Adopted December 3, 2021

STATEWIDE COST ESTIMATE

Estimated Total Costs For All 12 Fiscal Years For Which Costs Were Claimed (2002-2003 through 2013-2014): $8,845,457 - $18,441,556[1,2]

Los Angeles Regional Water Quality Control Board, Order No. 01-182,
Permit CAS004001, Part4F5c3

Municipal Stormwater and Urban Runoff Discharges

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

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate on consent by a vote of 7-0 during a regularly scheduled hearing on December 3, 2021 as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Natalie Kuffel, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Yvette Stowers, Representative of the State Controller, Vice Chairperson	Yes
Spencer Walker, Representative of the State Treasurer	Yes

[1] The last fiscal year for which the Controller accepted claims for this program was fiscal year 2013-2014 and the date for filing late claims for that year has passed. The Controller rejected and did not report to the Commission claims filed after fiscal year 2013-2014. Thus, the Commission assumes that all claims that may be filed for this program have been filed and are accounted for in this Statewide Cost Estimate. Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, page 1.

[2] The high estimate accounts for all costs claimed minus applicable late fees and those audit reductions for which the time to file an IRC has passed, and the low estimate reflects the cost if all of the Controller's audit reductions either go unchallenged or are upheld.

STAFF ANALYSIS

Background and Summary of the Mandate

This Statewide Cost Estimate (SCE) addresses the State's subvention for the mandated activities arising from Los Angeles Regional Quality Control Board Order No. 01-182, NPDES (National Pollutant Discharge Elimination System) Permit CAS004001 (Permit). On July 31, 2009, the Commission adopted the Test Claim Decision finding that Part 4F5c3 of the Permit imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution on the local agency permittees in Los Angeles County that are not subject to a trash total maximum daily load (TMDL)[3] to:

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[4]

The Commission also found that the remainder of the sections pled in the Test Claim (parts 4C2a, 4C2b, & 4E, inspections) are not reimbursable because the claimants have fee authority within the meaning of Government Code section 17556(d), sufficient to pay for those activities (primarily inspections) and therefore there are no costs mandated by the state.[5]

The Commission adopted its Parameters and Guidelines for this program on March 24, 2011.[6]

The parties challenged the Commission's Decisions on the Test Claim and Parameters and Guidelines in the courts on several grounds. However, in 2016, the California Supreme Court agreed with the Commission's findings that the Permit is not a federal mandate and that it imposes a state-mandated program on local agencies.[7] Then, in January 2021, the Second District Court of Appeal affirmed the Commission's findings on the remaining issues.[8] This SCE was on inactive status pending the completion of that litigation.

On May 31, 2011, the State Controller's Office (Controller) issued claiming instructions.[9] Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred in 2002-2003 through 2009-2010 by September 28, 2011.[10] Late initial claims, filed by September 28, 2012, incur a 10 percent late-filing penalty of the total amount of the initial claim

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[3] 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.

[4] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 3.

[5] Exhibit A, Test Claim Decision, adopted July 31, 2009, pages 54-56.

[6] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011.

[7] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749.

[8] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th, 546.

[9] Exhibit C, Controller's Claiming Instructions, No. 2011-05, issued May 31, 2011, revised July 1, 2015, page 1; Government Code section 17558(b).

[10] Government Code section 17561(d)(1)(A). Exhibit C, Controller's Claiming Instructions No. 2011-05, issued May 31, 2011, revised July 1, 2015, page 2.

without limitation.[11] Annual reimbursement claims for fiscal year 2010-2011 and later had to be filed with the Controller by February 15 following the fiscal year in which costs were incurred.[12] Annual claims filed more than one year after the deadline are not accepted, and late claims filed within one year of the deadline incur a 10 percent late-filing penalty not to exceed $10,000.[13]

During the test claim phase, the claimant cities filed a declaration with claims 03-TC-20 and 03-TC-21 stating that they will incur costs estimated to exceed $1,000 to implement the Permit conditions and provided no other evidence of costs.[14] The County of Los Angeles also alleged increased costs over $1,000 for claim 03-TC-04 as follows:

