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December 2, 2011  
Commission on  
State Mandates

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December 2, 2011

Via CSM Dropbox

Mr. Drew Bohan  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: San Diego Region Water Permit – Riverside County, 11-TC-13 –  
Supplement to Section 6 Declarations

Dear Mr. Bohan:

Attached to this letter please find the Declaration of a representative of the City of Wildomar, one of the test claimants in the above-referenced Test Claim, as well as three Supplemental Declarations of individuals representing test claimants Riverside County Flood Control & Water Conservation District and the Cities of Murrieta and Temecula. The Wildomar declaration was not available at the time the test claim was filed. The supplemental declarations concern an additional "special study" required by the permit at issue in the test claim.

If your staff has any questions on the attached documents, they may call me at the number noted above or contact me via e-mail.

Thank you for your consideration of these documents, which should be added to the test claim filed in this matter.

Very truly yours,



David W. Burhenn

DECLARATION OF TIM D'ZMURA

CITY OF WILDOMAR

I, TIM D'ZMURA, hereby declare and state as follows:

1. I am City Engineer and Director of Public Works for the City of Wildomar ("City"). In that capacity, I share responsibility for the compliance of the City with regard to the requirements of California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2010-0016 (the "Permit"), as they apply to the City.

2. I have reviewed sections of the Permit as set forth herein and am familiar with those provisions. I also am aware of the requirements of pertinent sections of Order No. R9-2004-001 ("2004 Permit") which was issued by the RWQCB in 2004 and as to which the City issued a notice of intent to comply, and am familiar with those requirements.

3. I also have an understanding of the City's sources of funding for programs and activities required to comply with the Permit. I also am aware of arrangements under which the City and other Copermittees under the Permit have agreed to share certain costs of complying with the Permit.

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit requires the City to undertake the following new and/or upgraded activities and which are unique to local government entities:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removes from the list of discharges exempted from the

prohibition against discharges of non-stormwater to the municipal separate storm sewer system (“MS4”) the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. Such discharges were exempted in the 2004 Permit. The removal of these three categories of exempted discharges will require the City to among other things, create new public education and outreach materials, expend City staff time to amend ordinances to facilitate the required prohibition, track and respond to reports of over-irrigation, enforce and monitor compliance of City residents and modify, monitor and more aggressively maintain City irrigation systems and landscaping. On information and belief, the City’s cost to comply with these requirements will exceed \$1,000 in each of fiscal years (“FYs”) 2011-2012 and 2012-2013.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program (“MRP”) of the Permit require Copermittees, including the City, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry weather non-stormwater action levels (“NALs”). These sections will require the City, to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City’s jurisdiction that is not otherwise performed by the District on behalf of the City, conduct and implement any follow-up source identification investigations for NAL exceedances at City outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations / enforcement, and where necessary, update City compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through their Implementation Agreement, the Riverside County

Flood Control & Water Conservation District (“District”) has performed an initial GIS screening of potential outfalls within the permit area for each of the copermittees, retained a consultant to develop a sampling and analysis plan; and over the remainder of Fiscal Year (“FY”) 2011-2012 and throughout the Permit term will finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary coordinate development of model updates to compliance programs to address NAL exceedances. On information and belief, the cost to the City of complying with these requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

c. Stormwater Action Levels: Section D of the Permit requires the City to conduct end-of-pipe assessments to determine stormwater action level (“SAL”) compliance metrics at major outfalls during wet weather. The City will be required to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City’s jurisdiction that is not otherwise performed by the District on behalf of the City, and where necessary, update the City’s compliance programs to address SAL exceedances. I understand and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District has performed an initial GIS screening of potential outfalls within the permit area for each of the Copermittees, including the City, retained a consultant to develop a sampling and analysis plan; and over the remainder of FY 2011-2012 and throughout the Permit term will finalize the sampling and analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis

and source identification results in developing annual updates the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. On information and belief, the cost to the City of these requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

d. Priority Development Projects (“PDPs”) and Hydromodification Requirements:  
Section F.1.d of the Permit requires Copermittees, including the City, to develop and implement low impact development (“LID”) principles and structural features into City-owned PDPs, which beginning July 1, 2012 will includes all City-owned projects that result in the disturbance of one acre or more of land, as well as new development projects that create 10,000 square feet or more of impervious surface, including public projects. This section further requires the City to review each of its PDPs to implement LID BMPs, including requiring specific types of LID Principles and LID BMPs or make a finding of technical infeasibility, incorporating formalized consideration of LID BMPs into the plan review process and reviewing its local codes, policies and ordinances for barriers to LID implementation and taking actions to remove such barriers. Additionally, the City is required to develop an LID waiver program for incorporation into the Standard Stormwater Mitigation Plan (“SSMP”), to allow a City-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit requires Copermittees, including the City, to develop and implement a Hydromodification Management Plan (“HMP”) to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees, including the City, must hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and

educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibits Copermittees, including the City, from using non-natural materials, including concrete, riprap or gabions, in reinforcing stream channels as mitigation for a PDP. None of these provisions were in the 2004 Permit. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District will hire a consultant to perform the studies and analysis and create a HMP that is intended to comply with the 2010 Permit. Additionally, the City will be required to implement the new SSMP requirements for LID and Hydromodification mitigation on an increased number of City projects. On information and belief, the cost to the City of complying with these requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit requires the City to develop and maintain a watershed-based database to track all projects that have a final approved SSMP and structural post-construction BMPs, including those PDPs dating to July 2005, and to inspect such projects on a routine basis. These requirements were not part of the 2004 Permit. This program requires the City to develop and populate a database of information for each SSMP project that has been built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct inspections. On information and belief, the cost to the City of complying with these provisions will exceed \$1,000 during each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

f. Construction Site Requirements: Section F.2.d of the Permit requires Copermittees, including the City, to implement active/passive sediment treatment at City- owned construction sites or portions thereof that are determined to be an “exceptional threat” to water quality. Section F.2.e of the Permit requires City inspectors at construction sites to review site monitoring data results, if the site monitors its runoff. The first requirement will add cost to every City-owned construction site that is determined to pose such a threat to water quality due to the requirement to adopt AST. The second requirement will require the City to ensure that its inspection staff is trained at a higher level than previously. These requirements were not contained in the 2004 Permit. On information and belief, the cost to the City of such requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit requires the Copermittees, including the City, to develop and implement, or require implementation of, BMPs for erosion and sediment control on City-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. These requirements were not contained in the 2004 Permit. The City will be required to assess its maintenance practices on City-maintained unpaved roads, which may require new activities or BMPs to be deployed for compliance with the 2010 Permit. On information and belief, the cost to the City of such

requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit requires the City, as part of its inspection of commercial/industrial facilities, to review facility monitoring data if the site monitors its runoff. This provision will involve greater time spent by inspectors at commercial/industrial sites or in analyzing data thereafter. Additionally, inspectors will have to be trained more highly so as to be able to read and interpret monitoring and sampling analysis data. These requirements were not in the 2004 Permit. On information and belief, the cost to the District of such requirements is expected to exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

i. Retrofitting of Existing Development: Section F.3.d of the Permit requires the Copermittees, including the City, to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. These requirements were not contained in the 2004 Permit. I am informed and believe that using funds contributed from the Copermittees, including the City, through the Implementation Agreement, the District has hired a consultant to perform the necessary studies and develop the retrofitting program for the Santa Margarita region. In addition to the cost to develop the program, the City will be required to implement the program on an ongoing basis. On information and belief, the cost to the City of these



requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

j. Watershed Water Quality Workplan ("Watershed Workplan"): Section G of the Permit requires the Copermittees, including the City, to develop and annually update a Watershed Workplan. This requires the City to: characterize watershed receiving water quality, including analyzing monitoring data collected under the Permit and from other public and private organizations; identify and prioritize water quality problems by constituent and by location, giving consideration to total maximum daily load programs, waters listed as impaired pursuant to CWA section 303(d), and other pertinent conditions; identify likely sources causing the highest water quality problems within the watershed, including from monitoring conducted under the Permit and additional focused water quality monitoring to identify specific sources; develop a watershed BMP implementation strategy, including a schedule to implement BMPs to abate specific receiving water quality problems; develop a strategy to monitor improvements in receiving water quality stemming from implementation of BMPs described in the Watershed Workplan, including required monitoring in the receiving water; establish a schedule for development and implementation of the watershed strategy outlined in the Watershed Workplan, including the holding of annual watershed workplan review meetings open to the public; implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the RWQCB; cooperate among Copermittees to develop and implement the Watershed Workplan, including the requirement to pursue interagency agreements with non-Copermittee MS4 operators; implement a public participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and as part of the review and annual update of the Watershed

Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District plans to hire a consultant to develop the Watershed Workplan. In addition to the costs to develop the plan, the Copermittees, including the City will be required to either directly, or with the assistance of a consultant, conduct and administer annual updates to the workplan. These requirements were not contained in the 2004 Permit. On information and belief, the cost to the City of these requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially in later years of the Permit.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit requires, among other items, that the Copermittees, including the City, submit a Jurisdictional Runoff Management Program (“JRMP”) report each year, beginning on October 31, 2013. New requirements not in the 2004 Permit include the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the City, are required to describe

efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, the Copermittees, including the City, are required to submit a checklist that requires, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. These requirements were not contained in the 2004 Permit. City staff will be required to enhance and expand its tracking mechanisms, and spend more time preparing annual reports. On information and belief, the cost to the City of these requirements will exceed \$1,000 in FY 2012-2013 and potentially in later years of the Permit.

l. Special Studies: The Monitoring and Reporting Program of the Permit requires Copermittees, including the City, to conduct special studies, including a sediment toxicity study, a trash and litter study, a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, a study regarding a study on MS4 and receiving water maintenance activities, and a study on intermittent and ephemeral streams converted to perennial streams. None of these studies was required by the 2004 Permit. These studies will require Copermittees, including the City, to locate suitable waterbodies, if any, to submit workplans, to conduct monitoring activities, to conduct analysis of the monitoring results and to report the results of the analysis to the RWQCB in the annual monitoring report. I am informed and believe that using funds from each Copermittee, including the City, through the Implementation Agreement, the

District has hired a consultant to develop these studies, and will either directly or through the assistance of a consultant, conduct and report upon the studies. On information and belief, the cost to the City of these requirements will exceed \$1,000 in each of FYs 2011-2012 and 2012-2013 and potentially additional years of the Permit.

m. Requirement to Prohibit Discharges Causing or Contributing to Violation of Water Quality Standards: Section A.3 of the Permit requires Copermittees, including the City, to ensure that discharges from MS4s operated by Copermittees, including the City, do not cause or contribute to the violation of water quality standards. The Section also requires Copermittees, including the City, in the event of a determination by a Copermittee or the RWQCB that stormwater MS4 discharges are causing or contributing to a violation of a water quality standard, to notify the RWQCB and to submit a report describing iterative BMPs that will be implemented to prevent or reduce the pollutants causing or contributing to the exceedance, and to thereafter modify its jurisdictional runoff management programs and monitoring programs to incorporate approved modified BMPs and to implement such BMPs. Copermittees, including the City, are required to repeat this procedure for continuing or recurring exceedances of the same water quality standards unless directed otherwise by the RWQCB's executive officer. Section A.3.c of the Permit further provides that the RWQCB may enforce any provision of the Permit while a Copermittee prepares and implements the report. On information and belief, the inclusion of Section A.3.c, which was not in the 2004 Permit, as well as a recent holding of the United States Circuit Court of Appeals for the Ninth Circuit that a similar prohibition in an MS4 permit issued to discharges in the County of Los Angeles imposed a separate prohibition not subject to the iterative BMP process, creates new potential liability for Copermittees, including the City. On information and belief, the cost for the City to comply with Section A.3, if the same were


triggered, would exceed \$1,000 in that FY and in succeeding FYs in the term of the Permit.

n. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit require Copermittees, including the City, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges do not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of the Permit requires Copermittees, including the City, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the MEP. Section F.6 of the Permit requires Copermittees, including the City, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. The 2004 Permit did not include these requirements. Copermittees, including the City, could be required to develop programs that are intended to guarantee that there are no exceedances of water quality standards, and to ensure that illicit discharges have been prevented. On information and belief, if the RWQCB or some other body were to order changes or enhancements to the City's Permit programs to meet the requirements of such provisions, the cost to the City to comply with these requirements would exceed \$1,000 in the applicable FYs.

6. I am informed and believe that there are no dedicated state or federal funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. The City has access to funding obtained through County Service Area

152 ("CSA 152") and Lighting and Landscape Maintenance District 89-1C (LLMD 89-1C), which funds, in part, the obligations of the City under the Permit. The City also can collect some fees during the development and business registration process. I am informed and believe that these funding sources are not sufficient to cover the cost of the programs and activities set forth in this Declaration. I am not aware of any other fee or tax that the City would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the City's general fund.

I declare under penalty of perjury that foregoing is true and correct. Executed November 30, 2011 at Wildomar, California.



