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December 19, 2016

VIA DROPBOX

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Santa Ana Region Water Permit, 09-TC-03
California Regional Water Quality Control Board, Santa Ana
Region, Order No. R8-2009-0030
Response of Joint Test Claimants to Notice of Incomplete Joint
Test Claim Filing

Dear Ms. Halsey:

I have been designated as Claimant Representative by all test claimants in the above-referenced Joint Test Claim and am therefore responding on behalf of Joint Test Claimants County of Orange ("County") and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach and Villa Park (the "Joint Test Claimants") to the Notice of Incomplete Joint Test Claim Filing of November 18, 2016 ("Notice Letter"), which stated that the original joint test claim filing was incomplete on several grounds.

The Joint Test Claimants were originally informed that their test claim was deemed complete as of July 9, 2010. The Notice Letter, issued more than six years later, forced the Joint Test Claimants to expend significant efforts, including locating old financial records and preparing new declarations, test claim forms and revisions to the Narrative Statement. The Joint Test Claimants were thus forced to incur significant, unforeseeable costs to address the issue raised in the Notice Letter or risk having the joint test claim either denied as untimely or rejected for other reasons stated in the Notice Letter. As previously raised in our letter of November 23, the Joint Test Claimants

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respectfully dispute the basis for the Notice Letter, on grounds of law and equity, and therefore reserve their right to contest the Notice Letter before the Commission.¹

Notwithstanding such reservation, and subject to it, the Joint Test Claimants submit with this letter the following new or revised documents:

- (a) New Test Claim Forms;
- (b) A revised Section 5 Narrative Statement; and
- (c) New Section 6 Declarations.

As requested in the Notice Letter, the Joint Test Claimants are not re-attaching any of the supporting documentation, including exhibits. We note, however, that Exhibit A to the original test claim is being withdrawn.

The Notice Letter indicated that to cure the alleged deficiencies in the original test claim, the Joint Tet Claimants were to provide:

1. "Evidence of the date and amount of costs *first* incurred as a result of the alleged new activities required under the Order."
2. "A revised test claim form from each co-claimant."
3. "Revised written narratives and declarations that provide a detailed description of the costs that are modified by the alleged mandate including the *actual* increased costs incurred by each co-claimant during the fiscal year for which the joint test claim was filed as well as the actual or estimated annual costs that will be incurred by

¹More specifically, Joint Test Claimants assert for the record that the Commission cannot make a determination that the test claim is now incomplete when Commission staff notified Joint Test Claimants on July 9, 2010 that the filing was complete pursuant to 2 CCR § 1183(g). Pursuant to that regulation, within 10 days after the filing of the test claim on June 30, 2010, the Commission was required to notify "the claimant if the test claim was complete or incomplete and send a copy of these regulations unless a correct copy was previously provided." The specific items for which a test claim may be deemed incomplete are the same items the Commission noted in its November 18 letter. The Joint Test Claimants submit that by failing to notify the claimants of the specific bases formulating the Commission's November 18 incompleteness determination within the regulatory 10 day period, coupled with the Commission's prior determination that the filing was complete, the Commission has waived its authority to challenge the completeness of the filing. The Joint Test Claimants further submit that the doctrine of estoppel would also bar the Commission from requiring Joint Test Claimants to substantively supplement the Joint Test Claim with new evidence and documentation concerning events occurring some 6 to 7 years ago when the claimants were in a superior position to correct any alleged deficiencies in the filing. Moreover, to the extent that the Commission is relying on regulations adopted after the date the Test Claim was filed (June 30, 2010) and the Commission issued its Notice of Complete Test Claim Filing (July 9, 2010), the Joint Test Claimants respectfully object.

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each co-claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed. In addition, please provide the statewide cost estimate (in this case the “statewide cost” is the cost for all of the local agency co-permittees, whether named or not, for the alleged new program or higher level of service imposed by the permit at issue) for increased costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed.”

Notice Letter, pages 6-7 (emphasis in original).

In response to item 1, the Joint Test Claimants have included evidence of the date of costs first incurred in the Declarations (see paragraphs 6 and 7) and also in relevant sections of the Section 5 Narrative Statement. This information establishes that costs were first incurred for the Joint Test Claimants in FY 2008-09 or FY 2009-10, and thus, the timeliness of the Joint Test Claim. *See* Cal. Code Regs., tit. 2, 1183.1(c). Additionally, information is provided in each Declaration as to the amount of the costs incurred in response to the mandates in the Permit.

In response to item 2, the Joint Test Claimants are herewith filing new test claim forms signed, in the case of the County, by the Auditor-Controller and in the case of the cities by their respective City Managers (or individuals having different titles but functioning as City Managers in the case of the Cities of Costa Mesa and Placentia). The names, addresses and contact information for these individuals are also set forth in Section 2 of the forms. Additionally, as noted above, I am designated as the Claimant Representative for all Joint Test Claimants in Section 3 of the forms.

In response to item 3, as already noted, both the Declarations and the Section 5 Narrative Statement (in revised sections following the description of each mandated activity) state the actual costs incurred in the relevant fiscal years covered by the Joint Test Claim. Also, costs representing the Joint Test Claimants’ best estimate of total statewide costs associated with the Joint Test Claim are set forth in the Section 5 Narrative Statement and are further supported by the Declarations. We also note that while the decision of the Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 is relevant to the discussion of the Los Angeles County test claim in the Narrative Statement, the decision is not discussed therein. Instead, the Joint Test Claimants refer the Commission to their supplemental brief filed on October 21, 2016 and to the supplemental brief filed October 28, 2016 by the City of Irvine.

Please note that while this additional information is being provided to the Commission by the December 19 deadline set in the Notice Letter, the Joint Test Claimants respectfully submit that this deadline is not jurisdictional, both because the regulatory authority cited in the Notice Letter applies only to the initial determination of

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test claim completeness and because the Executive Director has discretion to extend the 30-day time period within which to cure a returned test claim and still allow the test claimant to preserve the original claim filing date. Nevertheless, we believe that the information and evidence submitted herewith fully addresses the issues identified in the Notice Letter. If there are any further concerns or issues regarding these matters, we request a prompt response from your staff concerning them.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Burhenn', with a long horizontal flourish extending to the right.

David W. Burhenn

DB:dwb

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

County of Orange

Name of Local Agency or School District

Eric H. Woolery, C.P.A.

Claimant Contact

Auditor-Controller

Title

12 Civic Center Plaza, Room #200

Street Address

Santa Ana, CA 92702

City, State, Zip

714-834-2450

Telephone Number

714-834-2569

Fax Number

howard.thomas@ocpw.ocgov.com

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Avenue, Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages ____ to ____.

6. Declarations: pages ____ to ____.

7. Documentation: pages ____ to ____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

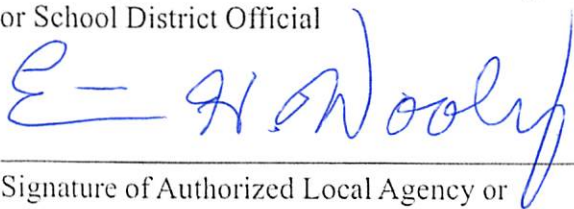
8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Eric H. Woolery

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

Auditor-Controller

Print or Type Title

12-14-2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

I. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

City of Anaheim

Name of Local Agency or School District

Paul Emery

Claimant Contact

City Manager

Title

200 S. Anaheim Blvd. Suite 733

Street Address

Anaheim, CA 92805

City, State, Zip

714-765-5162

Telephone Number

714-765-5164

Fax Number

pemery@anaheim.net

E-Mail Address

II. REPRESENTATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative: pages _____ to _____.
- 6. Declarations: pages _____ to _____.
- 7. Documentation: pages _____ to _____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
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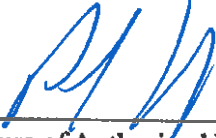
8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Paul Emery

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Brea

Name of Local Agency or School District

Bill Gallardo

Claimant Contact

City Manager

Title

1 Civic Center Circle

Street Address

Brea, CA 92821

City, State, Zip

714-990-7710

Telephone Number

714-990-2258

Fax Number

billga@cityofbrea.net

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030 (NPDES No. CAS618030)

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

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Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

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6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

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*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Bill Gallardo

Print or Type Name of Authorized Local Agency
or School District Official

City Manager

Print or Type Title


Signature of Authorized Local Agency or
School District Official

December 14, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Buena Park

Name of Local Agency or School District

Jim Vanderpool

Claimant Contact

City Manager

Title

6650 Beach Boulevard P.O. Box 5009

Street Address

Buena Park, CA 90622-5009

City, State, Zip

714-562-3550

Telephone Number

714-739-5012

Fax Number

jvanderpool@buenapark.com

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

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Filing Date:

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- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

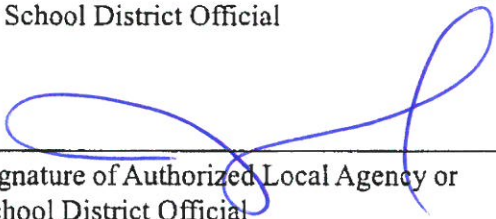
8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission. **

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Jim Vanderpool

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the test claim submission.*

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Tom Hatch

Print or Type Name of Authorized Local Agency
or School District Official

Chief Executive Officer

Print or Type Title



Signature of Authorized Local Agency or
School District Official

December 16, 2016

Date

* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Cypress

Name of Local Agency or School District

Peter Grant

Claimant Contact

City Manager

Title

5275 Orange Ave.

Street Address

Cypress, CA 90630

City, State, Zip

714-229-6700

Telephone Number

Fax Number

pgrant@cypressca.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave., Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhennigest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.

6. Declarations: pages _____ to _____.

7. Documentation: pages _____ to _____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Peter Grant

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 14, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Fountain Valley

Name of Local Agency or School District

Robert Hall

Claimant Contact

City Manager

Title

10200 Slater Avenue

Street Address

Fountain Valley, CA 92708

City, State, Zip

714-593-4410

Telephone Number

714-593-4494

Fax Number

bob.hall@fountainvalley.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhennigest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

TEST CLAIM STATUTES OR EXECUTIVE ORDERS GUID

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.

6. Declarations: pages _____ to _____.

7. Documentation: pages _____ to _____.

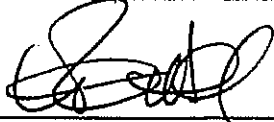
8 CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Robert Hall

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

12/15/2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Fullerton

Name of Local Agency or School District

Gretchen Beatty

Claimant Contact

Interim City Manager

Title

303 W. Commonwealth Ave.

Street Address

Fullerton, CA 92832

City, State, Zip

714-738-6310

Telephone Number

714-738-6758

Fax Number

citymanager@cityoffullerton.com

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

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7. **Documentation:** pages ____ to ____.

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 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
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7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
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- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Gretchen Beatty

Print or Type Name of Authorized Local Agency
or School District Official

Acting
Interim City Manager

Print or Type Title



Signature of Authorized Local Agency or
School District Official

December 19, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Huntington Beach

Name of Local Agency or School District

Fred Wilson

Claimant Contact

City Manager

Title

2000 Main Street

Street Address

Huntington Beach, CA 92648

City, State, Zip

714-375-8465

Telephone Number

Fax Number

Fred.Wilson@surfcity-hb.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave., Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative:** pages ____ to ____.
- 6. Declarations:** pages ____ to ____.
- 7. Documentation:** pages ____ to ____.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Fred Wilson

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Irvine

Name of Local Agency or School District

Sean Joyce

Claimant Contact

City Manager

Title

One Civic Center Plaza

Street Address

Irvine, CA 92623-9575

City, State, Zip

949-724-6246

Telephone Number

949-724-6045

Fax Number

SJoyce@cityofirvine.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave., Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhennigest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

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California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages ____ to ____.

6. Declarations: pages ____ to ____.

7. Documentation: pages ____ to ____.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission. **

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Sean Joyce

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

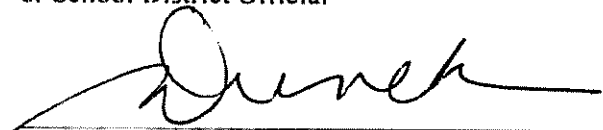
8. CLAIM CERTIFICATION

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Robert Dunek

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

12/15/2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below:*

1. IDENTIFICATION INFORMATION

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Newport Beach

Name of Local Agency or School District

Dave Kiff

Claimant Contact

City Manager

Title

100 Civic Center Drive

Street Address

Newport Beach, CA 92660

City, State, Zip

949-644-3001

Telephone Number

949-644-3020

Fax Number

Dkiff@newportbeachca.gov

E-Mail Address

3. CLAIMANT DESIGNATION OF REPRESENTATIVE

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave., Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhenngest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. IDENTIFICATION OF ALLEGED MANDATE

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages ____ to ____.
6. Declarations: pages ____ to ____.
7. Documentation: pages ____ to ____.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**


This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Dave Kiff

Print or Type Name of Authorized Local Agency
or School District Official

City Manager

Print or Type Title



Signature of Authorized Local Agency or
School District Official

December 7, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Placentia

Name of Local Agency or School District

Damien R. Arrula

Claimant Contact

City Administrator

Title

401 E. Chapman Avenue

Street Address

Placentia, CA 92870

City, State, Zip

714-993-8236

Telephone Number

714-528-4640

Fax Number

darrula@placentia.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhennigest.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2008-0030

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.

6. Declarations: pages _____ to _____.

7. Documentation: pages _____ to _____.

CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Damien R. Arrula

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Administrator

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Seal Beach

Name of Local Agency or School District

Jill Ingram

Claimant Contact

City Manager

Title

211 8th Street

Street Address

Seal Beach, CA 90740

City, State, Zip

562-431-2527

Telephone Number

562-431-4067

Fax Number

jingram@sealbeach ca.gov

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

213-624-1376

Fax Number

dburhenn@burhennigest.com

E-Mail Address

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Filing Date:

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Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030 (NPDES No. CAS618030)

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.

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7. Documentation: pages _____ to _____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission. **

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Jill Ingram

Print or Type Name of Authorized Local Agency
or School District Official

City Manager

Print or Type Title



Signature of Authorized Local Agency or
School District Official

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

1. TEST CLAIM TITLE

Santa Ana Region Water Permit, 09-TC-03

2. CLAIMANT INFORMATION

City of Villa Park

Name of Local Agency or School District

Jarad Hildenbrand

Claimant Contact

City Manager

Title

17855 Santiago Blvd

Street Address

Villa Park, CA 92861

City, State, Zip

714-998-1500

Telephone Number

714-998-1508

Fax Number

jhildenbrand@villapark.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

David W. Burhenn, Esq.

Claimant Representative Name

Partner

Title

Burhenn & Gest LLP

Organization

624 S. Grand Ave. Suite 2200

Street Address

Los Angeles, CA 90017

City, State, Zip

213-629-8788

Telephone Number

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California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

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Sections 5, 6, and 7 are attached as follows:

- 5. Written Narrative:** pages ____ to ____.
- 6. Declarations:** pages ____ to ____.
- 7. Documentation:** pages ____ to ____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

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- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

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- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
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- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

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*Read, sign, and date this section and insert at the end of the test claim submission.**

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Jarad Hildenbrand

Print or Type Name of Authorized Local Agency
or School District Official



Signature of Authorized Local Agency or
School District Official

City Manager

Print or Type Title

December 15, 2016

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

**SANTA ANA REGION WATER
PERMIT, 09-TC-03
SECTION FIVE
NARRATIVE STATEMENT**

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Inspections of Commercial Facilities) of the 2009 Permit.

A. STATEMENT OF INTEREST OF JOINT TEST CLAIMANTS

This test claim is being filed by the County of Orange (“County”) and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach and Villa Park (“Joint Test Claimants”). The Joint Test Claimants are filing this Test Claim jointly and, pursuant to 2 Cal. Code Reg. § 1183.1(g), attest to the following:

1. The Joint Test Claimants allege state-mandated costs resulting from the same Executive Order, i.e., the 2009 Permit;
2. The Joint Test Claimants agree on all issues of the Test Claim; and
3. The Joint Test Claimants have designated one contact person to act as a resource for information regarding the test claim in Section 3 of their Test Claim Forms.
4. All Test Claim forms have been executed by either the Auditor-Controller (on behalf of the County) or by City Managers (or equivalent personnel) of the city Joint Test Claimants.⁴

B. STATEMENT OF ACTUAL AND/OR ESTIMATED COSTS EXCEEDING \$1,000

The Joint Test Claimants further state that, as set forth below and in the attached Section 6 Declarations filed herewith in support, the actual and/or estimated costs from the state mandates set forth in this Test Claim exceed \$1,000 for each of the Joint Test Claimants. This Narrative Statement sets forth specific amounts expended by the Joint Test Claimants as determined from the perusal of pertinent records and as disclosed in the Section 6 Declarations filed herewith, including in the Declaration (Second) of Richard Boon. The Joint Test Claimants respectfully reserve the right to modify such amounts when or if additional information is received.

C. THE TEST CLAIM IS TIMELY FILED

As set forth in the Declarations attached in Section 6, Paragraphs 6(a)-(e) and 7, the Joint Test Claimants either first began incurring increased costs under the 2009 Permit in Fiscal Year (FY) 2008-09 (with respect to the County) or FY 2009-10 (with respect to the other Joint Test Claimants).

The 2009 Permit was adopted by the Santa Ana RWQCB on May 22, 2009 and became effective on June 1, 2009, within FY 2008-09. This is a fact which may be administratively noticed by the Commission, pursuant to Evidence Code §452(d) (records of executive bodies, such as the RWQCB). Thus, any costs incurred pursuant to such executive order could not have been incurred

⁴ The City of Costa Mesa’s Test Claim was executed by Tom Hatch, as Chief Executive Officer. Mr. Hatch is Costa Mesa’s City Manager. See www.costamesca.gov/index.index.aspx?page=77. The City of Placentia’s Test Claim was signed by Damien Arrula as City Administrator. Placentia does not have a City Manager, but its City Administrator serves in an identical function. See www.placentia.org/index.aspx?NID=15.

prior to that date. Nevertheless, as set forth above, the Joint Test Claimants are presenting evidence of the date of first incurrence of costs within either FY 2008-09 or FY 2009-10. The Commission's regulations provide that a test claim must be filed with the Commission "not later than 12 months following the effective date of a statute or executive order, or within 12 months of first incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, 'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."⁵ Whether the Joint Test Claimants first incurred such costs during FY 2008-09 or FY 2009-10, given that this Test Claim was filed on June 30, 2010, prior to the end of FY 2009-10, the Test Claim is, under the Commission's regulations, timely filed.

II. PROGRAM BACKGROUND

California ("State") has long been a leader in protecting the quality of all the waters of the State for the use and enjoyment of the people of the state. In fact, California adopted the Porter Cologne Water Quality Control Act ("Porter-Cologne") in 1969, three years prior to the adoption of the federal Clean Water Act (the "CWA" or "Act") and eighteen years before federal law expressly regulated MS4s. When Congress enacted the CWA, it modeled the Act in part on Porter-Cologne, but scaled back many requirements to meet the needs of a national program. As a result, the comprehensive Statewide program enacted through Porter-Cologne exceeds the more limited regulatory scope of the CWA, including the CWA's NPDES program.

One primary difference between Porter-Cologne and the CWA is the role Congress intended the CWA to play in the state regulatory scheme. When adopting the CWA, Congress preserved the states' ability to impose more stringent water quality controls, allowing the Act to be a federal baseline for water quality.⁶ California quickly elected to graft the CWA's NPDES program into its existing regulatory structure, becoming the first state in the nation authorized to issue NPDES permits. The California Legislature ("Legislature") determined that assuming the responsibility was "in the interest of the people of the State, *in order to avoid direct regulation by the federal government of persons already subject to state law* pursuant to this division. . . ."⁷ In other words, because the State had an existing, more aggressive regulatory program, it was not in the State's interest to allow direct federal regulation through a more narrowly tailored program.

III. FEDERAL LAW

The principal federal law regulating water quality is the CWA, found at 33 U.S.C. § 1251 *et seq.* The CWA, was enacted in 1972, and amended in 1987 to implement a permitting system for all discharges of pollutants from point sources to waters of the United States. In 1987, the CWA was amended to make clear that such discharges include discharges from MS4s. Following

⁵ Cal. Code Regs., tit. 2, § 1183.1, subd. (b).

⁶ Section 510 of the CWA, which is codified at Title 33 U.S.C. §1370, acknowledges the states' authority to adopt or enforce standards of limitations regarding the discharge of pollutants provided such standards are not less stringent than the "effluent limitation, or other limitation, effluent standard, prohibition pretreatment standard or standard of performance: under the CWA.