> December 13, 2001 to October 31, 2002: (1) Identify all transit stops in the jurisdiction: $19,989.17; (2) Select proper trash receptacle design, evaluate proper placement, specification and drawing preparation: $38,461.87; (3) Preliminary engineering works (construction contract preparation, specification reviewing process, bid advertising and awarding): $19,662.02; (4) Construct and install trash receptacle units: $230,755.58, construction management $34,628.31; (5) Trash collection and receptacle maintenance in FY 2002-03, $3,513.94, maintenance contractor costs for maintaining and collecting trash in FY 2002-03, $93,982.50; (6) Projected costs for on-going maintenance in FY 2003-04, $375,570.00.[15]

There are 47 local agencies that filed reimbursement claims for this program between fiscal years 2002-2003 through 2013-2014. Between February 2015 and October 2018, the Controller audited 42 local agencies that claimed 93.3 percent ($42.5 million of $45.5 million) of the total funds claimed between fiscal years 2002-2003 and 2013-2014.[16] Five local agencies that claimed a combined total of less than seven percent of costs claimed remain unaudited.[17]

Eligible Claimants and Period of Reimbursement

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.
- 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

[11] Government Code sections 17561(d)(3), 17568.

[12] Government Code section 17560(a).

[13] Government Code section 17568.

[14] Exhibit A, Test Claim Decision, adopted July 31, 2009, page 50.

[15] Exhibit A, Test Claim Decision, adopted July 31, 2009, page 50.

[16] Exhibit G(3), Spreadsheet of Audited Claims, page 1.

[17] The Cities of Burbank, La Mirada, Monrovia, Rancho Palos Verde, and Vernon have not been audited. Exhibit G(3), Spreadsheet of Audited Claims, page 1.

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.[18]

The Parameters and Guidelines identify the period of reimbursement beginning July 1, 2002, as follows:

> 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.

[18] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 4.

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.[19]

Reimbursable Activities

For each eligible local agency, the following activities in Section IV of the Parameters and Guidelines 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.[20]

Reasonable Reimbursement Methodology Adopted for the Ongoing Activities in Section IV.B. of the Parameters and Guidelines

For the ongoing activities in Section IV.B. of the Parameters and Guidelines, the Commission adopted a reasonable reimbursement methodology (RRM) of $6.74 (adjusted annually by the implicit price deflator beginning in fiscal year 2009-2010) for each trash collection multiplied by

[19] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, pages 4-5.

[20] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 6.

the annual number of trash collections, limited to no more than three pickups per week, as follows:

> Direct and Indirect Costs
>
> 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 unit cost of $6.74, during the period of July 1, 2002 to June 30, 2009, 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 week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.[21]

Offsetting Revenues and Reimbursements

According to the Parameters and Guidelines:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[22]

Statewide Cost Estimate

Commission staff reviewed 462 reimbursement claims filed by 46 cities[23] and Los Angeles County, and data compiled by the Controller.[24] These claims totaled $45,544,666 for fiscal years 2002 through 2014.[25] Of the 47 local agencies that filed for reimbursement, 21 claimed one-time costs under Section IV.A. (to install or move trash receptacles at transit stops) totaling $1,598,465, representing 3.5 percent of the costs claimed, for direct and indirect costs incurred between 2002-2003 through 2013-2014.[26] Most of the costs claimed, $43,946,202 (96.5

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[21] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, pages 8-9.

[22] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 9.

[23] Exhibit G(5), Spreadsheet of Claims Data, page 2. All local agencies filed for costs incurred during the initial reimbursement period except for the City of Gardena, which only filed for fiscal year 2013-2014. Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, page 1.

[24] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, page 1.

[25] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, page 1.

