit A.)(Emphasis in original.)

Contrary to this voter pamphlet’s statement, the Proposed Decision’s construction of section 6 places a limitation on the scope of section 6 that was not present before Proposition 4’s

⁴ In 1980, the Legislature amended Sections 2207 and 2231 again. Stats. 1980, c. 1256, §§ 4 and 8.

adoption. Under the Revenue and Taxation Code in existence at the time Proposition 4 was adopted, there was no limitation of the state’s obligation to provide a subvention of funds based on “proceeds of taxes,” or “appropriations subject to limitation.”

It is well established that “the voters, in adopting an initiative, did so being ‘aware of existing laws at the time the initiative was enacted.’” *People v. Valencia* (2017) 3 Cal. 5th 347, 369, quoting *Professional Engineers, supra*, 40 Cal. 4th at 1048. Nothing in the Voter Pamphlet or the language of the proposition itself indicates that the voters intended to make the subvention obligation under section 6 narrower than the subvention obligation that existed under the then-existing Revenue and Taxation Code. Indeed, the opposite was true. The voters intended to give constitutional protection to that obligation so that it could not be changed by legislation. The Proposed Decision erroneously concludes, without basis, that the voters intended to restrict the state’s obligation to provide a subvention of funds for the cost of state mandates.

IV. SOME CLAIMANTS DID INCLUDE PROCEEDS FROM PROPOSITION A AND C UNDER THEIR APPROPRIATIONS SUBJECT TO LIMITATION

The Proposed Decision assumes that all Claimants did not include their Proposition A or Proposition C funds under their appropriations limitation. This is not correct. As set forth in the comments of the City of Claremont on the Proposed Decision (filed separately herein), Claremont did include its Proposition A and Proposition C funds under its appropriations limitation for each of the fiscal years at issue. *See* Declaration of Adam Pirre, submitted with the comments of the City of Claremont.

As set forth above, whether a Claimant’s Proposition A or Proposition C funds were included in the Claimant’s appropriations subject to limitation is not relevant. The issue is whether the Claimant was required to expend tax revenue to pay for a state-mandated activity. However, to the extent that the Commission finds the issue of whether Proposition A or C funds were included in a Claimant’s appropriations limit to be relevant, the City of Claremont did include those funds under its appropriations limitation.

V. THE PROPOSED DECISION IMPROPERLY APPLIES THE PARAMETERS AND GUIDELINES RETROACTIVELY

The Proposed Decision asserts that its interpretation of “non-local source” is not a unlawful retroactive application of the Ps & Gs. This assertion is erroneous.

Section VIII of the Ps & Gs, “Offsetting Revenues and Reimbursements,”⁵ provides:

Any offsetting revenue the Claimant experiences in the same program as a result of the same statute or executive order found to contain the mandate shall be deducted from the cost claim. In addition, reimbursement for this mandate received from any *federal, state or non-local source* shall be identified and deducted from this claim.

⁵ Included in the County’s IRC at Ex. E.

Ps & Gs at 7 (emphasis added).

The Controller's office sought to offset Proposition A and C funds on the grounds that they were a non-local source because their use was restricted to transportation. There is no dispute, however, that the source of Proposition A and Proposition C funds is a local sales and use tax. Section 6 does not distinguish between restricted and non-restricted local taxes.

The Proposed Decision does not address the Controller's position. Instead, it asserts that Claimants should have known that Claimants could not obtain reimbursement for local tax revenues if those revenues had not been included in Claimants' appropriations limitations or had not been proceeds of taxes within the meaning of section 8(c). According to the Proposed Decision, because Claimants should have known that they could obtain reimbursement only with respect to expenditures of their own proceeds of taxes subject to appropriations limits, denial of reimbursement is not an unlawful retroactive application of Ps & Gs (Proposed Decision at 49).

This assertion is erroneous for two reasons. First, it is premised on the contention that Proposition A and Proposition C funds are not "proceeds of taxes" within the meaning of article XIII B, section 8(c) because the Proposition A and C funds were not levied "by or for" Claimants. The definition of "proceeds of taxes" under Article XIII B, section 8(c), however, does not include the qualifier that taxes be "levied by or for that entity." That qualifier exists with respect to the definitions of "appropriations subject to limitation" in section 8(b). Instead, section 8(c) defines "proceeds of taxes" to include "all tax revenues." "All tax revenues" would include Proposition A and C funds.

Second, Claimants had no reason to believe that the term "non-local source" would not include local sales tax that were available for use by Claimant if those taxes were assessed by another entity and then made available, by law, to Claimants. The Ps & Gs for the *Municipal Storm Water and Urban Discharges* test claim were adopted by the Commission on March 24, 2011. As noted above, Section VIII of the Ps & Gs provided, in relevant part, that "reimbursement for this mandate received from any *federal, state or non-local source* shall be identified and deducted from this claim." (Emphasis supplied.) In this IRC, there is no question that the Los Angeles County Proposition A and Proposition C funds at issue do not constitute "federal" or "state" funds. Thus the only issue is whether such funds constitute "non-local" sources of funds, and on the legal requirement, if any, that an advance of such funds must be deducted from a claim for subvention.

The meaning of "non-local sources" was not defined during the drafting of the Ps & Gs. Commission staff added this phrase to draft Ps & Gs released on February 8, 2011 as a further category of offsetting revenue in addition to federal and state revenues. See *Draft Parameters and Guidelines*, 03-TC-04, 03-TC-20, 03-TC-21, Exhibit B to Burhenn Decl., Section VII, page 7. The Draft Staff Analysis, containing staff's analysis of issues raised in the crafting of the Ps & Gs, contained no discussion of this offsetting revenues section beyond noting that the "parameters and guidelines also include instructions on claim preparation, including instructions for . . . any offsetting revenue or savings that may apply." *Draft Staff Analysis*, 03-TC-04, 03-TC-20, 03-TC-21, Exhibit C to Burhenn Decl., at 2. The Draft Staff Analysis contained no discussion of how

“non-local revenue” was to be defined or whether the term encompassed local taxes not subject to a claimant’s appropriations limit or to any tax levied by a local agency other than a claimant.

The final Ps & Gs were approved by the Commission on March 24, 2011. The Final Staff Analysis attached to that decision again provided no delineation as to what constituted “non-local revenue,” or whether the term referred to taxes not subject to the appropriations limit or to a tax levied by a local agency other than a claimant. *See Parameters and Guidelines and Decision Final Staff Analysis*, 03-TC-04, 03-TC-20, 03-TC-21, Exhibit D to Burhenn Decl.

The final Ps & Gs stated that the Commission’s Statement of Decision for the test claim was “legally binding on all parties and provides the legal and factual basis for the parameters and guidelines.” Ps & Gs Section X, “Legal and Factual Basis for the Parameters and Guidelines,” at 8. The Statement of Decision, however, provided no explication or legal basis for offsetting “non-local” revenue from the subvention obligation. In fact, the Statement of Decision, while it contained an extensive discussion of ostensible fee revenues to fund the trash receptacle state mandate (*see generally Statement and Decision*, 03-TC-04, 03-TC-20, 03-TC-21), contained no discussion of offsetting non-fee revenues from any sources, whether non-local, federal or state.