⁷ Cal Water Code § 13370(c) [emphasis added].

the 1987 amendments, NPDES permits are required for discharges from MS4s serving a population of more than 100,000 or from systems that the United States Environmental Protection Agency ("EPA") or the state determine contribute to a violation of a water quality standard or represent a significant contribution of pollutants to waters of the United States.⁸ Pursuant to the CWA, the MS4 permits:

- (i) may be issued on a system or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.⁹

In 1990, the EPA issued regulations to implement Phase 1 of the NPDES program, defining which entities need to apply for permits and the information to include in the permit application. The permit application must propose management programs that the permitting authority will consider in adopting the permit including the following:

[A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate.¹⁰

Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations¹¹ are not less stringent than those set out in the CWA.¹² The California

⁸ 33 U.S.C. § 1342(p)(2) requires NPDES permits for the following discharges:

- (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
- (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
- (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

⁹ 33 USC § 1342(p)(3)(B)

¹⁰ 40 Code of Federal Regulations (CFR) § 122.26(d)(2)(iv).

¹¹ *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.)

¹² 33 U.S.C. § 1370.

Supreme Court described the NPDES program as follows:

- (iv) 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).)¹³

IV. CALIFORNIA LAW

The CWA requires the EPA to issue NPDES permits to MS4 dischargers, but allows the EPA to delegate that authority to the states.¹⁴ In California, the Legislature has assigned that responsibility to the State Water Resources Control Board ("State Board"), and the individual Regional Water Quality Control Boards ("Regional Boards"). Permits issued by the State Board or the Regional Boards are subject to the same federal regulations, however, because the state of California has broader authority to regulate discharges than the EPA would under the CWA, requirements in NPDES permits issued by the State and Regional Boards frequently exceed the requirements of federal law.

In *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, the California Supreme Court expressly recognized that NPDES permits issued by the State and Regional Boards can exceed the requirements of federal law, describing the statutory scheme as follows:

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat. Code, § 13000 *et seq.*, added by Stats.1969, ch. 482,

§ 18, p. 1051.) Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."

(§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality, (§

¹³ *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 621; Water Code § 13263.

¹⁴ Section 510 of the CWA, codified at Title 33 U.S.C. § 1370, acknowledges the states' authority to adopt or enforce standards or limitations regarding the discharge of pollutants provided such standards are not less stringent than the "effluent limitation, or other limitation, effluent standard, prohibition pretreatment standard or standard of performance" under the CWA.

13001.)

Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240). The regional boards' water quality plans, called "basin plans," must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. (§13050, subd. (j)).¹⁵

With regard to the baseline role that the CWA plays in California water quality law, the Court held:

The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not "*less stringent*" than the federal standard (33 U.S.C. § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority. . .¹⁶

Porter-Cologne therefore provides California with broader authority to regulate water quality than it would have if it were operating exclusively under the CWA. The State's authority under Porter-Cologne extends to non-point sources of pollution such as urban and agricultural runoff, discharges to ground water and discharges to land overlying ground water.¹⁷ It not only establishes broader regulatory authority than the CWA, but also extends that broader regulatory authority to a larger class of waters. It is under this authority that the State and Regional Boards act when issuing NPDES permits that exceed the minimum requirements set forth in federal law, namely Title 40, section 122.26 of the Code of Federal Regulations.

The courts, the State Board and the Regional Boards have repeatedly acknowledged that many aspects of NPDES permits issued in California exceed the minimum requirements of the CWA. In a decision on the merits of the 2001 NPDES permit for San Diego County, the State Board acknowledged that the since NPDES permits are adopted as waste discharge requirements in California, they can more broadly protect "waters of the State," rather than being limited to "waters of the United States."¹⁸ As the State Board has expressed it, "the inclusion of waters of the State' allows the protection of groundwater, which is generally not considered to be 'waters of

¹⁵ *City of Burbank, supra*, 35 Cal.4th at 619.

¹⁶ *Id.* at 627-28.

¹⁷ See Water Code § 13050 [defining the term "Waters of the State" more broadly than the CWA definition of discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system"].

¹⁸ *In Re Building Industry Association of San Diego County and Western States Petroleum Association*, State Board Order WQ 2001-15, Exhibit 9 to the Miscellaneous Authorities included with Section 7 – Documentation.

the United States."¹⁹

The Regional Boards have also acknowledged in official documents that many of the requirements of MS4 permits exceed the requirements of federal law and are based, therefore, on the broader authority of Porter-Cologne. For example, in a December 13, 2000 staff report regarding the San Diego Regional Water Quality Control Board's draft 2001 permit, it was found that 40% of the draft permit requirements "exceed the federal regulations" because they are either more numerous, more specific/detailed, or more stringent than the requirements in the regulations.²⁰

Lastly, in *Burbank*, the California Supreme Court acknowledged that aspects of NPDES permits can exceed federal requirements, and held that to the extent such provisions are not required by federal law, the State and Regional Boards are required to consider state law restrictions on agency action.²¹ Implicit in the Court's decision is the requirement that orders issued by the State and Regional Boards are subject to State Constitutional restrictions, including those on funding set forth in Article XIII B section 6 of the California Constitution.

V. STATE MANDATE LAW

Article XIII B section 6 of the California Constitution requires that the Legislature provide a subvention of funds to local agencies any time the Legislature or a state agency requires the local agency to implement a new program, or provide a higher level of service under an existing program. Article XIII B section 6 states in relevant 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 governments for the cost of such program or increased level of service....

The purpose of Section 6 "is to preclude the State from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²² The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues."²³ In order to implement Section 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.²⁴ Under this scheme, the Legislature established the parameters regarding what

¹⁹ *Id.*

²⁰ See San Diego Regional Board Staff Report, p. 3, ¶14, included as Exhibit 18 under Section 7 – Documentation to these Test Claims.

²¹ *City of Burbank, supra*, 35 Cal.4th at 618.

²² *County of San Diego, supra*, 15 Cal.4th at 81; *County of Fresno, supra*, 53 Cal.3d at 487.

²³ *Id.*; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 984-85.

constitutes a state mandated cost, defining "Costs mandated by the State" to include:

any increased costs which a local agency ... is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level or service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.²⁵

Government Code section 17556 identifies seven exceptions to the rule requiring reimbursement for State mandated costs. The exceptions are as follows:

- (a) The claim is submitted by a local agency that requested legislative authority for that local agency ... to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority....
- (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
- (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .
- (d) The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies or . . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or

²⁴ Govt. Code § 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 [statute establishes "procedure by which to implement and enforce section 6"].

²⁵ Govt. Code §17514.

expressly included in, a ballot measure approved by the voters in a statewide or local election.

- (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

When a new program or level of service is in part federally required, courts have held that the authority to impose a condition does not equate to a direct order or mandate to impose the condition. This principle was expressly recognized in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564. In that case, the appellate court held "[i]f the state freely chooses to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."²⁶ As a result, when a state agency exercises discretion in choosing which requirements to impose in an executive order, those aspects that were not strictly required by the federal scheme are state mandates.²⁷

Similarly, when a state law or order mandates changes to an existing program that requires an increase in the actual level or quality of governmental services provided, that increase will represent a "higher level of service" within the meaning of Article XIII B § 6 of the California Constitution.²⁸ For example, in *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, an executive order required school districts to take specific steps to measure and address racial segregation in local public schools. The appellate court held that this constituted a "higher level of service" to the extent the order's requirements exceeded federal law by mandating school districts to undertake defined remedial actions that were merely advisory under prior governing law.²⁹

The 2009 Permit imposes new requirements on the Permittees that exceed the requirements of federal law, and that are unique to the Permittees.³⁰ For that reason, the 2009 Permit represents a state mandate for which the Permittees are entitled to reimbursement pursuant to Article XIII B section 6 of the California Constitution.

VI. STATE MANDATED ACTIVITIES

On May 22, 2009, the Santa Ana RWQCB issued the 2009 Permit to the Permittees. The 2009 Permit mandates many new programs and activities not required by either federal law or the

²⁶ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593.

²⁷ *Id.*

²⁸ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

²⁹ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173.

³⁰ Orders issued by any Regional Board pursuant to Division 7 of the Water Code (commencing at section 13000) come within the definition of "executive order". *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920.

2002 Permit. The program and activities that are at issue in this Test Claim are as follows:

A. 2009 PERMIT SECTION XVIII (WATERSHED ACTION PLANS AND TMDL IMPLEMENTATION) IMPOSE A SERIES OF NEW UNFUNDED STATE MANDATES ON THE PERMITTEES

1. CHALLENGED PROGRAM REQUIREMENTS

Section XVIII of the 2009 Permit imposes a number of new State mandated programs upon the Permittees that are not mandated by federal law, and without the Santa Ana RWQCB providing funding for any of such programs. Each of the new programs set forth in 2009 Permit Section XVIII concerns what are referred to as "Total Maximum Daily Loads" or "TMDLs" i.e., each involves either: (1) programs designed to implement a EPA and/or a State developed TMDL, in a manner that is not required by federal law; (2) pre-TMDL programs that are not required by federal law; or (3) programs designed to implement partially developed State TMDLs that have not yet been finally approved. The one common thread in each of these new Permit programs is that they all impose new requirements that are not mandated by federal law; nor do the Permittees have fee authority to recover their costs in complying with any of these TMDL-related State mandates. Accordingly, each of the TMDL programs discussed below is an unfunded State mandate which is constitutionally required to be reimbursed by the State.

2. TMDL REQUIREMENTS OF FEDERAL LAW

The CWA was enacted in 1972 by the United States Congress as "a 'comprehensive water quality statute designed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'"³¹ "To achieve these ambitious goals, the Clean Water Act establishes distinct roles for the Federal and state Governments. Under the Act, [EPA] is required ... to establish and enforce technology-based limitations on individual discharges into the country's navigable waters," and each state is "to institute comprehensive water quality standards establishing water quality goals for all intrastate waters." "These state water quality standards provide 'a supplementary basis ... so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.'"³²

The Act provides that these state-developed Water Quality Standards ("Standards") are to include (1) the designated beneficial use of the water body, and (2) the "water quality criteria" to protect such designated use.³³ The water quality criteria component of the Standards "can be expressed in narrative form or in a numeric form, e.g., specific pollutant concentrations."³⁴ "Narrative criteria are broad statements of desirable water quality goals in a water quality plan," such as "no toxic pollutants in toxic amounts."³⁵ A TMDL is to be established "at a level

³¹ *Burbank, supra*, 135 Cal.4th 613, 619, 620.

³² *PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 704.

³³ 33 U.S.C. § 1313(c)(2)(A); 40 CFR § 131.3(i).

³⁴ *Arcadia v. State Board* (2006) 135 Cal.App.4th 1392, 1403.

necessary to implement the applicable water quality standards.”³⁶

The federal regulations define a TMDL as follows:

Total Maximum Daily Load (TMDL). The sum of the individual WLAs [waste load allocations] for point sources and LAs [load allocations] for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If best management practices ("BMPs") or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.³⁷

The federal regulations then proceed to define a "wasteload allocation" or "WLA" as: "A portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation."³⁸ NPDES permit terms must be consistent with their assumptions and requirements of the waste load allocations within a TMDL.³⁹

In short, once adopted, "TMDLs serve as a link in an implementation chain" linking the implementation of the Standards to the NPDES Permits.⁴⁰ However, a TMDL is not self-executing and is only enforceable through NPDES permits.⁴¹ In incorporating a TMDL under the federal regulations, NPDES Permits need only be "consistent with the assumptions and requirements of any available waste load allocations for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7."⁴²

With these test claims, the Permittees contend that the 2009 Permit terms at issue go beyond what is required by federal law and thus impose a serious of unfunded State mandates in relation

³⁵ *Id.*

³⁶ 33 U.S.C. § 1313(d)(1)(c); *also see Arcadia, supra*, 235 Cal.App.4th at 1404 [“A TMDL must be ‘established’ at a level necessary to implement the applicable water quality standards. . . . Once a TMDL is developed, effluent limitations in NPDES permits must be consistent with the waste load allocations in the TMDL.”].

³⁷ 40 CFR § 130.2(i).

³⁸ 40 CFR § 130.3(h).

³⁹ 40 CFR § 122.44(d)(1)(vii)(B).

⁴⁰ *Arcadia v. EPA*, (N.D. Cal. 2003) 265 F.Supp.2d 1142, 1144-45.

⁴¹ *Id.*

⁴² 40 CFR § 122.44(d)(1)(vii)(B).

to TMDLs, as follows: (1) various Permit terms require compliance with numeric effluent limits derived from finally adopted TMDLs, even though federal law only requires that municipal NPDES Permits reduce the discharge of pollutants to the "maximum extent practicable" ("MEP") Standard, and do not require compliance with numeric effluent limits; (2) certain Permit terms require compliance with numeric effluent limits derived from the WLAs contained in TMDLs, even though the TMDLs have not been finally adopted or approved by EPA. Federal law does not require an NPDES Permit to require compliance, in any fashion, with a TMDL that has not been "approved by EPA pursuant to 40 CFR 130.7.;"⁴³ (3) some Permit terms require the Permittees to themselves develop the TMDLs or to otherwise conduct studies or take other action towards the development of TMDLs. Yet, federal law does not mandate that the Permittees take any action towards the development or study of a TMDL. The development of the TMDL is the responsibility of the Regional Water Quality Control Boards, a division of the State.

3. FEDERAL LAW DOES NOT MANDATE THE IMPOSITION OF NUMERIC EFFLUENT LIMITS FROM TMDLS OR OTHERWISE TO BE INCLUDED IN MUNICIPAL NPDES PERMITS.

The plain language of the CWA confirms that numeric effluent limits, either from TMDLs or otherwise, are not required to be imposed on municipal NPDES Permittees. Instead, federal law only requires controls to be included in municipal NPDES Permits, as needed "to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator *or the State determines appropriate* for the control of such pollutants," where it provides as follows:

(B) Municipal Discharge:

Permits for discharges from municipal storm sewers –

- (i) may be issued on a system – or jurisdiction wide basis;
- (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the **maximum extent practicable**, including management practices, control techniques and in system, design and engineering methods, and such other provisions as the Administrator *or the State determines appropriate* for the control of such pollutants.⁴⁴

In *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159 ("Defenders"), the Ninth Circuit Court of Appeal recognized the different approach taken by Congress for Stormwater,

⁴³ *Id.*

⁴⁴ 33 U.S.C. § 1342(p)(3)(B), emphasis added.

finding that "**industrial discharges must comply strictly with state water-quality standards while Congress chose 'not to include a similar provision for municipal storm-sewer discharges.'**"⁴⁵ The Court found that "because 33 U.S.C. § 1342(p)(3)(B) is not merely silent regarding whether municipal discharges must comply with 33 U.S.C. § 1311," but instead Section 1342(b)(3)(B)(iii) "replaces the requirements of § 1311 with the requirement that municipal storm-sewer dischargers 'reduce the discharge of pollutants to the maximum extent practicable ...' the statute unambiguously demonstrates that **Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).**"⁴⁶

In *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 874 ("BIA"), the California Court of Appeal similarly found:

[I]n 1987, Congress amended the Clean Water Act to add provisions that specifically concerned NPDES permit requirements for storm sewer discharges. [Citations.] In these amendments, enacted as part of the *Water Quality Act of 1987*, Congress distinguished between industrial and municipal storm water discharges, . . . With respect to municipal storm water discharges, Congress clarified that the EPA has the authority to fashion NPDES permit requirements to meet water quality standards **without specific numeric effluent limits and instead to impose "controls to reduce the discharge of pollutants to the maximum extent practicable."**⁴⁷

With respect to TMDLs, the fact that wasteload allocations within a TMDL are not required under the CWA to be enforced as "numeric limits" through a Stormwater Permit, was specifically confirmed by EPA itself in a November 22, 2002 EPA Guidance Memorandum on "*Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs*" ("EPA Guidance Memo").⁴⁸ In this EPA Guidance Memorandum, EPA explained that for NPDES Permits regulating municipal storm water discharges, any water quality based effluent limit for such discharges should be "**in the form of BMPs and that numeric limits will be used only in rare instances.**"⁴⁹ EPA further concluded that "**for NPDES-regulated municipal . . . dischargers effluent limits should be expressed as best management practices (BMPs), rather than as numeric effluent limits**"⁵⁰

⁴⁵ *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1165, emphasis added.

⁴⁶ *Id.*, at 1165, emphasis added.

⁴⁷ *BIA, supra*, 124 Cal.App.4th at 874, emphasis in original, citing 33 U.S.C. § 1342(p)(3)(B)(iii) and *Defenders, supra*, at 1163.

⁴⁸ All Exhibit references in this Narrative Statement are contained within the Miscellaneous Authority provided within Section 7 - Documentation to the Test Claims. The EPA Guidance Memo is Exhibit 1 thereto.

⁴⁹ Exhibit 1, EPA Guidance Memo, p. 6, emphasis added.

EPA went on to expressly recognize the difficulties in regulating Stormwater discharges and explained its policy as follows:

EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.⁵¹

In a recent Oregon Appellate Court decision in *Tualatin Riverkeepers, et al v. Oregon Department of Environmental Quality ("Tualatin")* (April 28, 2010) 235 Ore.App. 132, the Oregon Court of Appeal addressed, among other issues, the need for waste load allocations contained within developed TMDLs to be enforced as numeric effluent limits within a municipal NPDES Permit under Oregon law. The petitioners in that case argued that the Oregon Department of Environmental Quality ("DEQ") had erred because it had issued a permit that did not *"incorporate waste load allocations as enforceable effluent limits."*⁵²

The Oregon Court initially found that the CWA does not require that municipal NPDES Permits contain "numeric" effluent limits as a means of enforcing Standards, finding that under the CWA "although a permit must include restrictions on discharges of pollutants into the water, the applicable statute does not specify what form they must take. 'Best management practices,' such as those incorporated in the permits at issue in this case, are a type of effluent limitations."⁵³

The Oregon Court also discussed the purpose of a TMDL, noting that a TMDL is required to be established for pollutants and waters of the state identified pursuant to section 1313(d) of the CWA. Further, the Oregon Court addressed the petitioners' prime contention that the TMDLs were required under Oregon law to have been incorporated into the Permit as "enforceable effluent limitations."⁵⁴ Notably, there was no suggestion that federal law required a TMDL to be incorporated into a municipal NPDES Permit as a "numeric effluent limitation." Instead, as referenced above, the Oregon Court discussed the fact that under the CWA, best management

⁵⁰ *Id.* at p. 4; also see August 22, 2003 letter from EPA Headquarters to the Honorable Bart Doyle, then Councilmember for the City of Sierra Madre, wherein EPA Headquarters made clear that EPA has **"worked closely with all ten Regions on this memo and expects that it will be followed by the states."** (Exhibit 2, EPA August 22, 2003 Letter, p.2).

⁵¹ EPA Guidance Memo, p. 4.

⁵² *Tualatin, supra*, 235 Ore. App. 132 at 145-146.

⁵³ *Id.* at 141.

⁵⁴ *Id.* at 145-146.

practices were considered to be a "type of effluent limitation," and that such best management practices were authorized to be used pursuant to the CWA, section 33 U.S.C. § 1342(p) as a means of controlling "storm water discharges."⁵⁵

The Court in *Tualatin* went on to conclude that the DEQ need not require that TMDLs be enforced through the use of numeric effluent limits, finding as follows:

The applicable TMDLs in this case set forth specific waste load allocations for municipal storm water. The permits at issue, in turn, indicate the bodies of water for which TMDLs and wasteload allocations have been established and reference the specific TMDL for those bodies of water. The permits provide in the "adaptive management" section that, "[w]here TMDL wasteload allocations have been established for pollutant parameters associated with the permittee's [municipal separate storm sewer system] discharges, the permittee must use the estimated pollutant load reductions (benchmarks) established in the [storm water management plan] to guide the adaptive management process." .. . Adequate progress toward achieving assigned wasteload allocations will be demonstrated through the implementation of best management practices that are targeted at TMDL-related pollutants." Pursuant to that section, permittees must evaluate progress toward reducing pollutant loads "through the use of performance measures and pollutant load reduction benchmarks developed and listed in the [storm water management plan]."

Although the permits do not themselves include numeric wasteload allocations like those set forth in the TMDLs, the TMDL wasteload allocations are clearly referenced in the permits, and the permits require implementation of best management *practices*, set forth in the storm water management *plans*, to make progress towards meeting those wasteload allocations. **Again, best management practices are a type of effluent limitation that is used in municipal storm water permits.** See 40 CFR § 122.44(k)(2)-(13). Furthermore, the permits incorporate benchmarks, through incorporation of the storm water management plan, which are specific pollutant load reduction goals for the permittees. Those measures are "permit requirements" that properly incorporate the TMDL wasteload allocations.⁵⁶

The Oregon opinion confirms that numeric effluent limits are not required to be included

⁵⁵ *Id.* at 141, citing 33 U.S.C. § 1342(p) and 40 CFR § 122.44(k)(2)-(3).

