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November 4, 2022

Via Drop Box

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

Re: Claimants' Comments on Draft Proposed Decision on California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII and XVII, 09-TC-03

Dear Ms. Halsey:

Attached please see the comments of Claimants 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") on the Draft Proposed Decision issued by Commission staff on the above-referenced Joint Test Claim. The documents enclosed consist of the Comments and declarations and exhibits in support thereof.

Please let me know if you have any questions. Thank you.

I declare under penalty of perjury that the foregoing, signed on November 4, 2022, is true and correct to the best of my personal knowledge, information, or belief.

A handwritten signature in black ink, appearing to read 'David W. Burhenn', followed by a horizontal line.

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

**CLAIMANTS' COMMENTS ON DRAFT
PROPOSED DECISION**

***California Regional Water Quality Control Board,
Santa Ana Region, Order No. R8-2009-0030, Sections
IX, X, XI, XII, XIII, and XVIII, 09-TC-03, Santa Ana
Regional Water Quality Control Board, Resolution
No. R8-2009-0030, adopted May 22, 2009***

CLAIMANTS' COMMENTS ON DRAFT PROPOSED DECISION

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and XVIII, 09-TC-03, Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030, adopted May 22, 2009

Claimants 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”) herewith submit their comments on the Draft Proposed Decision (“Proposed Draft”) issued by staff of the Commission on State Mandates (“Commission”) on August 17, 2022 regarding the above-referenced test claim (“Test Claim”).

Claimants disagree with the Proposed Draft’s conclusion that the Commission should deny the Test Claim in its entirety. That conclusion reflects errors in an understanding of both the legal and factual basis for the Claimants’ Test Claim and also in assessing the funding allegedly available to pay for the mandates contained in Order No. R8-2009-0030 (the “2009 Permit”) issued by the California Regional Water Quality Control Board, Santa Ana Region (“Santa Ana Water Board”).

Each section of the 2009 Permit at issue in the Test Claim will be discussed in the order presented in the Proposed Draft.¹ Claimants submit that the arguments and evidence submitted in support of the Test Claim establish that all still-relevant elements of the Test Claim should be approved.

I. SUMMARY OF COMMENTS

Claimants’ Comments will cover the following areas:

- Section II, Background: This section discusses key authority that must inform the decision of the Commission on the Test Claim.
- Section III.A: This section provides specific information on the dates that Claimants first incurred costs under the 2009 Permit.
- Section III.B: This section, concerning the provisions in 2009 Permit Section XVIII, shows that the requirements associated with Total Maximum Daily Loads (“TMDLs”) are not federal mandates because the requirement to comply with water quality standards, which the TMDLs are intended to achieve, do not apply to MS4 permittees. This analysis extends to the wasteload allocations established in the TMDLs which, because they also require compliance with such standards, are state-mandated requirements. Similarly, the requirement in the 2009 Permit that permittees attain numeric effluent limitations also is a state mandate, and such limitations cannot be attained through an “iterative process” but rather are required by the permit. In

¹ These comments address the conclusions set forth in the Proposed Draft (pages 30-199) and to avoid repetition, do not separately address those in the Executive Summary (Proposed Draft at 1-29). To the extent required, the arguments and evidence set forth in the Comments are similarly directed to the conclusions in the Executive Summary.

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addition, the requirements in Section XVIII are both new to the 2009 Permit and require a higher level of service as a matter of law and fact. Such requirements are also not “de minimis.” Finally, the conclusion in the Proposed Draft that requirements in Section XVIII are not unique to local government and thus not a “program” is wrong, because the requirements both provide a service to the public, pollution reduction, and are unique to Claimants. Thus, such requirements constitute a “program” within the meaning of Calif. Const. article XIII B, section 6.

- Section III.C.: This section, concerning the provisions in 2009 Permit Section XII to incorporate Low Impact Development (LID) and hydromodification principles in “priority development projects,” demonstrates both that the Section XII requirements are unique to local government because permittees are practically compelled to deliver certain public projects and that the Proposed Draft overlooked requirements for the permittees to develop planning criteria for the incorporation of those principles.
- Section III.D: This section, concerning the provisions in 2009 Permit Section XI regarding residential areas, demonstrates that in addition to the provision found by the Proposed Draft to represent an unfunded mandate, other requirements in Section XI also represent such a mandate, in that the Santa Ana Water Board made the “true choice” to impose them in the permit.
- Section III.E: This section, concerning public education and outreach requirements in Section XIII of the 2009 Permit, agrees with the Proposed Draft’s identification of state mandates but notes that other requirements are “new” because Claimants were not able to challenge similar requirements in the previous 2002 Permit.
- Section III.F: In this section, concerning inspection requirements in Section X and XI of the 2009 Permit, Claimants concur with the analysis in the Proposed Draft.
- Section IV.A: While Claimants dispute the assertion that the Test Claim did not contain sufficient evidence to show that the mandates were paid for by using “proceeds of taxes,” this section sets forth yet more substantial evidence that Claimants utilized such funds (e.g., general fund and gas tax revenue) to pay for requirements at issue in the Test Claim. This is evidenced by not only the declarations of Claimant representatives but by contemporaneous documentation, required by the 2009 Permit, identifying the source of funding used by Claimants.
- Section IV.B: This section addresses the inability of Claimants to recover regulatory or development fees for the cost of development planning requirements for the incorporation of LID and hydromodification principles in private priority development projects, and also addresses the lack of fee authority for other requirements identified as state mandates by Claimants in Section III of the Comments.

- Section IV.C: This section addresses the validity of legislation, Senate Bill 231 (“SB 231”), purporting to overturn a case holding that the exception from the majority voter requirement in Calif. Const. article XIII D, section 6 for “sewer services” did not apply to stormwater facilities. The section shows that SB 231 should not be relied upon to deny Claimants a subvention of funds for costs incurred after January 1, 2018, the effective of the statute. The plain language and structure of Proposition 218, which incorporated article XIII D into the Constitution, reflected voters’ intent to limit the term “sewer” to sanitary sewers, and not storm drainage. In addition, the Legislature’s historical justification for SB 231 does not support it, given that the meaning of “sewer” in statutes and cases before Proposition 218 referred to sanitary sewers.

II. COMMENTS ON “BACKGROUND” SECTION OF PROPOSED DRAFT: THE 2009 PERMIT CAN AND DOES IMPOSE MANDATES THAT GO BEYOND THE MEP STANDARD OF COMPLIANCE

The discussion in the “Background” section of the Proposed Draft (Proposed Draft at 41-68) is, in Claimants’ view, incomplete. While the discussion notes in passing that operators of municipal separate storm sewer systems (“MS4s”) covered by a National Pollutant Discharge Elimination System (“NPDES”) permit are only required to reduce pollutant discharges “to the maximum extent practicable” (Proposed Draft at 44-45), there is no further discussion as to how the Clean Water Act (“CWA”) leaves substantial discretion to the states in adopting permit requirements.”

This distinction was at the heart of *Defenders of Wildlife v. Browner*,² which addressed whether MS4 operators were subject to the strict compliance with water quality standards mandated by the Clean Water Act for industrial dischargers in 33 U.S.C. section 1311. The Ninth Circuit found they were not, holding that in adopting Section 1342(p)(3)(B) (the subsection relating to municipal discharges), Congress “*replaces* the requirements of § 1311 with the requirement that municipal storm-sewer dischargers ‘reduce the discharge of pollutants to the maximum extent practicable’”³

Defenders also held that the Environmental Protection Agency (“EPA”) Administrator or a state authorized (like California) to carry out the NPDES program pursuant to 33 U.S.C. § 1342(a)(5) has the *discretion* to impose “such other provisions” as the Administrator or the state determines appropriate for the control of such pollutants. As the court held, “[t]hat provision gives the EPA discretion to determine what pollution controls are appropriate.”⁴

Armed with such discretion, a state like California can tailor its MS4 permits to require strict compliance with water quality standards or adopt other MS4 permit requirements that go beyond the MEP standard. The California Supreme Court recognized the dual nature of NPDES permitting in its decision in *City of Burbank v. State Water Resources Control Board*,⁵ where it held that more stringent permit requirements issued under the authority of the Porter-Cologne

² 191 F.3d 1159 (9th Cir. 1999).

³ 191 F.3d at 1165 (emphasis in original).

⁴ 191 F.3d at 1166.

⁵ (2005) 35 Cal.4th 613.

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Water Quality Act⁶ in an NPDES permit required evaluation of state requirements under Water Code §§ 13240 and 13241.⁷

The question of whether such state mandated requirements were subject to state constitutional requirements, and in particular article XIII B, section 6 of the California Constitution, was answered by the Supreme Court in *Department of Finance v. Commission*,⁸ which held that certain state-mandated provisions in the 2001 Los Angeles County MS4 permit in fact constituted state mandates eligible for subvention under article XIII B, section 6. In so doing, the Court expressly rejected the argument raised by the Department of Finance (“DOF”) and the Water Boards that because a provision was in a stormwater NPDES permit, it was “*ipso facto*, required by federal law.”⁹

Claimants recognize that the Proposed Draft later cites and relies upon *Department of Finance* in its analysis of the Test Claim. Claimants submit, however, that this case and the others cited above, provide additional and legal background for the analysis presented in the Commission’s decision and should be included in the Background section of the Proposed Draft.

III. COMMENTS ON DISCUSSION SECTION OF PROPOSED DRAFT

A. Jurisdiction over Test Claim

Claimants agree with the conclusions in Proposed Draft Sections IV.A.1 and 2 that the Commission has jurisdiction over this Test Claim. Claimants, however, wish to correct one statement regarding the timely filing of the Test Claim, where it is stated that “[t]he claimants state that they first incurred costs under the permit during fiscal year 2009-2010. Few specific dates of first-incurred costs are provided” Proposed Draft at 96. In fact, declarations submitted with the 2016 re-filing of the Test Claim included numerous specific dates as to first occurrence of costs, especially where those costs were associated with programs administered by the Orange County Stormwater Program, which invoiced cities as to the costs of those programs. *See, e.g.*, Declaration of Thomas Lo on Behalf of City of Irvine, pages 2-5, 7 (filed December 19, 2016). Other Claimant declarations include similar detail.

B. Total Maximum Daily Load Requirements in 2009 Permit Section XVIII

1. TMDL Provisions at Issue

Section XVIII of the 2009 Permit sets forth multiple requirements that Claimants must implement with respect to those TMDLs applicable to the waterbodies covered by the Permit. Claimants seek reimbursement for the following 2009 Permit TMDL requirements:

a. Compliance with the wasteload allocations (“WLAs”) specified in United States EPA promulgated TMDLs and in Tables 1A/B/C, 2A/B/C/D and 3 for metals (cadmium, copper, lead, zinc, mercury and chromium) in San Diego Creek, Newport Bay and the Rhine Channel; organochlorine compounds (DDT, chlordane, dieldrin, PCBs and toxaphene) in San Diego Creek, Upper and Lower Newport Bay and the Rhine Channel; and selenium in San

⁶ Water Code § 13000 *et seq.*

⁷ *City of Burbank*, 35 Cal. 4th at 618.

⁸ (2015) 1 Cal. 5th 749.

⁹ 1 Cal. 5th at 768.

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Diego Creek, by monitoring in receiving waters for these compounds and, if the monitoring results indicate an exceedance of WLAs, to implement new or revised Best Management Practices (BMPs) to address these exceedances (Section XVIII.B.4).

b. Prepare a Cooperative Watershed Program (“CWP”) to fulfill the requirements of the selenium TMDL implementation plan (Section XVIII.B.8).

c. Implement the CWP for selenium in San Diego Creek and Newport Bay (Section XVIII.B.8).

d. Develop and implement a “constituent-specific source control plan” for copper, lead, and zinc, including a monitoring program, for discharges tributary to the San Gabriel River and Coyote Creek, until a TMDL implementation plan is developed (Section XVIII.B.9).

e. Comply with WLAs for fecal coliform in discharges to Newport Bay, as measured at monitoring locations with San Diego Creek and Newport Bay (Section XVIII.C.1).

f. Comply with WLAs for diazinon and chlorpyrifos in discharges to San Diego Creek and WLAs for chlorpyrifos in discharges in Upper Newport Bay (Permit Section XVIII.D.1).

The Proposed Draft finds that the requirement to prepare a CWP for selenium constitutes a state-mandated new program or higher level of service. Proposed Draft at 122-23. With respect to the other TMDL obligations, however, the Proposed Draft concludes that they are not. The Proposed Draft is correct with respect to the selenium CWP but errs with respect to the other TMDL obligations.

2. The Proposed Draft Correctly Concludes that the Requirement to Submit a CWP to Fulfill the Requirements of the Selenium TMDL Implementation Plan Is a State-Mandated New Program or Higher Level of Service

The Proposed Draft (at 122) correctly concludes that the obligation to develop and submit a CWP to fulfill applicable requirements of the selenium TMDL implementation plan is a state mandate. No federal statute or regulation required the preparation of the CWP or the implementation plan itself. Instead, this requirement was imposed by the Water Board in an exercise of State discretion. If a permit requirement is not compelled by federal law, but is imposed by the state as a matter of discretion, it is a state mandate.¹⁰ The Proposed Draft also correctly concluded that the CWP requirement constituted a new program or higher level of service (Proposed Draft at 122-23). It was new, not having been required of permittees before, and was uniquely imposed on the MS4 permittees. It is thus a new program or higher level of service.¹¹

¹⁰ *Dept. of Finance*, 1 Cal. 5th at 765.

¹¹ *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46, 56.

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The Proposed Draft, however, concludes that other requirements in 2009 Permit Section XVIII at issue in the Test Claim do not constitute a state mandate. Proposed Draft at 123-27. The following sections address those conclusions.

3. The Requirements in Sections XVIII.B.4, XVIII.B.8, XVIII.B.9, XVIII.C.1 and XVIII.D.1 to Monitor and to Implement BMPs to Meet the TMDL WLAs Are Reimbursable State Mandates, Not Required by Federal Law

The Proposed Draft concludes that the above-referenced subsections of 2009 Permit Section XVIII are in fact federal mandates, and that the San Diego Water Board “did not have the power or discretion to ignore the WLAs adopted in the TMDLs. Federal law requires the Regional Board to take some action to include effluent limitations consistent with the WLAs in those TMDLs when reissuing the permit.” Proposed Draft at 124. This conclusion is incorrect, as the requirement for Claimants to comply with numeric water quality standards imposed by TMDLs and the WLAs contained therein is in fact a discretionary decision by the Santa Ana Water Board and, under controlling mandates authority, is a state, not federal, mandate.

- a. TMDLs, Including the WLAs Incorporated Therein, are Adopted to Attain Compliance with Water Quality Standards

The CWA requires states to adopt “water quality standards” for “waters of the United States” that exist within the state.¹² Water quality standards set forth the designated use or uses to be made of a waterbody (termed “beneficial uses” in California Water Code § 13050) and the criteria that protect those designated uses.¹³ A water quality standard for a particular pollutant in a waterbody sets forth the criteria, i.e., the amount of that pollutant, that can be present in the waterbody without impairing a designated use.¹⁴

Under the CWA, a state is also required to identify those water bodies for which effluent limitations are not stringent enough to result in the waterbody meeting its water quality standards.¹⁵ These water bodies are known as “water quality limited segments” or “impaired” waterbodies.¹⁶ A TMDL is a planning device that sets forth the amount of a pollutant allowable in a waterbody that will allow that waterbody to attain and maintain water quality standards necessary to support the waterbody’s beneficial uses.¹⁷ As the Proposed Draft recognizes (at 47-48), TMDLs are adopted for the purpose of meeting water quality standards.

A TMDL must be established for each pollutant causing the impairment in each impaired waterbody at a level “necessary to attain and maintain the applicable narrative and numerical *WQS* [*water quality standard*] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and

¹² 33 U.S.C. § 1313(a) and (c).

¹³ 33 U.S.C. § 1313(c)(2)(A); 40 CFR §§ 131.2 and 131.3(i).

¹⁴ 40 Code of Federal Regulations (“CFR”) § 131.3(b).

¹⁵ 33 U.S.C. § 1313(d).

¹⁶ 40 CFR §§ 130.2(j) and 131.3(h).

¹⁷ 40 CFR §§ 130.2(i) and 130.7(c)(1); *see* Proposed Draft at 48.

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water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and *water quality parameters*.”¹⁸

A TMDL is “[t]he sum of the individual WLAs for point sources and LAs [Load Allocations] for nonpoint sources and natural background.”¹⁹ A WLA, in turn, is “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution.”²⁰ A LA is “[t]he portion of a receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.”²¹ “Loading capacity” is “[t]he greatest amount of loading that a water can receive *without violating water quality standards*.”²²

By definition, therefore, TMDLs and their WLAs are adopted “to attain and maintain” water quality standards.

- b. MS4 Permittees Are Not Required to Attain Water Quality Standards and the Inclusion of TMDLs and WLAs in MS4 Permits Such as the 2009 Permit, is Not Mandated by Federal Law but is a Discretionary Decision by the Santa Ana Water Board

The Proposed Draft’s conclusion that the obligations to monitor, implement BMPs, and revise those BMPs to comply with numeric WLAs are federal, not state, mandates is premised on the erroneous assumption that federal law, specifically 40 CFR § 122.44(d)(1)(vii), *requires* the Santa Ana Water Board to include in the 2009 Permit effluent limitations consistent with the WLAs in those TMDLs. Proposed Draft at 101, 123.

This conclusion is in error. It is well established that, in contrast to industrial stormwater dischargers such as oil refineries or chemical plants, the CWA does not *require* municipal stormwater permittees, such as Claimants, to meet water quality standards, and also does not mandate that municipal stormwater permittees be subject to the mechanisms (including WLAs) adopted to achieve those water quality standards.²³

The Ninth Circuit held in *Defenders, supra*, that while Congress imposed this obligation on industrial stormwater dischargers, it specifically exempted municipal stormwater dischargers:

Industrial storm-water discharges “*shall . . . achieve . . . any more stringent limitation, including those necessary to meet water quality standards . . .*”

Congress chose not to include a similar provision for municipal storm-sewer discharges. Instead, Congress required municipal storm-sewer discharges to “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering

¹⁸ 40 CFR § 130.7(c)(1) (emphasis added).

¹⁹ 40 CFR § 130.2(i).

²⁰ 40 CFR § 130.2(h).

²¹ 40 CFR § 130.2(g).

²² 40 CFR § 130.2(f) (emphasis added).

²³ See, e.g. *Defenders, supra*, 191 F.3d 1159, 1165; *Building Industry Assn. of San Diego v. State Water Resources Control Board* (2004) (“*BIA*”) 124 Cal.App.4th 866, 886.

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methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” 33 U.S.C. § 1342(p)(3)(B)(iii).

Defenders, 191 F.3d at 1164-65.

The State Water Resources Control Board (“State Board”) itself recognized that the requirement to comply with water quality standards in MS4 permits is imposed as a matter of discretion. In *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements For Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating From the City of Long Beach MS4*, State Board Order WQ 2015-0075 (June 16, 2015) (“Order WQ 2015-0075”), which addressed the issue of whether an iterative, BMP-based process in an MS4 permit could constitute compliance with water quality standards (there, compliance with receiving water limitations imposed in the 2012 Los Angeles MS4 permit), the State Board found that:

In the context of NPDES permits for MS4s, however, the Clean Water Act does not explicitly reference the requirement to meet water quality standards. MS4 discharges must meet a technology-based standard of prohibiting non-storm water discharges and reducing pollutants in the discharge to the Maximum Extent Practicable (MEP) in all cases, *but requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency.*”

Id. at 10 (emphasis added).²⁴

There is thus no federal mandate for MS4 permits to impose requirements for permittees to strictly comply with water quality standards. Any such requirements are imposed as a matter of discretion. *A fortiori*, this principle applies to the imposition of a permit requirement to comply with any vehicle to achieve those water quality standards, including TMDL WLAs, since WLAs are a component of TMDLs and are adopted “to attain and maintain the applicable narrative and numerical *WQS* [*water quality standard*].”²⁵ In other words, if federal law does not require MS4 discharges to comply with water quality standards, then federal law also does not require MS4 dischargers to comply with permit requirements, such as WLAs, designed to attain those standards. Any requirement to do so is imposed as a matter of discretion by the permitting authority, here the Santa Ana Water Board.