Thus, in the administrative process to develop and approve the Ps & Gs, Claimants never were informed that a revenue stream such as the one at issue in this Consolidated IRC, an advance of local return funds from imposition of a local County tax, would be considered a “non-local” source if it was not included in the Claimants appropriations limit.

Claimant County first used Proposition A funds in FY2002-03, the period from July 1, 2002 to June 30, 2003, and then used Proposition A funds in each subsequent fiscal year through FY2012-13. Other Claimants used Proposition A or Proposition C funds similarly. The Ps & Gs were not adopted till March 24, 2011 and the Controller’s office did not issue its final audit of the County until November 6, 2017 (other audits were completed in or around that time or shortly before).

A regulation will not be given retroactive effect unless it merely clarifies existing law. *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135. Retroactivity is not favored in the law. *Aktar v. Anderson* (1997) 58 Cal.App.4th 1166, 1179. Regulations that “substantially change the legal effect of past events” cannot be applied retroactively. *Santa Clarita Organizing for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315 n.5.

“Non-local” means non-local. If Claimants were not going to be entitled to reimbursement where they used local tax funds, available by law for their use, solely because those were assessed through another local agency or where not included in Claimants’ appropriations limit, then this should have been articulated in the Ps & Gs. If this was going to be a condition, it should have been clearly articulated at the time the Ps and Gs were adopted so that Claimants could address it and have notice. Non-local does not mean local, with a caveat attached to it.

Claimants were given no notice that the term “non-local” supposedly meant local, but assessed by another local entity for them and, as discussed in Sections II through IV above, had no reason to conclude this. To construe the Ps & Gs to include this condition now, eighteen years

after the first expenditure of Proposition A funds and eight years after the expenditure of such funds ceased, is unlawful. Claimants had no notice nor reason to know the Commission would now adopt that construction.

The Proposed Decision's construction of "non-local source" is an unlawful retroactive construction of Ps andGs. The Commission should not adopt that construction.


VI. CONCLUSION

For the foregoing reasons, the Proposed Decision should be modified, and Claimants' Consolidated Incorrect Reduction Claim be granted.

I declare under penalty of perjury that the information provided is true and correct to the best of my personal knowledge, information, or belief.

Dated: April 9, 2021

BURHENN & GEST LLP
HOWARD GEST
DAVID W. BURHENN

By: 
Howard Gest
Attorneys for Claimant County of Los Angeles

DECLARATION OF DAVID W. BURHENN

I, David W. Burhenn, hereby declare and state as follows:

1. I am an attorney with Burhenn & Gest LLP, counsel for Claimant County of Los Angeles in this Consolidated Incorrect Reduction Claim proceeding. I have personal and first-hand knowledge of the matters set forth herein and could, if called upon, testify competently thereto.

2. Exhibit A to this Declaration is a true and correct copy of excerpts of a Voter Information Guide for the 1979 special election. I downloaded this exhibit on April 8, 2021 from the website of the University of California Hastings Scholarship Repository at the address: https://repository.uchastings.edu/ca_ballot_props/865/.

4. Exhibit B to this Declaration is a true and correct copy of Draft Parameters and Guidelines, *Municipal Storm Water and Urban Runoff Discharges*, No. 03-TC-04, 03-TC-20, 03-TC-21. I downloaded this exhibit on April 8, 2021 from the website of the Commission on State Mandates (“Commission”) at the address: <https://www.csm.ca.gov/matters/03-TC-04.php>.

5. Exhibit C to this Declaration is a true and correct copy of the Draft Staff Analysis Proposed Parameters and Guidelines, *Municipal Storm Water and Urban Runoff Discharges*, No. 03-TC-04, 03-TC-20, 03-TC-21. I downloaded this exhibit on April 8, 2021 from the website of the Commission at the address: <https://www.csm.ca.gov/matters/03-TC-04.php>.

6. Exhibit D to this Declaration is a true and correct copy of the Final Staff Analysis Draft Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, No. 03-TC-04, 03-TC-20, 03-TC-21, minus the service list and proof of service. I downloaded this exhibit on April 8, 2021 from the website of the Commission at the address: <https://www.csm.ca.gov/matters/03-TC-04.php>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of April, 2021 at Los Angeles, California.



David W. Burhenn

EXHIBIT A

1979

Voter Information Guide for 1979, Special Election

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Voter Information Guide for 1979, Special Election (1979).
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CALIFORNIA BALLOT PAMPHLET



SPECIAL STATEWIDE ELECTION NOVEMBER 6, 1979

COMPILED BY MARCH FONG EU • SECRETARY OF STATE
ANALYSES BY WILLIAM G. HAMM • LEGISLATIVE ANALYST

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 12 y 13. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a lo menos el día 30 de octubre de 1979.

NOTICE

A Spanish translation of this ballot pamphlet may be obtained by completing and returning the postage-paid card which you will find between pages 12 and 13. Please PRINT your name and mailing address on the card and return it no later than October 30, 1979.

Limitation of Government Appropriations — Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

LIMITATION OF GOVERNMENT APPROPRIATIONS. INITIATIVE CONSTITUTIONAL AMENDMENT. Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

Analysis by Legislative Analyst

Background:

The Constitution places no limitation on the amount which may be appropriated for expenditure by the state or local governments (including school districts), provided sufficient revenues are available to finance these expenditures. Nor does the Constitution limit the amount by which appropriations in one year may exceed appropriations in the prior year.

Proposal:

This ballot measure would amend the Constitution to:

- Limit the growth in appropriations made by the state and individual local governments. Generally, the measure would limit the rate of growth in appropriations to the percentage increase in the cost of living and the percentage increase in the state or local government's population.
- Establish the general requirement that state and local governments return to the taxpayers moneys collected or on hand that exceed the amount appropriated for a given fiscal year.
- Require the state to reimburse local governments for the cost of complying with "state mandates." "State mandates" are requirements imposed on local governments by legislation or executive orders.

The appropriation limits would become effective in the 1980-81 fiscal year, which begins on July 1, 1980, and ends on June 30, 1981. These limits would only apply to appropriations financed from the "proceeds of taxes," which the initiative defines as:

- All tax revenues (we are advised by Legislative Counsel that this would include those tax revenues carried over from prior years);
- Any proceeds from the investment of tax revenues; and
- Any revenues from a regulatory license fee, user charge or user fee that *exceed* the amount needed to cover the reasonable cost of providing the regulation, product or service.

The initiative would not restrict the growth in appropriations financed from other sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.

The *appropriation limit for the state government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," less amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriation limit for each succeeding year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. Thus, even if the state appropriations in a given year were held below the level permitted by this ballot measure, the appropriation limit for the following year would not be any lower as a result. The limit would still be based on the limit for the prior year, and not on the actual level of appropriations for that year.

The following types of appropriations would *not* be subject to the state limit:

- (1) State financial assistance to local governments—that is, any state funds which are distributed to local governments other than funds provided to reimburse these governments for state mandates;
- (2) Payments to beneficiaries from retirement, disability insurance and unemployment insurance funds;
- (3) Payments for interest and redemption charges on state debt existing on January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations needed to pay the state's cost of complying with mandates imposed by federal laws and regulations or court orders.