⁵⁶ *Tualatin, supra*, at 148.

in municipal NPDES Permits as a means of implementing the wasteload allocations in a TMDL, or otherwise. Yet, the 2009 Permit in issue contains a series of specific numeric effluent limits based on wasteload allocations from TMDLs, but without providing appropriate funding to fund these new programs. As such, all of the new TMDL-related programs in the Permit which require compliance with numeric effluent limits are unfunded State mandates that are not required under federal law; such mandates must, therefore, be funded by the State.

In a recently EPA-issued draft technical document entitled "TMDLs Stormwater Handbook, November, 2008" (Exhibit 3, hereafter "EPA Draft Handbook"), EPA provides "information to TMDL practitioners and NPDES stormwater permit writers" on various subjects, including:

Approaches for translating TMDL WLAs and implementation recommendations into NPDES stormwater permit requirements and implementations strategies.⁵⁷

The EPA Draft Handbook is designed to assist in the development of "TMDL implementation plans that connect WLAs and stormwater permits by either (1) including specific recommendations (e.g., performance standards, management measures) for implementing WLAs, or (2) providing technical information for permit writers and permittees on how to analyze, select, and implement provisions to implement the WLAs."⁵⁸ The Draft Handbook specifically references and quotes from the EPA Guidance Memo (referenced above), and provides that: *"EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances."*⁵⁹

Furthermore, in a report entitled *"Assessing the TMDL Approach to Water Quality Management,"* (September, 2001), issued for Congress by the National Research Council ("NRC"), a member of the National Academies of Science, the NRC similarly concluded that adaptive BMPs should be utilized to enforce TMDLs:

Many debates in the TMDL community have centered on the use of "phased" and "iterative" TMDLs. Because these terms have particular meanings, this report uses a more general term - adaptive implementation. Adaptive implementation is, in fact, the application of the scientific method to decision-making. It is a process of taking actions of limited scope commensurate with available data and information to continuously improve our understanding of a problem and its solutions, while at the same time making progress toward

⁵⁷ EPA Draft Handbook, p.1

⁵⁸ *Id.*

⁵⁹ EPA Draft Handbook, p. 133; emph. added.

attaining a water quality standard.⁶⁰

In addition to all of the above authority, there is a plethora of State Board Orders and related formal documentation confirming that the long-held policy of the State of California is not to require the use of numeric limits for stormwater dischargers, but rather to apply the MEP standard through an iterative BMP process. *See, e.g., Exhibit 5.* State Board Order No. 91-04, p. 14 ["There are ***no numeric objectives or numeric effluent limits*** required at this time, either in the Basin Plan or any statewide plan that apply to storm water discharges." p. 14]; *Exhibit 6* State Board Order No. 96-13, p. 6 ["***federal laws does not require*** the [San Francisco Reg. Bd] to dictate the specific controls."]; *Exhibit 7.* State Board Order No. 98-01, p. 12 ["Stormwater permits must achieve compliance with water quality standards, but they may do so by requiring implementation of BMPs ***in lieu of numeric water quality-based effluent limitations.***"]; *Exhibit 8* State Board Order No. 2000-11, p. 3 ["***In prior Orders this Board has explained the need for the municipal storm water programs and the emphasis on BMPs in lieu of numeric effluent limitations.***"]; *Exhibit 9.* State Board Order No. 2001-15, p. 8 ["While we continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvements of BMPs, is appropriate."]; *Exhibit 10.* State Board Order No. 2006-12, p. 17 ["***Federal regulations do not require numeric effluent limitations for discharges of storm water***"] *Exhibit 11.* Stormwater Quality Panel Recommendations to the California State Water Resources Control Board - The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial and Construction Activities, June 19, 2006, p. 8 ["***It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharger***"] and an *Exhibit 12.* April 18, 2008 letter from the State Board's Chief Counsel to the Commission on State Mandates, p. 6 ["***Most NPDES Permits are largely comprised of numeric limitations for pollutants.... Stormwater permits, on the other hand, usually require dischargers to implement BMPs.***"].

In short, neither State nor federal law or policy provide for the incorporation of wasteload allocations as numeric limits into an MS4 Permit. To the contrary, both EPA and the State have long recognized that numeric limits should only be incorporated into an MS4 Permit in "rare instances," with the State Board's own Numeric Effluent Limits Panel concluding that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban dischargers."

4. REQUIREMENTS FROM 2002 PERMIT

With the exception of the TMDL programs in the 2002 Permit involving the sediment and nutrient TMDLs for San Diego Creek and Newport Bay (not in issue in this Test Claim), and the need for further studies regarding fecal coliform in Newport Bay (also not in issue in this Test Claims), the 2002 Permit contains no TMDL-related programs and imposes no requirements on the Permittees to develop or implement any TMDL program in issue in these Test Claims; nor does the 2002 Permit contain any requirement to meet numeric effluent limitations derived from a wasteload allocation from a TMDL or otherwise (other than the requirements involving the

⁶⁰ *Exhibit 4, Assessing the TMDL Approach to Water Quality Management*, p. 90.

sediment and nutrient TMDLs that are not in issue here).

5. 2009 PERMIT MANDATED TMDL-RELATED ACTIVITIES

a. The Permit Programs Under Section XVIII.B Involving Promulgated TMDLs for Toxic Pollutants, Are All Unfunded State Mandates.

Under 2009 Permit Section XVIII.B, the Santa Ana RWQCB seeks to impose a series of new programs not contained in any prior permit, based on: *"EPA Promulgated Technical TMDLs for Toxic Pollutants in San Diego Creek and Newport Bay, including metals, organo-chlorine compounds, selenium, and organo-phosphate pesticides. EPA and the Los Angeles Regional Water Quality Control Board established technical TMDLs for metals in Coyote Creek."*⁶¹

For each of these referenced TMDLs, the 2009 Permit incorporates and requires compliance with specific numeric waste load allocations or load allocations taken from these various TMDLs. Yet, requiring compliance with each of these numeric effluent limits set forth in the tables under Section XVIII.B of the Permit (pages 68-74), constitutes new unfunded State mandates that are not required by federal law.

Each of the new TMDL-related programs is designed to implement either the EPA promulgated TMDLs for toxic pollutants, discussed above, or Regional Board promulgated TMDLs for other toxic pollutants which have not yet been "approved by EPA pursuant to 40 CFR 130.7." Further, all of the adopted or to be adopted TMDLs referenced in Subsections XVIII.B. 1 through B.4 have been based on what is known as the "California Toxics Rule" or "CTR," a rule adopted by EPA in May of 2000.⁶² Yet, a review of CTR itself, as well as EPA's Responses to Comments made in connection with CTR (Excerpts of which are included as Exhibit 15), even further confirms that TMDLs, once approved by EPA, impose no specific federal mandates on the State, but only trigger "a number of discretionary choices" for the State to make.

To start with, in the Preamble to CTR, *EPA made clear it was not intending to require municipal dischargers to strictly comply with the numeric objectives set forth in CTR.* To the contrary, EPA stated that CTR contains "no federal mandates" for State, local, or tribal government or the private sector.⁶³ Rather than imposing a federal mandate and requiring the State of California to apply the CTR limits as strict Stormwater Standards, EPA indicated the exact opposite was to occur:

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule establishes ambient water quality criteria which, by themselves do not directly impact any entity. The State will implement these criteria by ensuring that NPDES permits result

⁶¹ Permit, p. 68, Section XVIII.B.1.

⁶² See Exhibit 13, California Toxics Rule ("CTR"), 65 Fed. Reg. 31682

⁶³ Exhibit 13, 65 Fed. Reg. 31682, 31708.

in discharges that will meet these criteria. **In so doing, the State will have considerable discretion.**

Under the CWA water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval.

Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the State, in turn, implements through the NPDES permit process. **The State has considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards.** In circumstances where there is more than one discharger to a water body that is subject to water quality standards or criteria, a State also has discretion in deciding on the appropriate limits for the different dischargers. While the State's implementation of federally-promulgated water quality criteria or standards may result indirectly in new or revised discharge limits for small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's actions here, the State of California will need to ensure that permits it issues include limits as necessary to meet the water quality standards established by the criteria in today's rule. **In so doing, the State will have a number of discretionary choices associated with permit writing.** While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.⁶⁴

Moreover, according to EPA, CTR was not to have a direct effect on Stormwater dischargers. Instead, EPA stated that with respect to Stormwater permits, “compliance with water quality standards through the use of Best Management Practice (BMPs) is appropriate.”⁶⁵ EPA also claimed it would “continue to work with the State to implement storm water permits that comply with water quality standards with an emphasis on pollution prevention and best management

⁶⁴ Exhibit 13, 65 Fed. Reg. 31682, 31708-709; emphasis added.

⁶⁵ Exhibit 13, 65 Fed. Reg. 31703.

practices *rather than costly end-of-pipe controls.*"⁶⁶

EPA further represented that the CTR language "allows the practice of applying maximum extent practicable (MEP) to MS4 permits, along with best management practices (BMPs) as effluent limits to meet water quality standards where infeasible or insufficient information exists to develop WQBELS."⁶⁷ Additional examples of EPA representations in this regard are as follows:

County of Ventura's comments at the CTR public hearing:

"We have also recently completed a four-year monitoring program and, using the information from the monitoring program, we have attainability of the data that we have collected for our program. This attainability data indicates that even if we comply - apply the BMP program to the maximum extent possible, the expenditure of radial funds, we would still not be able to meet the requirements of the proposed criteria for several of the metals and other constituents which would then - of course, our program would go into a treatment mode for stormwater discharges. We believe that this was going to be very costly for us, particularly very costly for smaller communities who don't have the base to spread the cost of such expense over their population."⁶⁸

EPA's Response-

*If you look across the country, across the U.S., there are many, many states that have standards on the books, water quality standards that are far more stringent than the numbers we're promulgating or proposing to promulgate in Southern California. If you look at their standards, you won't see any black boxes on the end of those storm water discharges. **Nobody builds treatment for storm water treatment in this country. They've been implementing standards for 15 years, California is no different.***"⁶⁹

A portion of EPA's response to comments of Los Angeles County:

*EPA did not ascribe benefits or costs of controlling storm water discharges in the proposed or final Economic Analysis. EPA believes that many storm water dischargers can avoid violation of water quality standards **through application of best management practices that are already required by the current storm water***

⁶⁶ Exhibit 14, EPA Response to Comment 001-007.

⁶⁷ Exhibit 14, EPA Response to Comment 040-004.

⁶⁸ Exhibit 14, EPA Response to CTR H-002-017.

⁶⁹ Exhibit 14, EPA Response to CTR H-002-017.

permits.

The commenter claims that even with the application of current BMPs, its storm water dischargers would still violate water quality standards due to the CTR criteria. The commenter appears to assume that storm water discharge would be subject to numeric water quality based effluent limits which would be equivalent to the criteria values and applied as effluent limits never to be exceeded, or calculated in the same manner that effluent limits are calculated for other point sources, such as POTWs. The comment then appears to assume that such WQBELs would then require the construction of very costly end-of-pipe controls.

EPA contends that neither scenario is valid with regards to developing WQBELs for storm water discharges or establishing compliance with WQBELs. . . EPA will continue to advocate the use of BMPs, as discussed in the CTR preamble. . . . EPA will continue to work with the State to implement storm water permits that comply with water quality standards with an emphasis on pollution prevention and best management practices rather than costly end-of-pipe controls.⁷⁰

A portion of EPA's Response to Comments of Sacramento County:

EPA believes the applicability of water quality standards to storm water discharges is outside the scope of the rule.⁷¹

An excerpt of EPA's written response to the Fresno County Metropolitan Flood Control District:

EPA believes that implementation of the criteria [CTR] as applied to wet-weather dischargers will not require the construction of end-of-pipe facilities.⁷²

Other EPA comments on the issue:

As further described in the response to CTR-021-008, CTR-013-003 and CTR-040-004, EPA believes that the final CTR will not significantly affect the current storm water program being implemented by the State, which includes the requirement to develop best management practices to control pollutants in storm

⁷⁰ Exhibit 14, EPA Response to CTR-001-007.

⁷¹ Exhibit 14, EPA Response to CTR-040-014b.

⁷² Exhibit 14, EPA Response to CTR 031-005b.

*water discharges. As such, EPA believes that inclusion of end-of-pipe treatment costs for storm water are inappropriate.*⁷³

EPA written comments to the California Storm Water Task Force:

*EPA disagrees with the cost estimates provided by the commenter as EPA does not believe that storage and treatment of stormwater would be required to ensure compliance with the CTR.*⁷⁴

*EPA believes that the CTR language allows for the practice of applying maximum extent practicable (MEP) to MS4 permits, along with best management practices (BMPs) as effluent limits to meet water quality standards where infeasible or insufficient information exists to develop WQBELs.*⁷⁵

EPA similarly confirmed that CTR was not creating a "federal requirement" when it issued its "Economic Analysis of the California Toxic Rule," October 1999, which was prepared for EPA by Science Applications International Corporation (hereafter, "EPA's Economic Analysis of CTR" Exhibit 15V In EPA's Economic Analysis of CTR, it concluded that "[t]he State of California has significant flexibility and discretion as to how it chooses to implement the CTR within the NPDES permit program."⁷⁶

The fact that CTR-derived TMDLs should not be strictly applied to stormwater through numeric limits has further been confirmed by the State of California in its "*Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP)," adopted by the State Board by Resolution 2000-015 on April 26, 2000.⁷⁷ California's SIP confirms on page 1 that the SIP was designed to establish "implementation provisions for priority pollutant criteria promulgated by . . . EPA through the . . . California Toxics Rule (CTR)," but that it "*does not apply to regulation of stormwater discharges.*"⁷⁸

As such, each of the TMDL Programs as described below that seek to require compliance with wasteload allocations through the use of "numeric effluent limitations," are unfunded State

⁷³ Exhibit 14, EPA Response to CTR-035-044c.

⁷⁴ Exhibit 14, EPA Response to CTR H-001-001b.

⁷⁵ Exhibit 14, EPA Responses to CTR-040-004.

⁷⁶ EPA Economic Analysis of CTR, p. ES-2; *also see* CTR, 65 Fed. Reg. 31703 [where EPA confirmed CTR was not to have a direct effect on NPDES sources not typically subject to numeric water quality based effluent limits or urban runoff, instead finding, "**compliance with water quality standards through the use of best management practices (BMPs) is appropriate.**"].

⁷⁷ Exhibit 16, "*State Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*," also known as the "State Implementation Plan" or "SIP."

⁷⁸ SIP, p. 1, n. 1, *emph. added.*

mandates subject to reimbursement.

(1) 2009 Permit Subsections XVIII.B.1 through B.4 Require Compliance with a Series of Unfunded Mandates relating to Numeric Effluent Limitations for Various EPA Promulgated Toxic Pollutant TMDLs.

For the TMDLs described in the 2009 Permit as "Toxic Pollutants in San Diego Creek and Newport Bay, California, EPA-Region 9, established June 14, 2002," the 2009 Permit sets forth a number of numeric effluent limits in Tables 1 A/B/C, Table 2 A/B/C/D, and 3.⁷⁹ Specifically, for the numeric effluent limits set forth in Tables 1, 2, and 3,⁸⁰ the 2009 Permit requires the following:

The Permittees in the Newport Watershed shall comply with the waste load allocations specified in the established TMDLs and shown in Tables I A/B/C. 2 A/B/C/D. and 3. These wasteload allocations shall remain in effect unless and until alternative wasteload allocations are established in TMDLs approved by the Regional Board, State Board, Office of Administrative Law, and EPA.⁸¹

However, as discussed at length above, it is clear from the plain language of the CWA and controlling case law, along with EPA-issued Guidance, CTR, EPA's Responses to Comments on CTR, and State-issued policies and orders, that federal law does not require NPDES Permits for municipal dischargers, such as the subject Permit, to include programs requiring compliance with numeric effluent limits. Instead, both EPA and the State Board have made clear that numeric effluent limits are not required to be complied with under federal law, and that an adaptive best management practices approach should instead be adhered to. *(See discussion, supra.)*

Accordingly, the numeric effluent limits set forth in Tables 1 A/B/C, Table 2 A/B/C/D and Table 3 and which are all derived from WLAs contained within various TMDLs, go beyond federal law and represent unfunded State mandated programs subject to reimbursement under the California Constitution.

(2) 2009 Permit Subsection XVIII.B.5 Requires Compliance with Numeric Effluent Limits for Organo-Chlorine Compounds Without Funding.

Under 2009 Permit Subsection XVIII.B.5:

Accordingly, upon approval of the Regional Board-adopted organo-chlorine compound TMDLs by the State Board and the Office of Administrative Law, the Permittee shall comply with both

⁷⁹Permit, Section XVIII.B.4, pp. 68-70

⁸⁰ Permit, Section XVIII.B.4, pp. 68-71

⁸¹ Permit, Section XVIII.B.4, p. 68-69.

the EPA and Regional Board wasteload allocations specified in Tables 2 A/B/C/D, and Table 4, respectively. In accordance with the Regional Board TMDLs, compliance with the allocations specified in Table 4 shall be achieved as soon as possible, but no later than December 31, 2015. Upon approval of the Regional Board-approved organo-chlorine compounds TMDLs by EPA, the applicable wasteload allocations shall be those specified in Table 4.

The above-referenced 2009 Permit requirement thus imposes a series of unfunded State mandates. First, said Subsection would require compliance with the numeric effluent limits based on the WLAs set forth in EPA's organo-chlorine compound TMDL, as set forth in Table 2 A/B/C. Because, as discussed above, federal law does not require the use of numeric effluent limits to enforce WLAs contained within TMDLs, such a Permit requirement is a State mandate which goes beyond what is required under federal law.

Second, 2009 Permit Subsection XVIII.B.5 requires compliance with a State adopted TMDL even though it has not yet been "*approved by EPA pursuant to 40 CFR § 130.7.*"⁸² Accordingly, any portion of a TMDL incorporated into the subject Permit where the TMDL has not yet been "approved by EPA," *i.e.*, a Regional Board organo-chlorine TMDL referenced in Subsection XVIII.B.5, constitutes a State program that is clearly not required by federal law, and thus is an unfunded State requirement.

Third, according to the requirement in Subsection XVIII.B.5, once the Regional Board's TMDL for organo-chlorine has been approved by EPA, then in accordance with the terms of the 2009 Permit, the numeric effluent limits contained in "*Table 4 shall be achieved as soon as possible but no later than December 31, 2015.*" Yet as discussed above, federal law does not require that numeric effluent limits from waste load allocations or otherwise, be incorporated into a municipal NPDES permit. This requirement of Subsection XVIII.B.5 is thus yet another TMDL-related mandate not required under federal law.

Accordingly, the requirements under XVIII.B.S involving the organo-chlorine compound TMDLs constitute a series of requirements that go beyond the Clean Water Act, and as such, are all unfunded State mandates.

- (3) **The 2009 Permit's New Programs Under Subsections XVIII.B.7 and XVIII.B.8, Requiring Permittees Within the Newport Bay Watershed to "Participate in the Development and Implementation" of TMDLs for Metals and Selenium, are Unfunded States Mandates.**

Subsection XVIII.B.7 of the 2009 Permit provides that the Regional Board's staff, in collaboration with the stakeholders, is developing TMDLs for metals and selenium that will include implementation plans and monitoring programs and that are intended to replace the EPA TMDLs. This Subsection then requires as follows:

⁸² See 40 CFR § 122.44(d)(1)(vii)(B).

*The Permittees within the Newport Bay Watershed shall continue to participate in the development and implementation of these TMDLs.*⁸³

A requirement that the Permittees "participate in the development and implementation" of TMDLs, is not a requirement mandated by federal law. Specifically, nothing under federal law requires that Permittees develop or even participate in the "development" of a TMDL, and thus the requirements set forth in such Subsection XVIII.B.7 constitutes an unfunded State mandate.