[26] Exhibit G(6), Spreadsheet of One-Time Costs, page 1.

percent), were for ongoing costs to collect and dispose of trash and maintain the receptacles and pads under Section IV.B. and were claimed using the RRM.[27]

Total Costs Claimed for All Fiscal Years (2002-2003 through 2013-2014)

According to data submitted by the Controller, the 462 reimbursement claims filed for this program total $45,544,666 (not including late penalties) for fiscal years 2002-2003 through 2013-2014.[28] Because the last year that claims were filed for was 2013-2014 and the last year to file late claims for 2013-2014 was 2014-2015, this is assumed to be the maximum potential state liability for this program. The breakdown of total claims is as follows:

$1,552,218	Reimbursable Activities Under Section IV.A. of the Parameters and Guidelines – Purchase and Install Trash Receptacles (one-time per transit stop)[29]
$43,946,202	Reimbursable Activities Under Section IV.B. of the Parameters and Guidelines - Maintain Trash Receptacles and Pads (ongoing direct and indirect costs reimbursed under the RRM)[30]
$46,246	Indirect Costs Related to the Reimbursable Activities under Section IV.A.[31]
$45,544,666	**Total Costs Claimed**

However, the low estimate reflects audit reductions taken by the Controller of $36,699,209[32] that would reduce the total costs to $8,845,457, assuming they all go unchallenged or are upheld. The high estimate reflects late fees totaling $1,434,385[33] that would apply to all the costs claimed and would reduce the total costs to $44,110,281, and audit reductions for which the time to file an Incorrect Reduction Claim (IRC) has passed that reduces the total by $25,668,725 more, as explained below. Therefore, the total SCE for all years of the program ranges from $8,845,457 to $18,441,556.

In its comments on the Draft Proposed SCE, the County of Los Angeles "supports the Draft Cost Estimate's inclusion of a cost estimate range that recognizes that the amount to fund the mandate will be higher should be [sic] Commission's decisions on the IRCs be reversed by a court."[34]

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[27] Exhibit G(6), Spreadsheet of One-Time Costs.

[28] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, page 1.

[29] Exhibit G(5), Spreadsheet of Claims Data, page 2.

[30] Exhibit G(5), Spreadsheet of Claims Data, page 2.

[31] Exhibit G(5), Spreadsheet of Claims Data, page 2.

[32] Exhibit G(3), Spreadsheet of Audited Claims, page 1.

[33] Exhibit G(7), Spreadsheet of Late Claims, page 1.

[34] Exhibit F, County of Los Angeles' Comments on the Draft Proposed Statewide Cost Estimate, filed October 25, 2021, page 1.

Costs Claimed, Less Audit Reductions or Late Fees, for all Fiscal Years Claimed (2002-2003 through 2013-2014)

The estimated costs for all fiscal years claimed (2002-2003 through 2013-2014*)* ranges from $8,845,457 (assuming all the Controller's audit reductions go unchallenged or are upheld) to $18,441,556 (based on actual costs claimed less applicable late-filing penalties, and audit reductions for which the time to file an IRC has passed) as follows:

$1,552,218	Reimbursable Activities Under Section IV.A. of the Parameters and Guidelines – Purchase and Install Trash Receptacles (one-time per transit stop)[35]
$43,946,202	Reimbursable Activities Under Section IV.B. of the Parameters and Guidelines - Maintain Trash Receptacles and Pads (ongoing direct and indirect costs reimbursed claimed using the RRM)[36]
$46,246	Indirect Costs Related to Reimbursable Activities Under Section IV.A.[37]
($36,699,209) – ($25,668,725)	All Audit Adjustments or Offsetting Revenues[38]
$0 - ($1,434,385)	Less 10 Percent Late-Filing Penalty[39]
$8,845,457 - $18,441,556	**Total Estimated Costs from 2002-2003 to 2013-2014**[40]

[35] Exhibit G(6), Spreadsheet of One-Time Costs, page 1.

[36] Exhibit G(5), Spreadsheet of Claims Data, page 2.

[37] Exhibit G(4), Spreadsheet of Indirect Costs. For the initial claiming period, indirect costs were filed only by Baldwin Park ($19,897) Covina ($93), Downey ($85), Lakewood ($222), Lawndale ($1,669), Manhattan Beach ($1,673), Norwalk ($2,354), Pomona ($98), Santa Monica ($2,691), and the County of Los Angeles ($15,166). Initial indirect costs represent 0.12 percent of the initial claims.