We estimate that the state appropriated approxi-

Continued on page 20

Text of Proposed Law

This initiative measure proposes to add a new Article XIII B to the Constitution; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED ADDITION OF ARTICLE XIII B

PROPOSED ARTICLE XIII B. CONSTITUTION GOVERNMENT SPENDING LIMITATION

SEC. 1. The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article.

SEC. 2. Revenues received by any entity of government in excess of that amount which is appropriated by such entity in compliance with this Article during the fiscal year shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

SEC. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) In the event of an emergency, the appropriation limit may be exceeded provided that the appropriation limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

SEC. 4. The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.

SEC. 5. Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.

SEC. 6. 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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

SEC. 7. Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.

SEC. 8. As used in this Article and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the state shall mean any authorization to expend during a fiscal year the proceeds of taxes levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6 of this Article) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance and disability insurance funds;

(b) "Appropriations subject to limitation" of an entity of local government shall mean any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6 of this Article) exclusive of refunds of taxes;

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the state, other than pursuant to Section 6 of this Article, and, with respect to the state, proceeds of taxes shall exclude such subventions;

(d) "Local government" shall mean any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state;

(e) "Cost of living" shall mean the Consumer Price Index for the United States as reported by the United States Department of Labor, or successor agency of the United States Government; provided, however, that for purposes of Section 1, the change in cost of living from the preceding year shall in no event exceed the change in California per capita personal income from said preceding year;

(f) "Population" of any entity of government, other than a school district, shall be determined by a method prescribed by the Legislature, provided that such determination shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor agency of the United States Government. The population of any school district shall be such school district's average daily

Continued on page 22

Limitation of Government Appropriations — Initiative Constitutional Amendment

Arguments in Favor of Proposition 4

The 'Spirit of 13' citizen-sponsored initiative provides permanent constitutional protection for taxpayers from excessive taxation. A 'yes' vote for Proposition 4 will *preserve* the gains made by Proposition 13.

VERY SIMPLY, this measure:

- 1) WILL limit state and local government spending.
- 2) WILL refund or credit excess taxes received by the state to the taxpayer.
- 3) WILL curb excessive user fees imposed by local government.
- 4) WILL eliminate government waste by forcing politicians to re-think priorities while spending our tax money.
- 5) WILL close loopholes government bureaucrats have devised to evade the intent of Proposition 13.

ADDITIONALLY, this measure:

- 1) WILL NOT allow the state government to force programs on local governments without the state paying for them.
- 2) WILL NOT prevent the state and local governments from responding to emergencies whether natural or economic.
- 3) WILL NOT prevent state and local governments from providing essential services.
- 4) WILL NOT allow politicians to make changes (in this law) without voter approval.
- 5) WILL NOT favor one group of taxpayers over another.

Proposition 4 is a well researched, carefully written citizen-sponsored initiative that is sponsored by the signatures of nearly one million Californians who know that the 'Spirit of 13' is the next logical step to Proposition 13.

Your 'yes' vote will guarantee that excessive state tax surpluses will be returned to the taxpayer, not left in the State Treasury to fund useless and wasteful programs.

This amendment is a reasonable and flexible way to provide discipline in tax spending at the state and local levels and will not override the desires of individual communities—a majority of voters may adjust the spending limits for local entities such as cities, counties, etc.—

it will force return of any additional taxation to voter control! To protect our government's credit rating on behalf of the taxpayers, the limit does not apply to user charges required to meet obligations to the holders of existing or future bonds regardless of voter approval.

For California's sake, we sincerely urge a Yes vote on Proposition 4 to continue the Spirit of Proposition 13.

PAUL GANN

Coauthor, Proposition 13

CAROL HALLETT

*Member of the Assembly, 29th District
Assembly Minority Leader*

No government should have an unrestricted right to spend the taxpayer's money. Government should be subject to fiscal discipline no less than the citizens it represents.

Proposition 4 is a thoughtfully drafted spending limit. It will require state and local governments to limit their budgets yet provide for reasonable growth and meet emergencies.

It will not require wholesale cuts in necessary services. Californians want quality education, health services, police and fire protection.

Our citizens want to provide adequately for the elderly, the disabled, the abandoned children. Such programs will not be impaired.

Government must continue to be sensitive to human needs. A rational spending limit is not only consistent with that view, it is essential if government services are to be rendered effectively.

Nothing hinders the prompt attention to real needs as surely as an inefficient bureaucracy.

We need lean, flexible, responsive government. We need sensible spending controls that will help eliminate waste without sacrificing truly useful programs.

Proposition 4 offers that possibility.

LEO T. MCCARTHY

*Member of the Assembly, 18th District
Speaker of the Assembly*

Rebuttal to Arguments in Favor of Proposition 4

Don't be misled by promises!

The proponents make Proposition 4 sound like a cure-all for every government ill. They make Proposition 4 seem like a magic wand that will transform government into an efficient machine perfectly responsive to the public will. What nonsense!

Proposition 4

- will NOT eliminate government waste;
- will NOT eliminate user fees;
- will NOT allow governments to respond to emergencies without severe penalty.

What about waste? Proposition 4 puts the power to decide how spending limits will be met right back into the hands of the very same officials who have yet to prove they know how to cut waste. They find it much easier to cut services than to cut fat!

What about fees? The measure itself states that user fees, service charges and admission taxes can still be levied. (Check Sections 3(b) and 8(c)).

What about emergencies? Every time an emergency occurs, future expenditures in other important areas will have to be cut back. It is irresponsible to pit everyday services (like police and fire protection)

against the extraordinary needs of an emergency.

Proposition 4

- will NOT guarantee YOU a tax refund;
- will NOT preserve needed services;
- will NOT allow California to cope with the ravages of inflation and unemployment.

Recession and inflation are ganging up on government *and* on taxpayers. Proposition 4 is too inflexible to assure adequate government services for an uncertain future.

VOTE NO ON PROPOSITION 4!

JONATHAN C. LEWIS

*Executive Director
California Tax Reform Association*

SUSAN F. RICE

*President
League of Women Voters of California*

JOHN F. HENNING

*Executive Secretary-Treasurer
California Labor Federation AFL-CIO*

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Limitation of Government Appropriations — Initiative Constitutional Amendment

4

Argument Against Proposition 4

Proposition 4 DOES NOT guarantee that the “fat” will be cut from government. Proposition 4 IS NOT tax reform. Proposition 4 is, instead, a rash measure that places a straitjacket on government at the very moment when Californians are faced with an uncertain economic future.

Some of the state’s largest businesses, financial institutions, utilities, agribusiness and real estate interests spent \$537,000 putting Proposition 4 on the ballot. Doesn’t it strike you as strange that these interests are backing a so-called “grassroots” initiative?

All Californians are understandably concerned about rising taxes. We all want efficient government *and* a fair tax system. But who will really benefit from Proposition 4? Will it be *you* or the special interests backing this measure?

Proposition 4 does not guarantee tax relief for the individual. There is no guarantee that any excess government revenues will necessarily be used to lower *your* taxes. Genuine tax reform means changing the tax system so everyone pays his or her fair share.