In addition, under 2009 Permit Subsection XVIII.B.8, in connection with the Regional Board's proposed selenium TMDL, the Permittees must establish a "Cooperative Watershed Program" to meet the requirements of a Selenium TMDL Implementation Plan, and must thereafter implement this program where it provides as follows:

*A proposed Cooperative Watershed Program that will fulfill applicable requirements of the Selenium TMDL Implementation Plan must be submitted by the stakeholders covered by this water within twenty-four (24) months of adoption of this order, or one month after approval of the selenium TMDLs by OAL, whichever is later. The program must be implemented upon Regional Board's approval.*⁸⁴

Again, however, there is no requirement anywhere under federal law, either in connection with the TMDL requirements within the CWA or the regulations, or otherwise, that requires the Permittees to develop such a "Cooperative Watershed Program." Moreover, there is no requirement in federal law that the Permittees "implement" such a program to meet the requirements of a TMDL, particularly as discussed above, given that such a TMDL has not yet been "approved by EPA," and that a TMDL is not "self-executing." Further, the requirement to merely implement, sight unseen, a State adopted TMDL, is not a requirement that exists under federal law. The requirements set forth in Subsection XVIII.B.8 are yet additional TMDL-related unfunded State Mandates.

- (4) **The 2009 Permit's New Programs under Subsection XVIII.B.9, Requiring Permittees to Develop and Implement a Constituent Specific Source Control Plan for Coyote Creek and San Gabriel River TMDL for Metals and Selenium are Unfunded State Mandates.**

Subsection XVIII.B.9 requires as follows:

The Permittees with discharges tributary to Coyote Creek or the San Gabriel River shall develop and implement a constituent-specific source control plan for copper, lead and zinc until a TMDL implementation plan is developed. The source control plan shall

⁸³ Permit, Subsection XVIII.B.7, p. 72.

⁸⁴ Permit, Subsection XVIII.B.8, p. 73.

include a monitoring program and shall be completed within 12 months from the date of adoption of this order. The source control plan shall be designed to ensure compliance with the following waste load allocations:

[Table 6 – Municipal Stormwater Waste Load Allocations – Coyote Creek]⁸⁵

Nothing in federal law, however, requires the subject Permittees to develop or implement a "constituent-specific source control plan," nor to implement a "monitoring program" as a part of such a constituent-specific source control plan.⁸⁶ In addition, nothing in federal law require the Permittees to develop and implement a "source control plan" to achieve compliance with specific numeric effluent limits contained within a particular TMDL, in this case for Coyote Creek. Because federal law does not require the inclusion within a Municipal NPDES Permit of a "constituent-specific source control plan," or a "monitoring program" in relationship thereto, nor compliance with particular waste load allocations contained in such a constituent-specific source control plan, all such requirements under Subsection XVIII.B.9 are plainly unfunded State mandates.

b. The 2009 Permit Program Under Subsection XVIII.C.1 Relating to Regional Board-Adopted TMDLs for Fecal Coliform/Bacteria for Newport Bay, is an Unfunded State Mandate.

2009 Permit Subsection XVIII.C.1 requires that the Permittees comply with a Regional Board-adopted TMDL for fecal coliform for bacteria in Newport Bay, where it requires as follows:

The permittees shall comply with the waste load allocations for urban runoff in Tables 8A and 8B in accordance with the deadlines in Tables 8A and 8B. Compliance determination for fecal coliform shall be based on monitoring conducted at representative sampling locations within San Diego Creek and Newport Bay. (The permittees may use the current sampling locations for compliance determination.)⁸⁷

The above-referenced requirement is an unfunded State mandate for two reasons. First, federal law only requires consistency with the assumptions and requirements of a TMDL "**approved by EPA.**"⁸⁸ Because the referenced TMDL has not yet been approved by EPA, federal

⁸⁵ Permit, Subsection XVIII.B.9, p. 73.

⁸⁶ Under the CWA and EPA's Regulations, states are to identify impaired water segments, rank the segments in order of priority, and thereafter establish TMDLs for the segments according to the ranking. The Upper Reach of Coyote Creek has not been listed as an impaired segment, nor has it been proposed for listing as impaired under Section 303(d) of the Act. Accordingly, no TMDL is even appropriate at this time for the Upper Reach of Coyote Creek, and therefore no TMDL requirement in any form in any NPDES Permit, is required under federal law.

⁸⁷ Permit, Subsection XVIII.C.1, p. 73.

⁸⁸ See 40 CFR § 122.44(d)(1)(vii)(B).

law imposes no obligations of any kind upon the Permittees to take any action regarding such a TMDL. Therefore the inclusion of any requirement to comply with the fecal coliform TMDL for Newport Bay and San Diego Creek, is an unfunded State mandate.

Second and in addition, as discussed above, federal law does not require strict compliance with any numeric effluent limitations within a municipal NPDES Permit. Thus, beyond the fact the EPA has not approved the fecal coliform bacteria TMDL in question, this New Program in Subsection XVIII.C.1 of the 2009 Permit is an unfunded mandate as it goes beyond the requirement of federal law by attempting to impose particular numeric effluent limits, i.e., the waste load allocations from the fecal coliform TMDL, upon the Permittees.

c. The 2009 Permit Programs in Subsection XVIII.D.1 Relating to TMDLs for Diazinon and Chlorpyrifos are all Unfunded State Mandates.

Subsection XVIII.D.1 of the 2009 Permit requires Permittees to meet specific numeric limits from TMDLs for Diazinon and Chlorpyrifos for San Diego Creek, and Chlorpyrifos for Newport Bay, where it provides as follows:

The permittees in the Newport Bay Watershed shall comply with the allocations in Tables 9A and B.

[Table 9A Diazinon and Chlorpyrifos allocations for San Diego Creek].

[Table 9B Chlorpyrifos allocations for Upper Newport Bay].

These new programs requiring compliance with specific numeric effluent limits are new unfunded State mandates given that, as discussed at length above, federal law does not require that wasteload allocations contained within TMDLs be incorporated into municipal NPDES Permits as numeric effluent limits. Again, instead, the development of Municipal Permit terms need only ensure consistency with the "assumptions and requirements" of wasteload allocations in TMDLs, through the use of adaptive best management practices. The new programs imposed under Subsection XVIII.D.1 of the Permit are, therefore, unfunded State mandates subject to reimbursement under the California Constitution.

6. TMDL-RELATED UNFUNDED MANDATED PROGRAMS AND ACTUAL COSTS TO THE JOINT TEST CLAIMANTS

The 2009 Permit includes a whole new series of Permit requirements not found anywhere in the 2002 Permit relating to TMDLs.

The 2009 Permit specifically:

- 1) compels compliance with numeric limits taken from wasteload allocation within TMDLs;
- 2) requires compliance with numeric limits derived from TMDLs not "approved by EPA";

- 3) requires that the Permittees actually develop certain TMDLs (which is the responsibility of the State and/or the EPA); and
- 4) requires the Permittees to conduct various studies and monitoring, and develop and implement new programs and implementation plans, all in connection with the development of TMDLs.

All such TMDL-related programs are unfunded State Mandates not required under federal law.

As set forth in the Section 6 Declarations of the County and the Cities of Costa Mesa, Irvine, Lake Forest and Newport Beach (*see* paragraph 6(e)), the new costs incurred by these Joint Test Claimants as a result of the mandates set forth in 2009 Permit Subsections XVIII.B.1-4, XVIII.B.5, XVIII.B.7, XVIII.B.8, XVIII.C.1 and XVIII.D.1 (requirements relating to TMDLs applicable to San Diego Creek and Newport Bay watersheds), were \$546,226.63 for FY 2009-10 and \$534,679.50 for FY 2010-11. In addition, as set forth in the Section 6 Declaration of the County, the County incurred costs of \$57,140.61 during FY 2008-09. As set forth in the Declarations of the County and the Cities of Anaheim, Brea, Buena Park, Cypress, Fullerton, Placentia and Seal Beach (*see* paragraph 6(e)), the new costs incurred by these Joint Test Claimants as a result of the mandates set forth in 2009 Permit Subsection XVIII.B.9 (requirements relating to TMDL applicable to San Gabriel River and Coyote Creek watersheds) were \$55,000 in FY 2009-10 and approximately \$80,400 in FY 2010-11 and \$75,853.32 in FY 2011-12. The County alone fully funded the constituent-specific source control plan required under 2009 Permit Subsection XVIII.B.9. County Declaration at Paragraph 6(e).

B. THE 2009 PERMIT PROVISIONS REQUIRING PUBLIC PROJECTS TO COMPLY WITH LOW IMPACT DEVELOPMENT AND HYDROMODIFICATION REQUIREMENTS ARE UNFUNDED STATE MANDATES.

The 2009 Permit requires the Permittees to develop and implement a program to ensure that new development and significant redevelopment projects comply with strict low impact development and hydromodification prevention requirements. The issue of whether such requirements exceed the requirements of federal law, and represent reimbursable state mandates was considered by the Commission in Test Claim 07-TC-09, *Discharge of Stormwater Runoff - Order No. R9-2007-0001* (regarding the San Diego County Municipal Stormwater Permit).⁸⁹The 2009 Permit includes low impact development and hydromodification requirements that are similar, and in many ways more stringent than those at issue in Test Claim 07-TC-09.

In its decision on Test Claim 07-TC-09, the Commission determined that the San Diego County large municipal stormwater permit's low impact development and hydromodification requirements exceed the requirements of federal law, and as such represent state mandates. The Commission determined, however, that because the County of San Diego and the other permittees retained the ability to assess fees for new development, that the requirements did not represent a

⁸⁹ A copy of the Commission's decision in Test Claim 07-TC-09, *Discharge of Stormwater Runoff - Order No. R9-2007-0001*, is included under Section 7 - Documentation to these Test Claims.

reimbursable state mandate.⁹⁰

With regard to municipal projects, the Commission found that the low impact development and hydromodification requirements in the San Diego County permit are not reimbursable state mandates because the permittees in that case are under no obligation to construct projects that would trigger the San Diego County permit requirements.⁹¹ In support of this determination, the Commission cited the California Supreme Court's decision in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727. In *Kern High School Dist.*, the Court held that certain hearing requirements imposed upon school districts did not constitute a reimbursable state mandate because they were a requirement of voluntary program the school districts had elected to participate in. The Court held "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement."⁹²

In support of its to this decision, the Court relied on a lower court decision in *City of Merced v State of California* (1984) 153 Cal.App.3d 111. In that case, the City of Merced elected to take property by eminent domain. Then recent legislation required the City to compensate the property owner for loss of "business goodwill." The City sought reimbursement from the State, arguing that the new statutory requirement was a reimbursable state mandate. The Court of Appeal concluded that the City's increased costs flowed from its optional decision to condemn the property. The court reasoned: "whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state ... Thus, payment for loss of goodwill is not a state-mandated cost."⁹³

The conditions that dictated the Court's decision in *Kern High School Dist.* are not present in the 2009 Permit. For one, the 2009 Permit is not a voluntary program. It nonetheless requires the Permittees to take immediate mandatory actions, including updating the Permittees' model Water Quality Management Plan ("WQMP") to incorporate low impact development and hydromodification principles,⁹⁴ and developing feasibility criteria for project evaluation to determine the feasibility of implementing low impact development BMPs. Both requirements must be complete within 12 months of the 2009 Permit's effective date,⁹⁵ and both include elements that are specific to municipal projects.⁹⁶

⁸⁸ *Test Claim 07-TC-09*, Discharge of Stormwater Runoff - Order No. R9-2007-0001, 1.

⁸⁹ *Test Claim 07-TC-09*, Discharge of Stormwater Runoff-Order No. R9-2007-0001, 46, 52.

⁹² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742.

⁹³ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

⁹⁴ 2009 Permit Subsection XII.C.1.

⁹⁵ 2009 Permit Subsection XII.E.1.

⁹⁶ Including the "Green Streets" requirements of Permit section XII.B.2.

The conditions that dictated the Court's decision in *Kern High School Dist.* are also absent with regard to project implementation. Again, the 2009 Permit is not a voluntary program, yet it requires the Permittees to incur costs related to low impact development and hydromodification on any municipal project.⁹⁷ This includes hospitals, laboratories, medical facilities, recreational facilities, airfields, parking lots, streets, roads, highways, and freeways. These projects are not optional. They are integral to the Permittee's function as municipal entities, and the failure to make necessary repairs, upgrades and extensions can expose the Permittees to liability.

The rationale from *City of Merced* is likewise inapplicable. In that case, the City had the ability to avoid the new program by purchasing property, rather than taking it with eminent domain. Under the 2009 Permit, the Permittees have no such option. The 2009 Permit will force the Permittees to incur new, additional costs on every municipal project. Moreover, since issuing the *Kern High School Dist.* Decision, the California Supreme Court has rejected application of *City of Merced* in circumstances beyond those strictly present in Kern High School Dist.

In *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cai.4th 859, the Court considered similar regulatory requirements to those at issue in *Kern High School Dist.* The Court discussed its decision in *Kern High School Dist.*, at length, and cautioned future reliance on *City of Merced* holding:

[W]e agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514 whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ— and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 111, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters

⁹⁷ 2009 Permit Subsection XII.B.7 requires the Permittees to document which low impact development BMPs are included on any project in the WQMP for the project.

involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.⁹⁸

Thus strict reliance on the *City of Merced* rationale is only appropriate in the very limited circumstances presented in the *Kern High School District*. Those conditions are not present in the 2009 Permit, which imposes requirements on the Permittees that are either wholly unrelated to voluntary action on the part of the Permittees, or are triggered by municipal projects that the Permittees implement with little to no discretion because they are integral to the Permittees' function as municipal entities, and/or the failure to undertake them would expose the Permittees to liability. As set forth above, and in greater detail below, these requirements exceed federal law and represent reimbursable state mandates.

1. CHALLENGED PROGRAM REQUIREMENTS

The Permittees challenge Sections XII.B., through XII.E. of the 2009 Permit as they are applied to municipal projects. In sum, to comply with these sections, the Permittees will be required to invest significant resources developing a State-mandated program, and add requirements to municipal projects that will significantly increase the cost of design and construction,. This includes development of a model WQMP that incorporates low impact development and hydromodification BMPs. 2009 Permit Subsection XII.C.1 states:

Within 12 months of adoption of this order, the permittees shall update the model WQMP to incorporate LID principles (as per Section XII.C) and to address the impact of urbanization on downstream hydrology (as per Section XII.D) and a copy of the updated model WQMP shall be submitted for review and approval by the Executive Officer. As provided in Section XIII, 90 days after approval of the revised model WQMP, priority development projects shall implement LID principles described in this section, Section XII.C. To the extent that the Executive Officer has not approved the feasibility criteria within 18 months of adoption of this order as provided in Section XII.E. 1, the infeasibility of implementing LID BMPs shall be determined through project specific analyses, each of which shall be submitted to the Executive Officer, 30 days prior to permittee approval.

2009 Permit Subsection XII.B.6 additionally requires the Permittees to develop project approval streamlining guidelines for priority development projects, including municipal projects. 2009 Permit Subsection XII.B.6 states:

Within 12 months from the date of adoption of this order, the

⁹⁸ *San Diego Unified School Dist v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-88.

principal permittee shall develop recommendations for streamlining regulatory agency approval of regional treatment control BMPs. The recommendations should include information needed to be submitted to the Regional Board for consideration of regional treatment control BMPs. At a minimum, it should include: BMP location; type and effectiveness in removing pollutants of concern; projects tributary to the regional treatment system; engineering design details; funding sources for construction, operation and maintenance; and parties responsible for monitoring effectiveness, operation and maintenance.

2009 Permit Subsection XII.E.1 includes a similar requirement that the Permittees develop an "in lieu" program for projects that cannot meet the Permit's other low impact development requirements. 2009 Permit Subsection XII.E.1 states:

Within 12 months of adoption of this order, the principal permittee, in collaboration with the co-permittees, shall develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs (feasibility to be based in part, on the issues identified in Section XII.C). This plan shall be submitted to the Executive Officer for approval. Only those projects that have completed a vigorous feasibility analysis as per the criteria developed by the permittees and approved by the Executive Officer should be considered for alternatives and in-lieu programs. If a particular BMP is not technically feasible, other BMPs should be implemented to achieve the same level of compliance, or if the cost of BMP implementation greatly outweighs the pollution control benefits, a waiver of the BMPs may be granted. All requests for waivers, along with feasibility analysis including waiver justification documentation, must be submitted to the Executive Officer in writing, 30 days prior to permittee approval.

Once the model WQMP and the in lieu program are developed, municipal projects that qualify as "priority development projects" under the 2009 Permit will be required to implement low impact development and hydromodification BMPs. The requirements are very specific, and dictate which BMPs are required at different types of projects. For example, 2009 Permit section XII.B.2.h. requires specific requirements for road projects:

Streets, roads, highways and freeways of 5,000 square feet or more of paved surface shall incorporate USEPA guidance, "Managing Wet Weather with Green Infrastructure: Green Streets" in a manner consistent with the maximum extent practicable standard. This category includes any paved surface used for the transportation of automobiles, trucks, motorcycles and other vehicles and excludes any routine road maintenance activities where the footprint is not changed.

In general, all priority development projects must implement low impact development BMPs. Notable requirements in Sections XII.C.3 through XII.C.6. require the following:

The permittees shall require that each priority development project include site design BMPs during development of the preliminary and final WQMPs. The design goal shall be to maintain or replicate the pre-development hydrologic regime through the use of design techniques that create a functionally equivalent post- development hydrologic regime through site preservation techniques and the use of integrated and distributed micro-scale storm water infiltration, retention, detention, evapotranspiration, filtration and treatment systems as close as feasible to the source of runoff.

The selection of LID principles shall be prioritized in the following manner (from highest to the lowest priority): (1) Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the maximum extent practicable standard; minimization of runoff through clustering, reducing impervious areas, etc.) and (2) Mitigation (these are structural measures, such as, infiltration, harvesting and reuse, bio-treatment, etc. The mitigation or structural site design BMPs shall also be prioritized (from highest to lowest priority): (1) Infiltration (examples include permeable pavement with infiltration beds, dry wells, infiltration trenches, surface and sub-surface infiltration basins. All infiltration activities should be coordinated with the groundwater management agencies, such as the Orange County Water District); (2) Harvesting and Re-use (e.g., cisterns and rain barrels); and (3) Bio-treatment such as bio-filtration/bio-retention.

The LID BMPs shall be designed to mimic pre-development site hydrology through technically and economically feasible preventive and mitigative site design techniques. LID combines hydrologically functional site design with pollution prevention methods to compensate for land development impact on hydrology and water quality.

Lastly, the 2009 Permit requires the Permittees to analyze and mitigate downstream impacts related to the volume of water leaving completed priority development projects. 2009 Permit sections XII.D.1. through XII.D.4. require the following:

Each priority development project shall be required to ascertain the impact of the development on the site's hydrologic regime and include the findings in the WQMP, including the following for a two-year frequency storm event impacts downstream hydrology. If a

hydrologic condition of concern exists, then the WQMP shall include an evaluation of whether the project will adversely impact downstream erosion, sedimentation or stream habitat. If the evaluation determines adverse impacts are likely to occur, the project proponent shall implement additional site design controls, on-site management controls, structural treatment controls and/or in-stream controls to mitigate the impacts. The project proponent should first consider site design controls and on-site controls prior to proposing in-stream controls; in-stream controls must not adversely impact beneficial uses or result in sustained degradation of water quality of the receiving waters.

The project proponent may also address hydrologic conditions of concern by mimicking the pre-development hydrograph with the post-development hydrograph, for a two year return frequency storm. Generally, the hydrologic conditions of concern are not significant, if the post-development hydrograph is no more than 10% greater than pre-development hydrograph. In cases where excess volume cannot be infiltrated or captured and reused, discharge from the site must be limited to a flow rate no greater than 110% of the pre-development 2-year peak flow.

2. LID AND HYDROMODIFICATION REQUIREMENTS UNDER FEDERAL LAW

No federal statute, regulation, or policy specifically requires municipal stormwater permits to include the low impact development and hydromodification requirements present in the 2009 Permit. Title 40, section 122.26(d)(2)(iv)(A) of the Code of Federal Regulations provides a general requirement that large municipal stormwater permits include programs to reduce the discharge of pollutants from the MS4 that originate in areas of new development.⁹⁹ It does not require design elements such as low impact development, or management practices to control the volume of water leaving a newly developed site.

As stated in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, "[i]f the state freely chooses to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."¹⁰⁰ Federal law does not require the 2009 Permit to include low impact development and hydromodification programs, yet the state has exercised its discretion to include them in the permit. For that reason, those aspects of the 2009 Permit exceed the requirements of federal law and represent a state mandated program for which the Permittees are entitled to reimbursement.

⁹⁹ 40 C.F.R. § 122.26(d)(2)(iv)(A) requires Large MS4 permits to include "a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment."

¹⁰⁰ *Hayes, supra*, 11 Cal.App.4th at 1593.