Tim D'Zmura

WARREN D. WILLIAMS  
General Manager-Chief Engineer



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Commission on  
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RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

SUPPLEMENTAL DECLARATION OF JASON UHLEY

RIVERSIDE COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT

I, JASON UHLEY, hereby declare and state as follows:

1. I am Chief of the Watershed Protection Division of the Riverside County Flood Control & Water Conservation District ("District"). In that capacity, I share responsibility for the compliance of the District with regard to the requirements of California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2010-0016 (the "Permit"), as they apply to the District.

2. I have reviewed sections of the Permit as set forth herein and am familiar with those provisions. I also am aware of the requirements of pertinent sections of Order No. R9-2004-001 ("2004 Permit") which was issued by the RWQCB to the District in 2004, and am familiar with those requirements.

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

4. In addition to the four special studies identified in Paragraph 5.j of my Declaration dated November 9, 2011, the Monitoring and Reporting Program in the Permit also requires the Copermittees under the Permit, including the District, to conduct a trash and litter

special study. This special study was not required in the 2004 Permit. I am informed and believe that the tasks required to perform this special study, the funding arrangements, and the cost to the District, are the same as alleged in Paragraph 5.j of my Declaration dated November 9, 2011.

I declare under penalty of perjury that foregoing is true and correct. Executed November 30, 2011 at Riverside, California.



JASON E. UHLEY



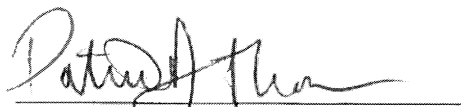
SUPPLEMENTAL DECLARATION OF PAT THOMAS

CITY OF MURRIETA

I, PAT THOMAS, hereby declare and state as follows:

1. I am City Engineer for the City of Murrieta ("City"). In that capacity, I share responsibility for the compliance of the City with regard to the requirements of California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2010-0016 (the "Permit"), as they apply to the City.
2. I have reviewed sections of the Permit, including the Monitoring and Reporting Program, and am familiar with those provisions.
3. I make this declaration based on my own personal knowledge, except for matters set forth herein based on information and belief, and as to those matters I believe them to be true. If called upon to testify, I could and would competently do so as to the matters set forth herein.
4. In addition to the four special studies identified in Paragraph 5.1 of my Declaration dated November 9, 2011, the Monitoring and Reporting Program in the Permit also requires the Copermittees under the Permit, including the City, to conduct a trash and litter special study. This special study was not required in the 2004 Permit. I am informed and believe that the tasks required to perform this special study, the funding arrangements, and the cost to the City, are the same as alleged in Paragraph 5.1 of my Declaration dated November 9, 2011.

I declare under penalty of perjury that foregoing is true and correct. Executed December 1<sup>st</sup>, 2011 at Murrieta, California.

  
\_\_\_\_\_  
Pat Thomas, City Engineer

SUPPLEMENTAL DECLARATION OF GREG BUTLER

CITY OF TEMECULA

I, GREG BUTLER, hereby declare and state as follows:

1. I am Director of Public Works for the City of Temecula ("City"). In that capacity, I share responsibility for the compliance of the City with regard to the requirements of California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2010-0016 (the "Permit"), as they apply to the City.

2. I have reviewed sections of the Permit as set forth herein and am familiar with those provisions. I also am aware of the requirements of pertinent sections of Order No. R9-2004-001 ("2004 Permit") which was issued by the RWQCB to the City in 2004, and am familiar with those requirements.

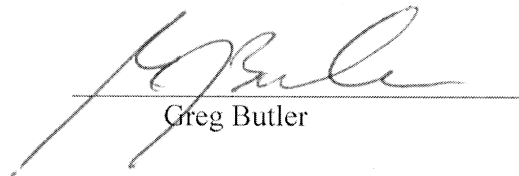
3. I make this declaration based on my own personal knowledge, except for matters set forth herein based on information and belief, and as to those matters I believe them to be true. If called upon to testify, I could and would competently do so as to the matters set forth herein.

4. In addition to the four special studies identified in Paragraph 5.k of my Declaration dated November 9, 2011, the Monitoring and Reporting Program in the Permit also requires the Copermittees under the Permit, including the City, to conduct a trash and litter special study. This special study was not required in the 2004 Permit. I am informed and believe that the tasks required to perform this special study, the funding arrangements and the

cost to the City, are the same as alleged in Paragraph 5.k of my Declaration dated November 9, 2011.

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

Executed November 30, 2011 at Temecula, California.



Greg Butler