During the past 20 years the burden of taxation has shifted from business and commercial interests to the individual taxpayer. The percentage of state and local taxes paid by business has dropped from 57% to only 37%. This partially accounts for the increase in your tax bills.

It is a myth to believe that Proposition 4 will streamline government. Nowhere in the proposal is there a requirement to cut

unnecessary or wasteful government spending. The “fat” in government could go untouched while cuts are made in vital and important services.

Passage of this measure could cripple economic growth in California. There will be no advantage for cities and counties to approve new commercial developments. Because of the spending limitation, revenues generated by new commercial development cannot be spent by local entities already at their spending limit. However, services must still be provided to new commercial and housing developments, which will result in a reduction in the level of services already provided to existing residents and businesses. Communities will be forced to choose between creating new jobs and cutting services.

Proposition 4 is smokescreen politics. That is why we ask you to join us in voting NO.

JONATHAN C. LEWIS
Executive Director
California Tax Reform Association

SUSAN F. RICE
President
League of Women Voters of California

JOHN F. HENNING
Executive Secretary-Treasurer
California Labor Federation, AFL-CIO

Rebuttal to Argument Against Proposition 4

The arguments submitted by the groups opposing Proposition 4 should come as no surprise—particularly to those of us who supported Proposition 13 last year. Scare tactics, distortion and a healthy smattering of “buzzwords” are the same devices used time and again against the people whenever they decide it’s time to offer a logical and reasonable solution. In this case, the people simply want to place *a limit on government spending*.

If you are among the people who think government should *not* have the unrestricted right to spend taxpayers’ money, you can recite these facts to your friends and neighbors.

FACT: In the past 20 years, government spending increased 5 times beyond the allowable limits of Proposition 4.

FACT: Proposition 4 *requires* that surplus funds be returned to the taxpayers.

FACT: Proposition 4 will force politicians to prioritize and

economize just as households and small businesses do to make ends meet.

FACT: Proposition 4 is supported by nearly one million voter signatures, the Democratic and Republican leaders of the State Assembly, state cochairperson Secretary of State March Fong Eu, the California Taxpayers’ Association, the California Chamber of Commerce, the 83,000 family-farm member California Farm Bureau, the 55,000 small business member Federation of Independent Business, local taxpayer associations, and scores of civic and community leaders concerned about the ever-increasing growth of government spending.

Please join us in voting “Yes” on Proposition 4 to maintain the Spirit of 13.

PAUL GANN
Coauthor, Proposition 13

mately \$7.9 billion from the "proceeds of taxes" in fiscal year 1978-79, after taking into account the exclusions listed above. This amount, referred to as "appropriations subject to limitation," represents approximately 40 percent of *total* General Fund and special fund appropriations made for that fiscal year. The main reason why the state's appropriation limit covers less than half of the state's total expenditures is that a large proportion of total state expenditures represents funds passed on to local governments for a variety of public purposes. Under this ballot measure, these funds would be subject to the limits on local, rather than state, appropriations.

The *appropriation limit for a local government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period of July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," *plus* state financial assistance received in that year, *less* amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriations limit in each subsequent year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. For each school district, "population" is defined in this measure as the district's average daily attendance.

The following types of appropriations would not be subject to the local limit:

- (1) Refunds of taxes;
- (2) Appropriations required for payment of local costs incurred as a result of state mandates. (The initiative requires the state to reimburse local governments for such costs, and the appropriation of such funds would be subject to limitation at the state level.);
- (3) Payments for interest and redemption charges on debt existing on or before January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations required to pay the local government's cost of complying with mandates imposed by federal laws and regulations or court orders.

Furthermore, any special district which was in existence on July 1, 1978, and which had a 1977-78 fiscal year property tax rate of 12½ cents per \$100 of assessed value or less, would never be subject to a limit on appropriations. Special districts which do not receive any funding from the "proceeds of taxes" would also be exempt from the limits.

Under the initiative, the limit on state or local government appropriations could be changed in one of four ways:

- (1) An appropriation limit *may* be changed temporarily if a majority of voters in the jurisdiction approve the change. Such a change could be made for one, two, three, or four years, but it could *not* be effective for more than four years

unless a majority of the voters again voted to change the limit.

- (2) In the event of an emergency, an appropriation limit *may* be exceeded for a single year by the governing body of a local government without voter approval. However, if the governing body provides for an emergency increase, the appropriation limits in the following three years would have to be reduced by an amount sufficient to recoup the excess appropriations. The initiative does not place any restrictions upon the types of circumstances which may be declared to constitute an emergency.
- (3) If the financial responsibility for providing a program or service is transferred from one entity of government to another *government* entity, the appropriation limits of both entities *must* be adjusted by a reasonable amount that is mutually agreed upon. Any increase in one entity's limit would have to be offset by an equal decrease in the other entity's limit.
- (4) If an entity of government transfers the financial responsibility for providing a program or service from itself to a *private* entity, or the source of funds used to support an existing program or service is shifted from the "proceeds of taxes" to regulatory license fees, user charges or use fees, the entity's appropriation limit *must* be decreased accordingly.

If, in any fiscal year, an entity of government were to receive or have on hand revenues in excess of the amount that it appropriates for that year, it would be required to return the excess to taxpayers within the next two fiscal years. The initiative specifies that these funds are to be returned by lowering tax rates or fee schedules. In addition, Legislative Counsel has advised us that direct refunds of taxes paid would also be permitted under the measure.

Because certain types of appropriations would not be directly subject to the limitations established by this ballot measure, it would be possible for the state or a local government with excess funds to spend these funds in the exempt categories rather than return the funds to the taxpayers. For example, the state could appropriate any excess revenues for additional financial assistance to local governments, because such assistance is excluded from the limit on state appropriations. (This, in turn, might result in the return of excess revenues to local taxpayers if a local government were unable to spend these funds within its limit.) Similarly, a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal "indebtedness" under this ballot measure.

Finally, the initiative would establish a requirement that the state provide funds to reimburse local agencies

r the cost of complying with state mandates. The initiative specifies that the Legislature need not provide such reimbursements for mandates enacted or adopted *prior* to January 1, 1975, but does not require explicitly that reimbursement be provided for mandates enacted or adopted after that date. Legislative Counsel advises us that under this measure the state would only be *required* to provide reimbursements for costs incurred as a result of mandates enacted or adopted *after* July 1, 1980.

Fiscal Impact:

This proposition is primarily intended to limit the rate of growth in state and local spending by imposing a limit on certain categories of state and local appropriations. As noted above, approximately 60 percent of current state expenditures would be excluded from the limit on state appropriations, although nearly all of these expenditures would be subject to limitation at the local level. Also, some unknown percentage of local government expenditures would not be subject to the limits on either state or local appropriations. Thus, the fiscal impact of this ballot measure would depend on two factors:

- (1) What the rate of growth in state and local "appropriations subject to limitation" would be, in the absence of this limitation; and
- (2) The extent to which any reductions in "appropriations subject to limitation" required by the measure are offset by increases in those appropriations *not* subject to limitation.