3. REQUIREMENTS FROM 2002 PERMIT

The 2009 Permit represents a significant increase in the permanent BMPs and other controls that the Permittees' must implement for municipal projects. The 2002 Permit's requirements were minimal in comparison.¹⁰¹ The relevant portions of the 2002 Permit are as follows:

- 2002 Permit section XII.A.2.
- 2002 Permit section XII.A.9.
- 2002 Permit section XII.B.

The requirements from the 2002 Permit were very general compared to the prescriptive requirements in the 2009 Permit. For example, 2002 Permit section XII.B. simply defined which priority development projects were subject to the requirements, and included a general requirement that the Permittees incorporate BMPs for source control, pollution prevention, and/or structural treatment BMPs into their model WQMPs.

4. MANDATED ACTIVITIES

To comply with the low impact development and hydromodification requirements in the 2009 Permit, the Permittees will need to develop and implement low impact development and hydromodification prevention design principles on municipal projects. Projects that are subject to these requirements include municipal yards, recreation centers, civic centers, and road improvements. To date, the Permittees have already incurred significant costs developing the "Green Streets" low impact development program elements that will be applied exclusively to municipal projects. The specific requirements are set forth in sections XII.B. through XII.E. of the 2009 Permit, however, in sum, the Permittees are required to add the following requirements to municipal projects that qualify as "priority development projects" under the 2009 Permit:

- Develop a program to ensure that water quality protection, including LID principles and "Green Streets" requirements, are incorporated into priority development projects, and implement the program within 18 months of adoption of this 2009 Permit.
- Incorporate EPA guidance, "Managing Wet Weather with Green Infrastructure: Green Streets" for all streets, roads, highways and freeways of 5,000 square feet or more of paved surface.
- Include BMPs for source control, pollution prevention, site design, LID implementation and structural treatment control BMPs.
- Infiltrate, harvest and re-use, evapotranspire, or bio-treat the 85th percentile storm event at completed project sites.

¹⁰¹ A copy of the 2002 Permit is included under Section 7 – Documentation to these Test Claims.

- Maintain or replicate the pre-development hydrologic regime through the use of design techniques that create a functionally equivalent post-development hydrologic regime through site preservation techniques and the use of integrated and distributed micro-scale storm water infiltration, retention, detention, evapotranspiration, filtration and treatment systems as close as feasible to the source of runoff.
- Limit disturbance of natural water bodies and drainage systems; conserve natural areas; preserve trees; minimize compaction of highly permeable soils; protect slopes and channels; and minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies.
- Minimize changes in hydrology and pollutant loading; require incorporation of controls, including structural and non-structural BMPs, to mitigate the projected increases in pollutant loads and flows; ensure that post-development runoff durations and volumes from a site have no significant adverse impact on downstream erosion and stream habitat; minimize the quantity of storm water directed to impermeable surfaces and the MS4s; minimize paving, minimize runoff by disconnecting roof leader and other impervious areas and directing the runoff to pervious and/or landscaped areas, minimize directly connected impervious areas; design impervious areas to drain to pervious areas; consider construction of parking lots, walkways, etc., with permeable materials; minimize pipes, culverts and engineered systems for storm water conveyance thereby minimizing changes to time of concentration on site; utilize rain barrels and cisterns to collect and re-use rainwater; maximize the use of rain gardens and sidewalk storage; and maximize the percentage of permeable surfaces distributed throughout the site's landscape to allow more percolation of storm water into the ground.
- Preserve wetlands, riparian corridors, vegetated buffer zones and establish reasonable limits on the clearing of vegetation from the project site.
- Use properly designed and well maintained water quality wetlands, bio-retention areas, filter strips and bio-filtration swales; consider replacing curbs gutters and conventional storm water conveyance systems with bio-treatment systems, where such measures are likely to be effective and technically and economically feasible.
- Evaluate whether the project will adversely impact downstream erosion, sedimentation or stream habitat, and develop a hydrograph with pre- and post-development time of concentration for a 2-year frequency storm event. If the evaluation determines adverse impacts are likely to occur, implement additional site design controls, on-site management controls, structural treatment controls and/or in-stream controls to mitigate the impacts.

- If site conditions do not permit infiltration, harvesting and re-use, and/or evapotranspiration, and/or bio-treatment of the design capture volume at the project site as close to the source as possible, implement an in lieu/mitigation project, in addition to treating the storm water on site.

5. ACTUAL INCREASED COSTS OF MANDATE

To comply with 2009 Permit's low impact development and hydromodification requirements on municipal projects, the permittees, including the Joint Test Claimants, were required to expend time in FY 2009-10, and each year thereafter, to develop, administer and maintain a costly program. To date, the Permittees, including the Joint Test Claimants, have retained private consultants to develop the program, and plan to expend significant resources in future fiscal years. These efforts have included cost-shared programs among the Permittees, including the Joint Test Claimants, to develop a public agency project element within the Model WQMP and to prepare a hydromodification susceptibility analysis of north Orange County's surface water drainage systems, including the preparation and updating of maps and language in the model WQMP and Technical Guidance Document. The increase in costs to comply with these mandated activities in FY 2009-10 and FY 2010-11 are set forth in the Joint Test Claimants' Section 6 Declarations, paragraph 6(d). These costs are composed of both costs shared among the Permittees, including the Joint Test Claimants, to develop these programs and costs incurred by individual jurisdictions to implement the programs with respect to development projects within those jurisdictions. The increased costs to the Joint Test Claimants in FY 2009-10 was \$997,952.89 and the cost in FY 2010-11 was \$1,763,231. The cost of future compliance will vary depending on each municipal project that will be subject to the 2009 Permit's low impact development and hydromodification requirements.

C. SECTION XIII OF THE 2009 PERMIT MANDATES NEW PUBLIC EDUCATION REQUIREMENTS THAT GO BEYOND THE FEDERAL LAW REQUIREMENT THAT AN MS4 PERMIT INCLUDE AN EDUCATION COMPONENT WITHOUT SPECIFYING THE ELEMENTS OF THAT PROGRAM.

1. CHALLENGED PROGRAM REQUIREMENTS

The 2009 Permit increases the public education requirements imposed on the Permittees, creating at least six new program requirements. The relevant portions of the 2009 Permit require the Permittees to implement the following:

XIII. PUBLIC EDUCATION AND OUTREACH

1. The permittees shall continue to implement the public education efforts already underway and shall implement the most effective elements of the comprehensive public and business education strategy contained in the Report of Waste Discharge/DAMP. By July 1, 2012, the permittees shall complete a public awareness survey to determine the effectiveness of the current public and business education strategy and any need for changes to the current multimedia public education efforts. The findings of the survey

and any proposed changes to the current program shall be included in the annual report for 2011-2012.

2. The permittees shall sponsor or staff a storm water table or booth at community, regional, and/or countywide events to distribute public education materials to the public. Each permittee shall participate in at least one event per year.
3. The permittees shall continue to participate in the Public Education Committee to review and update existing guidance for the implementation of the public education program. The Public Education Committee shall meet at least twice per year. The Public Education Committee shall continue to make recommendations for any changes to the public and business education program including: how to make the multimedia efforts more effective; a reevaluation of audiences and key messages for targeted behaviors; and opportunities for participation in regional and statewide public education efforts. The goal of the public and business education program shall be to target 100% of the residents, including businesses, commercial and industrial establishments. Through use of local print, radio and television, the permittees must ensure that the public and business education program makes a minimum of 10 million impressions per year and that those impressions measurably increase the knowledge and measurably change the behavior of the targeted groups.
4. The permittees shall continue their outreach and other public education activities. Each permittee should try to reach the following sectors: manufacturing facilities; mobile service industry; commercial, distribution and retail sales industry; residential/commercial landscape construction and services industry; residential and commercial construction industry; and residential and community activities. Individual workshops (or regional workshops) for each of the aforementioned elements shall be administered by each permittee (or on a countywide basis) by July 1, 2010 and on an annual basis thereafter. Commercial and industrial facility inspectors shall distribute developed educational information (Fact Sheets) to these facilities during inspections. Further, for restaurant, automotive service centers and gasoline service station corporate chains, new information or that which has been previously developed shall be provided to corporate environmental managers during outreach visits that should take place twice during the permit term. Some of these outreach activities could be conducted through the chamber of commerce or other similar establishments. The outcomes from all outreach requirements contained herein shall be reported in the applicable annual reports.
5. The permittees shall further develop and maintain public education materials to encourage the public to report illegal dumping and unauthorized, non-storm water discharges from residential, industrial, construction and commercial sites into public streets, storm drains and to

surface waterbodies and their tributaries; clogged storm drains; faded or missing catch basin stencils and general storm water and BMP information. Hotline and web site information shall be included in the public and business education program and shall be listed in the governmental pages of all regional phone books and on the permittees' website.

6. Within 12 months from the date of adoption of this order, the permittees shall further develop and maintain BMP guidance for the control of those potentially polluting activities identified during the previous permit cycle, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings and/or by mail.
7. The principal permittee, in collaboration with the Co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of the Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses.

2. REQUIREMENTS OF FEDERAL LAW

Neither the 2009 Permit, nor any of its supporting documents, specifically identify any federal regulations as specific authority for the 2009 Permit's public education requirements, and no federal statute, regulation, or policy specifically requires large municipal stormwater permits to include the public education requirements present in the 2009 Permit. Title 40, sections 122.26(d)(2)(iv)(A)(6), (B)(6), and (D)(4) of the Code of Federal Regulations provide general public education requirements for large municipal stormwater permits,¹⁰² they do not, however require anywhere near the level of specificity that the Santa Ana RWQCB has included in the 2009 Permit.

Where the state freely chooses to impose costs associated with a new program or higher level of service upon a local agency as a means of implementing a federal program, then the costs represent a reimbursable state mandate.¹⁰³ Federal law does not require the 2009 Permit to include

¹⁰² 40 C.F.R. § 122.26(d)(2)(iv)(A)(6) requires large municipal stormwater permits to include:

[A] program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

¹⁰³ *Hayes, supra*, 11 Cal.App.4th at 1593; *Long Beach Unified School District, supra*, 225 Cal.App.3d at 173.

the highly specific public education program in the 2009 Permit, yet the state has exercised its discretion to impose that program on the Permittees. For that reason, the public education requirements in the 2009 Permit exceed federal law and represent a state mandated program.

3. REQUIREMENTS FROM 2002 PERMIT

The 2009 Permit requires the Permittees to implement several new requirements that were not included in the 2002 Permit. The relevant portions of the 2002 Permit are as follows:

- Section XIII. Public Education

The Public Education requirements in the 2002 Permit were similar to those in the 2009 Permit. The 2002 Permit established many of the programs in the 2009 Permit. The 2009 Permit, however, includes several new requirements that were either suggested in the 2002 Permit, or not included in the 2002 Permit. The new requirements are set forth in greater detail below.

4. MANDATED ACTIVITIES

The 2009 Permit imposes at least six new public education requirements on the Permittees. As these requirements exceed federal law, they represent state mandates for which the Permittees are entitled to reimbursement. The new program areas are as follows:

1. By July 1, 2012, the permittees shall complete a public awareness survey to determine the effectiveness of the current public and business education strategy and provide a future action plan any need for changes to the current multimedia public education efforts. The findings of the survey and any proposed changes to the current program shall be included in the annual report for 2011-2012. (2009 Permit section XIII.1.)
2. The Public Education Committee shall continue to make recommendations for any changes to the public and business education program, including: how to make the multimedia efforts more effective; a reevaluation of audiences and key messages for targeted behaviors; and opportunities for participation in regional and statewide public education efforts. (2009 Permit section XIII.U.)
3. The permittees shall continue their outreach and other public education activities. Each permittee should try to reach the following sectors: manufacturing facilities; mobile service industry; commercial, distribution and retail sales industry; residential/commercial landscape construction and services industry; residential and commercial construction industry; and residential and community activities. Individual workshops (or regional workshops) for each of the aforementioned elements shall be administered by each permittee (or on a countywide basis) by July 1, 2010 and on an annual basis thereafter. Commercial and industrial facility inspectors shall distribute developed educational information (Fact Sheets). (2009 Permit section XIII.4.)

4. The permittees shall further develop and maintain public education materials to encourage the public to report (including a hotline number and web site to report) illegal dumping and unauthorized, non-storm water discharges. . . (2009 Permit section XIII.5.)
5. Within 12 months from the date of adoption of this order, the permittees shall further develop and maintain BMP guidance for the control of those potentially polluting activities identified during the previous permit cycle, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. (2009 Permit section XIII.6.)
6. The principal permittee, in collaboration with the Co-permittees, shall develop and implement a mechanism for public participation in the updating and implementation of the Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public shall be informed of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. (2009 Permit section XIII.7.)

5. ACTUAL INCREASED COSTS OF MANDATE

To comply with 2009 Permit's public education requirements, the Permittees, including the Joint Test Claimants, commenced expending time and resources in FY 2009-10 and continued in FY 2010-11 to develop, administer and maintain these requirements. The Joint Test Claimants' costs in those fiscal years primarily resulted from joint efforts funded through cost sharing to address the 2009 Permit's requirements in this area, as set forth in the Section 6 Declarations, paragraph 6(c). These costs are composed of both costs shared among the Permittees to develop these programs and costs incurred by an individual jurisdiction. The increased costs for the Joint Test Claimants in FY 2009-10 was \$35,045.44 and the cost in FY 2010-11 was \$4,062.41.

D. SECTION XI OF THE 2009 PERMIT MANDATES THAT THE PERMITTEES DEVELOP A PROGRAM TO REDUCE DISCHARGES OF POLLUTANTS FROM RESIDENTIAL FACILITIES AND MANDATES VERY SPECIFIC ELEMENTS OF THAT PROGRAM. THESE PROVISIONS GO BEYOND THE REQUIREMENTS OF FEDERAL LAW AND ARE UNFUNDED STATE MANDATES.

1. CHALLENGED PROGRAM REQUIREMENTS

The 2009 Permit requires the Permittees to develop and implement a new program to regulate discharges from residential areas. The relevant portions of the 2009 Permit require the Permittees to implement the following:

XI. RESIDENTIAL PROGRAM

1. Each permittee shall develop and implement a residential program to reduce the discharge of pollutants from residential facilities to the MS4s consistent with the maximum extent practicable standard so as to prevent discharges from the MS4s from causing or contributing to a violation of water quality standards in the receiving waters.
2. The permittees should identify residential areas and activities that are potential sources of pollutants and develop Fact Sheets/BMPs. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The permittees shall encourage residents to implement pollution prevention measures. The permittees should work with sub-watershed groups (e.g., the Serrano Creek Conservancy) to disseminate latest research information, such as the UC Master Gardeners Program⁴⁶ and USDA's Backyard Conservation Program.
3. The permittees, collectively or individually, shall facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes. Such facilitation should include educational activities, public information activities, and establishment of curbside or special collection sites managed by the permittees or private entities, such as solid waste haulers.
4. Within 18 months of adoption of this order, the permittees shall develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. The permittees should evaluate the applicability of programs such as the Landscape Performance Certification Program⁴⁸ to encourage efficient water use and to minimize runoff.
5. The permittees shall enforce their Water Quality Ordinance for all residential areas and activities. The permittees should encourage new developments to use weather-based evapotranspiration (ET) irrigation controllers⁵⁰.
6. Each permittee shall include an evaluation of its Residential Program in the annual report starting with the first annual report after adoption of this order.

2. REQUIREMENTS OF FEDERAL LAW

No federal statute, regulation, or policy specifically requires large municipal stormwater permits to include a residential program as required by the 2009 Permit. Code of Federal Regulations, Title 40, sections 122.26(d)(2)(iv)(A) generally requires large municipal stormwater permits to include:

structural and source control measures to reduce pollutants from

runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls.

Federal regulations do not, however require anywhere near the level of specificity that the Santa Ana RWQCB has included in the 2009 Permit. As stated above, where the state freely chooses to impose costs associated with a new program or higher level of service upon a local agency as a means of implementing a federal program, then the costs represent a reimbursable state mandate.¹⁰⁴ Federal law does not require the 2009 Permit to include the highly specific residential program in the 2009 Permit, yet the state has exercised its discretion to impose that program on the Permittees. For that reason, the residential program requirements in the 2009 Permit exceed federal law and represent a state mandated program.

3. REQUIREMENTS FROM 2002 PERMIT

The 2002 Permit does not require the Permittees to develop and implement a Residential program. The closest the 2002 Permit comes to requiring the Permittees to implement such a program is to require the Permittees to include a residential reporting component in paragraph 4 of the Section XIII. Public Education.

4. MANDATED ACTIVITIES

Because the 2002 Permit did not require the Permittees to develop and implement a Residential program, the entire Residential program from the 2009 Permit represents a State mandate for which the Permittees are entitled to reimbursement. The requirements are as follows:

1. Each permittee shall develop and implement a residential program to reduce the discharge of pollutants from residential facilities to the MS4s consistent with the maximum extent practicable standard so as to prevent discharges from the MS4s from causing or contributing to a violation of water quality standards in the receiving waters.
2. The permittees should identify residential areas and activities that are potential sources of pollutants and develop Fact Sheets/BMPs. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The permittees shall encourage residents to implement pollution prevention measures. The permittees should work with sub-watershed groups (e.g., the Serrano Creek Conservancy) to disseminate latest research information, such as the UC Master Gardeners Program⁴⁶ and USDA's Backyard Conservation Program.
3. The permittees, collectively or individually, shall facilitate the proper

¹⁰⁴ *Hayes, supra*, 11 Cal.App.4th at 1593.

collection and management of used oil, toxic and hazardous materials, and other household wastes. Such facilitation should include educational activities, public information activities, and establishment of curbside or special collection sites managed by the permittees or private entities, such as solid waste haulers.

4. Within 18 months of adoption of this order, the permittees shall develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies. The permittees should evaluate the applicability of programs such as the Landscape Performance Certification Program⁴⁸ to encourage efficient water use and to minimize runoff.
5. The permittees shall enforce their Water Quality Ordinance for all residential areas and activities. The permittees should encourage new developments to use weather-based evapotranspiration (ET) irrigation controllers.
6. Each permittee shall include an evaluation of its Residential Program in the annual report starting with the first annual report after adoption of this order.

5. ACTUAL INCREASED COST OF MANDATE

To comply with 2009 Permit's residential program requirements, the Permittees have expended time and resources commencing in FY 2009-10 and thereafter, to develop, administer and maintain the program. The Joint Test Claimants' increase in costs to comply with these mandated activities in FY 2009-10 and FY 2010-11 is set forth in the Joint Test Claimants' Section 6 Declarations, paragraph 6(b). These costs are composed of costs incurred jointly by the Permittees, including the Joint Test Claimants, to develop programs required by the 2009 Permit. The increased cost to the Joint Test Claimants in FY 2009-10 was \$2,933.85 and the cost in FY 2010-11 was \$18,864.37.

E. SECTIONS IX (MUNICIPAL INSPECTIONS OF INDUSTRIAL FACILITIES) AND X (MUNICIPAL INSPECTIONS OF COMMERCIAL FACILITIES) OF THE 2009 PERMIT MANDATE THAT THE PERMITTEES DEVELOP A GEOGRAPHICAL INFORMATION SYSTEM (GIS) FOR INDUSTRIAL FACILITIES AND NEWLY SPECIFIED COMMERCIAL FACILITIES WHICH GOES BEYOND THE REQUIREMENTS OF FEDERAL LAW AND IS AN UNFUNDED STATE MANDATE.

The 2009 Permit mandates that the Permittees develop a Geographic Information System ("GIS") as part of both the inspection program for industrial facilities (Section IX) and the inspection program for commercial facilities (Section X). This requirement goes beyond the requirements of Federal Law.

MUNICIPAL INSPECTIONS OF INDUSTRIAL FACILITIES

1. CHALLENGED PROGRAM REQUIREMENT

Section IX.1 (MUNICIPAL INSPECTIONS OF INDUSTRIAL FACILITIES) of the 2009 Permit provides as follows:

"Each permittee shall continue to maintain an inventory of industrial facilities within its jurisdiction. All sites that have the potential to discharge pollutants to the MS4 should be included in this inventory regardless of whether the facility is subject to business permits, licensing, the State's General Industrial Permit or other individual NPDES permit. This database must be updated on an annual basis. This inventory must be maintained in a computer-based database system and must include relevant information on ownership, SIC code(s), General Industrial Permit WDID # (if any), size, location, etc. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NADSS/WGS84¹⁰⁵ compatible formatting is required."

Section IX.1 of page 41 of 2009 Permit (emphasis added).