The Proposed Draft concludes, however, that one federal regulation issued under the authority of the CWA, 40 CFR § 122.44(d)(1)(vii)(B), which addresses compliance with water quality standards through TMDLs, requires MS4 permittees to comply with WLAs as a matter of federal law. *See* Proposed Draft at 123 (“the Regional Board . . . did not have the power or

²⁴ A copy of relevant portions of Order WQ 2015-0075 is attached as Exhibit 1 to the Declaration of David W. Burhenn filed herewith (“Burhenn Decl.”). The Commission is requested to take administrative notice of such memoranda pursuant to Evidence Code § 452(c) as an “official act of the . . . executive . . . departments of . . . any state of the United States”; Govt. Code § 11515; and Cal. Code Regs., tit. 2, § 1187.5(c).

²⁵ 40 CFR § 130.7(c)(1) (emphasis added)

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discretion to ignore the WLAs adopted in the TMDLs.” (*citing* 40 CFR § 122.44(d)(1)(vii)). This conclusion is incorrect for several reasons.

First, the conclusion is inconsistent with the governing law and regulations discussed above. If compliance with water quality standards is not required of MS4 permittees, a regulation purporting to require such compliance is similarly inapplicable to MS4 permits. The courts and the State Board could not have concluded that MS4 discharges were not required to meet water quality standards if Section 122.44 in fact imposed such a requirement. In fact, 40 CFR § 122.44 explicitly states that its provisions apply to NPDES permits only “when applicable.”

The plain language in Section 122.44 illustrates this point. Section 122.44 provides, in pertinent part:

In addition to the conditions established under §122.43(a), each NPDES permit shall include conditions meeting the following requirements *when applicable*.

....

(d) *Water quality standards and State requirements*: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) *Achieve water quality standards* established under section 303 of the CWA, including State narrative criteria for water quality.

....

(vii) When developing water-quality based effluent limits under this paragraph the permitting authority shall ensure that:

.....

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(Emphasis added.)

In construing a regulation, one must first look to the text of the regulation itself. *Price v. Starbucks Corp.* (“The rules of statutory construction apply to the interpretation of regulations. The chosen words of the regulation are the most reliable indicator of intent. We give the regulatory language its plain, commonsense meaning.” (citations omitted)).²⁶ Here that text is explicit: the requirements of 40 CFR § 122.44 apply to NPDES permits only “*when applicable*.”

²⁶ (2011) 192 Cal.App.4th 1136, 1145-1146

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Second, further proof that not all subsections of Section 122.44 are applicable to MS4 permits is that many subsections are simply missing from the 2009 Permit. For example, the permit does not reference Sections 122.44(j) and (m), which address pretreatment for publicly owned treatment works and privately owned treatment works. These subsections are not applicable because MS4 discharges of stormwater have nothing to do with discharges of treated sewage effluent from a treatment plant. Other subsections of Section 122.44 missing from the 2009 Permit include subsections (b)(2), (b)(3), (c), (g), and (i)(1)(i) and (ii), addressing standards for sewage sludge, requirements for cooling water intake structures, reopener clauses for treatment works treating domestic sewage, and measuring the mass of each pollutant discharged under the permit and the volume of effluent discharged from each outfall.

In fact, the only subsections of Section 122.44 that mention stormwater discharges are Sections 122.44(k) and (s), which address BMPs and small construction activity. Neither, however, requires compliance with water quality standards or inclusion of TMDL WLAs in MS4 permits.

Third, the language of subsection (d) itself indicates that it is not applicable to MS4 permits. Subsection (d) is entitled and addresses “Water Quality Standards and State Requirements.” Subsection (d)(1), containing the provision relied on in the Proposed Draft, subsection (d)(1)(vii)(B), states that it is to “achieve water quality standards.” As set forth above, however, MS4 permits are *not* required to contain provisions to achieve water quality standards but only to contain permit provisions that “reduce the discharge of pollutants to the maximum extent practicable.”²⁷ Accordingly, the TMDL provisions of Section 122.44(d)(1), which address compliance with water quality standards, are not “applicable” to MS4 permits.

This does not mean that the Santa Ana Water Board cannot require MS4 discharges to comply with WLAs. It means, however, that there is no requirement in *federal law or regulation* that it do so. Rather, where a water board decides to do so, such requirements are *imposed as a matter of the Water Board's discretion*. It is thus a state, not a federal mandate. As the Supreme Court held in *Dept. of Finance*:

If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a “true choice,” the requirement is not federally mandated.²⁸

Here, the Water Board had a true choice as to whether to require compliance with WLAs in the 2009 Permit. Neither the applicable federal statute, 33 U.S.C. § 1342(p)(3)(B), nor the regulation, 40 CFR § 122.44(d)(1), required this obligation to be imposed in an MS4 permit. *See also* Order WQ 2015-0175 at 11 (“[S]ince the State Water Board has *discretion* under federal law to determine whether to require strict compliance with the water quality standards of the water quality control plans for MS4 discharges, the State Water Board may also utilize the flexibility under the Porter-Cologne Act *to decline to require strict compliance with water quality standards* for MS4 discharges.”) (emphasis added.).

²⁷ *Defenders*, 191 F.3d at 1164-65; *BIA*, 124 Cal.App.4th at 886.

²⁸ 1 Cal. 5th at 765.

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Thus, under *Dept. of Finance*, the 2009 Permit's requirement for permittees to comply with WLAs to attain water quality standards was imposed as an exercise of the Santa Ana Water Board's discretion. It is therefore a state mandate.²⁹

- c. For the Same Reasons, the 2009 Permit's Requirement to Comply with Numeric Effluent Limitations Implementing a TMDL WLA is a State Mandate

The Santa Ana Water Board acknowledges that the TMDL WLAs were incorporated as numeric effluent limitations.³⁰ The CWA, however, does not require permittees to comply with such limitations. As discussed above, the Act requires MS4 permits to include "controls to reduce the pollutants to the maximum extent practicable" and further grants the state authority to impose "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."³¹ The Ninth Circuit in *Defenders* held that this provision did not require the inclusion of numeric effluent limits to meet water quality standards in MS4 permits, but that EPA or a State had the discretion to include them.³² *See also BIA, supra* ("With respect to municipal stormwater 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 a discharge of pollutants to the maximum extent practicable.'")³³ *See also* Order WQ-2015-0075 ("requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency.") Order at 10.

Three EPA guidance memoranda, issued over a period of 12 years, illustrate the point further. On November 22, 2002, EPA issued a guidance memorandum on "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements based on Those WLAs" ("2002 EPA Guidance"). EPA noted therein that because stormwater discharges are due to storm events "that are highly variable in frequency and duration and are not easily characterized, only in rare cases would it be feasible or appropriate to establish numeric limits" for municipal stormwater discharges. 2002 EPA Guidance at 4. EPA concluded that, in light of the language in 33 U.S.C. § 1342(p)(3)(B)(iii), "for NPDES-regulated municipal and small construction discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits." *Id.*

On November 12, 2010, EPA updated its 2002 guidance with a new memorandum, which recommended that, "where feasible, the NPDES permitting authority exercise its discretion to

²⁹ As the Supreme Court held in *Dept. of Finance*, the issue before the Commission is not whether the regional board had the authority to impose the obligations at issue. The question is whether those obligations constituted a State mandate. 1 Cal. 5th at 769.

³⁰ "Although the permit incorporates the WLAs as numeric effluent limitations . . ." Water Board Comments on Test Claim, March 9, 2011 at 21, cited in Proposed Draft at 21, n.82.

³¹ 33 U.S.C. § 1342(p)(3)(B)(iii).

³² 191 F.3d at 1165-66.

³³ 124 Cal.App.4th at 874.

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include numeric effluent limitations to meet water quality standards.”³⁴ In doing so, however, EPA reiterated that such inclusion would be an action of the permitting agency to “*exercise its discretion*.”³⁵ On November 26, 2014, EPA issued another revision to the 2002 EPA Guidance, which replaced the 2010 memorandum. In this memorandum, EPA recommended that “the NPDES permitting authority *exercise its discretion* to include . . . where feasible, numeric effluent limitations as necessary to meet water quality standards.”³⁶

What is noteworthy about these guidance memoranda is that EPA, over the course of 12 years, consistently maintained that if numeric limitations were contained in an MS4 permit, *it would be as a result of the permitting agency exercising its discretion*.

Under the controlling authority of *Dept. of Finance, supra*, because the numeric effluent limitations in the 2009 Permit were included as a matter of discretion, they are a state, not federal, mandate.³⁷

d. The 2009 Permit Does Not Allow Permittees to Comply with Numeric Effluent Limitations Through a Discretionary Iterative BMP-based Process

The Proposed Draft concludes that “although the effluent limits in [2009 Permit] are ‘expressed’ numerically, they are clearly complied with by way of an iterative BMP-based process.” Proposed Draft at 124. The Proposed Draft further concludes that the “[r]equirement to comply with the WLAs adopted in a TMDL, but allowing local government to have discretion and flexibility in the terms of that compliance, constitute at most incidental and de minimis requirements that are part and parcel of the federal mandate,” citing *County of Los Angeles v. Commission on State Mandates*³⁸ and *San Diego Unified School Dist. v. Commission on State Mandates*³⁹ (Proposed Draft at 124-27). For the reasons discussed below, these conclusions also are in error and these cases are inapposite.

First, as discussed previously, compliance by MS4 permittees with water quality standards is not federally required but is imposed as a matter of the state’s discretion.⁴⁰ The form through which compliance is achieved, be it numeric WLAs or non-numeric BMPs, does not

³⁴ Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs” at 2 (emphasis added).

³⁵ *Id.* (emphasis added).

³⁶ “Revisions to the November 22, 2002, Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,’” November 26, 2014, at 4 (emphasis added). Copies of these memoranda are attached as Exhibits, 2, 3, and 4 to the Burhenn Decl., filed herewith. The Commission is requested to take administrative notice of such memoranda pursuant to Evidence Code § 452(c) as an “official act of the . . . executive . . . departments of the United States”; Govt. Code § 11515; and Cal. Code Reg., tit.2, § 1187.5(c).

³⁷ 1 Cal. 5th at 765.

³⁸ (1995) 32 Cal.App.4th 805.

³⁹ (2004) 33 Cal. 4th 859.

⁴⁰ *Defenders*, 191 F.3d at 1164-65.

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change the fact that the obligation is imposed as a matter of discretion, the Santa Ana Water Board making a “true choice,” and therefore is a state mandate.⁴¹ Thus, an iterative BMP-based approach, even were it a true method of compliance, would still constitute a state mandate.

Second, the Proposed Draft’s conclusion that water quality standard compliance can be achieved through the act of implementing an iterative, BMP-based process itself is incorrect. The source of the “iterative BMP-based process” in the 2009 Permit is State Board Order WQ No. 99-05, which is cited as authority in Permit Finding N.74:

On June 17, 1999, the State Board adopted Water Quality Order No. 99-05. This is a precedential order that incorporates the receiving water limitations language recommended by the USEPA. Consistent with the State Board’s order, [the 2009 Permit] requires the permittees to comply with the applicable water quality standards, which is to be achieved through an iterative approach requiring the implementation of increasingly more effective BMPs.

In Order WQ 2015-0075, the State Board made it clear that the iterative BMP-based approach set forth in Order 99-05 did *not* act as a “safe harbor” to protect MS4 permittees from enforcement if they were engaged in that approach:

There has been significant confusion within the regulated MS4 community regarding the relationship between the receiving water limitations and the iterative process, in part because the water boards have commonly directed dischargers to achieve compliance with water quality standards by improving control measures through the iterative process. But the iterative process, as established in our precedential orders and as generally written into MS4 permits adopted by the water boards, does not provide a “safe harbor” to MS4 dischargers. When a discharger is shown to be causing or contributing to an exceedance of water quality standards, that discharger is in violation of the permit’s receiving water limitations and potentially subject to enforcement by the water boards or through a citizen suit, regardless of whether or not the discharger is actively engaged in the iterative process.

Order WQ 2015-0075 at 12.

Thus, compliance with a BMP-based iterative process does not *per se* constitute compliance with the WLAs which, as discussed above, are numeric effluent limitations specifically intended to meet water quality standards imposed by the 2009 Permit. The 2009 Permit, in Section IV, Receiving Water Limitations, in fact requires permittees to ensure that “[d]ischarges from the MS4s shall not cause or contribute to exceedances of receiving water quality standards (designed beneficial uses and water quality objectives) for surface waters or groundwaters.” 2009 Permit, Section IV.1.

The fact that the iterative process is controlled by the requirement to achieve water quality standards is reflected in the plain language of the 2009 Permit. Section XVIII.E.2 states, in relevant part, that if “the monitoring results indicate an *exceedance* of the wasteload allocations, the permittees shall *reevaluate the current control measures* and *propose additional*

⁴¹ *Ibid.*

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BMPs/control measures.” (emphasis added). In other words, even if there is an iterative process, the numeric WLAs still drive that process. Thus, if there is an “exceedance” of the numeric WLA, this triggers both the need to “reevaluate” current control measures and to “propose” additional control measures. These requirements to reevaluate and propose additional control measures are, again, based on a discretionary decision by the Santa Ana Water Board to require compliance with numeric WLAs expressed in a TMDL.

And, as the State Board held in Order 2015-0075, permittees engaging in the “iterative process” are *not* in compliance with the standard and are thus subject to continuing enforcement by either the permitting authority, the Santa Ana Water Board, or citizen plaintiffs under 33 U.S.C. § 1365(a)(1), which provides that a citizen suit may be brought against any “person” (including a municipality) who “is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an order issued by . . . a State with respect to such standard or limitation.”

Third, the requirement to comply with numeric WLAs is not merely incidental and de minimis. As discussed above, the requirement is not a federal mandate, but imposed as a matter of the Santa Ana Water Board’s discretion. Therefore, there was no “federal mandate” to which this requirement was merely appended, as in *County of Los Angeles* and *San Diego Unified School Dist.* Moreover, as a matter of fact, the costs and efforts required to comply with Section XVIII of the 2009 Permit are hardly “de minimis.” These costs and efforts are discussed in the next section.

4. The Programs Required as a Result of Incorporation of the TMDLs into Section XVIII of the 2009 Permit are New and Substantial, and Are Not “De Minimis”

The Proposed Draft concludes that the TMDL requirements in the 2009 Permit do not constitute new requirements or a higher level of service to the public because “the only difference between the prior permit and the [2009 Permit] is that the [2009 Permit] now identifies the WLAs calculated in the TMDL so that claimants know the percentage of bacterial loads that need to be reduced to meet the existing water quality objectives for these waterbodies.” Proposed Draft at 128. This statement (which, by mentioning only “bacterial loads,” does not address other pollutants for which Claimants are responsible in the TMDLs) characterizes the incorporation of the TMDLs in the 2009 Permit as equivalent to previous requirements imposed on Claimants in the 2002 Permit.

This characterization is incorrect, both legally and factually. As a legal matter, incorporation of a TMDL constitutes the imposition of additional pollution control requirements for permittees. The court in *City of Arcadia v. U.S. EPA*⁴² recognized how TMDL incorporation spawns additional requirements when it identified TMDLs as “planning devices” which “forms the basis for further administrative actions that may require or prohibit conduct with respect to particularized pollutant dischargers and waterbodies.”⁴³ See also *Pronsolino v. Nastri* (“TMDLs are primarily informational tools that allow the states to proceed from the identification of water

⁴² 265 F. Supp.2d 1142 (N.D. Cal. 2003).

⁴³ 265 F.Supp.2d at 1145.

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requiring additional planning to the required plans”);⁴⁴ *Idaho Sportsmen's Coalition v. Browner* (“TMDLs inform the design and implementation of pollution control measures.”).⁴⁵

In the 2009 Permit, the Santa Ana Water Board acknowledged how incorporation of a TMDL triggered requirements for permittees to undertake a number of new and substantial projects in affected watersheds::

For 303(d) listed waterbodies without a TMDL, the permittees are required to provide special protections through development and implementation of Watershed Action Plans or other focused control measures that would address the pollutant of concern. If a TMDL has been developed and an implementation plan is yet to be developed, *the permittees are required to develop constituent specific source control measures, conduct additional monitoring and/or cooperate with the development of an implementation plan.*

2009 Permit, Finding J.42 (emphasis added).

As a factual matter, the incorporation of the TMDLs into the 2009 permit, with the requirement to comply with the associated WLA for MS4s, triggered requirements for permittees to undertake a number of new and substantial projects in affected watersheds. As set forth in the Declaration of James Fortuna (“Fortuna Decl.”) filed herewith, the introduction of numerical WLAs into the 2009 Permit introduced new requirements for permittees with respect to pollutants covered by the associated TMDLs at issue in this Test Claim.

For example, with respect to the TMDL and associated WLAs for selenium in San Diego Creek and Newport Bay, since the inception of the 2009 Permit, permittees have undertaken projects such as: the design and construction of the Peters Canyon Channel Water Capture and Reuse Pipeline, at an approximate cost of \$7,728,000, and the Santa Ana-Delhi Diversion, at an approximate cost of \$5,827,000 (Fortuna Decl., ¶ 6.b) as well as various investigations under the Nitrogen and Selenium Management Program Working Group, including a selenium water balance investigation (at an approximate cost of \$160,000), studies for developing selenium site-specific objectives (at an approximate cost of \$349,000) and treatment technology evaluations and additional consultant support (at an approximate cost of \$1,058,000) (Fortuna Decl., ¶ 6.c). In addition, the City of Newport Bay undertook restoration and maintenance efforts for Big Canyon Creek (at an approximate cost of \$6,674,318 since 2009) and other selenium reduction efforts (at an approximate cost of \$3,325,368 since 2009) (Fortuna Decl., ¶ 6.d).

With respect to the TMDL and associated WLAs for organochlorine compounds (“OCs”) in Newport Bay and San Diego Creek, permittees have undertaken the preparation of a WLA Evaluation Assessment required to be sent to the San Diego Water Board (at an approximate cost of \$44,000) (Fortuna Decl., ¶ 7.b).

With respect to the TMDL and related WLAs for metals in Coyote Creek for wet and dry weather, programs undertaken to comply include monitoring, laboratory and data management costs (at an approximate cost of \$1,121,398 since 2011) (Fortuna Decl., ¶ 8.a).

⁴⁴ 291 F.3d 1123, 1129 (9th Cir. 2002).

⁴⁵ 951 F. Supp. 962, 996 (W.D. Wash. 1996).

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With respect to the TMDL and related WLAs for fecal coliform in Newport Bay, permittees have undertaken projects to complete engineering evaluations and analyses for new potential structural BMP projects at locations that drain into Newport Bay (at an approximate cost of \$302,936) (Fortuna Decl., ¶ 9.a) and the development and implementation of a Source Investigation Design Study to evaluate human sources of fecal contamination and conduct target source investigations (presently ongoing, at an approximate cost of \$200,000 as of 2022) (Fortuna Decl., ¶ 9.b).

In addition to these efforts, permittees, working through the Newport Bay TMDL Partners, which serves as a planning body to discuss additional studies, research, monitoring, reporting, development and revision of programs related to Newport Bay TMDLs generally in the Newport Bay watershed, spent approximately \$5,332,960 in reimbursing the labor costs of Orange County personnel since 2009 (Fortuna Decl., ¶ 10).

The Proposed Draft also concludes that the requirement “to monitor metals, pesticides, ‘and constituents which are known to have contributed to impairment of local receiving waters’ was required by the prior permit and are not new.” Proposed Draft at 127. However, as set forth in the Fortuna Declaration, monitoring requirements under the 2009 Permit were substantially upgraded from those under the 2002 Permit in several respects. That upgrading included, for the selenium TMDL, the monitoring of bird egg and fish tissue for the presence of selenium (at an approximate cost of \$755,000) since 2010 (Fortuna Decl., ¶ 6.a). With respect to the OCs TMDL, additional monitoring costs were incurred related to the addition of three groups of compounds to the list of analytes (at an approximate cost of \$816,264 since 2010) (Fortuna Decl., ¶ 7.a) and bird egg and fish tissue monitoring for OCs (at an approximate cost of \$755,000 since 2010) (Fortuna Decl., ¶ 7.c).

These programs, and their cost, are hardly *de minimis*. All of these programs were initiated and all associated expenses were incurred *after* the inception of the 2009 Permit and the inclusion of the above-noted TMDLs and numeric WLAs in the permit. They are both new to the 2009 Permit and provide a “higher level of service” by enhancing the protection of receiving waters from pollutants.