Impact on State Government. During six of the past ten years, total state spending has increased more rapidly than the cost of living and population. Thus, it is likely that, had this measure been in effect during those years, it would have caused "appropriations subject to limitation" to be less than they actually were.

It is *not* possible to predict with any accuracy the future rate of growth in state "appropriations subject to limitation." Thus it is not possible to estimate with any reliability what effect the measure, if approved, would have on such appropriations in the future. However, based on the best information now available (July 1979), we estimate that passage of the initiative would cause state "appropriations subject to limitation" in fiscal year 1980-81 to be modestly lower than they probably would be if the initiative were not approved. This assumes that state reimbursement would only be required for state mandates enacted or adopted after July 1, 1980. If the courts ruled that reimbursement was re-

quired for mandates enacted or adopted after January 1, 1975, the impact of the measure on "appropriations subject to limitation" would be substantial. This is because the state would be required to provide significant reimbursements to local governments within this limitation. We have no basis for predicting the impact in subsequent years.

Whether this would result in a reduction in *total* state spending would depend on whether the state decided to use the funds that could not be spent under the limitation for (1) additional financial assistance to local governments (or for some other category of appropriations excluded from the limit), or (2) state tax relief. Thus, the effect of this ballot measure on state spending in 1980-81 could range from no change to a modest reduction.

Impact on Local Governments. Existing data do not permit us to make reliable estimates of either the appropriation limits that local governments would face in fiscal year 1980-81 if this ballot measure were approved, or what these governments would spend in that fiscal year if the initiative were not approved. Nonetheless, we estimate that those school districts experiencing significant declines in enrollment would have to reduce "appropriations subject to limitation" significantly below what these appropriations would be otherwise. We also estimate that most cities and counties, at least initially, would not be required to reduce the growth in these categories of appropriations by any significant amounts. However, some local governments, especially those with stable or declining populations, could be subject to more significant restrictions on their "appropriations subject to limitation."

Whether any reductions in "appropriations subject to limitation" caused by this measure would result in corresponding reductions in *total* local government expenditures and a return of excess revenues to the taxpayers would depend on whether increased spending resulted in those categories *not* subject to limitation. We have no basis for estimating the actions of local governments in this regard.

Conclusion. Thus, while a reduction in the rate of growth in state or local government expenditures may result from this ballot measure in fiscal year 1980-81, there may be instances in which no reduction in the rate of growth in an individual government's spending occurs. The impact of this measure in subsequent years cannot be estimated, although the measure could cause government spending to be significantly lower than it would be otherwise.

TEXT OF PROPOSITION 3

This amendment proposed by Senate Constitutional Amendment No. 60 (Statutes of 1978, Resolution Chapter 85) expressly adds a section to the Constitution; therefore, provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII

SEC. 3.5. In any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property described in subdivisions (o), (p) and (q) of Section 3 of this article to maintain the same proportionate values of such property.

TEXT OF PROPOSITION 4—Continued from page 17

attendance as determined by a method prescribed by the Legislature;

(g) *"Debt service"* shall mean appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979 or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for such purpose.

(h) The *"appropriations limit"* of each entity of government for each fiscal year shall be that amount which total annual appropriations subject to limitation may not exceed under Section 1 and Section 3; provided, however, that the *"appropriations limit"* of each entity of government for fiscal year 1978-79 shall be the total of the appropriations subject to limitation of such entity for that fiscal year. For fiscal year 1978-79, state subventions to local governments, exclusive of federal grants, shall be deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, *"appropriations subject to limitation"* shall not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

SEC. 9. "Appropriations subject to limitation" for each entity of government shall not include:

(a) *Debt service.*

(b) *Appropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.*

(c) *Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.*

SEC. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption.

SEC. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

EXHIBIT B

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 load¹] 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.

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, 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:

² California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

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 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, 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. 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:

- 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.

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. Each 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 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

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 CFR 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 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 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

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 chapter³ 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.

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 administrative record, including the Statement of Decision, is on file with the Commission.

EXHIBIT C

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 load¹] 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

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	<p>Finance requests that the eligible claimants not subject to a trash TMDL be listed.</p> <p>City claimants assert that listing the claimants is not necessary.</p>	<p>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.</p>
Period of Reimbursement	<p>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.</p> <p>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.</p>	<p>The test claims were filed in September 2003 so reimbursement begins July 1, 2002 (six months after the effective date of the permit).</p> <p>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.</p> <p>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</p>
Reimbursable Activities	<p>Claimants propose activities related to installation and maintenance of trash receptacles at transit stops.</p> <p>Finance and the LA Regional Water Board request that identifying transit stops and installation be omitted.</p>	<p>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.</p>

Reasonable	Claimants submitted survey data from	Do not support the proposed RRM
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<p>Reimbursement Methodology</p>	<p>eight cities and LA County indicating a weighted average of \$6.75 per pick up per receptacle.</p> <p>Finance believes that the RRM does not accurately reflect the costs to implement the mandate.</p> <p>The State Controller’s Office requests that actual costs be reimbursed.</p>	<p>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.</p>
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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 Angeles²
- 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 Village³
- 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 Covina⁴
- 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 RRM 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

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

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 permittees¹⁵ that are *not subject to a Trash TMDL*. Part 4F5c3 of the permit states:

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

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

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 superseded 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

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 Inglewood, *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.

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

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

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.

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

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 guidelines⁴⁹ 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 residue in

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.

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 residue in order to prevent the flow of any waste to enter the storm drain and/or street gutters.”

EXHIBIT D

Adopted: March 24, 2011

**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)

EXECUTIVE SUMMARY

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 load¹] 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 purpose of the permit is to reduce the discharge of pollutants into storm water to the maximum extent practicable.”² The permit complies with the Federal Clean Water Act (CWA), which was

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/lawguidance/cwa/tmdl/index.cfm>> as of March 8, 2011.

² California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

amended in 1972 to implement a permitting system for all discharges of pollutants³ from point sources⁴ to waters of the United States. 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 limitations⁵ 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.)⁶

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 (Finance) were submitted in October 2009, and the claimants submitted rebuttal comments in November 2009.

³ 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.)

⁴ 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).

⁵ *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.)

⁶ *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 621. State and regional board permits allowing discharges into state waters are called “waste discharge requirements” (Wat. Code, § 13263).

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 reasonable reimbursement methodology (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.

Commission staff issued a draft staff analysis in February 2011. The State Controller's Office, Department of Finance, LA County and the city claimants all submitted comments in response to it.

Positions of Parties and Interested Parties

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 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.

In comments on the draft staff analysis, claimants propose reimbursement for some of the ongoing activities under either an RRM or actual costs. Claimant LA County also proposes graffiti removal as a reimbursable activity.

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 an RRM, 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 an 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.

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As of January 1, 2011, the Commission is required to hold a hearing on the adoption of proposed parameters and guidelines under Article 7 of the Commission’s regulations. Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony that is offered under oath or affirmation. Each party has the right to present witnesses, introduce exhibits, and submit declarations. (Gov. Code, § 17559, subd. (b), Cal.Code Regs., tit. 2, § 1187.5.)