2. REQUIREMENTS OF FEDERAL LAW

Neither the 2009 Permit, nor any of its supporting documents, specifically identify any federal regulations as specific authority for imposition of the GIS requirement set forth in Section IX. 1 of the 2009 Permit. Moreover, the CWA does not specifically require the use of GIS as a part of a municipal inventory of industrial facilities. 40 C.F.R. 122.26(d)(2)(ii) states that the following should be provided in the permit: "[A]n inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity."

40 CF.R. 122.26(d)(2)(ii) does not, however, expressly require or mention the use of GIS as part of municipal inspection of industrial facilities. Thus, the 2009 Permit's requirement for the inclusion of a GIS as part of a municipal inventory of industrial facilities is an unfunded state mandate.¹⁰⁶

3. REQUIREMENTS FROM 2002 PERMIT

¹⁰⁵ NAD 83/WGS84 = North American Datum of 1983 and World Geodetic System of 1984 are systems to define three-dimensional coordinates of a single physical point. See footnote 38 of page 39 of 2009 Permit.

¹⁰⁶ The test claimants further note that a slightly more recent Water Board stormwater permit issued by this same region (Santa Ana) does not include the GIS mandate for a database of municipal inspections of industrial or commercial facilities. *See, e.g.*, Exhibit 17. California Regional Water Quality Control Board (Santa Ana Region), Order No. R8-2010-0033 (Jan. 29, 2010), Sections XI.C. and XI.D (inspection requirements), and Section XI.A (General requirement of database inventory of active industrial and commercial facilities within their jurisdiction). Thus, the Santa Ana Board's decision to mandate GIS in this case clearly goes beyond not only federal law but also the Santa Ana Board's own understanding of federal law mandates based upon its January 29, 2010 stormwater permit issued to a different group of permittees.

The 2002 Permit provided that each Permittee:

- Develop an inventory of the industrial facilities within its jurisdiction and maintain such inventory in a computer-based database system.
- Include relevant information on ownership, SIC code(s), General Industrial Permit WDID # (if any), size, location, etc. in the computer-based dataset system.
- Update the inventory computer-based database on an annual basis

The 2002 Permit did not require, that Permittees include a GIS as part of its inventory of industrial facilities in a computer-based database system. The 2002 Permit merely recommended, as opposed to required, that a GIS be included. *See* Section IX. 1 of page 22 of the 2002 Permit for complete text.

4. MANDATED ACTIVITIES

Section IX.1 of the 2009 Permit requires Permittees to perform the following activities that are **not** required under either federal law or the 2002 Permit:

- In the inventory of industrial facilities, include a Geographical Information System, with latitude/longitude (in decimals) or NAD83/WGS8442 compatible formatting.

To comply with the GIS requirement set forth in Section IX.1, many of the Permittees have or will need to perform the following activities to comply with the new GIS requirement:

1. Purchase computer server and operating software compatible with GIS;
2. Hire a consultant to prepare aerial digital photographs of the Permittees' jurisdictions;
3. Hire a consultant to develop a GIS browser;
4. Purchase the Orange County Assessor database;
5. Hire a consultant to digitize all stormdrain systems and develop a storm drain system digital map; and
6. Hire a consultant to develop a GIS layer that includes all commercial, industrial and restaurant facilities that are inspected for stormwater compliance.

MUNICIPAL INSPECTIONS OF COMMERCIAL FACILITIES

1. CHALLENGED PROGRAM REQUIREMENT

Section X.1 of the 2009 Permit provides as follows:

X. MUNICIPAL INSPECTIONS OF COMMERCIAL FACILITIES

1. Each permittee shall continue to maintain and update quarterly an inventory of the types of commercial facilities/businesses listed below within its jurisdiction. As required under the third term permit, this inventory must be maintained in a computer-base database system (Commercial Database) and must include relevant information on ownership, size, location, etc. For fixed facilities, inclusion of a Geographical Information System (GIS), with latitude/longitude (in decimals) or NAD83/WGS84 compatible formatting is required. For water quality planning purposes, the permittees should consider using a parcel-level GIS that contains an inventory of the types of facilities/discharges listed below.

Commercial facilities may include, but not may be limited to:

- a) Transport, storage or transfer of pre-production plastic pellets;
- b) Automobile mechanical repair, maintenance, fueling or cleaning;
- c) Airplane maintenance, fueling or cleaning;
- d) Marinas and boat maintenance, fueling or cleaning;
- e) Equipment repair, maintenance, fueling or cleaning;
- f) Automobile impound and storage facilities;
- g) Pest control service facilities;
- h) Eating or drinking establishments, including food markets and restaurants;
- i) Automobile and other vehicle body repair or painting;
- j) Building materials retail and storage facilities;
- k) Portable sanitary service facilities;
- l) Painting and coating;
- m) Animal facilities such as petting zoos and boarding and training faculties;
- n) Nurseries and greenhouses;
- o) Landscape and hardscape installation;
- p) Pool, lake and fountain cleaning;
- q) Golf courses;

- r) Other commercial sites/sources that the permittee determines may contribute a significant pollutant load to the MS4; and
- s) Any commercial site or sources that are tributary to and within 500 feet of an area defined by the Ocean Plan as an Area of Special Biological Significance."

2. REQUIREMENTS OF FEDERAL LAW

Neither the 2009 Permit, nor any of its supporting documents specifically identify any federal regulations as specific authority for imposition of the requirements set forth in Section X.1 of the 2009 Permit. Although 40 C.F.R. § 122.26(d)(2)(iv)(A) provides that management programs describe "structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system", it does not specifically require quarterly municipal inspection of the commercial facilities specified in the 2009 Permit. Moreover, there is no express requirement or mention of the use of GIS as part of municipal inspection of commercial facilities in the CWA or the federal regulations. As such, the 2009 Permit's requirement for the inclusion of a GIS as part of a municipal inventory of commercial facilities is an unfunded state mandate.

3. REQUIREMENTS FROM 2002 Permit

The 2002 Permit provided that each Permittee:

- Develop an inventory of the specified commercial facilities and companies within its jurisdiction and maintain such inventory in a computer-based database system.
- Include relevant information on ownership, size, location, etc. in the computer-based database system.
- Update the inventory computer-based database on an annual basis

The 2002 Permit did not, however, require, that Permittees include a GIS as part of its inventory of commercial facilities and businesses in a computer-based database system. The 2002 Permit merely recommended, as opposed to require, that a GIS be included. *See* Section X. 1 of the 2002 Permit for complete text.

Moreover, the 2002 Permit only required that the computer-based database for the inventory of commercial facilities be updated on annual basis, as opposed to a quarterly basis as set forth in the 2009 Permit.

In addition, Section X.1 of the 2009 Permit adds 11 new categories¹⁰⁷ of commercial

¹⁰⁷ These 11 new categories of commercial facilities are: (a) Transport, storage or transfer of pre-production plastic pellets; (c) Airplane maintenance, fueling or cleaning; (d) Marinas and boat maintenance, fueling or cleaning; (e) Equipment repair, maintenance, fueling or cleaning; (f) Automobile impound and storage facilities; (g) Pest control service facilities; (h) Eating or drinking establishments, including food markets and restaurants; (j) Building materials retail and storage facilities; (k) Portable sanitary service facilities; (m) Animal facilities such as petting zoos and

facilities that are subject to municipal inspections that were not in the 2002 Permit. The Regional Board provides no legal justification or authority stating that these 11 new categories pose a significant water quality threat to the MS4. There appears to be no legal authority warranting the inclusion of these 11 new categories of commercial facilities and no evidence that these 11 categories are significant non-point source polluters.

4. MANDATED ACTIVITIES

Section X.1 of the 2009 Permit requires Permittees to perform the following activities that are **not** required under either federal law or the 2002 Permit:

Include a Geographical Information System, with latitude/longitude (in decimals) or NAD83AVGS8442 compatible formatting that contains an inventory of the following types of facilities and discharges:

- Transport, storage or transfer of pre-production plastic pellets;
- Automobile mechanical repair, maintenance, fueling or cleaning;
- Airplane maintenance, fueling or cleaning;
- Marinas and boat maintenance, fueling or cleaning;
- Equipment repair, maintenance, fueling or cleaning;
- Automobile impound and storage facilities;
- Pest control service facilities;
- Eating or drinking establishments, including food markets and restaurants;
- Automobile and other vehicle body repair or painting;
- Building materials retail and storage facilities;
- Portable sanitary service facilities;
- Painting and coating;
- Animal facilities such as petting zoos and boarding and training facilities;
- Nurseries and greenhouses;
- Landscape and hardscape installation;
- Pool, lake and fountain cleaning;

boarding and training facilities; and (q) Golf courses. See Section X. 1 on page 43 of the 2009 Permit.

- Golf courses;
- Other commercial sites/sources that the permittee determines may contribute a significant pollutant load to the MS4; and
- Any commercial site or sources that are tributary to and within 500 feet of an area defined by the Ocean Plan as an Area of Special Biological Significance

Lastly, to comply with the requirements of Section IX. 1, many of the Permittees have or will need to perform the following activities to comply with the new GIS requirement:

1. Purchase computer server and operating software compatible with GIS;
2. Hire a consultant to prepare aerial digital photographs of the Permittees' jurisdictions;
3. Hire a consultant to develop a GIS browser;
4. Purchase the Orange County Assessor database;
5. Hire a consultant to digitize all stormdrain systems and develop a storm drain system digital map; and
6. Hire a consultant to develop a GIS layer that includes all commercial, industrial, and restaurant facilities that are inspected for stormwater compliance.

5. ACTUAL INCREASED COSTS OF MANDATE

To comply with the requirements of the above-described requirements in Sections IX.1 and X.1 of the 2009 Permit, the Permittees, including the Joint Test Claimants, were required to expend time commencing in FY 2009-10 and thereafter, to develop, administer and maintain a costly Geographical Information System and update facility inventories. The Joint Test Claimants' costs to comply with these mandated activities were incurred on an individual jurisdiction basis, as set forth in the Section 6 Declarations of the Joint Test Claimants, paragraph 6(a). The increased cost to the Joint Test Claimants of these requirements in FY 2009-10 was \$335,796.25 and in FY 2010-11 was \$165,936.60.

VII. STATEWIDE COST ESTIMATE

This Joint Test Claim concerns a municipal stormwater permit applicable only to local agencies located in the portion of Orange County within the jurisdiction of the Santa Ana RWQCB. Therefore, any statewide cost estimate must, by virtue of this limitation, apply only to costs incurred by such local agencies. The Joint Test Claimants estimate that, for all requirements set forth in the 2009 Permit that are the subject of this Joint Test Claim, the amount of approximately \$2,447,890.20 was expended in FY 2009-10 and the amount of approximately \$3,051,349 was expended in FY 2010-11. See Section 6 Declarations of the Joint Test Claimants and the Declaration (Second) of Richard Boon.

VIII. FUNDING SOURCES

The Joint Test Claimants are not aware of any State, federal or non-local agency funds that are or will be available to fund these new activities. The Joint Test Claimants do not have fee authority to offset these costs. The source of funds for the requirements are General Fund monies of the Joint Test Claimants. Additionally, for the City of Brea, some funding was also available through an Urban Runoff/NPDES Fund and for the City of Buena Park, some funding was available through a Water Enterprise Fund. For the County, some additional funding was available through landfill gate fees and special district funding, among other sources. *See* Section 6 Declarations, Paragraph 8.

IX. PRIOR MANDATE DETERMINATIONS

A. Los Angeles County

In 2003 and 2007, the County of Los Angeles and 14 cities within the county (the Los Angeles claimants) submitted test claims 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21. The test claims asserted that provisions of Los Angeles Water Board Order 01 -1 82 constitute reimbursable state mandates. As is the case with the Regional Board Order that is the subject of this Test Claim, Order 01-182 was the 2001 renewal of the existing MS4 Permit, Order 01-182 is the MS4 Permit for Los Angeles County and most of its incorporated cities, and serves as an NPDES permit. The permit provisions require the Los Angeles claimants to install and maintain trash receptacles at specified transit stops and to inspect certain industrial, construction, and commercial facilities for compliance with local and/or state storm water requirements.

On September 3, 2009, the Commission issued a final decision entitled *In re Test Claim On: Los Angeles Regional Quality Control Board Order No. 01-182, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21 ("Los Angeles Decision")*. The Los Angeles Decision partially approved the test claims. The Commission found the trash receptacle requirement to be a reimbursable state mandate.

B. San Diego County

In 2007, the County of San Diego and 21 cities within the county (the San Diego claimants) submitted test claim 07-TC-09. The test claim asserted that many provisions of San Diego Water Board Order R9-2007-0001 constitute reimbursable state mandates. Order R9-2007-0001 is the 2007 renewal of the municipal storm water permit for San Diego County and many of its incorporated cities, and serves as an NPDES permit. The challenged permit provisions require the San Diego claimants to: (1) conduct and report on street sweeping activities; (2) clean and report on storm sewer cleaning; (3) implement a regional urban runoff management program; (4) assess program effectiveness; (5) conduct public education and outreach; (6) collaborate among Permittees to implement the program; (7) implement hydromodification management plans; and (8) implement plans for low impact development.

On March 30, 2010, the Commission issued a final decision entitled *In re Test Claim on: San Diego Regional Quality Control Board Order No. R9-2007-0001, Case No. 07-TC-09 (San Diego Decision)*. The San Diego Decision partially approved the test claim. The Commission's decision took the relatively narrow Los Angeles Decision to its logical conclusion. The

Commission found the following permit requirements to be reimbursable state mandates:

1. Street Sweeping
2. Street Sweeping Reporting
3. Conveyance System Cleaning
4. Conveyance System Cleaning Reporting
5. Public Education Requirements with Specific Target Communities and Specified Topics
6. Mandatory Watershed Activities and Collaboration in Watershed Urban Management Program
7. Regional Urban Runoff Management Program
8. Program Effectiveness Assessment
9. Long-term Effectiveness Assessment
10. Permittee Collaboration

The Commission also found the hydromodification and low impact development requirements in the San Diego Permit to be state mandates, but not reimbursable mandates because the local agencies could charge fees to pay for these programs.

X. CONCLUSION

The 2009 Permit imposes many new mandated activities and programs on the Permittees, including the Joint Test Claimants. As detailed above the costs to develop and implement these new programs and activities are substantial. The Joint Test Claimants believe that the costs incurred and to be incurred satisfy all the criteria for reimbursable mandates and respectfully requests that the Commission make such findings as to each of the mandated programs and activities set forth herein.

**SANTA ANA REGION WATER
PERMIT, 09-TC-03
SECTION 6
DECLARATIONS**

DECLARATION OF RICHARD BOON ON BEHALF OF THE
COUNTY OF ORANGE IN SUPPORT OF TEST CLAIM

I, Richard Boon, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the County of Orange (“County”) as Chief of the Orange County Stormwater Program within OC Public Works. I have knowledge of the County’s funding for the programs and activities set forth in this declaration.

3. I have held my current position for approximately 13 years. I am principally responsible for managing the Orange County Stormwater Program (the “Program”). My duties include preparing and securing approval of the Program’s annual operating budget, developing and implementing policy and programmatic guidance to ensure regulatory compliance by the County, Orange County Flood Control District and cities of Orange County with two areawide municipal stormwater permits, and managing consultant service contracts for geotechnical, regulatory and public education support to the Program.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region (“RWQCB”) Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the “Permit”) and am familiar with the requirements of the Permit as it applies to the County. The County is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The County was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the County, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the County, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the County was \$2,965 and that during FY 2010-11, the cost for this program was \$1,480. I am further informed and believe and therefore state that the County first incurred costs for this mandated activity in approximately August 2010.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the County, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of

Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the County, retained a consultant to perform this mandated activity. Each permittee, including the County, paid a share of this cost. I am informed and believe and therefore state that the County share of the cost for this activity in FY 2009-10 was \$414.51 and in FY 2010-11 the County's share was \$2,550.84. I am further informed and believe and therefore state that the County first incurred those costs for this mandated activity in July 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the County, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the County, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the County share of the costs for this activity were \$5,101.68. I am further informed and believe and therefore state that the County first incurred costs for this mandated activity during the period August 17th, 2009 through November 25th, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the County, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and

commercial construction industry; and residential and community activities. The permittees collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the County's share of such costs in FY 2009-10 was \$797.14 and that the County's share of such costs in FY 2010-11 was \$414.51. I am further informed and believe and therefore state that the County first incurred costs for this mandated activity in July, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the County, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the County share of such costs in FY 2009-10 was \$159.43 and that the County's share of such costs in FY 2010-11 was \$159.43. I am further informed and believe and therefore state that the County first incurred costs for this mandated activity in September, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the County, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*"

These include road, drainage facility, public utility, linear and other projects. The permittees, including the County, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the County share of the cost of this activity in FY 2009-10 was \$22,385.90 and that the County's share of the cost of this activity in FY 2010-11 was \$21,326.60. I am informed and believe and therefore state that the County first incurred costs for such activity in or about August 2009. In addition, I am informed and believe and therefore state that County-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$57,230 in FY 2010-11.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the County, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the County, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the County's share of the cost of these activities in FY 2009-10 was \$778.89 and in FY 2010-11 the County's share of the costs was \$2,647.93. I am informed and believe and therefore state that the County first incurred costs for this mandated activity in June, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The County was subject to the following requirements under this new program:

TMDL Programs in Newport Bay Watershed

(i) Permit Subsections XVIII.B.1 through B.4 required various permittees, including the County, to comply with a series of new numeric effluent limits based on waste load allocations within the EPA-Promulgated Toxic Pollutant TMDLs for San Diego Creek and Newport Bay. These new program requirements all involved the imposition of numeric effluent limits from waste load allocations from these TMDLs, as set forth in Tables 1 A/B/C, Table 2 A/B/C/D/ and Table 3 on pages 68 to 71 of the Permit.

(ii) Permit Subsection XVIII.B.5 imposed new TMDL-related requirements applicable to various permittees, including the County, that would take effect upon adoption by the State Water Resources Control Board and the Office of Administration Law (“OAL”), and concerned compliance with numeric limits taken from wasteload allocations in the TMDLs for Organochlorine Compounds for Newport Bay and San Diego Creek (as set forth in Table 4 on page 71 of the Permit).

(iii) Permit Subsection XVIII.B.7 imposed new requirements on various permittees, including the County, to participate in the development and implementation of additional Metals and Selenium TMDLs for the Newport Bay Watershed being developed by the RWQCB.

(iv) Permit Subsection XVIII.B.8 required certain permittees, including the County, to prepare a Cooperative Watershed Program for the Selenium TMDL for the Newport Bay Watershed. This Program was required to be submitted within 24 months of the date of adoption of the Permit or one month after the approval of the TMDL by the OAL. In addition, this subsection required certain permittees, including the County, to implement the Program once it was approved.

(v) Permit Subsection XVIII.C.1 imposed on certain permittees, including the County, new numeric effluent limits based on wasteload allocations from a Fecal Coliform/Bacteria TMDL for Newport Bay and San Diego Creek, as set forth in Tables 8A and 8B on pages 74-75 of the Permit.

(vi) Permit Subsection XVIII.D.1 required various permittees, including the County, to comply with new numeric effluent limits from waste load allocations from a TMDL for Diazinon and Chlorpyrifos for San Diego Creek and Chlorpyrifos for Newport Bay, as set forth in Tables 9A and 9B on page 76 of the Permit.

The permittees subject to such requirements participated in a cost-sharing program administered by the County, whereunder costs associated with the above-referenced TMDL requirements in the Permit were shared among those permittees. I am informed and believe and therefore state that the County's share of the costs for the above-referenced requirements in FY 2009-10 was \$47,904 and in FY 2010-11, \$46,127. I am further informed and believe and therefore state that the County first incurred costs for these Permit requirements in June 2009. The amount of costs incurred in FY 2008-09 is estimated at \$57,140.61.

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TMDL Programs in San Gabriel River/Coyote Creek Watershed

(vii) Metals TMDL for Coyote Creek and San Gabriel River: Permit

Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan (CSSCP) and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the County. I am informed and believe and therefore state that the estimated share of the monitoring costs for the County during FY 2010-11 was \$7,488 and that the share during FY 2011-12 was \$2,352. I am informed and believe and therefore state that the County first incurred costs for these requirements in March, 2010.

7. As set forth above in this Declaration, the County first incurred costs under the Permit during FY 2008-09, which commenced on July 1, 2008.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. The County, in addition to its General Fund, had sources of other County funding, including landfill gate fees and special district funding, for certain Permit obligations. To the extent such fees were employed and/or such funds appropriated for such obligations, they would not be available for other County obligations. I am informed and believe and therefore state that I am not aware of any other fee or tax which the County would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities.

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

Executed December 19, 2016 at Orange, California.

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive style with a large initial "R".