Moreover, even if certain TMDL obligations might be considered to have carried over from the 2002 Permit, those obligations also constitute a “new program” or “higher level of service” under legal principles discussed next below.

5. The 2009 Permit’s TMDL Obligations Are a New Program and Higher Level of Service

As noted above, the Proposed Draft concludes that the 2009 Permit’s TMDL obligations, other than the selenium CWP, do not constitute new programs or a higher level of service, basing this conclusion on the ground that the prior 2002 Permit required permittees to comply with receiving water limitations, through an iterative process, and that compliance with the WLAs established under the 2009 Permit simply continued that obligation. Proposed Draft at 127-28. Claimants have demonstrated that as both factually and legally, the 2009 Permit in fact required new programs and a higher level of service. See discussion in Section III.B.3(4) and III.B.4, above. If, however, it still was to be concluded that such requirements “carried over” from the 2002 Permit, that would not preclude Claimants from asserting such requirements in this Test Claim.

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This is so because even if certain TMDL obligations were carried forward into the 2009 Permit, they still are “new” obligations and a “higher level of service” because: (1) The 2009 Permit’s obligations cannot be compared with those in the 2002 Permit because the permittees were legally precluded from filing a test claim with respect to the obligations in the 2002 Permit; and (2) The permittees had no obligation to continue to implement BMPs in compliance with the receiving water limitations in the 2002 Permit once the 2002 Permit terminated. Each of those reasons is explored below.

First, in 2002 the Santa Ana Water Board issued the “third term” permit. Proposed Draft at 62. The permittees then had twelve months following the effective date of that permit, or twelve months after incurring increased costs as a result of mandates in that 2002 Permit, in which to file a test claim. Govt. Code §17551(c).

In those years (2002 and 2003), however, permittees were legally precluded from filing a test claim because the term “Executive Order” (a category of state action giving rise to “costs mandated by the State”)⁴⁶ was then defined to exclude any “order, plan, requirement, rule or regulation issued by the State Water Resources Control Board or by any Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code.”⁴⁷ Since the 2002 Permit was issued under that division of the Water Code,⁴⁸ permittees were precluded from filing a test claim. In 2007, a court found this provision unconstitutional⁴⁹ and effective January 1, 2011, the Legislature eliminated this exclusion.

Thus, in 2002 and 2003, the permittees could not file a test claim seeking reimbursement for obligations imposed by the 2002 Permit. It is well established that a party is not precluded from pursuing a claim in a current proceeding where that party could not have pursued the claim in the past. For example, with respect to “issue preclusion”⁵⁰ if an issue was not within a court’s power to decide the issue in the first action, it is not precluded in a later action. *Strangman v. Duke*⁵¹ (“The rule of res judicata does not apply to causes or issues which were not and could not be before the court in the first proceeding.”) *See also State Compensation Insurance Fund v. ReadyLink Healthcare, Inc.*⁵² (defendant not precluded from litigating amount of premium due where such issue could not have been brought in prior administrative proceeding because insurance commissioner lacked power to hear that issue); *Hong Sang Market, Inc. v. Peng*⁵³

⁴⁶ Govt. Code § 17514.

⁴⁷ Former Govt. Code § 17516.

⁴⁸ *See* 2002 Permit, at 14 (“**IT IS HEREBY ORDERED** that the permittees, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder”)(emphasis in original).

⁴⁹ *County of Los Angeles v. Comm. on State Mandates* (2007) 150 Cal.App.4th 898, 920.

⁵⁰ “Issue preclusion prohibits the litigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. *State Comp Insurance Fund v. ReadyLink*, 50 Cal.App.5th at 447. Issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who is a party in the first suit or one in privity with that party. *DKN Holdings LLC v. Faerber* (2015) 61 Cal. 4th 813, 825.

⁵¹ (1956) 140 Cal.App.2d 185, 191.

⁵² (2020) 50 Cal.App.5th 422, 458-460.

⁵³ (2018) 20 Cal.App.5th 474, 491.

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(“Thus, in a situation in which a court in the first action would clearly not have had jurisdiction to entertain the omitted theory or ground . . . then a second action in a competent court presenting an omitted theory or ground should be held not precluded”), quoting *Merry v. Coast Community College Dist.*⁵⁴

An analogous principle applies with respect to the exhaustion of administrative remedies. Where a party is precluded from exhausting its administrative remedies, or to do so would be futile, the exhaustion requirement is not a bar to further proceedings. Moreover, it is well established that the exhaustion requirement is not applicable where an effective administrative remedy is wholly lacking. *Glendale City Employees' Association, Inc. v. City of Glendale*⁵⁵ (exhaustion of administrative remedies does not apply if the remedy is inadequate). *See also Association for Los Angeles Deputy Sheriffs v. County of Los Angeles*⁵⁶ (where pursuing administrative remedies would not provide class-wide relief, failure to pursue administrative remedy does not bar such relief).

The same principle applies here. Because Claimants could not lawfully file a test claim seeking reimbursement for requirements imposed by the 2002 Permit, they should not be precluded from seeking reimbursement for requirements that might be deemed to be similar on the grounds that they are not “new.”

Second, with the expiration of the 2002 Permit and the commencement of the 2009 Permit, permittees were presented with new 2009 Permit TMDL obligations which constituted a higher level of service. The permittees' 2002 Permit obligations to monitor, assess and revise BMPs to comply with receiving water limitations ended when that permit expired and was replaced with the 2009 Permit. The 2009 Permit, then reimposed those obligations anew, for the life of the 2009 permit, *i.e.* it increased the level of services that Claimants must provide by extending these obligations from May 11, 2009 until the end of the 2009 Permit.

“Higher level of service” refers to “state mandated increases in the services provided by local agencies in existing programs.” *Dept. of Finance v. Comm. on State Mandates*⁵⁷ (“*Dept. of Finance II*”). Here, the permittees' 2002 Permit obligations ended when that permit expired and the 2009 Permit took effect. The 2009 Permit then obligated permittees to continue to provide those services for the term of that permit. Thus, even if those services were not considered “new,” the 2009 Permit created an increase of state-mandated services, *i.e.*, permittees were required to provide services that they would have otherwise not been required to provide. By requiring services for obligations that terminated upon the 2002 Permit's termination, the 2009 Permit obligated permittees to undertake a “higher level of service.”

6. The TMDL Compliance Requirements in the 2009 Permit Represent a “Program” Within the Meaning of Article XIII B, Section 6

The Proposed Draft also concludes that the WLA obligations in Section XVIII of the 2009 Permit are not “unique to government” because the NPDES permit program “operates against a backdrop of prohibiting *any discharge*, whether from a private or public entity, except

⁵⁴ (1979) 97 Cal.App.3d 214, 229.

⁵⁵ (1975) 15 Cal. 3d 328, 342.

⁵⁶ (2019) 42 Cal.App.5th 918, 930-931.

⁵⁷ (2021) 59 Cal.App.5th 546, 556.

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for one for which a permit has been issued.” Proposed Draft at 128 (emphasis in original). The Proposed Draft further notes that receiving waters have been identified as impaired under Section 303(d) of the CWA and any NPDES permit issued for discharges into that receiving water, whether public or private, has to comply with the applicable TMDL. Proposed Draft at 128-29. From this general prohibition and general requirement that NPDES permits must reflect TMDL provisions, the Proposed Draft concludes that compliance with the WLAs are not unique to local government and therefore not a “program.” Proposed Draft at 130.

This conclusion is not correct. “Programs,” within the meaning of article XIII B, section 6, “carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” *County of Los Angeles, supra*.⁵⁸ The two definitions are alternatives; either will trigger the subvention obligation unless an exception applies. *Carmel Valley Fire Protection Dist. v. State of California*.⁵⁹

There is no question that compliance with the WLAs in the 2009 Permit is intended to reduce pollutants in stormwater discharge that enter receiving waters such as San Diego Creek and Newport Bay. Discharges from public and private properties (e.g., urban runoff) have been collected by the MS4. The reduction of pollutants is a service that constitutes a “program” within the meaning of article XIII B, section 6. *Dept. of Finance II*⁶⁰ (installation and maintenance of trash receptacles is a government function that provides a service to the public by producing cleaner transit stops, streets and stormwater drainage systems and receiving waters.) Having met this test, the Section XVIII requirements represent a “program” as a matter of law.

The WLA requirements in the 2009 Permit are also unique to the MS4 permittees, because those specific WLAs are imposed *only* on local government entities, not private dischargers. *See Dept. of Finance II*⁶¹ (where a permit applies by its terms only to the local government entities, obligations imposed by it are unique). Moreover, the activities compelled by the WLAs, reduction of pollutants in municipal stormwater discharges, lie solely within the purview of government agencies, not private parties. *Id.* Several supporting points can be made.

First, as discussed above, the factual premise that TMDL requirements in the 2009 Permit were imposed on both MS4 and private permittees ignores the fact that in the case of the MS4 permittees, imposition of those requirements was a matter of discretion. While private dischargers are required to strictly comply with water quality standards (*Defenders, supra*), that obligation does not apply to MS4 dischargers.

Second, as *County of Los Angeles v. Commission on State Mandates* held, “the applicability of permits to public and private dischargers does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6.”⁶² In that case, the court

⁵⁸ 43 Cal. 3d at 56.

⁵⁹ (1987) 190 Cal.App.3d 521, 537.

⁶⁰ 59 Cal.App.5th at 558-59.

⁶¹ 59 Cal.App.5th at 559-560.

⁶² 150 Cal.App.4th at 919.

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rejected the argument that an MS4 permit cannot contain state mandates “because the Water Boards regulate water pollution with an even hand.”⁶³

The holding in *County of Los Angeles* applies with equal force to elements of NPDES permits. If the fact that NPDES permits are required of both private and public entities does not negate that the permit is a “program” within the meaning of article XIII B, section 6, then *a fortiori*, the fact that an element of that permit is required of both private and public entities is similarly not controlling on whether that element is a “program.” Instead, the test is whether it meets the definition of “program” set forth by the Supreme Court in *County of Los Angeles*.

Indeed, the Commission itself recognized upon remand of the Los Angeles test claim that “the issue is not whether NPDES permits generally constitute a ‘program’ within the meaning of article XIII B, section 6. “The only issue before the Commission is whether the permit in this test claim . . . constitutes a program because this permit is the only one over which the Commission has jurisdiction.”⁶⁴ Looking at the trash receptacle and inspection obligations in that test claim, the Commission concluded that “[b]ecause they apply exclusively to local agencies, the Commission concludes that the activities . . . in this permit . . . constitute a program within the meaning of article XIII B, section 6.”⁶⁵

That reasoning applies here. The issue is not whether private discharger NPDES permits may also contain provisions to comply with TMDLs. The issue is whether the specific WLAs imposed on Claimants are also imposed on private parties. They are not. Those WLAs are imposed solely on governmental entities, e.g., the municipalities that are the permittees under the 2009 Permit.

The fact that these WLAs were imposed solely on MS4 permittees distinguishes those obligations from the elevator requirements at issue in *County of Los Angeles v Department of Industrial Relations*.⁶⁶ There, the requirement to follow elevator safety rules was the same for both public and private entities, and county elevators, which merely transported individuals from floor to floor in county buildings, did not themselves provide a “government service.” Here, the WLAs are uniquely required of municipal permittees, require permittees to take actions not required of private dischargers, and provide a service to the public of reducing pollution in the public and private stormwater that becomes collected in the MS4 system.

Finally, the Proposed Draft’s conclusion that 2009 Permit obligations are not unique because there is a general prohibition in the CWA against unpermitted discharges of pollutants (Proposed Draft at 128-29) was specifically litigated and rejected in *Dept. of Finance II*. There, the DOF and the Water Boards had argued that the trash receptacle obligation imposed by the Los Angeles County MS4 Permit was not a “program” because the CWA imposed a general prohibition against discharges containing pollutants, as the Proposed Draft concludes here.⁶⁷

⁶³ *Id.*

⁶⁴ Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21, at 49.

⁶⁵ *Id.*

⁶⁶ (1989) 214 Cal.App.3d 1538.

⁶⁷ *Dept. of Finance II*, 59 Cal.App.5th at 560.

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Based on that argument, the superior court determined that the MS4 permit did not impose a “program” because “a NPDES program enforcing a prohibition against polluting is not a government program in the usual sense of the word . . .”.⁶⁸ While the superior court acknowledged that the placement of trash receptacles was uniquely imposed on local government, it concluded that the “relevant state policy” being implemented was the prohibition against unlawful discharges, which applied generally to all residents and entities in the state, and was therefore “not the type of policy the voters intended to embrace in the ballot measure giving rise to section 6.”⁶⁹

Dept. of Finance II rejected this reasoning:

The trial court agreed with the state agencies that the trash receptacle and inspection requirements are mere manifestations of policies to prohibit pollution. As the trial court stated, the requirements “enforce a prohibition rather than initiate or upgrade ‘classic’ or ‘peculiar governmental function[s]’ like the fire fighting services effected in *Carmel Valley*. . . . This view, however, ignores the terms of the Regional Board’s permit; the challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions – restoring and maintaining trash receptacles and inspecting business sites – that the local governments were not previously required to perform.”⁷⁰

The Court of Appeals thus found that the MS4 trash receptacle requirements were a new program or higher level of service.⁷¹

The holding in *Dept. of Finance II* applies here. The 2009 Permit’s requirement that the permittees implement programs to comply with the WLAs were not mere bans or limits on pollutions levels. They were obligations to implement programs to reduce pollutants to the levels set forth in the WLAs.

The 2009 Permit’s obligations to develop and implement programs to comply with the WLAs at issue in this Test Claim provide a service to the public, the reduction of pollutants in public and private stormwater discharges. Compliance with these particular WLAs are uniquely imposed on permittees. They are not mere bans or limits on pollution levels but are, as discussed above, obligations to implement programs to reduce pollution. The 2009 Permit obligations at issue in this Test Claim, including those in Section XVIII, thus constitute a “program” within the meaning of article XIII B, section 6 of the California Constitution.

⁶⁸ *State of California Dept. of Finance v. Commission on State Mandates*, Case No. BS130730, Order Granting Petition for Writ of Mandate (Post Remand) and Denying Cross-Petitions as Moot at 12:3-4, attached as Exhibit 5 to Burhenn Decl. The Commission is requested to take administrative notice of this evidence as a record of “any court of this state” pursuant to Evid. Code § 452(d)(1); Govt. Code § 11515; Cal. Code Regs., tit. 2, § 1187.5(c).

⁶⁹ *Id.* at 12:21-13:2.

⁷⁰ *Dept. of Finance II*, 59 Cal.App.5th at 560.

⁷¹ *Id.* at 560-61.

C. Requirements in 2009 Permit Section XII to Implement LID and HMP

The Proposed Draft concludes that 2009 Permit Section XII, which requires the incorporation of Low Impact Development (“LID”) and hydromodification principles (“HMP”) into Priority Development Projects (“PDPs”), instituted new requirements in the 2009 Permit Proposed Draft at 134. The Proposed Draft concluded, however, that these requirements are not “state-mandated” because there was “no legal requirement to undertake municipal Priority Development Projects” (“PDPs”) and that the activities “are not unique to local government and do not provide a peculiarly governmental service to the public.” Proposed Draft at 134-35.

These conclusions overlook the numerous requirements in Section XII for permittees, and permittees only, to establish the planning framework for the incorporation of LID/HMP into PDP planning and also that many municipal PDPs are in fact practically compelled and thus are fundamentally different from private PDPs.

1. The Proposed Draft Does Not Address Requirements for Claimants to Devise Plans to Incorporate LID and HMP Principles Into Priority Development Projects

Proposed Sections XII.B through XII.E of the 2009 Permit require Claimants to devise plans to incorporate best management practices (“BMPs”) regarding Low Impact Development (“LID”) and hydromodification principles (“HMP”) into PDPs (defined in Subsection XII.B.2), and then to implement those plans in municipal PDPs.

Section XII contains several distinct requirements for Claimants to develop planning documents to govern Water Quality Management Plans (“WQMPs”) used by PDP developers. The first is Section XII.B.1, which required permittees to “annually review the existing structural treatment control and other BMPs for New Development and submit any changes for review and approval by the Executive Officer.” The principal permittee was required to “revise the appropriate tables in the Water Quality Management Plan [for new development projects] with the latest information on BMPs and provide additional clarification regarding their effectiveness and applicability.” These requirements are unique to permittees and they provides a peculiarly governmental service to the public, as the permittees are, themselves, the permitting authority for PDPs within their respective jurisdictions, and providing planning guidance to developers on meeting clean water goals requirements for permit issuance is inherent in this uniquely governmental role.

Second, Section XII.C required permittees to “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, within 12 months after the adoption of the 2009 Permit to submit the updated model WQMP “for review and approval by the Executive Officer.”⁷² This required model WQMP updating to incorporate LID and hydromodification principles is again, a requirement unique to the permittees and it provides a peculiarly governmental service to the public.

Third, Section XIII.D (which relates to hydromodification) required permittees to prepare a Watershed Master Plan for each of four identified watersheds, which were required to integrate

⁷² 2009 Permit Subsection XII.C.1.

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water quality, hydromodification, water supply, and habitat. The Master Plan must include maps to identify areas susceptible to hydromodification and a hydromodification model to use as a tool for project developers to select storm water preventative and mitigative site BMPs.⁷³ The permittees were required to submit the maps and a model plan for one watershed to the Santa Ana Water Board Executive Officer by May 22, 2011. The model plan was required to specify hydromodification standards for each sub-watershed and provide assessment tools. Watershed Master Plans for the remaining watersheds were required to be completed 24 months after approval of the model Plan.⁷⁴

Fourth, Section XIII.E (relating to LID alternatives and in-lieu programs) required the principal permittee, "in collaboration with the co-permittees," to develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs and to submit that to the Executive Officer for approval.⁷⁵

All of the above requirements to develop and/or modify various programs and documents governing development of PDPs within each Claimant's jurisdiction apply uniquely to local governmental entities. All of the above requirements further compel those entities to provide uniquely governmental services *and* services to the public (e.g., guidance on water quality considerations for new development requirements as well as improvements to water quality and the environment through the reduction of stormwater flows).⁷⁶ As such, these requirements fall well within the definition of a "new program or higher level of service" set forth by the California Supreme Court in *County of Los Angeles, supra*.

The Proposed Draft, however, overlooks these requirements in its discussion of Section XII. Proposed Draft at 131-33. The Test Claim included all requirements in Sections XII.B-XII.E and Claimants' Narrative Statement discussed the costs of "developing a State-mandated program," development of a model WQMP, and other permittee-specific planning requirements. See Narrative Statement at 31-34. The "Actual Increased Costs of Mandate" section of the Narrative Statement further specifically discussed costs relating to these planning efforts. Narrative Statement at 37. Claimants' Rebuttal Narrative Statement also referenced the LID/HMP planning requirements: "The 2009 Permit requires the Permittees to take immediate actions related to low impact development and hydromodification. These steps include updating the model WQMP to incorporate low impact development and hydromodification principles and developing feasibility criteria for project evaluation to determine the feasibility of implementing low impact development BMPs." Claimants' Rebuttal Narrative Statement at 43.

⁷³ 2009 Permit Subsection XII.D.5.

⁷⁴ *Ibid*.

⁷⁵ 2009 Permit Subsection XII.E.1.

⁷⁶ *Cf. Dept. of Finance II, supra* ("In the case of the provision of stormwater drainage and flood control services, the trash receptacle requirement provides a higher level of service because it, together with other requirements, will reduce pollution entering stormwater drainage systems and receiving waters. In addition, litter will presumably be reduced at transit stops and adjacent streets and sidewalks; as the local governments put it, the "community is cleaner as a result."). 59 Cal.App.5th at 558.

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In light of these facts, Claimants request that the final Proposed Decision address these requirements and, as required by applicable law, conclude that they are unfunded state mandates requiring a subvention of funds.