[38] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021, pages 2-1874. The low estimate ($36,699,209) assumes the Controller's audit reductions are all unchallenged or upheld. The high estimate ($25,668,725) assumes that only the Controller's audit reductions beyond the period of limitation to file an IRC remain final.

[39] Exhibit G(7), Spreadsheet of Late Claims, page 1. Late initial claims were filed by Beverly Hills, Glendale, the City of Los Angeles, and the County of Los Angeles and late annual claims were filed by the cities of Beverly Hills, Claremont, Commerce, Downey, Glendora, La Puente and Lynwood. Applicable fees of 10 percent for all late claims filed are estimated to total $1,434,385.

[40] The low estimate is the amount claimed minus all audit reductions. The high estimate is the amount claimed minus late penalties and those audit reductions that are beyond the period of limitation to file an IRC.

Assumptions

Based on the claims data and other publically available information, the Commission makes the following assumptions and uses the following methodology to develop the SCE for this program.

- *The Controller rejected claims filed after fiscal year 2013-2014, and late claims for costs incurred from fiscal years 2002-2003 through 2013-2014 may no longer be filed. Thus, it is assumed that all claims that may be filed have been filed and they are accounted for in this SCE.*

Generally, reimbursement under article XIII B, section 6 continues to be required for each fiscal year for which actual increased costs are incurred by local governments to comply with the reimbursable state-mandated program.[41] The last fiscal year for which the Controller accepted any claims filed for this program was fiscal year 2013-2014.[42] The claiming instructions were last amended on July 1, 2015[43] and no longer appear on the Controller's website. Additionally, late claims for costs incurred from fiscal years 2002-2003 through 2013-2014 may no longer be filed.[44]

For initial reimbursement claims (2002-2003 through 2009-2010), Government Code section 17561(d)(1) requires local agencies to submit reimbursement claims to the Controller within 120 days of the date the claiming instructions are issued. If the local agency does not submit a claim for reimbursement within the 120-day period, it may submit a claim for reimbursement as specified in Section 17560. The claiming instructions in this case were issued on May 31, 2011.[45] Eligible claimants were required to file initial reimbursement claims with the Controller by September 28, 2011.[46] Late initial claims filed by September 28, 2012 incurred a 10 percent late-filing penalty of the total amount of the initial claim without limitation.[47] But, "[i]n no case shall a reimbursement claim be paid that is submitted more than one year after the deadline …"[48]

For annual reimbursement claims (2010-2011 through 2013-2014), Government Code 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in

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[41] Article XIII B, section 6 of the California Constitution; Government Code sections 17514, 17560, and 17561.

[42] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021.

[43] Exhibit C, Controller's Claiming Instructions No. 2011-05, issued May 31, 2011, revised July 1, 2015, page 1.

[44] Government Code sections 17560(a), 17568.

[45] Exhibit C, Controller's Claiming Instructions No. 2011-05, issued May 31, 2011, revised July 1, 2015, page 1; Government Code section 17558(b).

[46] Government Code section 17561(d)(1)(A). Exhibit C, Controller's Claiming Instructions No. 2011-05, issued May 31, 2011, revised July 1, 2015, page 2.

[47] Government Code sections 17561(d)(3), 17568.

[48] Government Code section 17568.

which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.[49] Government Code section 17568 allows valid reimbursement claims to be submitted after that deadline and receive a 10 percent late-filing penalty, but "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." (Emphasis added.) In this case, the annual reimbursement claims for fiscal year 2013-2014 were due on February 15, 2015. Late claims could be filed no later than February 15, 2016.

Accordingly, this SCE reflects the costs actually claimed from 2002-2003 through 2013-2014 and no further late claims may be filed. Thus, it is assumed that all claims that may be filed have been filed and are accounted for in this SCE.