Richard Boon
Chief, Orange County Stormwater Program
OC Public Works

**DECLARATION (SECOND) OF RICHARD BOON ON BEHALF OF THE
COUNTY OF ORANGE IN SUPPORT OF TEST CLAIM**

I, Richard Boon, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the County of Orange (“County”) as Chief of the Orange County Stormwater Program within OC Public Works. I have knowledge of the County’s funding for the programs and activities set forth in this declaration.

3. I have held my current position for approximately 13 years. I am principally responsible for managing the Orange County Stormwater Program (the Program). My duties include preparing and securing approval of the Program’s annual operating budget, developing and implementing policy and programmatic guidance to ensure regulatory compliance by the County, Orange County Flood Control District and cities of Orange County with two areawide municipal stormwater permits and managing consultant service contracts for geotechnical, regulatory and public education support to the Program.

4. I am familiar with the requirements of California Regional Water Quality Control Board, Santa Ana Region (“RWQCB”) Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the “Permit”). The County is a permittee under that Permit.

5. I am also familiar with the matters set forth in the Test Claim filed before the Commission on State Mandates regarding the Permit and the municipalities that are Joint Test Claimants in that Test Claim.

6. The County was designated as the Principal Permittee in the Permit. In that role, the County has, among other things, responsibility for budgeting, contracting with consultants and other third parties, and the invoicing of permittees for their share of the costs of programs subject to cost-sharing among the permittees. In my role as Chief of the Orange County Stormwater Program, I am familiar with these processes and how permittees are invoiced.

7. The cost-sharing programs in which permittees under the Permit participated can be divided into three main categories: (a) compliance with Total Maximum Daily Load (“TMDL”) provisions applicable to the San Diego Creek and Newport Bay; (b) compliance with TMDL provisions applicable to the San Gabriel River and Coyote Creek; and (c) other non-TMDL compliance activities, including those activities identified in Paragraph 6(b)-d) of my Declaration on behalf of the County in this Test Claim.

8. I have reviewed financial records maintained by the County in its regular business relating to the cost-sharing programs. I have also reviewed the dates on which cost-sharing invoices were submitted to the Joint Test Claimants and the dates on which the Joint Test Claimants submitted payment for such cost-sharing amounts. Based on that review, I understand and believe and therefore state that:

a. With regard to San Diego Creek/Newport Bay TMDL requirements, the County first invoiced the Joint Test Claimants for their share of the cost of such requirements on or about February 9, 2010 and the County received payment from the Joint Test Claimants during a period commencing on or about March 8, 2010 and ending on or about May 6, 2010.

b. With regard to the San Gabriel River/Coyote Creek TMDL requirements, the County first invoiced the Joint Test Claimants for their share of the cost of such requirements on or about December 23, 2010 and the County received payment from the Joint Test Claimants

during a period commencing on or about January 10, 2011 and ending on or about February 4, 2011.

c. With regard to the non-TMDL requirements of the Permit that were subject to cost sharing, the County first invoiced the Joint Test Claimants for their share of the cost of such requirements on or about December 1, 2009 and the County received payment from the Joint Test Claimants during a period commencing on or about December 14, 2009 and ending on or about February 8, 2010.

9. From my review of the financial records of the cost-sharing programs, I determined that the total amount paid by the permittees in FY 2009-10 for the San Diego Creek/Newport Bay TMDLs was \$837,764.89 and in FY 2010-11 was \$827,185.92; the total amount paid by the permittees in FY 2009-10 for the San Gabriel River/Coyote Creek TMDL was \$55,000 and in FY 2010-11 was approximately \$84,000; and the total amount paid by the permittees in FY 2009-10 for the other cost-sharing requirements at issue in the Test Claim was \$395,088.32 and in FY 2010-11 was \$433,420.68.

10. Documents reflecting the information set forth in this Declaration, including documents that I prepared or caused to be prepared, were distributed to representatives of the Joint Test Claimants in connection with the preparation of declarations in support of the Test Claim.

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

Executed December 19, 2016 at Orange, California.



Richard Boon
Chief, Orange County Stormwater Program
OC Public Works

DECLARATION OF KEITH LINKER ON BEHALF OF THE CITY OF ANAHEIM IN

SUPPORT OF TEST CLAIM

I, Keith Linker, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Anaheim ("City") as a Principal Civil Engineer. In that capacity, I have knowledge of the requirements of the stormwater permits discussed herein, as well as of the City's funding of such requirements.

3. I have held my current position for approximately fifteen (15) years. My duties include addressing the City's stormwater and related environmental programs as they affect the Public Works, capital improvements, and in to a degree the City in general.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 ("Permit") and am familiar with the requirements of the Permit as it applies to the City. The City was a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system.

Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$11,953 and that during FY 2010-11, the cost for this program was \$7,043. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about March 12, 2010.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$538.12 and in FY 2010-11 \$3,311.51. I am further

informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$6,623.01. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$1,034.85 and that the City’s share of such costs in FY 2010-11 was \$538.12. In addition, I am informed and believe and therefore state that City-specific costs to participate in

the mobile service industry workshop was \$2,500 in FY 2010-2011. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010. I am informed and believe and therefore state that the City first incurred its City-specific costs on February 17, 2011.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$206.97 and that the City's share of such costs in FY 2010-11 was 206.97. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*"

These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the City's share of the cost of this activity in FY 2009-10 was \$29,061.44 and that the City's share of the cost of this activity in FY 2010-11 was \$27,686.25. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$39,992 in FY 2009-10 and \$43,191 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010. I am informed and believe and therefore state that the City first incurred its City-specific costs on July 1, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$732.80 and in FY 2010-11 the City's share of the costs was \$2,491.23. I am

informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 7, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan (CSSCP) and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$13,271 and that the cost during FY 2011-12 was \$13,364.58. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about February 4, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 12, 2016 at Anaheim, California.



Keith Linker,
Principal Civil Engineer

**DECLARATION OF BRIAN M. INGALLINERA ON BEHALF OF THE CITY OF
BREA IN SUPPORT OF TEST CLAIM**

I, Brian M. Ingallinera, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Brea ("City") as Environmental Services Coordinator.

3. I have held my current position for five years. However, I have worked with the City for a total of ten consecutive years and being involved with the environmental regulations. My duties include managing the City's National Pollutant Discharge Elimination System (NPDES), water conservation program, and Fats, Oils and Grease (FOG) program. Prior to holding my current position as Environmental Services Coordinator, I served as an Assistant Engineer and managed the NPDES program along with Capital Improvement Projects.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$8,572.50 and that during FY 2010-11, the cost for this program was \$4,905.50. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City,

retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$88.68 and in FY 2010-11 the City's share was \$545.74. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City's share of the costs for this activity were \$1,091.48. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated

activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$170.54 and that the City's share of such costs in FY 2010-11 was \$88.68. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$34.11 and that the City's share of such costs in FY 2010-11 was \$34.11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*"

These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the City's share of the cost of this activity in FY 2009-10 was \$4,789.36 and that the City's share of the cost of this activity in FY 2010-11 was \$4,562.73. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$1,088 in FY 2009-10 and \$1,786 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$5,463.98 and in FY 2010-11 the City's share of the costs was

\$18,575.39. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$6,122 and that the cost during FY 2011-12 was \$6,165.92. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about January 18, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund and Urban Runoff-NPDES Fund. I declare under penalty of perjury that the foregoing is true and correct.

Executed December 13, 2016 at Brea, California.



Brian M. Ingallinera
Environmental Services Coordinator

DECLARATION OF DAVID JACOBS ON BEHALF OF THE CITY OF BUENA PARK

IN SUPPORT OF TEST CLAIM

I, David Jacobs, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Buena Park ("City") as Director of Public Works.

3. I have held my current position for approximately ten months. My duties include managing the Public Works Department and I oversee divisional supervisors in the engineering, traffic, streets, utilities, government facilities, equipment maintenance, and environmental compliance divisions.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$196,500, and that during FY 2010-11, the cost for this program was \$45,500. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$122.83 and in FY 2010-11 the City's share was

\$755.87. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City's share of the costs for this activity were \$1,511.74. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$236.21 and that the City's share of such costs in FY 2010-11 was \$122.83. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$47.24 and that the City's share of such costs in FY 2010-11 was \$47.24. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$6,633.44 and that the City's share of the cost of this activity in FY 2010-11 was \$6,319.54. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were approximately \$15,000 in FY 2009-10 and approximately \$360,000 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$900.47 and in FY 2010-11 the City's share of the costs was \$3,061.25. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$10,534 and that the cost during FY 2011-12 was \$10,610.58. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about January 24, 2011.


7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further

informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund and Water Enterprise Fund.

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

Executed December 14, 2016 at Buena Park, California.



David Jacobs, Director of Public Works

DECLARATION OF BALTAZAR MEJIA ON BEHALF OF THE CITY OF COSTA

MESA IN SUPPORT OF TEST CLAIM

I, Baltazar Mejia, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Costa Mesa ("City") as City Engineer.

3. I have held my current position for approximately 6 months. My duties include overseeing the City's stormwater program as it relates to capital improvement projects, new development and other activities of the Engineering Division.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$16,494 and that during FY 2010-11, the cost for this program was \$17,557. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$176.25 and in FY 2010-11 the City's share was \$1,084.63. I am further informed and believe and therefore state that the City first incurred those

costs when it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$2,169.26. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$338.95 and that the City’s share of such costs in FY 2010-11 was \$176.25. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$67.79 and that the City's share of such costs in FY 2010-11 was \$67.79. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$9,518.60 and that the City's share of the cost of this activity in FY 2010-11 was \$9,068.18. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$4,229 in FY 2009-10 and \$34,755 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$1,247.17 and in FY 2010-11 the City's share of the costs was \$4,239.94. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 28, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirements under this new program:

(i) Permit Subsections XVIII.B.1 through B.4 required various permittees, including the City, to comply with a series of new numeric effluent limits based on waste load allocations within the EPA-Promulgated Toxic Pollutant TMDLs for San Diego Creek and Newport Bay. These new program requirements all involved the imposition of numeric effluent limits from waste load allocations from these TMDLs, as set forth in Tables 1 A/B/C, Table 2 A/B/C/D/ and Table 3 on pages 68 to 71 of the Permit.

(ii) Permit Subsection XVIII.B.5 imposed new TMDL-related requirements applicable to various permittees, including the City, that would take effect upon adoption by the State Water Resources Control Board and the Office of Administration Law (“OAL”), and concerned compliance with numeric limits taken from wasteload allocations in the TMDLs for Organochlorine Compounds for Newport Bay and San Diego Creek (as set forth in Table 4 on page 71 of the Permit).

(iii) Permit Subsection XVIII.B.7 imposed new requirements on various permittees, including the City, to participate in the development and implementation of additional Metals and Selenium TMDLs for the Newport Bay Watershed being developed by the RWQCB.

(iv) Permit Subsection XVIII.B.8 required certain permittees, including the City, to prepare a Cooperative Watershed Program for the Selenium TMDL for the Newport Bay

Watershed. This Program was required to be submitted within 24 months of the date of adoption of the Permit or one month after the approval of the TMDL by the OAL. In addition, this subsection required certain permittees, including the City, to implement the Program once it was approved.

(v) Permit Subsection XVIII.C.1 imposed on certain permittees, including the City, new numeric effluent limits based on wasteload allocations from a Fecal Coliform/Bacteria TMDL for Newport Bay and San Diego Creek, as set forth in Tables 8A and 8B on pages 74-75 of the Permit.

(vi) Permit Subsection XVIII.D.1 required various permittees, including the City, to comply with new numeric effluent limits from waste load allocations from a TMDL for Diazinon and Chlorpyrifos for San Diego Creek and Chlorpyrifos for Newport Bay, as set forth in Tables 9A and 9B on page 76 of the Permit.

The permittees, including the City, subject to such requirements participated in a cost-sharing program administered by the County of Orange, whereunder costs associated with the above-referenced TMDL requirements were shared among those permittees. I am informed and believe and therefore state that the costs for the above-referenced requirements allocated to the City in FY 2009-10 was \$53,228.99 and in FY 2010-11, \$51,376.89. I am further informed and believe and therefore state that the City first incurred costs for these requirements when it received an invoice from the County on or about February 9, 2010 and that the City paid the invoice on or about March 8, 2010.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 16, 2016 at Costa Mesa, California.



**DECLARATION OF GONZALO VAZQUEZ ON BEHALF OF THE CITY OF
CYPRESS IN SUPPORT OF TEST CLAIM**

I, Gonzalo Vazquez, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Cypress (“City”) as the Water Quality Manager.

3. I have held my current position for approximately 27 years. My duties include managing the stormwater program and overseeing staff in the Environmental Division.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region (“RWQCB”) Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the “Permit”) and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 (“2002 Permit”). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$14,024 and that during FY 2010-11, the cost for this program was \$15,527. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$74.49 and in FY 2010-11 the City's share was \$458.43. I am further informed and believe and therefore state that the City first incurred those costs when

it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$916.85. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$143.26 and that the City’s share of such costs in FY 2010-11 was \$74.49. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(iii) **Public Participation:** Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$28.65 and that the City's share of such costs in FY 2010-11 was \$28.65. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(iv) **Additional City Costs:** In addition to the City's share of costs incurred by all permittees, the City incurred additional costs for Public Education and Outreach of \$1,421 in FY 2009-10 and \$2,991 in FY 2010-11. I am informed and believe and therefore state that the City first incurred such costs on or about July 1, 2009.

(d) **New/Revised Development Programs and Standards**

(i) **Low Impact Development (LID) and Model Water Quality Management Plan (WQMP):** Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA)

Guidance entitled, “*Management Wet Weather with Green Infrastructure: Green Streets.*”

These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the City’s share of the cost of this activity in FY 2009-10 was \$4,023.11 and that the City’s share of the cost of this activity in FY 2010-11 was \$3,832.74. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$12,823 in FY 2009-10 and \$21,141 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009. I am informed and believe and therefore state that the City first incurred such City specific costs on or about July 1, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site’s hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County’s surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as

needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$1,789.64 and in FY 2010-11 the City's share of the costs was \$6,084.07. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

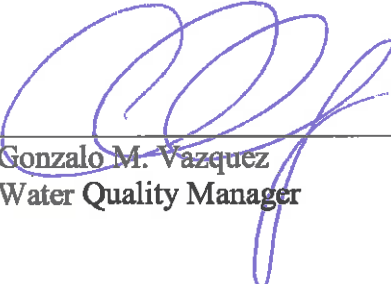
(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$4,666 and that the cost during FY 2011-12 was \$4,699.57. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about January 24, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 16, 2016 at Cypress, California.


12-16-16

Gonzalo M. Vazquez
Water Quality Manager

**DECLARATION OF STEVEN M. HAUERWAAS ON BEHALF OF THE CITY OF
FOUNTAIN VALLEY IN SUPPORT OF TEST CLAIM**

I, Steven M. Hauerwaas, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Fountain Valley ("City") as Environmental Services Administrator.

3. I have held my current position for approximately 16 years. My duties include managing the City of Fountain Valley's Stormwater Pollution Prevention Program and other environmental compliance programs.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$2,400 and that during FY 2010-11, the cost for this program was \$2,400. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about December 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$93.05 and in FY 2010-11 the City's share was \$572.59.

I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City's share of the costs for this activity was \$1,145.18. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$178.93 and that the City's share of such costs in FY 2010-11 was \$93.05. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$35.79 and that the City's share of such costs in FY 2010-11 was \$35.79. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$5,025.00 and that the City's share of the cost of this activity in FY 2010-11 was \$4,787.22. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

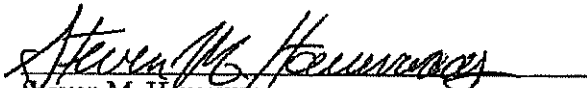
(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$756.41 and in FY 2010-11 the City's share of the costs was \$2,571.48. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 23, 2009.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 13, 2016 at Fountain Valley, California.


Steven M. Hauerwaas
Environmental Services Administrator
City of Fountain Valley

**DECLARATION OF TRUNG CHANH PHAN ON BEHALF OF THE CITY OF
FULLERTON IN SUPPORT OF TEST CLAIM**

I, Trung Chanh Phan, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Fullerton ("City") as Public Works Analyst/Stormwater/Wastewater Compliance Specialist.

3. I have held my current position for approximately eight (8) years. My duties include overseeing the City's stormwater and related environmental programs as they affect the public works, private development, and capital improvements.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the approximate cost of this program for the City was over \$40,000 and that during FY 2010-11, the cost for this program was approximately over \$40,000. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$223.72 and in FY 2010-11 the City's share was

\$1,376.72. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$2,753.45. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$430.23 and that the City’s share of such costs in FY 2010-11 was \$223.72. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$86.05 and that the City's share of such costs in FY 2010-11 was \$86.05. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$12,081.99 and that the City's share of the cost of this activity in FY 2010-11 was \$11,510.27. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$670,000 in FY 2009-10 and \$737,000 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$630.14 and in FY 2010-11 the City's share of the costs was \$2,142.22. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 5, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$20,191 and that the cost during FY 2011-12 was \$20,332.97. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about February 4, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further

informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Fullerton, California.



Trung Chanh Phan
Public Works Analyst

DECLARATION OF TRAVIS HOPKINS ON BEHALF OF THE
CITY OF HUNTINGTON BEACH IN SUPPORT OF TEST CLAIM

I, Travis K. Hopkins, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Huntington Beach ("City") as Director of Public Works.

3. I have held my current position for approximately nine years. My duties include managing the Public Works Department and I oversee divisional managers in Engineering, Transportation, Utilities, Facilities, Streets, Parks, Trees, and Landscape.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local

governmental agencies:

(a) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$303.36 and in FY 2010-11 the City's share was \$1,866.82. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City's share of the costs for this activity

were \$3,733.64. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$583.38 and that the City's share of such costs in FY 2010-11 was \$303.36. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY

2009-10 was \$116.68 and that the City's share of such costs in FY 2010-11 was \$116.68. The City participated in these workshops and the cost incurred was \$4,265. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, and public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the City's share of the cost of this activity in FY 2009-10 was \$16,383.02 and that the City's share of the cost of this activity in FY 2010-11 was \$15,607.20. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-

year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$2,271.59 and in FY 2010-11 the City's share of the costs was \$7,722.52. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 18, 2009.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Huntington Beach, California.


Travis Hopkins

DECLARATION OF THOMAS LO ON BEHALF OF THE CITY OF IRVINE IN
SUPPORT OF TEST CLAIM

I, Thomas Lo, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Irvine (“City”) as the Water Quality Administrator.

3. I have held my current position for approximately one month. My duties include overseeing the City’s National Pollutant Discharge Elimination System (NPDES) permit to ensure City compliance with state and local water quality control requirements.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region (“RWQCB”) Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the “Permit”) and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 (“2002 Permit”). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$3,955.25 and that during FY 2010-11, the cost for this program was \$3,904.10. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$480.52 and in FY 2010-11 the City's share was \$2,957.06. I am further informed and believe and therefore state that the City first incurred

those costs when it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$5,914.13. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$924.08 and that the City’s share of such costs in FY 2010-11 was \$480.52. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$184.82 and that the City's share of such costs in FY 2010-11 was \$184.82. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$25,950.89 and that the City's share of the cost of this activity in FY 2010-11 was \$24,722.90. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this model WQMP program element for the City was \$4,318.24 and that during FY 2010-11, the cost for this program was \$2,026.85. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about October 22, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$2,431.42 and in FY 2010-11 the City's share of the costs was \$8,265.87. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 24, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirements under this new program:

(i) Permit Subsections XVIII.B.1 through B.4 required various permittees, including the City, to comply with a series of new numeric effluent limits based on waste load allocations within the EPA-Promulgated Toxic Pollutant TMDLs for San Diego Creek and Newport Bay. These new program requirements all involved the imposition of numeric effluent limits from waste load allocations from these TMDLs, as set forth in Tables 1 A/B/C, Table 2 A/B/C/D/ and Table 3 on pages 68 to 71 of the Permit.

(ii) Permit Subsection XVIII.B.5 imposed new TMDL-related requirements applicable to various permittees, including the City, that would take effect upon adoption by the State Water Resources Control Board and the Office of Administration Law (“OAL”), and concerned compliance with numeric limits taken from wasteload allocations in the TMDLs for Organochlorine Compounds for Newport Bay and San Diego Creek (as set forth in Table 4 on page 71 of the Permit).

(iii) Permit Subsection XVIII.B.7 imposed new requirements on various permittees, including the City, to participate in the development and implementation of additional Metals and Selenium TMDLs for the Newport Bay Watershed being developed by the RWQCB.