2. Municipal PDPs Are in Many Cases “Practically Compelled,” Which Differentiates Them from Private PDPs and Entitles the Cost of Including LID/HMP Requirements to be Recovered as an Unfunded State Mandate

The Proposed Draft also disputes the arguments raised by Claimants regarding the distinction between municipal PDPs and private PDPs, asserting that Claimants have not presented evidence in the record showing that, under two cases⁷⁷ they were “practically compelled” to construct a PDP. Under *POBRA*, a municipality may be practically compelled to follow statutory or regulatory requirements in carrying out a facially discretionary project if the project was either “the only reasonable means to carry out [the claimant’s] core mandatory functions”⁷⁸ and under *Kern*, if the failure to act would subject the claimant to “certain and severe . . . penalties.”⁷⁹

Claimants submit that, with the passage of time since adoption of the 2009 Permit, there is substantial evidence in the record of just such projects. As set forth in the attached Declaration of Robert Rodarte, the County of Orange has embarked on multiple PDPs required to incorporate LID requirements during the permit term which, Claimants submit, were “practically compelled” under the *POBRA* and *Kern* tests. The projects set forth in Mr. Rodarte’s Declaration, two Orange County administration building projects and a project for transitional housing for the homeless, represent the only reasonable means to carry out core mandatory governmental functions and, in the case of the homeless shelter, is an example of where the failure to act would subject claimant to certain and severe penalties.

With respect to the two government administration buildings, in order to conduct the business of the people and to serve the public with a functioning, efficient and convenient County government, the only reasonable means for the County is to concentrate County governmental offices in a centralized civic center. As set forth in the Rodarte Declaration and Exhibits 1 and 2 thereto, such a centralized area for governmental services and functions, including the holding of public County Board of Supervisors meetings, Planning Commission meetings, OC Public Works planning and permitting services, and Treasurer-Tax Collector services, allows the delivery of core mandatory functions of government to the residents of the County by grouping similar and related services. Moreover, such a location allows County employees to better interact with employees from other departments. The taxpayers benefit from the project’s use of utilities from the Central Utilities Facility and also from the improvement of space usage. (Rodarte Decl., ¶¶ 4.a; 4.b, and Exhibits 1 and 2). Were the offices to be distributed amongst rental properties or disparate buildings, none of these advantages would accrue. Thus,

⁷⁷ *Dept. of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1358 (“*POBRA*”) and *Dept. of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (“*Kern*”).

⁷⁸ *POBRA*, 170 Cal.App.4th at 1368.

⁷⁹ *Kern*, 30 Cal. 4th at 754.

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the administrative buildings project is the “only reasonable means” to carry out the County’s “core mandatory functions.”⁸⁰

The transitional housing project meets both the *POBRA* and *Kern* tests. First, it allows the County to address one of the great challenges posed to local governments in California, providing shelter and necessary services to the large numbers of unhoused persons currently living on the street. As the Rodarte Declaration notes, the project was aimed at meeting a “critical need for individuals experiencing homelessness,” as well as to address “a pressing social issue that is deeply affecting local businesses and neighborhoods.” (Roarte Decl., ¶ 4.c. and Exhibit 3). Housing must be found for such individuals. Such a challenge poses not only threats to the health and well-being of the homeless, it also poses a public safety and healthcare problem for county government, a clear “core government function” under the *POBRA* test. The creation of homeless facilities like the Yale Transitional Center discussed in Mr. Roarte’s Declaration is thus the “only reasonable means” for the County to address these challenges. Moreover, the failure to address the problem of homelessness continues to subject the County to legal liability, as the County has already been sued due to the presence of unhoused persons camped along the Santa Ana River Trail. *See* article in the *Daily Pilot*, July 24, 2019, attached as Exhibit 6 to the Burhenn Declaration. Such a risk meets the *Kern* test.

Finally, the Proposed Draft concludes that the LID/HMP requirements applicable to public PDPs are not government mandates because the requirements are applicable to private PDPs as well, citing *County of Los Angeles, supra*, and other cases. Proposed Draft at 139-43. However, the provision of core governmental services, such as the conduct of governmental services, is fundamentally different from the county elevator at issue in that case. There, the issue was whether the requirement for the county to follow elevator safety regulations represented a government mandate. The projects noted above are projects which provide uniquely governmental functions, e.g., the conduct of government and the requirement to address the needs of the unhoused. This is a far cry from simply the carriage of passengers from floor to floor. As such, the BMPs required to be imposed as part of those projects are categorically different than those required for a private project. *See generally*, discussion in Section III.B.6 above.

D. Requirements in 2009 Permit Section XI Regarding Residential Areas

The requirements in 2009 Permit Section XI relate to programs required of Claimants to address residential areas, including to develop and implement a residential program to reduce discharges of pollutants,⁸¹ to identify areas and activities that are potential sources of pollutants and to develop Fact Sheets and BMPs and to encourage residents to adopt pollution prevention measures,⁸² to facilitate the collection of used oil, toxic and hazardous materials,⁸³ to develop a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies,⁸⁴ to enforce water quality ordinances for all

⁸⁰ *POBRA*, 170 Cal.App.4th at 1368.

⁸¹ 2009 Permit Section XI.1.

⁸² 2009 Permit Section XI.2.

⁸³ 2009 Permit Section XI.3.

⁸⁴ 2009 Permit Section XI.4.

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residential areas⁸⁵ and to evaluate the residential program in annual reports.⁸⁶ The Proposed Draft found that the requirement for permittees to develop the pilot program imposed a new program or higher level of service. Proposed Draft at 148-49. Claimants agree with this conclusion.

However, Claimants take issue with the Proposed Draft's conclusion that the remaining requirements of Section XI at issue in the Test Claim simply effectuated federal regulatory requirements or were not "new" because they had already been performed by Claimants during the term of the 2002 Permit. Proposed Draft at 145. These conclusions do not comport with the controlling law or the facts.

With regard to controlling law, in *Dept. of Finance, supra*, the California Supreme Court set forth the "true choice" test for determining whether a federal requirement compels a permit requirement:

On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," that requirement is not federally mandated.⁸⁷

Here, no federal law or regulation explicitly compelled these programs.

With regard to the facts, a comparison of the terms in Section XI and the federal regulations cited in the Proposed Draft reflects that the Santa Ana Water Board was both given the discretion to move beyond the federal regulations and that it exercised that discretion. For example, Section XI.6 required each permittee to "include an *evaluation* of its Residential Program" in their annual reports starting with the first annual report after adoption of the 2009 Permit (emphasis added). The Proposed Draft concluded that the federal annual reporting requirements (applicable to the entire MS4 program and not a residential program in particular), which merely require a report on the "status" of components of the stormwater program and a summary describing the number and nature of enforcement actions, inspections, and public education programs,⁸⁸ was "consistent" with the requirements in Section XI.6. Proposed Draft at 147.

The 2009 Permit, however, requires permittees to *evaluate* their residential programs, a task which requires more than listing statistics of inspections or enforcement actions. It requires an analytical, qualitative element assessing of what worked, and did not work, in the implementation of the residential program. This requirement is not "consistent" with the federal regulations – it reflects a decision by the Santa Ana Water Board to exceed it. By electing to *require* this additional level of analysis, the Board made a "true choice" and, under controlling authority, created a state mandate.⁸⁹

⁸⁵ 2009 Permit Section XI.5

⁸⁶ 2009 Permit Section XI.6.

⁸⁷ *Dept. of Finance, supra*, 1 Cal. 5th at 765.

⁸⁸ 40 Code Fed. Reg. § 122.42(c)

⁸⁹ *Dept. of Finance, supra*, 1 Cal. 5th at 765.

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Similarly, the Proposed Draft concludes that the requirement for permittees to encourage residents to implement pollution prevention measures was required by federal regulations, but the regulations cited (Proposed Draft at 147) contain no such language.

The Proposed Draft characterizes the requirement in Section XI.3 that permittees “facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes” as simply implementing a federal regulatory requirement that an MS4 NPDES permit application require that a permittee include a “description of educational activities, public information, and *other appropriate activities* to facilitate the proper management and disposal of used oil and toxic materials.” Proposed Draft at 146⁹⁰ (emphasis in original). The Proposed Draft appears to conclude that the general term “other appropriate activities” serves to federally require the specific 2009 Permit requirements at issue. However, the federal regulatory language does not command permittees to “facilitate collection and management” of these materials, nor does it even mention “other household wastes.” Instead, the regulation simply give the Water Board the *discretion* to impose other measures that it deems “appropriate”. The Santa Ana Water Board made a “true choice” in requiring the specific tasks in Section XI.3.

This point was addressed by the Supreme Court in *Dept of Finance*, when it considered whether a general requirement in the federal NPDES permit regulations could be translated into a dictate to install trash receptacles at transit stops:

While the Operators were required to include a description of practices and procedures in their permit application, the issuing agency has discretion whether to make those practices conditions of the permit. (40 C.F.R. § 122.26(d)(2)(iv).) No regulation cited by the State required trash receptacles at transit stops.⁹¹

In the Fact Sheet for the 2009 Permit, the Water Board itself recognized that the residential program (which did not exist as a separate program in the 2002 Permit) in fact imposed new and more comprehensive requirements: “The Fourth Term Permit has also added a residential program to be implemented by the permittees. This element *improves upon* the existing requirements within the third term permit, by *adding specific criteria associated with developing a more successful means* of reducing the discharge of pollutants from residential areas into the MS4 to the maximum extent practicable.” Fact Sheet at Section IX.7 (emphasis added).⁹² The Fact Sheet’s acknowledgement that the residential requirements in the 2009 Permit “improves upon” the requirements in the 2002 Permit and adds “specific criteria” shows that these requirements are in fact new.

The Proposed Draft further concludes that certain requirements in Sections XI.2 and XI.3 are not “mandatory” because the 2009 Permit stated that permittees “should” undertake those requirements. The Proposed Draft (at 145) concluded that because the Permit uses both “should”

⁹⁰ Citing 40 CFR § 122.26(d)(2)(iv)(B)(6).

⁹¹ *Dept. of Finance, supra*, 1 Cal. 5th at 771–72.

⁹² NPDES permit Fact Sheets are required to, *inter alia*, “briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit.” 40 CFR § 124.8(a). In addition, the Fact Sheet must set forth “a brief summary of the basis for the draft permit conditions . . .” 40 CFR § 124.8(b)(4). The requirement to prepare a Fact Sheet as part of permit adoption also applies to permits issued by authorized states, such as California. 40 CFR § 123.25.

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and “shall” in Section XI, “the terms must mean something different.” Claimants have several responses. First, in the Fact Sheet, the Santa Ana Water Board expressly stated that the provisions in Section XI.2 were, in fact, “requirements”: “The addition of the Residential Program to the fourth term permit includes *requirements for permittees* to identify residential areas and activities therein that are potential sources of pollutants and to develop Fact Sheets/BMPs for each and encourage residents to implement the pollution prevention measures.” Fact Sheet at IX.7 (emphasis added).

Second, the Fact Sheet also reveals that the Santa Ana Water Board considered the public education activities required in Section XI.3, another “should” provision (Proposed Draft at 144), to be “requirements”: “The proposed order contains additional *requirements* to address runoff from residential developments. The permittees have developed a number of educational materials, established a storm water pollution prevention hotline, started an advertising and educational campaign, and distribute public education materials at a number of public events. *The permittees are required* to continue these efforts and *to expand* public participation and education programs.”⁹³ The Fact Sheet reflects that the Santa Ana Water Board treated the “should” provisions in Section XI as requirements, not suggestions.

Third, the language used in the 2009 Permit is suggestive of a mandatory requirement. For example, in Section XI.2, the permit language specifies that “[a]t a minimum,” distinct categories of businesses and various practices must be the subject of an investigation and the development of Fact Sheets and BMPs. There is no discretion when the permit language requires certain tasks to be accomplished “at a minimum.”⁹⁴

California courts have looked to the context of a requirement when interpreting whether the wholly discretionary term “may” could in fact be a mandatory directive. In *Elmore v. Imperial Irrigation District*,⁹⁵ defendant district argued that statutes using the term “may” regarding its flood control and other obligations indicated that the district was under no mandatory obligation to the plaintiff. The court disagreed:

IID quickly points out sections 22160, 22875 and 22879 contain the operative word “may,” not the mandatory words “shall” or “must” and relies on decisions declaring “shall” is mandatory and “may” is permissive (Evid. Code, § 11; Gov. Code, § 14) in contending it has no clear duty to avoid wasting water. “May,” however, should be interpreted as “shall” and as invoking a mandatory duty *if such an interpretation is necessary to carry out legislative intent*. (See *People ex rel. City of Bellflower v. Bellflower County Water Dist.* (1966) 247 Cal.App.2d 344, 352.)⁹⁶

The intent of the Santa Ana Water Board, as revealed in the Fact Sheet (which sets forth the rationale for permit requirements) and the language of Section XI.2 specifying that the tasks

⁹³ Fact Sheet at IX.4 (emphasis added).

⁹⁴ Moreover, “should” is simply the past tense of “shall.” See *Webster’s Third International Dictionary* (G. & C. Merriam Co. 1967); *The Random House Dictionary of the American Language* (Random House 1967.)

⁹⁵ (1984) Cal.App.3d 185.

⁹⁶ *Id.* at 194 (emphasis in original).

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therein were intended to be performed “at a minimum,” demonstrates that the Permittees were required to undertake these activities, and that they were not considered to be merely discretionary on their part.

Finally, the Proposed Draft concludes that permittees had “already completed” the requirement in Section XI.2 to identify residential areas and activities that are potential sources of pollutants and develop Fact Sheets and BMPs based on statements in the 2006 Report of Waste Discharge (ROWD) referencing a “Public Awareness Survey” survey conducted under the 2002 Permit. Proposed Draft at 146. The ROWD, however, states that this survey was instead conducted to survey residents’ *knowledge* as to sources of pollutants in the MS4 system:

In May 2003, the Permittees conducted a large sample (1,500 respondents) public awareness survey to measure the current level of knowledge held by residents of Orange County. In November 2005, after 30 months of the public education campaign, a follow-up to the baseline survey was conducted. The purpose of the second survey was to assess the extent to which public opinion and knowledge about urban runoff issues have changed and whether Orange County residents have made any behavioral changes as a result of the public education campaign.

The findings indicate that the public information campaign on stormwater and urban runoff has made initial inroads towards increasing awareness. In the majority of questions, awareness of the program and or its elements increased one to three percentage points.

2006 ROWD, Exhibit X to Draft Proposed Decision, at 6-10. This ROWD excerpts does not support the Proposed Draft’s conclusion.

Thus, the above-discussed provisions in Section XI are in fact new requirements in the 2009 Permit and represent state mandates requiring a subvention of state funds.

E. Requirements in 2009 Permit Section XIII Regarding Public Education

Section XIII of the 2009 Permit contains public education and outreach requirements. The Proposed Draft concludes that several of the requirements identified in the Test Claim are in fact state mandates, namely (1) the requirement to complete by July 1, 2012 a public awareness survey to determine the effectiveness of the current public and business education strategy, and to include the survey findings and any proposed changes to the program in the 2011-2012 annual report; (2) the requirement to administer individual or regional workshops for identified sectors by July 1, 2010 and annually thereafter, the requirement for commercial and industrial facility inspectors to distribute education information (Fact Sheets) during inspection visits; and (3) the requirement for the principal permittee, in collaboration with the other permittees, to develop and implement a mechanism for public participation in the uploading and implementation of DAMPs, WQMP guidance, and Fact Sheets for various activities, and to inform the public of these documents through various means. Proposed Draft at 153-58.

Claimants agree with the analysis presented in the Proposed Draft, as it comports with applicable mandates law and the facts presented in the Test Claim. In particular Claimants note the statement in the Proposed Draft at pages 156-57 regarding whether general federal MS4 permit regulations required the Section XIII obligations: “Nothing in these provisions, nor

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anywhere else in federal law, require the *specific activities* challenged in this Test Claim.” Proposed Draft at 157 (emphasis in original).

The Test Claim also identified other new mandates in Section XIII, including requirements in Section XIII.2 (to sponsor or staff tables or booths at various events to distribute public education materials), Section XIII.3 (requirements involving Public Education Committee), Section XIII.4 (requirements regarding outreach to industry and commercial groups), Section XIII.5 (requirements regarding reporting of illegal dumping and discharges), and Section XIII.6 (relating to developing BMP guidance).

The Proposed Draft concludes (at 152-53) that these were not “new” requirements since the 2002 Permit required similar steps. Though these requirements, in some form, may have been contained in the 2002 Permit, for the reasons outlined earlier in these comments, Claimants should be entitled to a subvention of funds because they had no opportunity to bring a test claim before the Commission when the 2002 Permit was first in effect, because Claimants were precluded by statute from bringing such claims and the inclusion of these requirements in the 2009 Permit represents a new requirement. *See* discussion in Section III.B.5, above.

F. Requirements in 2009 Permit Sections X and XI Regarding Inspections

These requirements of the 2009 Permit go to inspections of industrial and commercial facilities. The Proposed Draft concluded that the majority of these requirements, to develop an inventory of industrial and commercial sites that is in Global Information System (GIS) compatible format, to inspect additional categories of commercial facilities, to develop a new prioritization and inspection schedule based on identified criteria, and pending completion of that schedule, to inspect sites on the basis of an interim ranking system, and to develop a mobile business pilot program based on one category of mobile businesses, to develop outreach materials for that business type and an enforcement strategy and BMPs for the business and new requirements, were state mandates. Proposed Draft at 157-67. Claimants concur with that analysis.

IV. COMMENTS ON FUNDING SOURCES SECTION OF PROPOSED DRAFT

The Proposed Draft reaches several conclusions with respect to the sources of funds for the activities it identified as new state-required mandates in the 2009 Permit, all to the effect that Claimants have not shown that they are entitled to a subvention of funds under article XIII B, section 6 of the California Constitution:

1. There is no substantial evidence in the record that Claimants were required to use “proceeds of taxes” to pay for the 2009 Permit requirements at issue in the Test Claim;
2. Claimants had the authority to charge “regulatory fees” sufficient to pay for certain mandates;
3. Beginning on January 1, 2018, the adoption of new California legislation cut off the ability of Claimants to seek a subvention of funds after that date for mandates fundable through property-related fees, by re-defining the term “sewer” in a statute interpreting terms in the state Constitution to include storm drains, and thereby expanding the categories of projects for which a fee may be imposed without a majority vote of approval.

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Below, Claimants will show first that there is substantial evidence that Claimants in fact used “proceeds of taxes” (e.g., municipal general funds) to fund the requirements at issue in the Test Claim and second, that some of the costs which the Proposed Draft contends could be recovered through regulatory or other fees could not, due to legal and constitutional restrictions on such recovery.

With respect to the new California legislation, known as “Senate Bill 231” (“SB 231”), Claimants will show that it is an invalid attempt to legislatively modify the California Constitution. Proposition 218, which passed in 1996 and enacted article XIII D, section 6 of the state Constitution (“article XIII D, section 6”), establishing restrictions on the imposition of property-related fees, reflected voter intent to treat sewers as limited to sanitary sewer facilities, and not storm sewers or storm drains. This voter intent cannot be legislatively overridden by SB 231. Therefore, SB 231 should not be relied upon by the Commission to deny Claimants a subvention of funds for activities occurring after January 1, 2018, the effective date of the statute.

A. There is Substantial Evidence that Claimants used “Proceeds of Taxes” to Fund the Obligations in the 2009 Permit

The Proposed Draft concludes that various obligations in the 2009 Permit (such as submitting a Cooperative Watershed Program, inspecting additional categories of industrial and commercial facilities, GIS mapping of facilities, developing a mobile business pilot program, conducting various public education programs and developing a pilot program to control pollutant discharges from common interest areas and areas managed by homeowner associations or management companies) (Proposed Draft at 167-69) constitute “mandated new programs or higher levels of service.” Proposed Draft at 167. Claimants submit that additional obligations in the 2009 Permit, those identified in Sections III.B-E above, also constitute mandated new programs or higher levels of service.

However, the Proposed Draft also concludes that the Test Claim failed to present “substantial evidence in the record” that “claimants have been forced to spend their local ‘proceeds of taxes’ on the new state-mandated activities, and, thus, “there is not a sufficient showing of increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.” Proposed Draft at 169.

Claimants disagree. First, even putting aside the evidence in Claimants’ declarations submitted to accompany the Test Claim indicating sources of funds, the ROWDs from 2006 and 2013 (which the Proposed Draft employs to question Claimants’ assertions as to funding sources) reflect that “proceeds of taxes” (in the form of general fund and gas tax revenue) were in fact used for significant percentages of the costs of stormwater programs in Orange County. Proposed Draft at 175-77 (reflecting that, respectively, approximately 54% and 41% of funding sources for County permittees constituted proceeds of taxes).