Should the Commission adopt this analysis and the proposed parameters and guidelines as modified by staff, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller’s Office to issue claiming instructions to local governments, 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.

Summary Chart

The following provides a brief summary of the eligible claimants, period of reimbursement, reimbursable activities, and the proposed RRM.

Subject	Issues	Staff Recommendation
Eligible Claimants	<p>Finance requests that the eligible claimants not subject to a trash TMDL be listed.</p> <p>City claimants assert that listing the claimants is not necessary.</p>	<p>List the local agency permittees 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 <i>not</i> subject to an operative and effective trash TMDL.</p>
Period of Reimbursement	<p>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.</p> <p>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.</p>	<p>The test claims were filed in September 2003 so reimbursement begins July 1, 2002 (six months after the effective date of the permit).</p> <p>Reimbursement is allowed for receptacles installed at transit stops after the deadlines in the permit. Reimbursement for installation activities is limited to one time per transit stop.</p> <p>Reimbursement under the permit continues until the effective date of a new NPDES storm water permit that supersedes the permit in the test claim</p>
Reimbursable Activities	<p>Claimants propose activities related to installation and maintenance of trash receptacles at transit stops.</p>	<p>Reimbursement is for most installation and maintenance as proposed by claimants except: (1) removing graffiti is not reimbursable; (2) installing a</p>

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	<p>Finance and the LA Regional Water Board request that identifying transit stops and installation be omitted.</p> <p>The State Controller proposes minor changes to boilerplate language and deleting reference to activities beyond installation and maintenance.</p>	<p>receptacle and pad is limited to one-time per transit stop; and (3) picking up trash is limited to not more than three times per week per receptacle.</p>
<p>Reasonable Reimbursement Methodology</p>	<p>Claimants propose an RRM of \$6.74 per trash receptacle per pickup for the ongoing activities listed in Part B of the proposed parameters and guidelines to maintain the trash receptacles. In support of the proposed RRM, the claimants submitted survey data from seven municipalities.</p> <p>Finance states the RRM does not accurately reflect the actual costs to implement the mandate.</p> <p>The State Controller’s Office requests that actual costs be reimbursed.</p>	<p>Adopt the proposed RRM because it is based on cost information from a representative sample of eligible claimants and considers the variation of costs among local agencies to implement the mandate in a cost-efficient manner. (Gov. Code, § 17518.5.)</p>

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 resulted 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

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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, and West Hollywood.

Thus, local agency permittees identified 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, and Vernon.

Beginning September 23, 2008, the local agencies listed above that are subject to the Los Angeles River 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 Los Angeles River 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 up to February 3, 2003 for the remaining transit stops. The cities object to limiting reimbursement to activities performed before 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 permit deadlines because the permit does not excuse municipalities who fail to meet the placement deadline from performing the mandated activity. In addition, transit stops may be added after the deadlines in the permit. Staff also finds, however, that the reimbursement for installation activities is limited to one-time per transit stop. 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 finds that for each eligible local agency, the following activities should be reimbursable:

- A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
 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 drawings.
 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
 4. Purchase or construct receptacles and pads and install receptacles and pads.
 5. Move (including replacement if required) 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. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
 1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
 4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.

Reasonable Reimbursement Methodology

Staff finds that actual costs should be reimbursed for the one-time activities listed in section A above.

Staff finds that an RRM should be adopted to reimburse eligible local agencies for all direct and indirect costs for all of the on-going activities identified in section B above to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing a detailed documentation of actual costs. Under the RRM, the annual unit cost of \$6.74 for each trash collection or “pickup” is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per receptacle per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted by the implicit price deflator as forecast by the Department of Finance.

Staff finds that the proposed RRM is “based on cost information from a representative sample of eligible claimants” (Gov. Code, § 17518.5, subd. (b)) and implements “the mandate in a cost-efficient manner.” (Gov. Code, § 17518.5, subd. (c).)

Conclusion & Recommendation

Staff recommends that the Commission adopt this analysis as its decision along with the attached proposed parameters and guidelines, as modified by staff.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimants

County of Los Angeles (03-TC-04); Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, and Vernon, Claimants (03-TC-20); Bellflower, Covina, Downey, Monterey Park, and 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 Angeles⁷
- 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 Village⁸
- 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 Covina⁹
- 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 claimant 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 claimant submits 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

⁷ 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.

⁸ 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.

⁹ 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.

- 02/12/10 City claimants submit comments on the information from the LA Regional Water Board
- 03/25/10 Commission staff participates in an informal conference on the proposed parameters and guidelines
- 05/13/10 County claimant requests 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 claimant submits 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 claimant submits rebuttal comments to Controller's and Finance's comments
- 08/26/10 City claimants submit rebuttal comments to Controller's and Finance's comments
- 02/08/11 Commission staff issues draft staff analysis and proposed parameters and guidelines
- 02/18/11 State Controller's Office submits comments on the proposed parameters and guidelines
- 02/24/11 County claimant submits comments on the proposed parameters and guidelines
- 02/25/11 City claimants submit comments on the proposed parameters and guidelines
- 03/01/11 Department of Finance submits comments on the proposed parameters and guidelines
- 03/03/11 County claimant submits comments on the proposed parameters and guidelines (graffiti removal)

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:

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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.¹⁰

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 other 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.

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 RRM 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, Finance and the State Controller’s Office 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: 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; instructions on claim preparation, including instructions for the direct or

¹⁰ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.¹¹

The Commission may adopt an RRM for inclusion in the parameters and guidelines.¹² An RRM may be proposed by the claimant, an interested party, the Department of Finance, the Controller's Office, or another affected state agency. 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.

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 an RRM may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years. An RRM shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of 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.¹³

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.¹⁴ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.¹⁵ 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.¹⁶

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

¹¹ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

¹² Government Code section 17557, subdivision (b); California Code of Regulations, Title 2, section 1183.131.

¹³ Government Code section 17518.5.

¹⁴ California Code of Regulations, Title 2, section 1187.

¹⁵ Government Code section 17559, subdivision (b); California Code of Regulations, Title 2, section 1187.5.

¹⁶ California Code of Regulations, Title 2, section 1187.5.

III. Discussion

The analysis of the proposals and comments submitted by the parties, and a description of the proposed parameters and guidelines and RRM 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.¹⁷

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 finds that the “Summary of the Mandate” section of the parameters and guidelines should state:

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.¹⁸

¹⁷ Department of Finance comments dated October 23, 2009.

¹⁸ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), part 4F5c3, page 49.

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 other 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 permittees¹⁹ that are *not subject to a Trash TMDL* as stated in Part 4F5c3 as quoted above.

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.²⁰

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.²¹

¹⁹ 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 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), pages 15-16.

²⁰ County of Los Angeles’ revised parameters and guidelines, filed June 1, 2010.

²¹ 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.

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.²²

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 were 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.

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." "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."²³ Once impaired waters are identified, the states are required to rank them 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.²⁴ 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."²⁵

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

²² Department of Finance comments filed October 23, 2009.

²³ Section 303(d) of the Clean Water Act (codified as 33 U.S.C. § 1313).

²⁴ 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.

²⁵ State Water Resources Control Board, "Total Maximum Daily Loads (TMDL), Questions & Answers," April 2001.