(iv) Permit Subsection XVIII.B.8 required certain permittees, including the City, to prepare a Cooperative Watershed Program for the Selenium TMDL for the Newport Bay

Watershed. This Program was required to be submitted within 24 months of the date of adoption of the Permit or one month after the approval of the TMDL by the OAL. In addition, this subsection required certain permittees, including the City, to implement the Program once it was approved.

(v) Permit Subsection XVIII.C.1 imposed on certain permittees, including the City, new numeric effluent limits based on wasteload allocations from a Fecal Coliform/Bacteria TMDL for Newport Bay and San Diego Creek, as set forth in Tables 8A and 8B on pages 74-75 of the Permit.

(vi) Permit Subsection XVIII.D.1 required various permittees, including the City, to comply with new numeric effluent limits from waste load allocations from a TMDL for Diazinon and Chlorpyrifos for San Diego Creek and Chlorpyrifos for Newport Bay, as set forth in Tables 9A and 9B on page 76 of the Permit.

The permittees, including the City, subject to such requirements participated in a cost-sharing program administered by the County of Orange, whereunder costs associated with the above-referenced TMDL requirements were shared among those permittees. I am informed and believe and therefore state that the cost shared costs for the above-referenced requirements allocated to the City in FY 2009-10 was \$303,073.49 and in FY 2010-11, \$292,528.04. I am further informed and believe and therefore state that the City first incurred costs for these requirements when it received an invoice from the County on or about February 9, 2010 and that the City paid the invoice on or about March 12, 2010. Additionally, I am informed and believe, and therefore state that during fiscal year (FY) 2009-10, the cost of the above-referenced TMDL requirements for the City was \$5,757.65 and that during FY 2010-11, the cost for this program

was \$5,404.94. I am further informed and believe, and therefore state, that the City first incurred costs for such requirements on or about July 1, 2009.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Irvine, California.



Water Quality Administrator

DECLARATION OF DEVIN SLAVEN ON BEHALF OF THE CITY OF LAKE FOREST

IN SUPPORT OF TEST CLAIM

I, Devin Slaven, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Lake Forest ("City") as the Environmental Manager.

3. I have held my current position for approximately twelve years. My duties include managing the Water Quality Division and directing the pollution prevention and enforcement program.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system.

Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$6,800. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 2, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$99.42 and in FY 2010-11 the City's share was \$611.80. I am further informed and believe and therefore state that the City first incurred those costs when

it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City's share of the costs for this activity was \$1,223.59. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$191.19 and that the City's share of such costs in FY 2010-11 was \$99.42. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$38.24 and that the City's share of such costs in FY 2010-11 was \$38.24. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Managing Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state that the City's

share of the cost of this activity in FY 2009-10 was \$5,369.05 and that the City's share of the cost of this activity in FY 2010-11 was \$5,114.99. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$622.03 and in FY 2010-11 the City's share of the costs was \$2,114.67. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about January 21, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirements under this new program:

(i) Permit Subsections XVIII.B.1 through B.4 required various permittees, including the City, to comply with a series of new numeric effluent limits based on waste load allocations within the EPA-Promulgated Toxic Pollutant TMDLs for San Diego Creek and Newport Bay. These new program requirements all involved the imposition of numeric effluent limits from waste load allocations from these TMDLs, as set forth in Tables 1 A/B/C, Table 2 A/B/C/D/ and Table 3 on pages 68 to 71 of the Permit.

(ii) Permit Subsection XVIII.B.5 imposed new TMDL-related requirements applicable to various permittees, including the City, that would take effect upon adoption by the State Water Resources Control Board and the Office of Administration Law ("OAL"), and concerned compliance with numeric limits taken from wasteload allocations in the TMDLs for Organochlorine Compounds for Newport Bay and San Diego Creek (as set forth in Table 4 on page 71 of the Permit).

(iii) Permit Subsection XVIII.B.7 imposed new requirements on various permittees, including the City, to participate in the development and implementation of additional Metals and Selenium TMDLs for the Newport Bay Watershed being developed by the RWQCB.

(iv) Permit Subsection XVIII.B.8 required certain permittees, including the City, to prepare a Cooperative Watershed Program for the Selenium TMDL for the Newport Bay Watershed. This Program was required to be submitted within 24 months of the date of adoption of the Permit or one month after the approval of the TMDL by the OAL. In addition, this subsection required certain permittees, including the City, to implement the Program once it was approved.

(v) Permit Subsection XVIII.C.1 imposed on certain permittees, including the City, new numeric effluent limits based on wasteload allocations from a Fecal Coliform/Bacteria TMDL for Newport Bay and San Diego Creek, as set forth in Tables 8A and 8B on pages 74-75 of the Permit.

(vi) Permit Subsection XVIII.D.1 required various permittees, including the City, to comply with new numeric effluent limits from waste load allocations from a TMDL for Diazinon and Chlorpyrifos for San Diego Creek and Chlorpyrifos for Newport Bay, as set forth in Tables 9A and 9B on page 76 of the Permit.

The permittees, including the City, subject to such requirements participated in a cost-sharing program administered by the County of Orange, whereunder costs associated with the above-referenced TMDL requirements were shared among those permittees. I am informed and believe and therefore state that the costs for the above-referenced requirements allocated to the City in FY 2009-10 was \$63,361.25 and in FY 2010-11, \$61,156.60. I am further informed and believe and therefore state that the City first incurred costs for these requirements when it received an invoice from the County on or about February 9, 2010 and that the City paid the invoice on or about May 6, 2010.


7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further

informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Lake Forest, California.

A handwritten signature in black ink, appearing to read "D. J. [unclear]". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

**DECLARATION OF JOHN L. KAPPELER ON BEHALF OF THE CITY OF NEWPORT
BEACH IN SUPPORT OF TEST CLAIM**

I, John L. Kappeler, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Newport Beach ("City") as A Senior Engineer.

3. I have held my current position for approximately 3 years. I have been employed by the City of Newport Beach for approximately 14 years. My duties include managing projects and managing the City's water quality program.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "2009 Permit") and I am familiar with the requirements of the 2009 Permit as it applies to the City. The City is a permittee under the 2009 Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the 2009 Permit, I understand and believe and therefore state that the 2009 Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the 2009 Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$8,290.00 and, during FY 2010-11, the cost for this program was \$8,700.00. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about October 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the 2009 Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$186.20 and in FY 2010-11 the City's share was \$1,145.85. I am further informed and believe and therefore state that the City

first incurred those costs when it was invoiced by the County of Orange ("County") on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the 2009 Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that, during FY 2009-10, the City's share of the costs for this activity was \$2,291.69. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(ii) Workshops: Subsection XIII.4 of the 2009 Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$358.08 and that the City's share of such costs in FY 2010-11 was \$186.20. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(iii) Public Participation: Subsection XIII.7 of the 2009 Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$71.62 and that the City's share of such costs in FY 2010-11 was \$71.62. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the 2009 Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$10,055.83 and that the City's share of the cost of this activity in FY 2010-11 was \$9,579.99. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$14,990 in FY 2009-10 and \$220,000 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the 2009 Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$497.28 and in FY 2010-11 the City's share of the costs was \$1,690.55. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 1, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the 2009 Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the 2009 Permit. Its requirements continued through the term of the 2009 Permit. The City was subject to the following requirements under this new program:

(i) 2009 Permit Subsections XVIII.B.1 through B.4 required various permittees, including the City, to comply with a series of new numeric effluent limits based on waste load allocations within the EPA-Promulgated Toxic Pollutant TMDLs for San Diego Creek and Newport Bay. These new program requirements all involved the imposition of numeric effluent limits from waste load allocations from these TMDLs, as set forth in Tables 1 A/B/C, Table 2 A/B/C/D/ and Table 3 on pages 68 to 71 of the 2009 Permit.

(ii) 2009 Permit Subsection XVIII.B.5 imposed new TMDL-related requirements applicable to various permittees, including the City, that would take effect upon adoption by the State Water Resources Control Board and the Office of Administration Law (“OAL”), and concerned compliance with numeric limits taken from wasteload allocations in the TMDLs for Organochlorine Compounds for Newport Bay and San Diego Creek (as set forth in Table 4 on page 71 of the 2009 Permit).

(iii) 2009 Permit Subsection XVIII.B.7 imposed new requirements on various permittees, including the City, to participate in the development and implementation of additional Metals and Selenium TMDLs for the Newport Bay Watershed being developed by the RWQCB.

(iv) 2009 Permit Subsection XVIII.B.8 required certain permittees, including the City, to prepare a Cooperative Watershed Program for the Selenium TMDL for the Newport

Bay Watershed. This Program was required to be submitted within 24 months of the date of adoption of the 2009 Permit or one month after the approval of the TMDL by the OAL. In addition, this subsection required certain permittees, including the City, to implement the Program once it was approved.

(v) 2009 Permit Subsection XVIII.C.1 imposed on certain permittees, including the City, new numeric effluent limits based on wasteload allocations from a Fecal Coliform/Bacteria TMDL for Newport Bay and San Diego Creek, as set forth in Tables 8A and 8B on pages 74-75 of the Permit.

(vi) 2009 Permit Subsection XVIII.D.1 required various permittees, including the City, to comply with new numeric effluent limits from waste load allocations from a TMDL for Diazinon and Chlorpyrifos for San Diego Creek and Chlorpyrifos for Newport Bay, as set forth in Tables 9A and 9B on page 76 of the 2009 Permit.

The permittees, including the City, subject to such requirements participated in a cost-sharing program administered by the County of Orange, whereunder costs associated with the above-referenced TMDL requirements were shared among those permittees. I am informed and believe and therefore state that the costs for the above-referenced requirements allocated to the City in FY 2009-10 was \$80,900.97 and in FY 2010-11, \$78,086.03. I am further informed and believe and therefore state that the City first incurred costs for these requirements when it received an invoice from the County on or about February 9, 2010 and that the City paid the invoice on or about April 12, 2010.

7. As set forth above in this Declaration, the City first incurred costs under the 2009 Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December ^{15th}, 2016 at Newport Beach, California.



JOHN L. KAPPELER

DECLARATION OF LUIS ESTEVEZ ON BEHALF OF THE CITY OF PLACENTIA IN

SUPPORT OF TEST CLAIM

I, Luis Estevez, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Placentia ("City") as Acting Public Works Director.

3. I have held my current position for approximately a year and three months. My duties include addressing the City's stormwater and related environmental programs as they affect the Public Works Department and capital improvements in the City.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$16,000 and that during FY 2010-11, the cost for this program was \$13,500. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about 2010.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$76.71 and in FY 2010-11 the City's share was \$472.06. I am further informed and believe and therefore state that the City first incurred those costs when

it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$944.11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$147.52 and that the City’s share of such costs in FY 2010-11 was \$76.71. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$29.50 and that the City's share of such costs in FY 2010-11 was \$29.50. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$4,142.72 and that the City's share of the cost of this activity in FY 2010-11 was \$3,946.69. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$32,500 in FY 2009-10 and \$37,500 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$165.56 and in FY 2010-11 the City's share of the costs was \$562.83. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about February 8, 2010.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$3,577 and that the cost during FY 2011-12 was \$3,602.44. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about February 4, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further

informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Placentia, California.



Luis Estevez
Acting Public Works Director

DECLARATION OF MICHAEL HO ON BEHALF OF THE CITY OF SEAL BEACH IN

SUPPORT OF TEST CLAIM

I, Michael Ho, P.E., declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Seal Beach ("City") as Deputy Director of Public Works/City Engineer.

3. I have held my current position for approximately 9 years. My duties include managing aspects of the Public Works Department and overseeing divisional supervisors in Engineering or addressing the City's stormwater and related environmental programs as they affect the Public Works Department and capital improvements in the City.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$3,842.50 and that during FY 2010-11, the cost for this program was \$2,900. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or about July 1, 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$41.34 and in FY 2010-11 the City's share was \$539.41.

I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$508.83. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$79.50 and that the City’s share of such costs in FY 2010-11 was \$41.34. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$15.90 and that the City's share of such costs in FY 2010-11 was \$15.90. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$2,232.71 and that the City's share of the cost of this activity in FY 2010-11 was \$2,127.06. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$13,540 in FY 2009-10 and \$14,176 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$1,009.46 and in FY 2010-11 the City's share of the costs was \$3,431.77. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(e) Total Maximum Daily Loads (TMDLs): Section XVIII of the Permit contained a new program setting forth the implementation of various TMDLs. This TMDL program was not required under the 2002 Permit and was a new program under the Permit. Its requirements continued through the term of the Permit. The City was subject to the following requirement under this new program:

(i) Metals TMDL for Coyote Creek and San Gabriel River: Permit Subsection XVIII.B.9 required the development and implementation of a Constituent Specific Source Control Plan and a monitoring program in connection with a Metals TMDL for Coyote Creek and the San Gabriel River. The CSSCP was required to be designed and implemented to ensure compliance with specific numeric effluent limits taken from the wasteload allocations set forth in the TMDL, as set forth in Table 6 on page 73 of the Permit. While the cost of the CSSCP was not shared by the permittees, including the City, costs of the monitoring program, which was done on a cost-sharing basis, were shared by the City. I am informed and believe and therefore state that the estimated cost of the monitoring efforts during FY 2010-11 was approximately \$3,635 and that the cost during FY 2011-12 was \$3,087.33. I am informed and believe and therefore state that the City was first invoiced for these requirements by the County on December 23, 2010 and that the City paid such invoice on or about January 10, 2011.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further

informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Seal Beach, California.



Michael Ho, P.E.
City Engineer

**DECLARATION OF JARAD HILDENBRAND ON BEHALF OF THE CITY OF VILLA
PARK IN SUPPORT OF TEST CLAIM**

I, Jarad Hildenbrand, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein under oath.

2. I am employed by the City of Villa Park ("City") as City Manager.

3. I have held my current position for approximately four years. My duties include managing the day-to-day operations of the City, which includes addressing the City's stormwater and related environmental programs as they affect the Public Works Department and capital improvements in the City.

4. I have reviewed California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") Order No. R8-2009-0030, issued by the RWQCB on May 22, 2009 (the "Permit") and am familiar with the requirements of the Permit as it applies to the City. The City is a permittee under that Permit.

5. I have also reviewed and am familiar with the requirements of Order No. R8-2002-0010, issued by the RWQCB on January 18, 2002 ("2002 Permit"). The City was a permittee under the 2002 Permit.

6. Based on my understanding of the requirements of the 2002 Permit and the requirements of the Permit, I understand and believe and therefore state that the Permit requires the permittees, including the City, to perform the following new programs and/or enhanced

levels of service that were not required by the 2002 Permit and which are unique to local governmental agencies:

(a) Municipal Inventories: Sections IX.1 and X of the Permit required each permittee, including the City, to maintain an inventory of industrial and commercial facilities/businesses within its jurisdiction, which must be maintained in a computer-based database system. Inclusion of a Geographical Information System (GIS) is required, with latitude/longitude (in decimals) or NAD83/WGS8439 compatible formatting. I am informed and believe and therefore state that during fiscal year (FY) 2009-10, the cost of this program for the City was \$4,000 and that during FY 2010-11, the cost for this program was \$4,000. I am further informed and believe and therefore state that the City first incurred costs for such requirements on or December 2009.

(b) Residential Program -- Common Interest Area (CIA)/Homeowner Association (HOA) Pilot Program: Subsection XI.4 of the Permit required the permittees, including the City, to develop a pilot program to control pollutant discharges from common interest areas and areas managed by HOAs or management companies. Program activities required to be funded include: Evaluation of applicable regional programs and studies to encourage efficient water use and to minimize runoff, such as those developed by the Municipal Water District of Orange County and the Irvine Ranch Water District, and development of a pilot program to include design and dissemination of educational and outreach materials, determination of baseline conditions and measurable target outcomes, and assessment of performance. The permittees, including the City, retained a consultant to perform this mandated activity. Each permittee, including the City, paid a share of this cost. I am informed and believe and therefore state that the City's share of the cost for this activity in FY 2009-10 was \$14.75 and in FY 2010-11 the City's share was \$90.74. I am further informed and believe and therefore state that the City first incurred those costs when

it was invoiced by the County of Orange (“County”) on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(c) Public Education and Outreach

(i) Public Awareness Survey: Subsection XIII.1 of the Permit required the permittees, including the City, to complete a public awareness survey to determine the effectiveness of the existing public and business education strategy and any need for changes to the existing multimedia public education efforts. The permittees, including the City, collectively retained a consultant to perform this mandated activity in FY 2009-10. I am informed and believe and therefore state that during FY 2009-10, the City’s share of the costs for this activity were \$181.48. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Workshops: Subsection XIII.4 of the Permit required the permittees, including the City, to conduct sector-specific workshops, individually or on a regional basis, by July 1, 2010 and on an annual basis thereafter. The target sectors were manufacturing facilities; the mobile service industry; the commercial, distribution and retail sales industry; the residential/commercial landscape construction and services industry; the residential and commercial construction industry; and residential and community activities. The permittees, including the City, collectively retained staff from the County to assist with these mandated activities. I am informed and believe and therefore state that the City’s share of such costs in FY 2009-10 was \$28.36 and that the City’s share of such costs in FY 2010-11 was \$14.75. I am further informed and believe and therefore state that the City first incurred those costs when it

was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(iii) Public Participation: Subsection XIII.7 of the Permit required the permittees, including the City, to develop and implement a mechanism for public participation in the updating and implementation of Drainage Area Management Plans, monitoring plans, Water Quality Management Plan guidance and Fact Sheets for various activities. The public was required to be notified of the availability of these documents through public notices in local newspapers, County and/or city websites, local libraries/city halls and/or courthouses. The permittees, including the City, collectively retained County staff to assist with these mandated activities. I am informed and believe and therefore state that the City's share of such costs in FY 2009-10 was \$5.67 and that the City's share of such costs in FY 2010-11 was \$5.67. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(d) New/Revised Development Programs and Standards

(i) Low Impact Development (LID) and Model Water Quality Management Plan (WQMP): Subsection XII.C of the Permit required the permittees, including the City, to incorporate LID principals and structural features into public agency Priority Development Projects and in other instances to incorporate U.S. Environmental Protection Agency (EPA) Guidance entitled, "*Management Wet Weather with Green Infrastructure: Green Streets.*" These include road, drainage facility, public utility, linear and other projects. The permittees, including the City, collectively retained a consultant team to assist with developing a public agency project element within the Model WQMP. I am informed and believe and therefore state

that the City's share of the cost of this activity in FY 2009-10 was \$796.34 and that the City's share of the cost of this activity in FY 2010-11 was \$758.66. In addition, I am informed and believe and therefore state that City-specific costs to develop public agency WQMPs for road, drainage facility, public utility, linear, and other projects with the mandated incorporation of LID principals were \$10,000 in FY 2009-10 and \$10,000 in FY 2010-11. I am further informed and believe and therefore state that the City first incurred those costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

(ii) Hydrologic Conditions of Concern (HCOC): Subsection XII.D of the Permit required the permittees, including the City, to address the impact of urbanization on downstream hydrology. Subsection XII.D.1 required each permittee Priority Development Project to ascertain the impact of the project on the site's hydrologic regime based on the two-year frequency storm event, and to include the findings in the WQMP for the project. The permittees, including the City, shared the cost of a hydromodification susceptibility analysis of north Orange County's surface water drainage systems. Hydromodification susceptibility maps were prepared and language added to the model WQMP and Technical Guidance Document. The draft map data were verified using mapping and photography and updated as needed. The draft map data were verified using mapping and photography and updated as needed. I am informed and believe and therefore state that the City's share of the cost of these activities in FY 2009-10 was \$1,727.22 and in FY 2010-11 the City's share of the costs was \$5,871.88. I am informed and believe and therefore state that the City first incurred these costs when it was invoiced by the County on or about December 1, 2009 and that the City paid such invoice on or about December 14, 2009.

7. As set forth above in this Declaration, the City first incurred costs under the Permit during FY 2009-10, which commenced on July 1, 2009.

8. I am informed and believe and therefore state that there are no dedicated state, federal or regional funds that were available to pay for any of these new programs/activities. I am not aware of any fee or tax which the City would have the discretion to impose under California law to cover any portion of the cost of these new programs/activities. I am further informed and believe and therefore state that the only available source of funds to pay for the costs set forth in this Declaration was the City's General Fund.

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

Executed December 15, 2016 at Villa Park, California.



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 January 12, 2017, I served the:

Claimants' Response to the Notice of Incomplete Joint Test Claim Filing

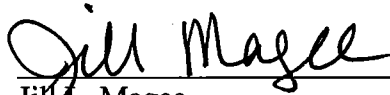
California Regional Water Quality Control Board, Santa Ana Region,

Order No. R8-2009-0030, 09-TC-03

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 12, 2017 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562