In any event, it is not necessary that Claimants show that they were required to pay for all Test Claim requirements through “proceeds of taxes” to recover a subvention of funds under article XIII B, section 6. Govt. Code § 17556(d) provides that costs are not deemed mandated by the state to the extent the “local agency or school district has the authority to levy service charges, fees, or assessments *sufficient to pay* for the mandated program or increased level of service.” (emphasis added). If there are such service charges, etc. available to supplement

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general fund revenue, it serves as an offset for the amount of the subvention. *E.g., Clovis Unified School Dist. v. Chiang* (2010).⁹⁷ See also 2 Cal. Code Reg. § 1183.7(g)(4) (providing that offsets to claims for subvention include fee authority).

Moreover, the Proposed Draft itself notes that the ROWDs “are not broken down by individual city permittees, or by program area.” Proposed Draft at 175.⁹⁸ Thus, the ROWDs provide no “evidence” at all, much less substantial evidence, of the source of funds utilized by any individual Claimant to pay for the new mandates in the 2009 Permit. The extensive discussion in the Proposed Draft (at 174-78) based solely on the ROWDs’ very general categories of funding sources represents, at best, speculation as to those sources.⁹⁹

In contrast, there is substantial evidence in the form of reports required by the 2009 Permit to be filled out and submitted by Claimants to the Santa Ana Water Board as to the source of funds for Permit programs. That evidence is discussed next.

1. Permittees, including Claimants, Were and Are Required to Identify the Source of Funding for 2009 Permit Activities

The 2009 Permit requires, in Section XX.2, that all permittees prepare and submit a “unified fiscal accountability analysis” to the Santa Ana Water Board Executive Officer. The fiscal analysis is required to be “submitted with the annual report” and must, at a minimum, set forth each permittee’s expenditures for the previous fiscal year, budget for the current fiscal year, “[a] description of the source of funds,” and estimated budget for the next fiscal year. 2009 Permit, Section XX.2 (emphasis added). In addition, under the Monitoring & Reporting Program (“MRP”), which is enforceable as part of the 2009 Permit,¹⁰⁰ permittees must include the financial analysis required by Section XX.2 as part of an “Annual Progress Report.” MRP, Section IV.2 and Section IV.2(g). This report in turn is required to be submitted each year to the

⁹⁷ 188 Cal. App. 4th 794, 812 n.8.

⁹⁸ While this statement referred to the 2006 ROWD, the same limitation applies to funding source summary information in the 2013 ROWD. See Exhibit X submitted by Commission staff, at 153.

⁹⁹ In particular, this discussion contains speculation that erroneously characterizes mandates law. In noting that funding data in a ROWD from 2013 reflected slightly lower overall costs paid for by general fund and gas tax monies during Fiscal Year 2011-2012 as compared to FY 2004-2005, the Proposed Draft states that “only the *increase* in costs under the test claim permit is of concern in a test claim analysis.” Proposed Draft at 177. This is incorrect. As the Commission itself has held, it is not the permit as a whole at issue in a Test Claim, but those sections of that permit which represent new programs or higher levels of service: “The issues are whether the parts of the permit in the test claim are federal mandates or state mandates, and whether they are a new program or higher level of service.” Statement of Decision, 07-T-09, *Discharge of Stormwater Runoff – Order No. R9-2007-0001*, at 40. This Test Claim in fact has identified specified provisions of the 2009 Permit as containing such requirements, and the Proposed Draft has confirmed that certain of those requirements are, in fact, new mandated programs or higher levels of service. Proposed Draft at 167. To the extent that Claimants use proceeds of taxes for the costs of complying with those provisions, they qualify for a subvention of funds. Claimants are submitting herewith additional substantial evidence that the cost of complying with the 2009 Permit, including necessarily the programs at issue in the Test Claim, were paid for by “proceeds of taxes.”

¹⁰⁰ 2009 Permit, Section XXI.4 (“[t]he permittees shall comply with Monitoring and Reporting Program NO. R8-2008-0030, and any revisions thereto, which is hereby made a part of this order.”) The MRP is included in the record before the Commission.

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Santa Ana Water Board Executive Officer and the Regional Administrator of EPA Region 9. MRP, Section IV.2.

The MRP further requires that the permittees “shall be responsible for the submittal to the principal permittee of all required information/materials needed to comply with this order in a timely manner. *All such submittals shall be signed by a duly authorized representative* of the permittee under penalty of perjury.” MRP, Section IV.3 (emphasis added).

There is thus evidence available in the form of certified statements by duly authorized permittee representatives, filed each year with the Santa Ana Water Board, which set forth the sources of funding for 2009 Permit requirements, including those at issue in the Test Claim.

2. The Fiscal Analyses Provided by Claimants in their Annual Reports Reflect, in Many Cases, Nearly Complete Reliance on General Funds to Pay For 2009 Permit Requirements

The Proposed Draft concludes that the Commission cannot approve reimbursement for 2009 Permit requirements determined to be mandated new programs or higher levels of service “because there is not substantial evidence in the record that the claimants were forced to use [sic] their proceeds of taxes to pay for these requirements. Unless that evidence is provided, this Test Claim is denied.” Proposed Draft at 199. In the following section, Claimants provide that evidence.

Permittees submit their financial analyses along with other information required to be provided in the annual report to the County of Orange, the principal permittee under the 2009 Permit. (Declaration of Sarah Chiang (“Chiang Decl.”). ¶ 4). These reports are referred to as the “Program Effectiveness Assessment” (“PEA”) (Chiang Decl, ¶ 4). The County maintains copies of such reports in the form of compact discs. *Ibid.* CDs containing permittees’ PEAs are hand-delivered by the County to the office of the Santa Ana Water Board. (Chiang Decl., ¶ 5.)

In addition, when the County delivers the PEAs to the Water Board, it also delivers a “wet ink” copy of each permittees’ “Signed Certified Statement,” which must accompany the PEA. Chiang Decl. at ¶ 5. An example of such a statement is attached as Exhibit 1 to the Chiang Declaration. The language of the Signed Certified Statement recites as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Chiang Decl., Exhibit 1).

As noted, the financial analysis required in the PEA must set forth information on the “source of funds” for permit activities. This analysis is included in a specific section of the PEAs, Section C-2.4. (Chiang Decl., ¶ 6). The financial analysis section recites that it is intended

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“to depict all NPDES compliance related costs” for the city making the report. *Ibid.* Thus, because the 2009 Permit is an NPDES permit, the financial information, including source of funds information, reflects costs associated with complying with the requirements in the 2009 Permit.

To demonstrate that Claimants have, in fact, used “proceeds of taxes,” excerpts of PEAs submitted by Claimants Cities of Costa Mesa, Irvine, Lake Forest, Seal Beach, and Villa Park are attached as Exhibits 2-6 to the Chiang Declaration. These excerpts reflect that for all fiscal years represented (ranging from 2009-10 to 2020-21, with some exceptions for missing reports) those cities’ source of funding for stormwater activities, including compliance with 2009 Permit requirements, was entirely or almost entirely general fund revenue and in some cases, gas tax revenue. As the Proposed Draft states, both funding streams constitute “proceeds of taxes.” Proposed Draft at 176.

This evidence is reinforced by the Declarations of Seung Yang, P.E., Thomas Lo, Devin Slavin, David Spitz, P.E., and Steve Franks, on behalf of the Cities of Costa Mesa, Irvine, Lake Forest, Seal Beach and Villa Park (filed herewith), in which the declarants confirm that expenditures for 2009 Permit requirements, which necessarily include the requirements at issue in the Test Claim, were funded entirely or almost entirely by general fund revenues over the time periods relevant to the Test Claim.

While these cities have used general fund revenues for 2009 Permit compliance requirements, they are not the only Claimants who have used such revenues. For example, annual reports filed by the City of Cypress disclosed that the city used 100% general fund sources for all permit obligations. (Chiang Decl., ¶ 6).

Absent grants or other fee sources, Claimants have been constitutionally limited in their ability to obtain funding for 2009 Permit requirements due to the decision of the court in *Howard Jarvis Taxpayers Ass’n v. City of Salinas*.¹⁰¹ Proposed Draft at 170.¹⁰² *City of Salinas* held that the exemption from voter approval requirements for property-related fees in California Constitution article XIII D, article 6 applicable to “fees or charges for sewer, water, and refuse collection services” did not extend to storm sewer services and did not apply to a property-related fee to pay the costs of controlling stormwater pollution.¹⁰³ The Proposed Draft concluded, correctly, that this voter approval requirement means that “the fee authority is not sufficient as a matter of law to fund the costs of the mandated activities.” Proposed Draft at 170.

Thus, in light of the evidence that Claimants have, in fact, used general fund revenue to fund requirements under the 2009 Permit, including requirements that are the subject of the Test Claim, Claimants submit that they have satisfied the requirement in the Proposed Draft that they provide evidence of the use of “proceeds of taxes” to pay for those requirements. In light of that evidence, the Commission has no reason not to find that Claimants are entitled to a subvention of

¹⁰¹ (2002) 98 Cal.App.4th 1351.

¹⁰² Such a holding was also reflected in the Commission’s decision in *Discharge of Stormwater Runoff*, 07-TC-09, as noted in the Proposed Draft, at 170.

¹⁰³ 98 Cal.App.4th at 1358-59. The supposed impact of legislation effective after January 1, 2018, purporting to amend the exception to include stormwater fees is discussed in Section IV.C, below.

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state funds for requirements determined to be mandated new programs or higher levels of service.

B. Claimants Do Not Have Regulatory Fee Authority to Recover the Costs of Various 2009 Permit Requirements or Otherwise Lack Fee Authority

The Proposed Draft concludes that, with respect to requirements in Sections XIII, IX and X, Claimants have regulatory fee authority sufficient as a matter of law. Proposed Draft at 189-90. However, as set forth in this section, Claimants lack such authority for additional provisions in the 2009 Permit.

Article XI, section 7 of the California Constitution provides that a municipality “may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Proposed Draft at 181. Courts have traditionally interpreted this power to authorize “valid regulatory fees.”¹⁰⁴ This fee-setting power is, however, limited by California case law as well as amendments to the Constitution adopted through the initiative process in Propositions 218 and 26. With regard to case law, the recent case of *Dept. of Finance v. Commission on State Mandates*¹⁰⁵ outlines these limitations:

A regulatory fee is valid “if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers' activities or operations” or the benefits the fee payers receive from the regulatory activity. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046, citing *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 881). The third element is a question “of fair allocation” that “considers whether any class of fee payers is shouldering too large a portion of the associated regulatory costs.” (*California Building Industry Assn. v. State Water Resources Control Bd., supra*, at p. 1052.)¹⁰⁶

The Proposed Draft’s conclusion that Claimants have fee authority does not address provisions in Section XII that require the permittees to devise various planning documents to assist developers in applying LID and HMP principles to PDPs.”¹⁰⁷ These provisions, referred to as the “LID/HMP Implementation Requirements,” are:

(1) Section XII.B.1, requiring permittees to “annually review the existing structural treatment control and other BMPs for New Development and submit any changes for review and approval by the Executive Officer” and further for the Principal Permittee to “revise the appropriate tables in the Water Quality Management Plan [for new development projects] with the latest information on BMPs and provide additional clarification regarding their effectiveness and applicability.”

¹⁰⁴ *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662.

¹⁰⁵ (2021) 59 Cal.App.5th 546.

¹⁰⁶ *Dept. of Finance, supra*, 59 Cal.App.5th at 562.

¹⁰⁷ As discussed in Section III.C.1, the Proposed Draft does not discuss these requirements in its evaluation of the merits of the Test Claim on Sections XII of the 2009 Permit.

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(2) Section XII.C.1, requiring permittees to “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, within 12 months after the adoption of the 2009 Permit submit the updated model WQMP “for review and approval by the Executive Officer.”

(3) Section XII.D.5, requiring permittees to prepare a Watershed Master Plan for each of four identified watersheds, which are required to integrate water quality, hydromodification, water supply, and habitat, and include maps to identify areas susceptible to hydromodification and a hydromodification model to use as a tool for project developers to select storm water preventative and mitigative site BMPs. Permittees were required to submit the maps and a model plan for one watershed by May 22, 2011, and the model plan had to specify hydromodification standards for each sub-watershed and provide assessment tools. The model plan was required to be submitted for approval by the Executive Officer, and Watershed Master Plans were required to be completed for all watersheds 24 months after approval of the model plan.

(4) Section XIII.E.1, requiring the principal permittee in collaboration with the other permittees, to develop technically based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs and to submit that to the Executive Officer for approval.

All work on the LID/HMP Implementation Requirements was to be completed by 12 months after Permit adoption (*e.g.*, May 11, 2010).¹⁰⁸ Until the model WQMP was approved, PDPs were not subject to the requirements of Section XII.¹⁰⁹ Thus, the LID/HMP Planning Requirements would necessarily be completed *before* it was known how many private PDPs (the only ones on which a fee could be charged) would actually be subject to LID/HMP requirements.

1. Because the LID/HMP Planning Requirements Generally Benefitted Downstream Communities and the Citizens of Orange County, any Attempt to Allocate Costs Only to Developers of Priority Development Projects Would Violate the Constitution

While this section discusses limitations on the ability of municipalities to fund activities through regulatory fees, the LID/HMP Planning Requirements are not chargeable through fees because the requirements “redound to the benefit of all[.]” *Newhall County Water Dist. v. Castaic Lake Water Agency*.¹¹⁰ *Newhall County* held that a charge imposed by a water agency for creating “groundwater management plans” as part of the agency’s groundwater management program could not be imposed as a fee. The court reasoned that the charge was “not [for] specific services the Agency provides directly to the [payors], and not to other [non-payors] in the Basin. On the contrary, groundwater management services redound to the benefit of all groundwater extractors in the Basin – not just the [payors].”¹¹¹ *See also Dept. of Finance II, supra*, holding

¹⁰⁸ 2009 Permit Section XII.C.1 and XII.E.1.

¹⁰⁹ 2009 Permit Section XII.J (requirements in Section XII to be implemented for all PDPs 90 days after approval of the revised model WQMP.)

¹¹⁰ (2016) 243 Cal.App.4th 1430, 1451.

¹¹¹ *Ibid.*

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that placing trash receptacles at transit stops benefitted the “public at large”¹¹² and that associated costs could not be passed on to any particular person or group.¹¹³

The LID/HMP Implementation Requirements, which enable developers of private PDPs to design projects with LID and HMP intended to reduce the impacts of those projects, similarly benefit the public at large. For example, findings in the 2009 Permit discuss threats to communities posed by excess urban runoff intended to be addressed by LID and HMP measures. Finding L.60 under the heading “New Development/Significant Redevelopment – WQMP/LIP/LID,” states in relevant part that “[u]rban development increases impervious surfaces and storm water runoff volume and velocity and decreases vegetated, pervious surface areas available for infiltration and evapotranspiration of storm water. Increase in runoff volume and velocity can cause scour, erosion . . . aggradation . . . and can change fluvial geomorphology, hydrology and aquatic ecosystems. This order includes requirements to address increases in imperviousness and changes in water quality and quantity, including hydrologic conditions of concern.” Similarly, Finding L.60 notes that recent “studies have indicated that low impact development (LID) BMPs are effective storm water management tools that minimize adverse impacts on storm water runoff quality and quantity resulting from urban developments.”

The LID/HMP Implementation Requirements established guidance for LID BMPs and HMP measures to be implemented in PDPs. As such they benefit the entire downstream community, not simply the project proponents. Thus, the costs of developing the Requirements could not be constitutionally assessed by imposing fees on a subset of those entities, e.g., developers of PDPs. A charge for these requirements would thus have to be assessed as a property-related fee, which required voter approval pursuant to article XIII D, section 6 of the Constitution. Under the law existing at the time of these requirements, fees requiring voter approval were not sufficient, as a matter of law, to fund the cost of these mandated activities. *See Proposed Draft at 170.*

Even were the LID/HMP Implementation Requirements potentially payable by fees, because the permittees could not know how many private developers would employ them, Constitutional requirements made it impossible for permittees to allocate the cost of those fees to developers in accord with those requirements.

2. Because the Number of Priority Development Projects Utilizing the LID/HMP Implementation Requirements Was Unknown When the Requirements Were Developed, Permittees Had No Way to Fairly Allocate the Costs in Accordance with Law

While the costs associated with developing the LID/HMP Implementation Requirements were known to the permittees, what was not known at the time of their completion was the number of private PDPs that would use the Requirements in their planning and could therefore be assessed a reasonable fee in an amount “no more than necessary to cover the reasonable costs

¹¹² 59 Cal.App.5th at 569.

¹¹³ *See also* Calif. Const. article XIII D, section 6(b)(5), which prohibits fees “for general governmental services . . . where the service is available to the public at large in substantially the same manner as it is to property owners.”

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of the government activity” or allocated to a payor in a manner which bore “a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Cal. Const. article XIII C, section 1(e). Article XIII C, section 1(e) was added to the Constitution by Proposition 26, effective November 3, 2010. Since this occurred during development of the LID/HMP Implementation Requirements, Article XIII C is relevant to this discussion. However, as the Proposed Draft notes, Proposition 26 largely reflected teachings in previous court cases, including *Sinclair Paint v. State Board of Equalization*.¹¹⁴ Proposed Draft at 184.

A number of cases have discussed limits on how payors are to be assessed costs for governmental programs. For example, in *Cal. Farm Bureau Fed. v. State Water Resources Control Bd.*¹¹⁵ the court held that an aggregate charge imposed, “measured collectively, considering all . . . payors” cannot exceed the cost of the service provided.¹¹⁶ This is directly applicable to charges associated with the LID/HMP Implementation Requirements. Given that the cost of preparing the Requirements was known but the number of developers using the Requirements was not, charging each developer a set fee, could well exceed the aggregate cost. This would result in a fee which exceeded the reasonable costs of the activity, rendering it a “tax” under article XIII C, section 1(e).

On the other hand, were permittees to stop charging fees after recouping all costs associated with the Requirements, the developers who already paid the fee would have paid an amount that did not represent a “fair or reasonable” relationship to the developers’ “burdens on or benefits from” the Requirements.¹¹⁷ Because the ultimate number of priority development projects could not be known, there was no ability of permittees to allocate costs on any reasonable basis, such as an emission-based formula validated in *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.*¹¹⁸

Given these issues, the cost of the LID/HMP Planning Requirements could not be constitutionally assessed and therefore permittees would have to obtain voter approval.¹¹⁹ Thus, Claimants lack fee authority.

3. Claimants Also Lack Fee Authority for Additional Provisions in the 2009 Permit that Constitute New Mandated Programs or Higher Levels of Service

In the discussion in Section III above, Claimants have identified additional provisions in the 2009 Permit that constitute new mandated programs or higher levels of service. Of these, the provisions in Section XVIII of the Permit relating to TMDLs, by necessity, all concern property-

¹¹⁴ (1997) 15 Cal. 4th 866.

¹¹⁵ (2011) 51 Cal.App.4th 421, 438.

¹¹⁶ See also *Sinclair Paint*, 15 Cal. 4th at 876.

¹¹⁷ *Sinclair Paint*, *supra*, 15 Cal. 4th 878; see also Cal. Const. article XIII C, section 1(e).

¹¹⁸ (1988) 203 Cal.App.3d 1132.

¹¹⁹ The costs incurred to develop the LID/HMP Implementation Requirements all were incurred prior to the effective date of SB 231, January 1, 2018.

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related requirements, as the benefits of cleaner water apply generally to all residents and cannot be charged to a particular activity as a regulatory fee, assessed on particular persons receiving benefits from the service as a user fee, or assessed on developers of real property as a development fee.

Indeed, the Proposed Draft acknowledges that the one TMDL provision in Section XVIII which it found to constitute a state-mandated new program or higher level of service, that requiring development of a Cooperative Watershed Program, would fall under the category of property-related fees. Proposed Draft at 170. Such costs would be subject to the majority vote requirement in Calif. Const. article XIII D, section 6(c). Because of that voter approval requirement, the Commission has determined that Claimants did not have the authority to charge or assess such fees as a matter of law. Proposed Draft at 170.

The same analysis would apply to the costs of LID and HMP BMPs required for public PDPs discussed in Section III.C.2 above, since a regulatory or development fee cannot be assessed against a public entity.

With respect to requirements in Section XI relating to residential programs, the Proposed Draft identified the requirement to develop a pilot program to control discharges from common interest areas and areas managed by homeowner associations or management companies as one for which property-related fees would apply. Since such fees would be subject to the majority voter approval requirement of Article XIII, the Proposed Draft correctly determined that the fees were not sufficient as a matter of law. Proposed Draft at 170. The other requirements of Section XI identified by Claimants in Section III.D above, requirements in Section XI.2, XI.3, and XI.6, also would be subject to such fees, as general programs benefitting residential areas cannot be allocated as user, regulatory, or development fees.