Agency (EPA).²⁶ The TMDL is not effective until the U.S. EPA approves the TMDL. If the U.S. EPA disapproves the state's TMDL, it must establish its own TMDL within 30 days of the disapproval.²⁷

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 identified as a responsible jurisdiction in the TMDL, until the final target of zero trash discharge is attained over a period of several years.²⁸ 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.²⁹ The LA Regional Board reports that these TMDLs became effective on August 28, 2002.³⁰

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 the Los Angeles region or to have established the TMDL itself by a March 24, 2002 deadline.³¹ The State did not adopt and submit a final TMDL by the consent decree deadline so in March 2002 EPA adopted a trash TMDL for the water bodies in the Los Angeles River and Ballona Creek watershed areas.

²⁶ State Water Resources Control Board, "Total Maximum Daily Loads (TMDL), Questions & Answers," April 2001. See also, *City of Arcadia, supra*, 265 F.Supp.2d 1142, 1147.

²⁷ 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.

²⁸ 2001 TMDLs for trash adopted for Ballona Creek and Los Angeles River watershed areas.

²⁹ U.S. EPA, August 1, 2002 letter to the State Water Resources Control Board approving the LA River and Ballona Creek trash TMDLs. See also, *City of Arcadia, supra*, 265 F.Supp.2d 1142, 1147.

³⁰ California Regional Water Quality Control Board, Los Angeles Region, "Basin Plan Amendments – TMDLs." <www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.shtml> as of March 8, 2010

³¹ *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).

EPA's TMDLs were based largely on the TMDLs for trash adopted by the LA Regional Board, but did not contain implementation measures.³² 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."³³ 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.³⁴

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 2002.³⁵ 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, and West Hollywood.³⁶

c) The Los Angeles River Trash TMDL was not effective or operative from August 28, 2002, until September 22, 2008 due to legal challenges

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

³² State Water Resources Control Board, Staff Reports supporting approval of the Trash TMDLs for the Los Angeles River and Ballona Creek watershed areas, July 30, 2002; and letter dated August 1, 2002, from the U.S. EPA approving the TMDLs.

³³ *Ibid.*

³⁴ U.S. EPA, Region 9, "Monitoring, Assessment and TMDLs: EPA-established TMDLs" which lists the March 2002 trash TMDLs for the Los Angeles River and Ballona Creek watersheds adopted by EPA and indicates they were superseded by State trash TMDLs in August 2002. No further EPA TMDLs are listed.

³⁵ 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.)

³⁶ Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010, Appendix I to Regional Board's TMDL for the Ballona Creek and Wetland, dated September 19, 2001.

issued a writ of mandate directing the State and Regional Water Boards to set aside the TMDL until it was brought into compliance with CEQA.³⁷

In accordance with the court's order, the LA 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, 2008.³⁸

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 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 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 LA 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, and Vernon.³⁹

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:

³⁷ *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.

³⁸ Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010, Fact Sheet supporting 2009 amendments to the Los Angeles River trash TMDL, pages 4.

³⁹ Regional Water Quality Control Board, Los Angeles Region, letter dated January 26, 2010; Regional Board Order No. R4-2009-0130, Appendix 7-1.

[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 LA 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 Inglewood, *parts* of Los Angeles, and *some unincorporated areas* of Los Angeles County." (Emphasis added.) Page 23 of the Los Angeles River TMDL (revised draft: July 27, 2007) describes "cities that are only partially located in the watershed" under the description for the refined baseline waste load allocations.⁴⁰

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.

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 claimants 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 Finding on "Eligible Claimants"

Staff finds that Section II of the parameters and guidelines that describe the "Eligible Claimants" should 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 Water 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.

⁴⁰ California Regional Water Quality Control Board, Los Angeles Region, "Trash Total Maximum Daily Loads for the Los Angeles River Watershed." Revised draft: July 27, 2007, page 23.

- 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, and West Hollywood
- 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, and 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 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, and Vernon

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.⁴¹ 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).⁴²

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

⁴¹ 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.”

⁴² 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.

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 to be 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 of pollutants into storm water to the maximum extent practicable.”⁴³ 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 finds that the claimants should be reimbursed for receptacles installed at transit stops after the dates in the permit, staff also finds that the reimbursement for installation activities (as discussed further below) should 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, 2006,⁴⁴ 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.⁴⁵

⁴³ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

⁴⁴ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), page 70.

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

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.⁴⁶

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 finds that the following language in Section III of the parameters and guidelines addressing the "Period of Reimbursement" should be adopted:

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 Quality Control Board for Los Angeles 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. 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. (Gov. Code, § 17561, subd. (b)(1)(A).)
3. 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. (Gov. Code, § 17560, subd. (a).)
4. In the event 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

⁴⁶ California Code of Regulations, title 23, section 2235.4.

issuance date of the revised claiming instructions to file a claim. (Gov. Code, § 17560, subd. (b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564, 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.

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.⁴⁷
5. Repeat steps 3-4 above when necessary for replacement of receptacles/pads.⁴⁸

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 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 A.1 to A.4 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.” In its

⁴⁷ City claimants: “purchase and/or construct and install pads.”

⁴⁸ City claimants: “repeat steps 3-4 above when necessary for replacement of receptacles/pads on a non-individual basis.”

comments submitted March 1, 2011, Finance reiterates these comments in response to the draft staff analysis and proposed parameters and guidelines.

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.”

The State Controller’s Office, in its February 18, 2011 comments on the draft staff analysis, proposes deleting all activities other than “Installation of Trash Receptacles (one-time per transit stop)” and “Maintenance of Trash Receptacles (on-going as needed).”

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 LA 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

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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 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, beyond installing and maintaining trash receptacles, are in the permit. The Commission has discretion, however, to determine “the most reasonable methods of complying with the mandate.”⁴⁹ This is defined as “those methods not specified in statute or executive

⁴⁹ Government Code section 17557; California Code of Regulations, title 5, section 1183.1, subdivision (a)(4).

order that are necessary to carry out the mandated program.”⁵⁰ 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.”⁵¹ 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, is a reimbursable activity as discussed below under B.4.

Staff also finds that all activities in A should be 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

⁵⁰ *Ibid.*

⁵¹ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

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 B.4 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, “collection and disposal of trash,” falls within the plain language of the mandate that requires “all trash receptacles shall be maintained as necessary.” 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 guidelines⁵² 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.”⁵³

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 residue in 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.

⁵² 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.

⁵³ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

In its February 23, 2011 comments on the draft staff analysis, Los Angeles County concurs that graffiti removal should not be reimbursable, and submits declarations from contractors that costs for graffiti removal were not included in the contractors' rates for trash removal and receptacle cleaning. These declarations are further discussed below under "Proposed Reasonable Reimbursement Methodology."

In comments received on March 3, 2011, Los Angeles County submits an engineer's declaration that graffiti removal should be reimbursable, citing maintenance procedures from the California Stormwater Best Management Practices Municipal Handbook. The recommended procedures include using the least toxic materials available for graffiti removal, scheduling graffiti removal for dry weather, and similar activities. The procedures also call for protecting "nearby storm drain inlets prior to removing graffiti from walls, signs, sidewalks, or other structures needing graffiti abatement" and include a declaration of information and belief that the "other structures needing graffiti abatement" includes trash receptacles at bus stops.