- *Claims filed during the initial reimbursement period (2002-2003 through 2009-2010) were higher than annual claims (2010-2011 through 2013-2014) partly because of higher one-time costs claimed during the initial period of reimbursement, with 90 percent of the one-time costs claimed to purchase and install receptacles.*

The plain language of the test claim permit requires local agency permittees to place trash receptacles at all sheltered transit stops within their jurisdictions no later than August 1, 2002, and at all other transit stops no later than February 3, 2003, and these costs are eligible for reimbursement under Section IV.A. of the Parameters and Guidelines. The Commission found, however, that reimbursement for the costs of placing trash receptacles at transit stops was not limited to only those costs incurred before the deadlines. According to the Commission's Decision on the Parameters and Guidelines:

> 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." 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.[50]

Therefore, the Parameters and Guidelines authorize reimbursement for receptacles installed at transit stops after the deadlines in the permit, but only as a one-time cost per transit stop.[51]

Claims for one-time costs represent less than four percent of total costs claimed and were filed by 21 of the 47 local agencies that filed claims for reimbursement. The data shows that one-time costs to purchase and install receptacles were filed for all fiscal years (2002-2014) claimed. However, most claims for one-time costs were claimed for the initial period of reimbursement and they were highest in fiscal years 2002-2003 and 2006-2007, as follows:

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[49] Government Code section 17560 was last amended by was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008.

[50] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 31.

[51] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 31.

2002-2003 - $507,313
2003-2004 - $185,414
2004-2005 - $53,460
2005-2006 - $54,481
2006-2007 - $498,692
2007-2008 - $135,611
2008-2009 - $58,131
2009-2010 - $2,434

Total for initial period - $1,495,536[52]

For annual claims from 2010-2011 to 2013-2014, claims for one-time costs were generally lower than during the initial reimbursement period:

2010-2011 - $3,768
2011-2012 - $1,685
2012-2013 - $42,867
2013-2014 - $8,363

Total for annual claims - $56,683[53]

The Parameters and Guidelines separate one-time costs into five distinct activities, with the claimed costs to "4. purchase or construct and install receptacles and pads" totaling 90 percent of the one-time costs for all years as follows:[54]

Activity (all one-time per transit stop)	Claims (2002-2003 through 2013-2014)	Percent of Total One-time Activities
1. Identify locations of all transit stops in the jurisdiction required to have a trash receptacle.	$29,876	2%
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.	$51,574	3%
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.	$28,711	2%
4. Purchase or construct receptacles and pads and install receptacles and pads.	$1,393,843	90%
5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including	$48,215	3%

[52] Exhibit G(6), Spreadsheet of One-Time Costs, page 1.

[53] Exhibit G(6), Spreadsheet of One-Time Costs, page 1.

[54] Exhibit G(6), Spreadsheet of One-Time Costs, page 1.

costs of removal and restoration of property at former receptacle location and installation at new location.[55]		
TOTAL	$1,552,219	100%

- *Claims filed for the initial reimbursement period (2002-2003 through 2009-2010) were higher than annual claims (2010 through 2014), likely because many local agencies became subject to a trash TMDL in the later years.*

As indicated in the Parameters and Guidelines, only those local agency permittees identified in the Test Claim Permit that are *not* subject to a trash TMDL are eligible to claim reimbursement for the mandated activities. The state's trash TMDL for the Ballona Creek area was in effect beginning in March 2002, before the period of reimbursement in this case (July 1, 2002). The local agencies identified in the Ballona Creek trash TMDL (Beverly Hills, Culver City, Inglewood, Los Angeles, Los Angeles County, Santa Monica, and West Hollywood) are only eligible for reimbursement to the extent they have transit stops located in areas *not* subject to a trash TMDL.[56]

The claimants listed below, however, became subject to the Los Angeles River trash TMDL on September 23, 2008 (the effective date of the TMDL), six years after the period of reimbursement began for this program. Thus, the following agencies were only eligible to claim reimbursement for transit stops in areas covered by the Los Angeles River trash TMDL before it became effective, from August 28, 2002 until September 22, 2008:

> 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.[57]

After the Los Angeles River trash TMDL became effective, these same local agencies could claim reimbursement "only to the extent they have transit stops located in areas not covered by the Los Angeles River trash TMDL requirements."[58]

The claims data shows that 12 of the 46 local agencies that filed reimbursement claims during the initial period of reimbursement[59] did not file any claims after fiscal year 2008-2009, so the average of the total annual costs claimed went down from $4,396,421for the initial claiming

[55] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 40.