A similar analysis applies to the requirements of 2009 Permit Section XIII relating to public outreach and education, since requirements aimed at the general public are not susceptible to repayment through regulatory fees. In addition to those requirements identified as reimbursable state mandates in the Proposed Draft, the additional requirements in this section, Sections XIII.2, XIII.3, XIII.4, XIII.5 and XIII.6, also would qualify as property-related.

C. SB 231, Which Claims to “Correct” a Court’s Interpretation of article XIII D, section 6 of the California Constitution, Misinterprets Proposition 218 and the Historical Record and Should Not Be Relied Upon by The Commission

As discussed above, *Howard Jarvis Taxpayers Assn. v. City of Salinas* (“*City of Salinas*”) determined that the exclusion from the majority taxpayer vote requirement for property-related fees for “sewer services” in article XIII D, section 6(c) of the California Constitution, did not cover storm sewers or storm drainage fees.¹²⁰

In 2017, fifteen years after the decision in *City of Salinas*, the Legislature enacted SB 231, which amended Govt. Code § 53750 to define the term “sewer” (which is contained in Calif. Const. article XIII D, section 6(c)):

¹²⁰ 98 Cal. App. 4th at 1358-359.

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“Sewer” includes systems, all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. “Sewer system” shall not include a sewer system that merely collects sewage on the property of a single owner.

Govt. Code § 53750(k).

SB 231 also added Govt. Code § 53751, which sets forth findings as to the legislative intent in amending § 53750 to encompass storm sewers and drainage in the definition of “sewer.” Section 53751 states that the Legislature intended to overrule *City of Salinas* because that court failed, among other things, to recognize that the term “sewer” had a “broad reach” “encompassing the provision of clean water and then addressing the conveyance and treatment of dirty water, whether that water is rendered unclean by coming into contact with sewage or by flowing over the built-out human environment and becoming urban runoff.” Govt. Code § 53751(h).

The Legislature also included a finding that “[n]either the words ‘sanitary’ nor ‘sewerage’ are used in Proposition 218, and the common meaning of the term ‘sewer services’ is not ‘sanitary sewerage.’ In fact, the phrase ‘sanitary sewerage’ is uncommon.” Govt. Code § 53751(g). SB 231 further cites a series of pre-Proposition 218 statutes and cases which, the legislation asserts, “reject the notion that the term ‘sewer’ applies only to sanitary sewers and sanitary sewerage.” Govt. Code § 53751(i).

The Proposed Draft states that the “Commission presumes the validity of Government Code sections 53750 and 53751, as amended” and concludes that the adoption of SB 231, combined with the decision of the court in *Paradise Irrigation Dist. v. Commission on State Mandates*¹²¹ renders any costs incurred by Claimants after January 1, 2018 (the effective date of SB 231) “not eligible for reimbursement.” Proposed Draft at 197.¹²²

1. SB 231 Does Not Apply Retroactively

The Proposed Draft concludes that the amendments to Govt. Code §§ 53750 and 53751 operate *prospectively* from January 1, 2018 and thus do not have retroactive effect. Proposed Draft at 193. To the extent that SB 231 has any application to the Test Claim, Claimants concur with the finding that SB 231 is not retroactive. In addition to the cases discussed in the Proposed Draft, Claimants note, first, that there is a strong presumption in California against the retroactive application of statutes. Civil Code § 3 (“No part of it is retroactive, unless expressly

¹²¹ (2019) 33 Cal.App.5th 205.

¹²² The applicability of *Paradise Irrigation Dist.* to this test claim depends on whether SB 231 is valid. If it is not, as Claimants assert, a local government could not even assess a fee without it being subject to a majority vote.

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so declared.”). See also *Evangelatos v. Superior Court*.¹²³ Second, if the question of retroactive application is ambiguous, that ambiguity is to be resolved in favor of prospective application. *Myers v. Philip Morris Companies, Inc.*¹²⁴

Nothing in the language of SB 231 indicates that the Legislature intended it to apply retroactively. There is no statement of retroactive application in Sections 53750 and 53751, and other language in the statutes suggests otherwise. For example, Section 53751(a) references the “[o]ngoing, historic drought” (emphasis added); Section 53751(k) provides that the “plain meaning rule shall apply in conjunction with the definitions” provided in Section 53750 (emphasis added); and, while pre-Proposition 218 cases are cited, Sections 53751 (j), (k) and (m) cite two cases and a statute dating from 2013 and later, well after adoption of Proposition 218.

2. The Plain Language and Structure of Proposition 218 Do Not Support SB 231’s Definition of “Sewer” in Govt. Code § 53750

When it comes to the validity of any statute purporting to interpret the California Constitution, it is undisputed that the final word is left to the courts.¹²⁵ For this reason, the ultimate validity of SB 231 is not before the Commission. It would be error, however, for the Commission to follow SB 231 to deny Claimants a subvention of funds for costs expended after January 1, 2018. This is so because in seeking to overrule *City of Salinas*, SB 231 attempts to reinterpret the Constitution in contradiction of the intent of the voters when they adopted Proposition 218. Because the Constitution cannot be modified by a legislative enactment,¹²⁶ SB 231 is unconstitutional on its face, and should not be relied upon by the Commission.

SB 231 represents an attempt to re-define the meaning of a Constitutional provision, article XIII D, section 6, through an amendment to legislation enacted to implement Proposition 218, the Proposition 218 Omnibus Implementation Act, Govt. Code § 53750 *et seq.* The Legislature made no attempt to define “sewer” in the original Act, which was enacted in 1997, nor in subsequent amendments prior to SB 231. SB 231 sought to do so 21 years after passage of Proposition 218 (and 20 years after the Implementation Act). Notably, the Legislature waited 15 years after the allegedly erroneous holding in *City of Salinas*¹²⁷ to enact a “correction.”

¹²³ (1988) 44 Cal. 3d 1188, 1209 (“As we have explained, under Civil Code section 3 and the general principle of prospectivity, the absence of any express provision directing retroactive application strongly supports prospective operation of the measure.”).

¹²⁴ (2002) 28 Cal. 4th 828, 841 (“[A] statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.” (quoting *I.N.S. v. St. Cyr* (2001) 533 U.S. 289, 320, fn. 45)).

¹²⁵ Cf. *City of San Buenaventura v. United Water Conservation Dist.* (2017 Cal. 5th 1191, 1209 n.6 (“the ultimate constitutional interpretation must rest, of course, with the judiciary.”); see also *County of Los Angeles v. Comm’n on State Mandates*, *supra*, 150 Cal.App.4th at 921 (overruling statute that purported to shield MS4 permits from article XIII B section 6 and holding that a “statute cannot trump the constitution.”)

¹²⁶ *County of Los Angeles*, *supra*, 150 Cal.App.4th at 921.

¹²⁷ Govt. Code § 53751(e)-(f).

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In Govt. Code § 53751(f), the Legislature found that the *City of Salinas* court “failed to follow long-standing principles of statutory construction by disregarding the plain meaning of the term “sewer.” In so finding, the Legislature itself ignored such principles.

In interpreting the meaning of voter initiatives, courts are charged with determining the intent of the voters. *Professional Engineers in California Government v. Kempton*.¹²⁸ To ascertain that intent, courts turn first to the initiative’s language, giving words their ordinary meaning as understood by “the average voter.” *People v. Adelman*.¹²⁹ The initiative must also be construed in the context of the statute as a whole and the scheme of the initiative. *People v. Rizo*.¹³⁰ In addition, if there is ambiguity in the initiative language, ballot summaries and arguments may be considered as well as reference to the contemporaneous construction of the Legislature. *Professional Engineers, supra*;¹³¹ *Los Angeles County Transportation Comm. v. Richmond*.¹³²

In construing a statute or initiative, every word must be given meaning. *City of San Jose v. Superior Court*.¹³³ If the Legislature (or the voters) use different words in the same sentence, it must be assumed that their intent was that the words have different meanings. *K.C. v. Superior Court*.¹³⁴

In the case of Proposition 218, the word “sewer” is used both in article XIII D, section 5 and in article XIII D, section 6. Section 5 exempts from the majority protest requirement in article XIII D, section 4 “[a]ny assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, *sewers*, water, flood control, *drainage systems* or vector control. “ Calif. Const. article XIII D, section 5(a) (emphasis added). There, the term “sewer” is set forth separately from “drainage systems,” which the Legislature defined as “any system of public improvements that is intended to provide for erosion, control, for landslide abatement, or for *other types of water drainage*.” Govt. Code § 53750(d) (emphasis added). Since both “sewer” and “drainage systems” (which refer to systems which drain stormwater, including storm sewers) are contained in the same sentence, it must be presumed that the voters intended that “sewer” mean something other than “public improvements . . . intended to provide for . . . other types of water drainage.”

Moreover, the word “sewer,” but not the term “drainage systems” then also appears in article XIII D, section 6. A longstanding principle of statutory construction is that when language is included in one portion of a statute, “its omission from a different portion addressing a similar subject suggests that the omission was purposeful.” *E.g., In re Ethan C.*¹³⁵

¹²⁸ (2007) 40 Cal. 4th 1016, 1037

¹²⁹ (2018) 4 Cal. 5th 1071, 1080

¹³⁰ (2000) 22 Cal. 4th 681, 685.

¹³¹ 40 Cal. 4th at 1037.

¹³² (1982) 31 Cal.3d 197, 203.

¹³³ (2017) 2 Cal. 5th 608, 617.

¹³⁴ (2018) 24 Cal.App.5th 1001, 1011 n.4.

¹³⁵ (2012) 54 Cal. 4th 610, 638.

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The Supreme Court in *Richmond v. Shasta Community Services Dist.* used this tool to analyze article XIII D to determine if a capacity charge and a fire suppression charge imposed by a water district were “property related”:

Several provisions of article XIII D tend to confirm the Legislative Analyst’s conclusion that charges for utility services such as electricity and water should be understood as charges imposed “as an incident of property ownership.” For example, subdivision (b) of section 3 provides that ‘fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership’ under article XIII D. Under the rule of construction that the expression of some things in a statute implies the exclusion of other things not expressed (*In re Bryce C.* (1995) 12 Cal.4th 226, 231), the expression that electrical and gas service charges are not within the category of property-related fees implies that similar charges for other utility services, such as water and sewer, are property-related fees subject to the restrictions of article XIII D.”¹³⁶

A similar analysis of Article XIII D supports the conclusion that the voters’ intent was that “sewers” referred to sanitary sewers, not storm drainage systems. As noted above, the municipal infrastructure listed in article XIII D, section 5 includes both “sewers” and “drainage systems.” By contrast, article XIII D, section 6(c) refers only to “sewer” in exempting from the majority vote requirement “sewer, water and refuse collection services.” Given that another section of the proposition specifically called out “drainage systems” as different from “sewers,” the absence of the former term requires that it be presumed that the voters understood “sewer” or “sewer services” in section 6(c) to be limited to sanitary sewers. *Richmond, supra.*

The proponents of Proposition 218 also expressed an intent that it “be construed liberally to curb the rise in “excessive” taxes, assessments, and fees exacted by local governments without taxpayer consent.”¹³⁷ Any interpretation of the breadth of the meaning of the exception for “sewer services” must therefore take that intent into account and interpret exceptions to limits on the taxing or fee power narrowly.

Thus, the unambiguous, plain meaning of article XIII D, section 6(c) is that the term “sewer” or “sewer services” pertains only to sanitary sewers and not to MS4s. In attempting to expand the facilities and services covered by this term, SB 231 is an invalid modification of Proposition 218 that seeks to override voter intent. SB 231 does not provide authority to bar Claimants from seeking a subvention of funds for costs incurred after January 1, 2018.

While resort to interpretive aids is not required when a term in a statute is clear, SB 231 nevertheless justifies its amendment of Govt. Code § 53750 by asserting that “[n]umerous sources predating Proposition 218 reject the notion that the term “sewer” applies only to sanitary sewers and sanitary sewerage.” Govt. Code § 53751(i). These “sources” include:

¹³⁶ (2004) 32 Cal. 4th 409, 427.

¹³⁷ *City of Salinas*, 98 Cal. App. 4th at 1357-58.

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(a) Pub. Util. Code § 230.5: This statute is referenced¹³⁸ as the source for the “definition of ‘sewer’ or ‘sewer service’ that should be used in the Proposition 218 Omnibus Implementation Act. The statute defines “sewer system” to include both sanitary and storm sewers and appurtenant systems. However, this is an isolated statutory example and it is found in a section of the Public Utilities Code dealing with privately owned sewer and water systems regulated by the Public Utilities Commission,¹³⁹ and not a “system of public improvements that is intended to provide . . . for other types of water drainage.” Govt. Code § 53750(d). Such small systems may well serve both as a sanitary and storm system, but they are not typical of the MS4 systems being regulated by the 2009 Permit or of the public-supported projects that Proposition 218 was written to address. Moreover, the fact that the statute goes to the effort to define “sewer system” to include both sanitary and storm sewers shows that, without such an explicit definition, the tendency would be to consider only sanitary sewers to fall under the definition of “sewer.”

(b) Govt. Code § 23010.3. This statute¹⁴⁰ relates to the authorization for counties to spend money for the construction of certain conveyances, and defines those conveyances as “any sanitary sewer, storm sewer, or drainage improvements . . .” This does not further the arguments made in SB 213, since the statutory language calls out “sanitary sewer,” “storm sewer” and “drainage improvements” as separate items, and also contradicts the statement in Govt. Code § 53751(g) that the phrase “sanitary sewerage” is uncommon. The similar phrase “sanitary sewer” is commonly found, as noted elsewhere below.

(c) The Street Improvement Act of 1913: Govt. Code § 53751(i)(3) references only the name of this statute, Streets & Highways Code §§ 10000-10706, but cites no section which supports the interpretation of Proposition 218 promoted by SB 213. However, Streets & Highways Code § 10100.7, which allows a municipality to establish an assessment district to pay for the purchase of already constructed utilities, separately defines “water systems” and “sewer systems,” with the latter clearly limited to sanitary sewers: “sewer system facilities, including sewers, pipes, conduits, manholes, treatment and disposal plants, connecting sewers and appurtenances for providing sanitary sewer service, or capacity in these facilities . . .” *Ibid.*

(d) *Los Angeles County Flood Cont. Dist. v. Southern Cal. Edison Co.*¹⁴¹ is cited¹⁴² for the proposition that the California Supreme Court “stated that ‘no distinction has been made between sanitary sewers and storm drains or sewers.’” This case involved the responsibility of defendant Edison to pay for the relocation of its gas lines to allow for construction of District storm drains. In stating that there was no distinction (as to the payment obligation) between sanitary sewers and storm drains or sewers, the Court was not commenting on whether a “sewer” *qua* “sewer” necessarily filled both sanitary and storm functions. And, again, the Court

¹³⁸ Govt. Code § 53751(i)(1)

¹³⁹ See Pub. Util. Code § 230.6, defining “sewer system corporation” to include “every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this state.”

¹⁴⁰ Cited in Govt. Code § 53751(i)(2).

¹⁴¹ (1958) 51 Cal.2d 331.

¹⁴² Cited in Govt. Code § 53751(i)(4)

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distinguished between “sanitary sewers” and “storm drains or sewers” in the language of the opinion.

(e) *County of Riverside v. Whitlock* (1972) 22 Cal.App.3d 863, *Ramseier v. Oakley Sanitary Dist.* (1961) 197 Cal.App.2d 722, and *Torson v. Fleming* (1928) 91 Cal. App. 168. These cases are cited in Govt. Code § 53751(i)(5) as examples of “[m]any other cases where the term ‘sewer’ has been used interchangeably to refer to both sanitary and storm sewers.” These cases, however, are more limited in their holdings. *County of Riverside* refers to “sewer” only in a footnote, which quotes from an Interim Assembly Committee Report discussing public improvements including “streets, storm and sanitary sewers, sidewalks, curbs, etc.”¹⁴³ However, in another footnote which quoted from Street & Highways Code § 2932 regarding assessments for public improvements, the phrase “sewerage or drainage facilities” is employed, again reflecting a distinction between these functions and assigning the function of sanitary services to “sewerage.”¹⁴⁴

Ramseier involved a dispute over a contract to expand the district’s “storm and sanitary sewer system.”¹⁴⁵ This was the only reference to “sewers” in the case, and the reference distinguishes between “storm” and “sanitary” sewers. The reason for citation to *Torson* is unclear, though the case involved a requested extension of a sanitary sewer, and the statutes cited in the case referred, separately, to both “sanitary” and “storm” sewers.¹⁴⁶ While these cases present only limited examples of how the term “storm sewer” or “sanitary sewer” were employed, it is clear that in all, a distinction is drawn between sanitary sewers and storm sewers.

3. There is Significant Evidence that the Legislature and the Courts Considered “Sewers” to be Different from “Storm Drains” Prior to the Adoption of Proposition 218

There are numerous examples in pre-Proposition 218 California statutes and cases of the term “sewer” being used to denote sanitary sewers, and not storm sewers. For example, Education Code § 81310, in referring to the power of a community college board to convey an easement to a utility, refers to “water, sewer, gas, or storm drain pipes or ditches, electric or telephone lines, and access roads.” (emphasis added). There is no ambiguity in this statute – the “sewer” being referred cannot be a storm sewer, as “storm drain” pipes are specifically referenced.¹⁴⁷

Another example is Govt. Code § 66452.6, referring to the timing of extensions for approval of a subdivision tentative map act, and defining “public improvements” to include “traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges,

¹⁴³ 22 Cal.App.3d at 874 n.9.

¹⁴⁴ 22 Cal.App.3d at 869 n.8.

¹⁴⁵ 197 Cal.App.2d at 723.

¹⁴⁶ 91 Cal. App. at 172.

¹⁴⁷ *K.C., supra*, 24 Cal.App.5th at 1011 n.4 (when Legislature uses different words in the same sentence, it is assumed that it intended the words to have different meanings).

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flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities."¹⁴⁸ Again, there is no ambiguity; the Legislature separately defined "flood control or storm drain facilities" from "sewer facilities," with the latter taken on the same meaning ascribed to it in *City of Salinas*.

Similarly, Health & Safety Code § 6520.1, relating to the power of sanitary districts, provides that a district can prohibit a private property owner from connecting "any house, habitation, or structure requiring *sewerage or drainage* disposal service to any privately owned *sewer or storm drain* in the district." Again, "sewer" here is used by the Legislature as a sanitation utility separate and apart from drainage. This practice of defining "sewer" as a sanitary utility distinct from "storm drain" has continued after the adoption of Proposition 218. In Water Code § 8007, effective May 21, 2009, the Legislature made the extension of certain utilities by cities into disadvantaged unincorporated areas subject to the prevailing wage law, and defined those utilities as the city's "water, *sewer, or storm drain* system." (emphasis added).

Cases, too have used the term "sewer" to mean a sanitary sewer, handling sewage, as opposed to storm drains. For example, in *E.L. White, Inc. v. Huntington Beach*,¹⁴⁹ the Supreme Court used the terms "storm drain" and "sewer" separately in discussing the liability of the city and a contractor for a fatal industrial accident. Also, in *Shea v. Los Angeles*, the court referred to the "sanitary sewer" and "sewers" in addition to a "storm drain."¹⁵⁰ In *Boyton v. City of Lockport Mun. Sewer Dist.*, the court discussed whether "sewer rates" were properly assessed by the city, and in that case, the court consistently used the term "sewer" to refer to sanitary sewers handling sewage.¹⁵¹

The examples of these statutes and cases, as well as the language in Proposition 218 itself, demonstrates that there was no "plain meaning" of "sewer" as a term that meant both sanitary and storm sewers. In fact, the better argument is that the term was understood by the voters to mean solely sanitary sewers which, long before the adoption of comprehensive federal MS4 regulations in 1990 (*see* Proposed Draft at 45-46), had been paid for, along with water and refuse services, through property assessments. By contrast, a storm drain ordinance, such as that attempted to be passed by the City of Salinas, was relatively new, reflecting the greater costs imposed on city agencies by the new stormwater permitting requirements.

Thus, there is significant evidence, in the language of the ballot measure itself, in the interpretation courts are required to give to the measure, and in the prevailing legislative and judicial usage of the term "sewer," to find that the voters on Proposition 218 intended the result found by the court in *City of Salinas*. As such, SB 231 is an unconstitutional attempt by the Legislature to rewrite history and should not be relied upon by the Commission to refuse a subvention of funds for the costs of unfunded state mandates in the 2009 Permit incurred after January 1, 2018.

