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April 13, 2023

Via Drop Box

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

Re: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XIII.B.8 and XVIII.B.9, 09-TC-03: Comments on Draft Expedited Parameters and Guidelines

Dear Ms. Halsey:

These comments on the Draft Expedited Parameters and Guidelines are submitted on behalf of Claimants County of Orange, the Orange County Flood Control District and the Cities of Anaheim, Brea, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach and Villa Park. Claimants generally support the Parameters and Guidelines, but respectfully request minor additions to Sections IV and VII, set forth below in redline:

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursements for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question, including electronic records (such as emails or accounting records). Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts receipts, accounting records generated in a claimants' normal course of business (including, but not

Ms. Heather Halsey

Page 2

April 13, 2023

limited to, general ledger details) and/or emails evidencing work being performed or completed, among other potential records.

The definition of “source document” should include any documents or records that were created at or near the time the costs were incurred, which would include items like accounting records generated in a cities’ normal course of business (including, but not limited to, general ledger details) and/or emails evidencing work being performed or completed. However, the list of examples provided in the Draft Parameters and Guidelines (admittedly a non-exclusive list) does not specifically reference these types of records, which may be auto-generated or which may otherwise demonstrate that a cost was incurred or work was completed.

Accordingly, to avoid future disputes, Claimants respectfully request that the Commission clarify the definition of “source document” and revise the Expedited Draft Parameters and Guidelines to specifically reference accounting records and emails as potential examples of “source documents” that can be used to support the existence of an “actual cost,” as shown in the modification above.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program and any other funds that are not the claimant’s proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement. However, with respect to reimbursement claims filed by the County of Orange, any portions thereof reflecting funds received from the County’s co-permittees under the Test Claim Permit, pursuant to cost-share arrangements in their stormwater program Implementation Agreement, shall not be deemed offsetting revenues or reimbursements. The County of Orange, on behalf of itself and the other claimants (e.g., Test Claim Permit co-permittees) may claim costs jointly funded by the County and the other claimants through their Implementation Agreement. In such a case, any funds received by the County of Orange on behalf of any other claimant should be paid or credited to the other claimant.

This request is submitted to reflect the County of Orange’s unique position as “Principal Permittee” in the Test Claim Permit (“Permit”), Section I, as recognized by the Commission in its Test Claim Decision adopted on March 24, 2023, Section III.A. In order to more effectively implement the Permit, the permittees have agreed that the County of Orange (“County”) will act as the “Principal Permittee.” Permit, Finding B.6.

Ms. Heather Halsey
Page 3
April 13, 2023

The permittees have also developed a Storm Water Implementation Agreement, which establishes the responsibilities of each party, including a funding mechanism for shared costs. Permit, Finding O.77 and Section V.

As Principal Permittee, the County is charged with responsibility for overall program management, including the submission of unified reports, plans and programs required by the Permit. Permit, Section I.A. The County coordinates permit activities, including implementation of areawide activities such as public education, and pollution prevention. Permit, Section I.B. The co-permittees participate on a Management Committee, but the County is charged with taking the lead in initiating and developing areawide programs and activities required by the Permit. Permit, Section II.B.1.

Claimants' requested modification to Section VII of the Draft Expedited Parameters and Guidelines is simply to reflect the County's role as Principal Permittee and the funding mechanism for shared costs set forth in the Implementation Agreement. For those activities for which the County has taken the lead, the County, rather than the other claimants, is the party that has the source documents required to support the claim. With this modification, the County, having collected and used funds from the other claimants for the development and implementation of these activities, could then file a claim on behalf of itself and the other claimants for those costs and then reimburse or credit the other claimants their respective share of the reimbursement.

For these reasons, Claimants respectfully request that the Draft Expedited Parameters and Guidelines be modified as set forth above.

I declare under penalty of perjury that the foregoing, signed on April 13, 2023, is true and correct to the best of my personal knowledge, information, or belief.



David W. Burhenn
Claimant Representative
Address, phone and e-mail set forth above

cc: Claimants

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On April 14, 2023, I served the:

- **Claimants' Comments on the Draft Expedited Parameters and Guidelines filed April 14, 2023**


*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, and, XVIII.B.8, and
XVIII.B.9, Adopted May 22, 2009, 09-TC-03*

Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,
adopted May 22, 2009

County of Orange, Orange County Flood Control District; 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, 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 April 14, 2023 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/13/23

Claim Number: 09-TC-03

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, Adopted May 22, 2009

Claimants: City of Anaheim
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 City of Buena Park
 City of Costa Mesa
 City of Cypress
 City of Fountain Valley
 City of Fullerton
 City of Huntington Beach
 City of Irvine
 City of Lake Forest
 City of Newport Beach
 City of Placentia
 City of Seal Beach
 City of Villa Park
 County of Orange
 Orange County Flood Control District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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