[56] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 27.

[57] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 4.

[58] Exhibit B, Decision and Parameters and Guidelines, adopted March 24, 2011, page 4.

[59] Although 47 local agencies filed claims, 46 filed during the initial period of reimbursement because Gardena did not file a claim until fiscal year 2013-2014. Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021.

period (2002-2003 to 2009-2010) to $2,657,234 during the annual claiming period (2010-2011 to 2013-2014).[60] Therefore, the claims filed for the initial period of reimbursement are higher than the annual claims filed for the later years likely because many local agency claimants became subject to a trash TMDL and were then only required to install and maintain trash receptacles at transit stops in areas not covered by a trash TMDL.

- *The total amount for this program may be significantly lower than the total amount claimed based on the Controller's audit findings.*

The Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable.[61] Therefore, costs may be lower than the total amount claimed based on reductions in the findings of audits conducted thus far or in the future.

Forty seven local agencies have filed reimbursement claims for this program. The Controller has conducted 51 audits of reimbursement claims for most or all of the fiscal years claimed by 42 of the 47 local agencies.[62] Of the $45,544,666 in direct and indirect costs claimed for all fiscal years, from 2002-2003 through 2013-2014, $42,509,725 has been audited (93 percent), and $3,034,941 (7 percent) has not been audited.[63] Of the $4.3 million audited, the Controller has reduced $36,699,209 in direct and related indirect costs and found that $5,810,516 (14 percent of funds audited) is allowable.[64]

As explained below, 93 percent of the Controller's reductions to date have not been challenged or have been upheld by the Commission; seven percent of the reductions are at issue in pending IRCs; and one percent of the costs claimed have not yet been audited, but may be audited in the future.

Claimants have three years to file an incorrect reduction claim (IRC) with the Commission following the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.[65] Of the 42 local agencies that the Controller audited, 13 have filed IRCs alleging that the Controller's reductions are incorrect. On May 28, 2021, the Commission adopted its Decision denying Consolidated IRCs filed by seven of those claimants, including the County of Los Angeles, on seven audit reports finding that the Controller's reductions, totaling $7,106,836 in funds that should have been identified and deducted as offsetting revenues but were not, were correct as a matter of law.[66] On

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[60] Exhibit G(5), Spreadsheet of Claims Data, page 1.

[61] Government Code section 17561(d)(1)(C)(ii) & (d)(2)(B).

[62] Exhibit G(3), Spreadsheet of Audited Claims.

[63] Exhibit G(3), Spreadsheet of Audited Claims.

[64] Exhibit G(3), Spreadsheet of Audited Claims.

[65] Government Code sections 17551(d), 17558.7(a); California Code of Regulations, section 1185.1(c).

[66] Exhibit G(1), Commission on State Mandates, Consolidated Incorrect Reduction Claim Decision, *Municipal Stormwater 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, 20-0304-I-13, adopted May 28, 2021. The claimants (Cities of Claremont, Downy, Glendora, Pomona, Santa Clarita, Signal Hill, and

July 23, 2021, the Commission adopted its Decision denying another IRC filed by the City of Bellflower on this program on the same grounds, finding that the Controller's reduction of $530,321, which should have been identified and deducted as offsetting revenues but was not, was correct as a matter of law.[67] The local agencies may challenge the Commission's decisions on the IRCs in court by filing a petition for writ of mandate pursuant to Government Code section 17559(b). In comments on the Draft Proposed SCE, the representative of the County of Los Angeles supported this statement because it "is appropriate . . . to acknowledge that the Commission's decisions on the . . . (IRCs) in this matter are still subject to court review."[68]

If the Commission's decisions are not challenged or are upheld, then statewide costs are estimated to be significantly lower than the costs claimed for this program.