¹⁴⁸ Govt. Code § 66452.6(a)(3) (emphasis added).

¹⁴⁹ (1978) 21 Cal.3d 497.

¹⁵⁰ (1935) 6 Cal.App.2d 534, 535-36.

¹⁵¹ (1972) 28 Cal.App.3d 91, 93-96.

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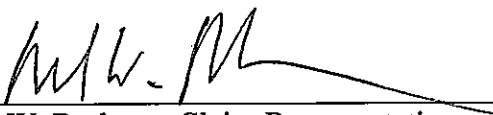
V. CONCLUSION

In these Comments, Claimants have demonstrated that in many ways, the Proposed Draft has overlooked governing principles of law and controlling facts that support this Test Claim brought on the 2009 Permit. Claimants acknowledge that the regulatory scheme applicable to stormwater discharges is complex, and these Comments have been written in an effort to bring clarity to the analysis.

In summary, Claimants are entitled to a subvention of funds under article XIII B, section 6 of the California Constitution for those requirements in Sections XVIII, XII, XI, XIII and X identified in the discussion above. Moreover, Claimants have adduced substantial evidence that they were required to use "proceeds of taxes" to pay for those requirements. They have also demonstrated that funding for certain obligations cannot be obtained through regulatory or development fees. Finally, the Commission should not rely on SB 231 to deny Claimants a subvention of funds for costs incurred after January 1, 2018 because that statute ignores the voter's intent in adopting Proposition 218.

Claimants appreciate this opportunity to provide their comments on the Proposed Draft. I declare under penalty of perjury that the foregoing, signed on November 4, 2022, is true and correct to the best of my personal knowledge, information, or belief.

BURHENN & GEST LLP
HOWARD GEST
DAVID W. BURHENN

By: 
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**DECLARATIONS AND EXHIBITS IN SUPPORT
OF CLAIMANTS' COMMENTS ON DRAFT
PROPOSED DECISION**

***California Regional Water Quality Control Board,
Santa Ana Region, Order No. R8-2009-0030, Sections
IX, X, XI, XII, XIII, and XVIII, 09-TC-03, Santa Ana
Regional Water Quality Control Board, Resolution
No. R8-2009-0030, adopted May 22, 2009***

**DECLARATION OF DAVID W. BURHENN AND
EXHIBITS THERETO**

DECLARATION OF DAVID W. BURHENN

I, DAVID W. BURHENN, hereby declare and state as follows:

1. I am an attorney with the firm of Burhenn & Gest LLP, counsel for the County of Orange and joint claim representative for Claimants in *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII XIII and XVIII, 09-TC-03*. I have personal and first-hand knowledge of the matters set forth herein and could, if called upon, testify competently thereto.

2. Exhibit 1 to this Declaration is a true and correct copy of excerpts of an order of the State Water Resources Control Board, *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements For Municipal Separate Storm Sewer System (MS4) Discharges Within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating From the City of Long Beach MS4, State Board Order WQ 2015-0075 (June 16, 2015)*.

3. Exhibit 2 to this Declaration is a true and correct copy of a guidance memorandum issued by the United States Environmental Protection Agency (“USEPA”) entitled “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements based on Those WLAs” and dated November 22, 2002.

4. Exhibit 3 to this Declaration is a true and correct copy of a guidance memorandum issued by USEPA entitled “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs’” and dated November 12, 2010.

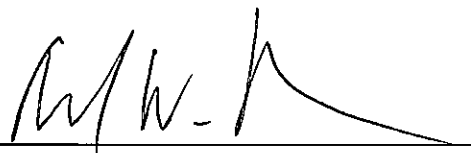
5. Exhibit 4 to this Declaration is a true and correct copy of a guidance memorandum issued by USEPA entitled “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Waste Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAS’” and dated November 26, 2014.

6. Exhibit 5 to this Declaration is a true and correct copy of an order of the Los Angeles County Superior Court in *State of California Dept. of Finance v. Commission on State Mandates*, Case No. BS130730, Order Granting Petition for Writ of Mandate (Post Remand) and Denying Cross-Petitions as Moot.

7. Exhibit 6 to this Declaration is a true and correct copy of an article in the *Daily Pilot* newspaper dated July 24, 2019, found on the Internet from the website of latimes.com, and titled, “Settlement ends 18-month battle surrounding Orange County homeless lawsuit.”

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

Executed November 4, 2022 at Los Angeles, California.

A handwritten signature in black ink, appearing to read 'D. W. Burhenn', written over a horizontal line.

David W. Burhenn

EXHIBIT 1

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2015-0075

In the Matter of Review of

Order No. R4-2012-0175, NPDES Permit No. CAS004001

**WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER
SYSTEM (MS4) DISCHARGES WITHIN THE COASTAL WATERSHEDS OF
LOS ANGELES COUNTY, EXCEPT THOSE DISCHARGES ORIGINATING FROM THE
CITY OF LONG BEACH MS4**

Issued by the
California Regional Water Quality Control Board,
Los Angeles Region

SWRCB/OCC FILES A-2236 (a)-(kk)

BY THE BOARD:

In this order, the State Water Resources Control Board (State Water Board) reviews Order No. R4-2012-0175 (NPDES Permit No. CAS004001) adopted by the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) on November 8, 2012. Order No. R4-2012-0175 regulates discharges of storm water and non-storm water from the municipal separate storm sewer systems (MS4s) located within the coastal watersheds of Los Angeles County, with the exception of the City of Long Beach MS4, and is hereinafter referred to as the "Los Angeles MS4 Order" or the "Order." We received 37 petitions challenging various provisions of the Los Angeles MS4 Order. For the reasons discussed herein, we generally uphold the Los Angeles MS4 Order, but with a number of revisions to the findings and provisions in response to issues raised in the petitions and as a result of our own review of the Order.

I. BACKGROUND

The Los Angeles MS4 Order regulates discharges from the MS4s operated by the Los Angeles County Flood Control District, Los Angeles County, and 84 municipal permittees (Permittees) in a drainage area that encompasses more than 3,000 square miles and multiple watersheds. The Order was issued by the Los Angeles Water Board in

Arcadia, Claremont, Covina, Duarte and Huntington Park, San Marino et al.,³¹ and Sierra Madre, incorporated a response to the collateral estoppel argument.

We stated in a July 15, 2013 letter that “[i]nterested persons may not use the [October 15]³² deadline for responses on the remaining petition issues as an opportunity to respond to comments filed on the receiving water limitations approach.” We clarified further in a July 29, 2013 letter: “[W]hen submitting subsequent responses to the petitions in accordance with the [October 15] deadline, petitioners and interested persons should not raise new issues related to the specific questions regarding the watershed management program/enhanced watershed management program or respond to any August 15, 2013, submissions; however petitioners and interested persons will not be precluded from responding to specific issues raised in the original petitions on grounds that the issues are related to the receiving water limitations language.”

We find that the collateral estoppel responses by the six petitioners are disallowed by the direction we provided in our July 15 and July 29, 2013 letters. However, as will be apparent in our discussion in section II.A, we do not rely on the Environmental Petitioners’ collateral estoppel argument in resolving the petitions. Our determination that portions of the October 15, 2013 Responses are disallowed is, therefore, immaterial to the resolution of the issues.³³

Having resolved the procedural issues, we turn to the merits of the Petitions.

A. Implementation of the Iterative Process as Compliance with Receiving Water Limitations

The Los Angeles MS4 Order includes receiving water limitations provisions that are consistent with our direction in Order WQ 99-05 in Part V.A of the Los Angeles MS4 Order. Part V.A. provides, in part, as follows:

1. Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited.

³¹ The cities of San Marino, Rancho Palos Verdes, South El Monte, Norwalk, Artesia, Torrance, Beverly Hills, Hidden Hills, Westlake Village, La Mirada, Vernon, Monrovia, Agoura Hills, Commerce, Downey, Inglewood, Culver City, and Redondo Beach submitted a joint October 15, 2013 Response.

³² The July 15, 2013 letter set a deadline of September 20, 2013, which was subsequently extended to October 15, 2013.

³³ In a November 21, 2013 letter, we indicated that we would consider the Motion to Strike concurrently with drafting of this Order, but that we would not accept any additional submissions in this matter, including any responses to the Motion to Strike. City of San Marino objected to the letter and submitted an opposition to the Motion to Strike. Several petitioners submitted joinders in City of San Marino’s motion. For the same reasons articulated above, we are not accepting these submissions; they would not affect our resolution of the issues.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible [footnote omitted], shall not cause or contribute to a condition of nuisance.
3. The Permittees shall comply with Parts V.A.1 and V.A.2 through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the storm water management program and its components and other requirements of this Order including any modifications. . . .³⁴

The petitioners that are permittees (hereinafter referred to as "Permittee Petitioners")³⁵ argue that the above language either means, or should be read and/or clarified to mean, that good faith engagement in the requirements of Part V.A.3, traditionally referred to as the "iterative process," constitutes compliance with Parts V.A.1. and V.A.2. The position put forth by Permittee Petitioners is one we took up when we initiated a process to re-examine the receiving water limitations and iterative process in MS4 permits statewide with our Receiving Water Limitations Issue Paper and the November 20, 2012 workshop. We summarize the law and policy regarding Permittee Petitioners' position again here and ultimately disagree with Permittee Petitioners that implementation of the iterative process does or should constitute compliance with receiving water limitations.

The Clean Water Act generally requires NPDES permits to include technology-based effluent limitations and any more stringent limitations necessary to meet water quality standards.³⁶ In the context of NPDES permits for MS4s, however, the Clean Water Act does not explicitly reference the requirement to meet water quality standards. MS4 discharges must meet a technology-based standard of prohibiting non-storm water discharges and reducing pollutants in the discharge to the Maximum Extent Practicable (MEP) in all cases, but requiring strict compliance with water quality standards (e.g., by imposing numeric effluent limitations) is at the discretion of the permitting agency.³⁷ Specifically the Clean Water Act states as follows:

Permits for discharges from municipal storm sewers –

. . .

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

³⁴ Los Angeles MS4 Order, Part V.A, pp. 38-39.

³⁵ For ease of reference, where an argument is made by multiple Permittee Petitioners, even if not by all, we attribute that argument to Permittee Petitioners generally, and do not list which of the 37 Permittee Petitioners in fact make the argument. Where only one or two Permittee Petitioners make a particular argument, we have identified the specific Permittee Petitioner(s).

³⁶ 33 U.S.C. §§ 1311, 1342(a).

³⁷ 33 U.S.C. § 1342(p)(3)(B); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159.

(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 State determines appropriate for the control of such pollutants.³⁸

Thus, a permitting agency imposes requirements related to attainment of water quality standards where it determines that those provisions are “appropriate for the control of [relevant] pollutants” pursuant to the Clean Water Act municipal storm water provisions.

Under the Porter-Cologne Act, waste discharge requirements must implement applicable water quality control plans, which include the beneficial uses to be protected for a given water body and the water quality objectives reasonably required for that protection.³⁹ In this respect, the Porter-Cologne Act treats MS4 dischargers and other dischargers even-handedly and anticipates that all waste discharge requirements will implement the water quality control plans. However, when implementing requirements under the Porter-Cologne Act that are not compelled by federal law, the State Water Board and regional water boards (collectively, “water boards”) have some flexibility to consider other factors, such as economics, when establishing the appropriate requirements.⁴⁰ Accordingly, since the State Water Board has discretion under federal law to determine whether to require strict compliance with the water quality standards of the water quality control plans for MS4 discharges, the State Water Board may also utilize the flexibility under the Porter-Cologne Act to decline to require strict compliance with water quality standards for MS4 discharges.

We have previously exercised the discretion we have under federal law in favor of requiring compliance with water quality standards, but have required less than strict compliance. We have directed, in precedential orders, that MS4 permits require discharges to be controlled so as not to cause or contribute to exceedances of water quality standards in receiving waters,⁴¹ but have prescribed an iterative process whereby an exceedance of a water quality standard triggers a process of BMP improvements. That iterative process involves reporting of the violation, submission of a report describing proposed improvements to BMPs

³⁸ 33 U.S.C. § 1342(p)(3)(B).

³⁹ Wat. Code, § 13263. The term “water quality standards” encompasses the beneficial uses of the water body and the water quality objectives (or “water quality criteria” under federal terminology) that must be met in the waters of the United States to protect beneficial uses. Water quality standards also include the federal and state antidegradation policy.

⁴⁰ Wat. Code, §§ 13241, 13263; *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613.

⁴¹ State Water Board Orders WQ 98-01 (*Environmental Health Coalition*), WQ 99-05 (*Environmental Health Coalition*), WQ 2001-15 (*Building Industry Association of San Diego*).

expected to better meet water quality standards, and implementation of these new BMPs.⁴² The current language of the existing receiving waters limitations provisions was actually developed by USEPA when it vetoed two regional water board MS4 permits that utilized a prior version of the State Water Board's receiving water limitations provisions.⁴³ In State Water Board Order WQ 99-05, we directed that all regional boards use USEPA's receiving water limitations provisions.

There has been significant confusion within the regulated MS4 community regarding the relationship between the receiving water limitations and the iterative process, in part because the water boards have commonly directed dischargers to achieve compliance with water quality standards by improving control measures through the iterative process. But the iterative process, as established in our precedential orders and as generally written into MS4 permits adopted by the water boards, does not provide a "safe harbor" to MS4 dischargers. When a discharger is shown to be causing or contributing to an exceedance of water quality standards, that discharger is in violation of the permit's receiving water limitations and potentially subject to enforcement by the water boards or through a citizen suit, regardless of whether or not the discharger is actively engaged in the iterative process.⁴⁴

The position that the receiving water limitations are independent from the provisions that establish the iterative process has been judicially upheld on several occasions. The receiving water limitations provisions of the 2001 Los Angeles MS4 Order specifically have been litigated twice, and in both cases, the courts upheld the provisions and the Los Angeles Water Board's interpretation of the provisions. In a decision resolving a challenge to the 2001 Los Angeles MS4 Order, the Los Angeles County Superior Court stated: "[T]he Regional [Water] Board acted within its authority when it included [water quality standards compliance] in

⁴² State Water Board Order WQ 99-05, pp. 2-3; see also State Water Board Order WQ 2001-15, pp. 7-9. Additionally, consistent with federal law, we found it appropriate to require implementation of BMPs in lieu of numeric water quality-based effluent limitations to meet water quality standards. See State Water Board Orders WQ 91-03 (*Citizens for a Better Environment*), WQ 91-04 (*Natural Resources Defense Council*), WQ 98-01, WQ 2001-15. This issue is discussed in greater detail in Section II.C. of this order.

⁴³ See State Water Board Orders WQ 99-05, WQ 2001-15.

⁴⁴ Several Permittee Petitioners have argued that the State Water Board's opinion in State Water Board Order WQ 2001-15 must be read to endorse a safe harbor in the iterative process. We disagree. Regardless, the State Water Board's position that the iterative process of the subject permit did not create a "safe harbor" from compliance with receiving water limitations was clearly established in subsequent litigation on that order. (See *Building Industry Ass'n of San Diego County v. State Water Resources Control Bd.* (Super. Ct. 2003, No. GIC780263), *affd.* *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866.)

the Permit without a 'safe harbor,' whether or not compliance therewith requires efforts that exceed the 'MEP' standard."⁴⁵ The lack of a safe harbor in the iterative process of the 2001 Los Angeles MS4 Order was again acknowledged in 2011 and 2013, this time by the Ninth Circuit Court of Appeal. In these instances, the Ninth Circuit was considering a citizen suit brought by the Natural Resources Defense Council against the County of Los Angeles and the Los Angeles County Flood Control District for alleged violations of the receiving water limitations of that order. The Ninth Circuit held that, as the receiving water limitations of the 2001 Los Angeles MS4 Order (and accordingly as the precedential language in State Water Board Order WQ 99-05) was drafted, engagement in the iterative process does not excuse liability for violations of water quality standards.⁴⁶ The California Court of Appeal has come to the same conclusion in interpreting similar receiving water limitations provisions in MS4 Orders issued by the San Diego Regional Water Quality Control Board in 2001 and the Santa Ana Regional Water Quality Control Board in 2002.⁴⁷

While we reiterate that the judicial rulings have been consistent with the water boards' intention and position regarding the relationship between the receiving water limitations and the iterative process, we acknowledge that some in the regulated community perceived the 2011 Ninth Circuit opinion in particular as a re-interpretation of that relationship. Our Receiving Water Limitations Issue Paper and subsequent workshop reflected our desire to re-examine the issue in response to concerns expressed by the regulated community in the aftermath of that ruling.

As stated above, both the Clean Water Act and the Porter-Cologne Act afford some discretion to not require strict compliance with water quality standards for MS4 discharges. In each of the discussed court cases above, the court's decision is based on the specific permit language; thus the cases do not address our authority with regard to requiring compliance with water quality standards in an MS4 permit as a threshold matter, and they do not require us to continue to exercise our discretion as we decided in State Water Board Order

⁴⁵ *In re Los Angeles County Municipal Storm Water Permit Litigation* (L.A. Super. Ct., No. BS 080548, Mar. 24, 2005) Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, pp. 4-5, 7. The decision was affirmed on appeal (*County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985); however, this particular issue was not discussed in the court of appeal's decision.

⁴⁶ *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, rev'd on other grounds sub nom. *Los Angeles County Flood Control Dist. v. Natural Resources Defense Council* (2013) 133 S.Ct. 710, mod. by *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2013) 725 F.3d 1194, cert. den. *Los Angeles County Flood Control Dist. v. Natural Resources Defense Council* (2014) 134 S.Ct. 2135.

⁴⁷ *Building Industry Assn. of San Diego County, supra*, 124 Cal.App.4th 866; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377.

WQ 99-05. Although it would be inconsistent with USEPA's general practice of requiring compliance with water quality standards over time through an iterative process,⁴⁸ we may even have the flexibility to reverse⁴⁹ our own precedent regarding receiving water limitations and receiving water limitations provisions and make a policy determination that, going forward, we will either no longer require compliance with water quality standards in MS4 permits, or will deem good faith engagement in the iterative process to constitute such compliance.⁵⁰

However, with this Order, we now decline to do either. As the storm water management programs of municipalities have matured, an increasing body of monitoring data indicates that many water quality standards are in fact not being met by many MS4s. The iterative process has been underutilized and ineffective to date in bringing MS4 discharges into compliance with water quality standards. Compliance with water quality standards is and should remain the ultimate goal of any MS4 permit. We reiterate and confirm our determination that provisions requiring compliance with receiving water limitations are "appropriate for the control of . . . pollutants" addressed in MS4 permits and that therefore, consistent with our authority under the Clean Water Act, we will continue to require compliance with receiving water limitations.⁵¹

⁴⁸ See, e.g. Modified NPDES Permit No. DC0000022 for the MS4 for the District of Columbia, *supra*, fn. 17.

⁴⁹ Of course any change of direction would be subject to ordinary principles of administrative law. (See Code Civ. Proc., § 1094.5, subd. (b).)

⁵⁰ As such, it is not necessary to address the collateral estoppel arguments raised by the Environmental Petitioners and opposed by Permittee Petitioners. We agree that it is settled law that we have the discretion to require compliance with water quality standards in an MS4 permit under federal and state law. We also agree that it is settled law that the receiving water limitations provisions currently spelled out in our MS4 permits do not carve out a safe harbor in the iterative process. But the question for us is whether we should continue to exercise our discretion to utilize the same approach to receiving water limitations established under our prior precedent, or proceed in a new direction.

⁵¹ Several Permittee Petitioners argued in comments submitted on the first draft of this order that, because we find that we have some discretion under Clean Water Act section 402(p)(3) to not require compliance with receiving water limitations, the Los Angeles Water Board's action in requiring such compliance -- and our action in affirming it -- is pursuant to state authority. (See, e.g., Cities of Arcadia, Claremont, and Covina, Comment Letter, Jan. 21, 2015.) The Permittee Petitioners argue that the action is therefore subject to evaluation in light of the factors set out in Water Code section 13263 and 13241 pursuant to *City of Burbank*, *supra*, 35 Cal.4th 613. Under *City of Burbank*, a regional water board must consider the factors specified in section 13241 when issuing waste discharge requirements under section 13263, subdivision (a), but only to the extent those waste discharge requirements exceed the requirements of the federal Clean Water Act. (35 Cal.4th at 627.) Nowhere in our discussion in this section do we mean to disavow either that the Los Angeles Water Board acted under federal authority to impose "such other provisions as . . . determine[d] appropriate for the control of . . . pollutants" in adopting the receiving water limitations provisions of the Los Angeles MS4 Order in the first instance or that we are acting under federal authority in upholding those provisions. (33 U.S.C. § 1342(p)(3)(B)(iii).) The receiving water limitations provisions do not exceed the requirements of federal law. We nevertheless also point out that the Los Angeles Water Board engaged in an analysis of the factors under section 13241 when adopting the Order. (See Los Angeles MS4 Order, Att. F, Fact Sheet, pp. F-139 to F-155.)