There is nothing in the record to support a finding that removing graffiti furthers the purpose of the permit, which is to "reduce the discharge of pollutants into storm water to the maximum extent practicable."⁵⁴ Because graffiti removal is carried out for purposes other than complying with the permit, graffiti removal is beyond the scope of the mandate. Thus, staff finds that graffiti removal is not reimbursable.

In its 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. The survey data that the claimants provided in support of the RRM includes receptacle replacement costs. 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 its February 25, 2011 comments on the draft staff analysis, city claimants propose adding the following: "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." Claimants further include the option to use time studies for repetitive tasks.

Staff disagrees with the language proposed by the city claimants. The RRM is intended to balance "accuracy with simplicity." (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs

⁵⁴ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, Permit CAS004001 (12/13/01), pages 7 and 13.

by using either an RRM, a time study, or actual costs does not conform to this standard. Instead, it would allow claimants to maximize their reimbursement depending on whether or not their costs are higher than the RRM. This is not the purpose of an RRM. For this reason, staff finds that the language allowing claimants to claim costs by electing either the RRM, time studies, or actual costs should not be included under section IV.B.

In its February 18, 2011 comments, the State Controller's Office proposes adding "time sheets and calendars" to the list of evidence that may corroborate the source documents. Claimants have no objection to this proposal. Because time sheets and calendars may serve as evidence to corroborate source documents, staff has included this language in the proposed parameters and guidelines.

The State Controller's Office also proposes deleting "training packets" from the list of evidence that corroborates the source documents. City claimants, in their February 25, 2011 comments, object to this deletion because "training packets can serve as corroborative evidence" and point to "training packets" being listed in prior parameters and guidelines. Staff agrees with the State Controller's Office that training packets should be deleted because training is not a reimbursable activity in this test claim.

In sum, staff finds that the following language for section IV of the parameters and guidelines addressing "Reimbursable Activities" should be adopted:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV.A below. For the ongoing tasks in section IV.B below, claimants are reimbursed under a reasonable reimbursement methodology.

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, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, 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.

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. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
 - 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 drawings.
 - 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
 - 4. Purchase or construct receptacles and pads and install receptacles and pads.
 - 5. Move (including replacement if required) 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. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
 - 1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
 - 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
 - 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
 - 4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.

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, subds. (b) & (c).)

Claimants propose an RRM for the four reimbursable activities listed in Section IV.B to maintain trash receptacles at \$6.74 per trash receptacle times the annual number of trash collections for that receptacle. The claimants propose the following RRM language:

Under this [RRM] 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.

To support the proposed RRM, city and county claimants submitted surveys of 11 local agencies. The surveys of seven local agencies were used to calculate the proposed RRM (surveys from Beverley Hills and Commerce were excluded because those cities are subject to a trash TMDL, and Norwalk's survey was excluded because it included additional costs). Attached to the February 5, 2011 comments on the draft staff analysis was data that further excluded the city of Covina's survey based on contractor billing practices.

Of about 85 eligible claimants (minus some that may be wholly covered a trash TMDL), the seven that are reflected in the survey data used to formulate the RRM comprise at least 8.2% of the eligible claimants. The seven permittees that make up the survey data (with numbers of receptacles that in some cities fluctuate by year) are: Los Angeles County (324-470 receptacles), Downey (151-239 receptacles), Carson (210-198 receptacles), Bellflower (189 receptacles), Azusa (13 receptacles), Artesia (9 receptacles), and Signal Hill (50 receptacles). The variation in the number of receptacles per permittee indicates that both large and small local agency claimants were surveyed. Therefore, staff finds that the proposed RRM is based on a "representative" sample of eligible claimants. (Gov. Code, § 17518.5, subd. (b).)

In its July 23, 2010 comments, 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.

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 "for uniformity and consistency."

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 cite Mr. Yan's declaration regarding cleaning costs. City claimants also state that Signal Hill's contract review is a proper administrative cost, and do not object to deleting a cost of living adjustment.

In the draft staff analysis, staff found that the proposed RRM appeared 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,⁵⁵ 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.

In the February 2011 city and county responses to the draft staff analysis, claimants submitted declarations from the contractors used to clean the transit receptacles. In a declaration, the General Manager of ShelterClean, Inc., stated 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 the County.” A second declaration from the General Operations Manager of Sureteck Industrial & Commercial Services, Inc., also stated that the costs of graffiti removal are not used in developing the rate for cleaning trash receptacles.

Regarding the data submitted from the City of Bellflower for “other” unidentified costs, the claimants state that these costs were for the one-time purchase of trash receptacles and should not be included in the costs used to calculate the RRM. After recalculating the RRM, the claimants now propose \$6.74 per transit stop for the on-going maintenance activities. Because this calculation is based on surveys of actual costs, staff finds that the RRM implements the mandate in a cost efficient manner. (Gov. Code, § 17518.5, subd. (c).)

Given the new evidence submitted by the claimants, staff finds that the evidence in the record now supports a finding that the requirements of Government Code section 17518.5 have been satisfied and recommends that the Commission adopt the proposed RRM.

The claimants, in comments submitted February 25, 2011, propose a cost of living adjustment to their RRM for costs incurred beginning July 1, 2009.

Finance, in its comments submitted July 23, 2010, states that the RRM should be constant from 2002-2009 because “the proposed RRM rate provides a uniform cost allowance that is based on local costs incurred over a seven year period.”

Staff finds that the implicit price deflator, as forecast by the Department of Finance, should be applied to the RRM beginning in fiscal year 2009-2010 because the cost survey on which the RRM is based covers the period from 2002-2009.

Staff finds that the following language should be in the parameters and guidelines:

The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the annual unit cost of \$6.74 for

⁵⁵ 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 residue in order to prevent the flow of any waste to enter the storm drain and/or street gutters.”

each trash collection or “pickup” is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted by the implicit price deflator as forecast by the Department of Finance.

In addition, staff finds that the following record retention language should be included in the parameters and guidelines for any audits conducted by the State Controller’s Office of the costs claimed using the RRM:

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter⁵⁶ 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.

Pursuant to Government Code section 17561, subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.

Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups. If an audit has been initiated by the Controller during the period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.

F. Conclusion & Recommendation

Staff recommends that the Commission adopt this analysis as its decision along with the attached proposed parameters and guidelines, as modified by staff.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁵⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 9, 2021, I served the:

- **Claimants' Comments on the Draft Proposed Decision filed April 9, 2021**

Municipal Storm Water and Urban Runoff Discharges, 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13

Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Claremont, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006

City of Downey, Claimant

Fiscal Years: 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Glendora, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

City of Pomona, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009

City of Santa Clarita, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

City of Signal Hill, Claimant

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 9, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/12/21

Claim Number: 20-0304-I-08 Con. 19-0304-I-04, 20-0304-I-06, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, 20-0304-I-13

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimants: City of Claremont
 City of Downey
 City of Glendora
 City of Pomona
 City of Santa Clarita
 City of Signal Hill
 County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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