Four of the seven claimants that joined the consolidated IRC that the Commission decided on May 28, 2021 chose *not* to challenge an additional $757,056 in reductions by the Controller based on other grounds that were not at issue in the consolidated IRC, and the deadline to file an IRC on these reductions has passed, so these reductions are final.[69] The remaining five IRCs on this program pending with the Commission contain audit reductions totaling $2,210,305, which may involve other audit issues in addition to the offsetting revenue issue.[70]

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the County of Los Angeles) received local return funds under Proposition A and C, sales and use taxes levied by the Los Angeles County Metropolitan Transportation Authority, and used those funds to pay for the mandated program. The Commission found that local return funds are not the claimants' proceeds of taxes, are not subject to the claimants' appropriations limit, and are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

[67] Exhibit G(2), Commission on State Mandates, Incorrect Reduction Claim Decision, *Municipal Stormwater and Urban Runoff Discharges,* 18-0304-I-01, adopted July 23, 2021.

[68] Exhibit F, County of Los Angeles' Comments on the Draft Proposed Statewide Cost Estimate, filed October 25, 2021, page 1.

[69] Exhibit G(1), Commission on State Mandates, Consolidated Incorrect Reduction Claim Decision, *Municipal Stormwater 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, 20-0304-I-13, adopted May 28, 2021, pages 12, 14-15 (Cities of Downey (audit report issued June 30, 2017, $465,731 not challenged), Pomona (audit report issued May 21, 2018, $7,959 not challenged), Santa Clarita (audit report issued August 28, 2018, $185,290 not challenged), and Signal Hill (audit report issued June 25, 2018, $98,076 not challenged). See also, Government Code section 17558.7 and California Code of Regulations, title 2, sections 1185.3 and 1185.4, which require that all IRCs joining a consolidated claim have similar reductions of other parties' claims, and that all of the claims involve common questions of law or fact.

[70] The following local agencies currently have IRCs pending on this program: Cities of Norwalk (19-0304-I-02), Arcadia (19-0304-I-03), La Puente (19-0304-I-05), Lakewood (20-0304-I-07), and Hawaiian Gardens (20-0304-I-12).

Of the 51 audits conducted by the Controller, IRCs have *not* been filed on 38 of them and the amount reduced in these audits totals $25,668,725.[71] The period of limitation to file an IRC (three years following the date the claimant receives the final audit report or other written notice of adjustment)[72] has expired for all of them and therefore, these audit reductions, totaling $25,668,725, are final.

Accordingly, of the total amount reduced by the Controller in audits to date ($36,699,209):

- 93 percent of the costs reduced have either not been challenged or have been upheld by the Commission ($25,668,725 in reductions can no longer be challenged because the time to file an IRC has passed + $757,056 in reductions in the Consolidated IRC that were not challenged and are now beyond the period of limitation + $7,106,836 and $530,321 in reductions upheld by the Commission = $34,062,938 divided by $36,699,209 (the total audit reductions taken) = 93 percent);
- Seven percent of the costs reduced ($2,636,271 divided by $36,699,209 = 7 percent) are at issue in pending IRCs; and

A total of $3,304,941 (or seven percent of the total amount claimed, $45,544,666) has not yet been audited, but may be in the future.[73] This amount was claimed by the following local agencies that were not audited for all or some of the years they claimed reimbursement: Cities of Burbank (2002-2003 through 2008-2009), Covina (2013-2014), Cudahy (2002-2003 through 2007-2008), Glendale (2002-2003 through 2007-2008), La Mirada (2002-2003 through 2008-2009), Lakewood (2013-2014), Lawndale (2002-2003 and 2004-2012), Monrovia (all years 2002-2003 through 2008-2009), Norwalk (2013-2014), Paramount (2013-2014), Rancho Palos Verdes (all years 2002-2003 through 2010-2011), San Gabriel (2002-2003 through 2007-2008), Santa Monica (2013-2014), Signal Hill (2013-2014), South Gate (2013-2014), Vernon (all years 2002-2009), West Covina (2013-2014), and the County of Los Angeles (2013-2014). The five local agencies not audited at all (Cities of Burbank, La Mirada, Monrovia, Rancho Palos Verde,

[71] IRCs have not been filed by the following audited claimants (and the amounts reduced): Alhambra ($1,114,628), Baldwin Park ($593,149), Bell Gardens ($152,219), Bell Gardens ($328,569), Beverly Hills ($1,664,084), Carson ($909,690), Cerritos ($60,712), Claremont ($12,112), Commerce ($225,239), Commerce ($73,217), Covina ($1,053,561), Cudahy ($112,960), Gardena ($66,993), Glendale ($167,646), Glendora ($47,838), Hawaiian Gardens ($27,369), Hermosa Beach ($474,880), Inglewood ($1,305,991), La Puente ($65,934), Lawndale ($21,686), City of Los Angeles ($7,790,956), Lynwood ($401,345), Lynwood ($327,664), Manhattan Beach ($656,156), Monterey Park ($1,446,812), Palmdale ($406,227), Paramount ($361,674), Pasadena ($376,576), Pomona ($143,726), San Fernando ($510,621), San Gabriel ($206,616), Santa Fe Springs ($61,064), Santa Fe Springs ($366,513), Santa Monica ($102,138), South Gate ($1,415,136), South Pasadena ($73,896), Torrance ($1,485,382), West Covina ($1,057,746).

[72] California Code of Regulations, title 2, section 1185.1(c).

[73] See Exhibit G(3), Spreadsheet of Audited Claims.

and Vernon) each claimed a total of $151,000 or less for all years claimed.[74] Government Code section 17558.5 allows the Controller to initiate an audit three years after funds are appropriated for the program or payment has been made. In this case, no payments have been made because funds have not yet been appropriated for this program.[75] Thus, the Controller may still audit the unaudited claimed costs of $3,034,941.

Based on the Controller's audit findings, the total statewide costs for this program are likely to be significantly lower than the total amount claimed.

Draft Proposed Statewide Cost Estimate

On October 14, 2021, Commission staff issued the Draft Proposed Statewide Cost Estimate.[76] On October 25, 2021, the County of Los Angeles filed comments on the Draft Proposed Statewide Cost Estimate that have been incorporated herein.[77]

Conclusion

On December 3, 2021, the Commission adopted this Statewide Cost Estimate for a total of $8,845,457 - $18,441,556 for all years for which costs were claimed: 2002-2003 to 2013-2014.

[74] Exhibit D, Controller's Summary of Claims and Claims Filed, Reported as of March 1, 2021, filed March 5, 2021; Exhibit G(3), Spreadsheet of Audited Claims, page 1.

[75] Article XIII B, section 6(b) states the following: "Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law."

Government Code section 17561(e)(1) then states: for the purposes of determining the state's payment obligation under paragraph (1) of subdivision (b) of Section 6 of Article XIII B of the Constitution, a mandate that is "determined in a preceding fiscal year to be payable by the state" means any mandate for which the commission adopted a statewide cost estimate pursuant to this part during a previous fiscal year."

[76] Exhibit E, Draft Proposed Statewide Cost Estimate, issued October 14, 2021.

[77] Exhibit F, County of Los Angeles' Comments on the Draft Proposed Statewide Cost Estimate, filed October 25, 2021, page 1.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On December 6, 2021, I served the:

- **Statewide Cost Estimate adopted December 3, 2021**

  Municipal Stormwater and Urban Runoff Discharges, 03-TC-04, 03-TC-20, 03-TC-21
  Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 6, 2021 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/15/21

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Matter: Municipal Stormwater and Urban Runoff Discharges

Claimants: City of Artesia
City of Azusa
City of Bellflower
City of Beverly Hills
City of Carson
City of Commerce
City of Covina
City of Downey
City of Monterey Park
City of Norwalk
City of Rancho Palos Verdes
City of Signal Hill
City of Vernon
City of Westlake Village
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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