EXHIBIT 2




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


NOV 22 2002

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs

FROM: Robert H. Wayland, III, Director
Office of Wetlands, Oceans and Watersheds 

James A. Hanlon, Director
Office of Wastewater Management 

TO: Water Division Directors
Regions 1 - 10

This memorandum clarifies existing EPA regulatory requirements for, and provides guidance on, establishing wasteload allocations (WLAs) for storm water discharges in total maximum daily loads (TMDLs) approved or established by EPA. It also addresses the establishment of water quality-based effluent limits (WQBELs) and conditions in National Pollutant Discharge Elimination System (NPDES) permits based on the WLAs for storm water discharges in TMDLs. The key points presented in this memorandum are as follows:

NPDES-regulated storm water discharges must be addressed by the wasteload allocation component of a TMDL. See 40 C.F.R. § 130.2(h).

NPDES-regulated storm water discharges may not be addressed by the load allocation (LA) component of a TMDL. See 40 C.F.R. § 130.2 (g) & (h).

Storm water discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL. See 40 C.F.R. § 130.2(g).

It may be reasonable to express allocations for NPDES-regulated storm water discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs. See 40 C.F.R. § 130.2(i). In cases where wasteload allocations

are developed for categories of discharges, these categories should be defined as narrowly as available information allows.

The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES- regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.

NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.

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.

When a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. See 40 C.F.R. §§ 124.8, 124.9 & 124.18.

The NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. See 40 C.F.R. § 122.44(i). Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data).

The permit should also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

This memorandum is organized as follows:

- (I). Regulatory basis for including NPDES-regulated storm water discharges in WLAs in TMDLs;
- (II). Options for addressing storm water in TMDLs; and

(III). Determining effluent limits in NPDES permits for storm water discharges consistent with the WLA

(I). Regulatory Basis for Including NPDES-regulated Storm Water Discharges in WLAs in TMDLs

As part of the 1987 amendments to the CWA, Congress added Section 402(p) to the Act to cover discharges composed entirely of storm water. Section 402(p)(2) of the Act requires permit coverage for discharges associated with industrial activity and discharges from large and medium municipal separate storm sewer systems (MS4), *i.e.*, systems serving a population over 250,000 or systems serving a population between 100,000 and 250,000, respectively. These discharges are referred to as Phase I MS4 discharges.

In addition, the Administrator was directed to study and issue regulations that designate additional storm water discharges, other than those regulated under Phase I, to be regulated in order to protect water quality. EPA issued regulations on December 8, 1999 (64 FR 68722), expanding the NPDES storm water program to include discharges from smaller MS4s (including all systems within “urbanized areas” and other systems serving populations less than 100,000) and storm water discharges from construction sites that disturb one to five acres, with opportunities for area-specific exclusions. This program expansion is referred to as Phase II.

Section 402(p) also specifies the levels of control to be incorporated into NPDES storm water permits depending on the source (industrial versus municipal storm water). Permits for storm water discharges associated with industrial activity are to require compliance with all applicable provisions of Sections 301 and 402 of the CWA, *i.e.*, all technology-based and water quality-based requirements. *See* 33 U.S.C. §1342(p)(3)(A). Permits for discharges from MS4s, however, “shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” *See* 33 U.S.C. §1342(p)(3)(B)(iii).

Storm water discharges that are regulated under Phase I or Phase II of the NPDES storm water program are point sources that must be included in the WLA portion of a TMDL. *See* 40 C.F.R. § 130.2(h). Storm water discharges that are not currently subject to Phase I or Phase II of the NPDES storm water program are not required to obtain NPDES permits. 33 U.S.C. §1342(p)(1) & (p)(6). Therefore, for regulatory purposes, they are analogous to nonpoint sources and may be included in the LA portion of a TMDL. *See* 40 C.F.R. § 130.2(g).

(II). Options for Addressing Storm Water in TMDLs

Decisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data. The amount of storm water data available for a TMDL varies from location to location. Nevertheless, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges

(in the form of WLAs) and unregulated storm water (in the form of LAs). It may be reasonable to quantify the allocations through estimates or extrapolations, based either on knowledge of land use patterns and associated literature values for pollutant loadings or on actual, albeit limited, loading information. EPA recognizes that these allocations might be fairly rudimentary because of data limitations.

EPA also recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis. In this situation, EPA recommends expressing the wasteload allocation in the TMDL as either a single number for all NPDES-regulated storm water discharges, or when information allows, as different WLAs for different identifiable categories, e.g., municipal storm water as distinguished from storm water discharges from construction sites or municipal storm water discharges from City A as distinguished from City B. These categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial storm water sources or dischargers).

(III). Determining Effluent Limits in NPDES Permits for Storm Water Discharges Consistent with the WLA

Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

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.

Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 CFR § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this.

EPA expects that the NPDES permitting authority will review the information provided by the TMDL, see 40 C.F.R. § 122.44(d)(1)(vii)(B), and determine whether the effluent limit is appropriately expressed using a BMP approach (including an iterative BMP approach) or a numeric limit. Where BMPs are used, EPA recommends that the permit provide a mechanism to require use of expanded or better-tailored BMPs when monitoring demonstrates they are necessary to implement the WLA and protect water quality.

Where the NPDES permitting authority allows for a choice of BMPs, a discussion of the BMP selection and assumptions needs to be included in the permit's administrative record, including the fact sheet when one is required. 40 C.F.R. §§ 124.8, 124.9 & 124.18. For general permits, this may be included in the storm water pollution prevention plan required by the permit. See 40 C.F.R. § 122.28. Permitting authorities may require the permittee to provide supporting information, such as how the permittee designed its management plan to address the WLA(s). See 40 C.F.R. § 122.28. The NPDES permit must require the monitoring necessary to assure compliance with permit limitations, although the permitting authority has the discretion under EPA's regulations to decide the frequency of such monitoring. See 40 CFR § 122.44(i). EPA recommends that such permits require collecting data on the actual performance of the BMPs. These additional data may provide a basis for revised management measures. The monitoring data are likely to have other uses as well. For example, the monitoring data might indicate if it is necessary to adjust the BMPs. Any monitoring for storm water required as part of the permit should be consistent with the state's overall assessment and monitoring strategy.

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," i.e., "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

This memorandum discusses existing requirements of the Clean Water Act (CWA) and codified in the TMDL and NPDES implementing regulations. Those CWA provisions and regulations contain legally binding requirements. This document describes these requirements; it does not substitute for those provisions or regulations. The recommendations in this memorandum are not binding; indeed, there may be other approaches that would be appropriate

in particular situations. When EPA makes a TMDL or permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation. EPA may change this guidance in the future.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Charles Sutfin, Director of the Assessment and Watershed Protection Division.

cc:

Water Quality Branch Chiefs
Regions 1 - 10

Permit Branch Chiefs
Regions 1 - 10

EXHIBIT 3



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2010

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

FROM: James A. Hanlon, Director
Office of Wastewater Management

Denise Keehner, Director
Office of Wetlands, Oceans and Watersheds

TO: Water Management Division Directors
Regions 1 - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum").

Background

Section III of the 2002 memorandum "affirm[ed] the appropriateness of an iterative, adaptive management best management practices (BMP) approach" for improving stormwater management over time as permitting agencies, the regulated community, and other involved stakeholders gain more experience and knowledge. Since 2002, States and EPA have obtained considerable experience in developing TMDLs and WLAs that address stormwater sources. The technical capacity to monitor stormwater and its impacts on water quality has increased. In many areas, monitoring of the impacts of stormwater on water quality has become more sophisticated and widespread. Better information on the effectiveness of stormwater controls to reduce pollutant loadings and address water quality impairments is now available. In many parts of the country, permitting agencies have issued several rounds of permits for Phase I municipal separate storm sewer systems (MS4s), Phase II MS4s, and stormwater discharges associated with industrial activity, including stormwater from construction activities. Notwithstanding these developments, stormwater discharges remain a significant cause of water quality

impairment in many places, highlighting a continuing need for more useful WLAs and better NPDES permit provisions to restore impaired waters to their beneficial uses.

With this additional experience in mind, EPA is updating and revising the following four elements of the 2002 memorandum to better reflect current practices and trends in permits and WLAs for stormwater discharges:

- Providing numeric water quality-based effluent limitations in NPDES permits for stormwater discharges;
- Disaggregating stormwater sources in a WLA;
- Using surrogates for pollutant parameters when establishing targets for TMDL loading capacity; and
- Designating additional stormwater sources to regulate and treating load allocations as wasteload allocations for newly regulated stormwater sources.

EPA is currently reviewing other elements of the 2002 memorandum and will consider making appropriate revisions in the future.

Providing Numeric Water Quality-Based Effluent Limitations in NPDES Permits for Stormwater Discharges

In today's memorandum, EPA is revising the 2002 memorandum with respect to water quality-based effluent limitations (WQBELs) in stormwater permits. Since 2002, many NPDES authorities have documented the contributions of stormwater discharges to water quality impairment and have identified the need to include clearer permit requirements in order to address these impairments. Numeric WQBELs in stormwater permits can clarify permit requirements and improve accountability and enforceability. For the purpose of this memorandum, numeric WQBELs use numeric parameters such as pollutant concentrations, pollutant loads, or numeric parameters acting as surrogates for pollutants, such as stormwater flow volume or percentage or amount of impervious cover.

The CWA provides that stormwater permits for MS4 discharges shall contain controls to reduce the discharge of pollutants to the "maximum extent practicable" and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. CWA section 402(p)(3)(B)(iii). Under this provision, the NPDES permitting authority has the discretion to include requirements for reducing pollutants in stormwater discharges as necessary for compliance with water quality standards. *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166 (9th Cir. 1999).

Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations as necessary to meet water quality standards. The 2002

memorandum stated “EPA expects that most WQBELs for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs, and that numeric limitations will be used only in rare instances.” Those expectations have changed as the stormwater permit program has matured. EPA now recognizes that where the NPDES authority determines that MS4 discharges and/or small construction stormwater discharges have the reasonable potential to cause or contribute to water quality standards excursions, permits for MS4s and/or small construction stormwater discharges should contain numeric effluent limitations where feasible to do so. EPA recommends that NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling stormwater discharges.

The Clean Water Act (CWA) requires that permits for stormwater discharges associated with industrial activity comply with section 301 of the Act, including the requirement under section 301(b)(1)(C) to contain WQBELs for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion. CWA section 402(p)(3)(A), 40 CFR 122.44(d)(1)(iii). When the permitting authority determines, using the procedures specified at 40 CFR 122.44(d)(1)(ii) that the discharge causes or has the reasonable potential to cause or contribute to an in-stream excursion of the water quality standards, the permit must contain effluent limits for that pollutant. EPA recommends that NPDES permitting authorities use numeric effluent limitations where feasible as these types of effluent limitations create objective and accountable means for controlling stormwater discharges.

Where WQBELs in permits for stormwater discharges from MS4s, small construction sites or industrial sites are expressed in the form of BMPs, the permit should contain objective and measurable elements (e.g., schedule for BMP installation or level of BMP performance). The objective and measurable elements should be included in permits as enforceable provisions. Permitting authorities should consider including numeric benchmarks for BMPs and associated monitoring protocols or specific protocols for estimating BMP effectiveness in stormwater permits. These benchmarks could be used as thresholds that would require the permittee to take additional action specified in the permit, such as evaluating the effectiveness of the BMPs, implementing and/or modifying BMPs, or providing additional measures to protect water quality.

If the State or EPA has established a TMDL for an impaired water that includes WLAs for stormwater discharges, permits for either industrial stormwater discharges or MS4 discharges must contain effluent limits and conditions consistent with the requirements and assumptions of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Where the WLA of a TMDL is expressed in terms of a surrogate pollutant parameter, then the corresponding permit can generally use the surrogate pollutant parameter in the WQBEL as well. Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant load or numeric surrogate pollutant parameter objectives, the WLA should, where feasible, be translated into numeric WQBELs in the applicable stormwater permits.

The permitting authority's decision as to how to express the WQBEL(s), either as numeric effluent limitations or BMPs, including BMPs accompanied by numeric benchmarks, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results or other relevant information. As discussed in the 2002 memorandum, the permit's administrative record needs to provide an adequate demonstration that, where a BMP-based approach to permit limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs. Improved knowledge of BMP effectiveness gained since 2002 should be reflected in the demonstration and supporting rationale that implementation of the BMPs will attain water quality standards and WLAs.

EPA's regulations at 40 CFR § 122.47 govern the use of compliance schedules in NPDES permits. Central among the requirements is that the effluent limitation(s) must be met "as soon as possible." 40 CFR 122.47(a)(1). EPA expects the permitting authority to include in the permit record a sound rationale for determining that any compliance schedule meets this requirement. Where a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, the permitting authority should consider the schedule as it decides whether and how to establish enforceable interim requirements and interim dates in the permit.

Lastly, NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. See CWA section 402(a)(2); 40 C.F.R. 122.44(i). Where WQBELs are expressed as BMPs, the permit must require adequate monitoring to determine if the BMPs are performing as necessary. When developing monitoring requirements, the NPDES authority should consider the variable nature of stormwater as well the availability of reliable and applicable field data describing the treatment efficiencies of the BMPs required and supporting modeling analysis.

Disaggregating Stormwater Sources in a WLA

As stated in the 2002 memorandum, EPA expects TMDL authorities will make separate aggregate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA also recognized that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated storm water discharges on an outfall-specific basis.

EPA still recognizes that decisions about allocations of pollutant loads within a TMDL are driven by quantity and quality of existing and readily available water quality data. However, today, TMDL writers may have better data or better access to data and, over time, may have gained more experience since 2002 in developing TMDLs and WLAs in a less aggregated manner. Moreover, since 2002, EPA has noted the difficulty of establishing clear, effective, and enforceable NPDES permit limitations for sources covered by WLAs that are expressed as single categorical or aggregated wasteload allocations.

Accordingly, for all these reasons, EPA recommends that WLAs for NPDES-regulated stormwater discharges should be disaggregated into specific categories (e.g., separate WLAs for MS4 and industrial stormwater discharges) to the extent feasible based on available data and/or modeling projections. In addition, these disaggregated WLAs should be defined as narrowly as available information allows (e.g., for MS4s, separate WLAs for each one; and, for industrial sources, separate WLAs for different sources or types of industrial sources or discharges.)

Where appropriate, EPA encourages permit writers to assign specific shares of the wasteload allocation to specific permittees during the permitting process.

Using Surrogate for Pollutant Parameters When Establishing Targets for TMDL Loading Capacity

Many waterbodies affected by stormwater discharges are listed as impaired under Section 303(d) due to biological degradation or habitat alteration, rather than for specific pollutants (e.g., metals, pathogens, sediment). Impairment can be due to pollutants where hydrologic changes such as quantity of flow and variation in flow regimes are important factors in their transport. Since the stormwater-source impairment is usually the result of the cumulative impact of multiple pollutants and physical effects, it may be difficult to identify a specific pollutant (or pollutants) causing the impairment. Using a surrogate parameter in developing wasteload allocations for waters impaired by stormwater sources may, at times, be the appropriate approach for restoring the waterbodies.

In the 2009 report *Urban Stormwater Management in the United States*, the National Research Council suggests: “A more straightforward way to regulate stormwater contributions to waterbody impairment would be to use flow or a surrogate, like impervious cover, as a measure of stormwater loading . . . Efforts to reduce stormwater flow will automatically achieve reductions in pollutant loading. Moreover, flow is itself responsible for additional erosion and sedimentation that adversely impacts surface water quality.”

Therefore, when developing TMDLs for receiving waters where stormwater sources are the primary source of impairment, it may be suitable to establish a numeric target for a surrogate pollutant parameter, such as stormwater flow volume or impervious cover, that would be expected to provide attainment of water quality standards. This is consistent with the TMDL regulations that specify that TMDLs can be expressed in terms of mass per time, toxicity or other appropriate measure (40 C.F.R. §130.2(i)).

Where a surrogate parameter is used, the TMDL document must demonstrate the linkage between the surrogate parameter and the documented impairment (e.g., biological degradation). In addition, the TMDL should provide supporting documentation to indicate that the surrogate pollutant parameter appropriately represents stormwater pollutant loadings. Monitoring is an essential undertaking to ensure that compliance with the effluent limitations occurs.

Recent examples of TMDLs using flow or impervious cover as surrogates for pollutants in setting TMDL loading targets include: the Eagleville Brook (CT) TMDL and the Barberry Creek (ME) TMDL which used impervious cover as a surrogate; and, the Potash Brook (VT) TMDL which used stormwater flow volume as a surrogate.

Designating Additional Stormwater Sources to Regulate and Treating Load Allocations as Wasteload Allocations for Newly Regulated Stormwater Sources

The 2002 memorandum states that “stormwater discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL.” Section 402(p)(2) of the Clean Water Act (CWA) requires industrial stormwater sources, certain municipal separate storm sewer systems, and other designated sources to be subject to NPDES permits. Section 402(p)(6) provides EPA with authority to identify additional stormwater discharges as needing a permit.

In addition to the stormwater discharges specifically identified as needing an NPDES permit, the CWA and the NPDES regulations allow for EPA and NPDES authorized States to designate, additional stormwater discharges for regulation. See 40 CFR 122.26 (a)(9)(i)(C), (a)(9)(i)(D), (b)(4)(iii), (b)(7)(iii), (b)(15)(ii) and 122.32(a)(2). Since 2002, EPA has become concerned that NPDES authorities have generally not adequately considered exercising these authorities to designate for NPDES permitting stormwater discharges that are currently not required to obtain permit coverage but that are significant enough to be identified in the load allocation component of a TMDL. Accordingly, EPA encourages permitting authorities to consider designation of stormwater sources in situations where coverage under NPDES permits would afford a more effective mechanism to reduce pollutants in stormwater discharges than available nonpoint source control methods.

In situations where a stormwater source addressed in a TMDL’s load allocation is not currently regulated by an NPDES permit but may be required to obtain an NPDES permit in the future, the TMDL writer should consider including language in the TMDL explaining that the allocation for the stormwater source is expressed in the TMDL as a “load allocation” contingent on the source remaining unpermitted, but that the “load allocation” would later be deemed a “wasteload allocation” if the stormwater discharge from the source were required to obtain NPDES permit coverage. Such language, while not legally required, would help ensure that the allocation is properly characterized by the permit writer should the source’s regulatory status change. This will help ensure that effluent limitations in a NPDES permit applicable to the newly permitted source are consistent with the requirements and assumptions of the TMDL’s allocation to that source.

Such recharacterization of a load allocation as a wasteload allocation would not automatically require resubmission of the TMDL to EPA for approval. However, if the TMDL’s allocation for the newly permitted source had been part of a single aggregated or gross load allocation for all unregulated stormwater sources, it may be appropriate for the NPDES permit authority to determine a wasteload allocation and corresponding

effluent limitation specific to the newly permitted stormwater source. Any additional analysis used to refine the allocation should be included in the administrative record for the permit. In such cases, the record should describe the basis for (1) recharacterizing the load allocation as a wasteload allocation for this source and (2) determining that the permit's effluent limitations are consistent with the assumptions and requirements of this recharacterized wasteload allocation. For purposes of this discussion, it is assumed that the permit writer's additional analysis or recharacterization of the load allocation as a wasteload allocation does not change the TMDL's overall loading cap. Any change in a TMDL loading cap would have to be resubmitted for EPA approval.

If you have any questions please feel free to contact us or Linda Boornazian, Director of the Water Permits Division or Benita Best-Wong, Director of the Assessment and Watershed Protection Division.

cc: Association of State and Interstate Water Pollution Control Administrators
Water Quality Branch Chiefs, Regions 1 – 10
Permits Branch Chiefs, Regions 1 – 10

EXHIBIT 4



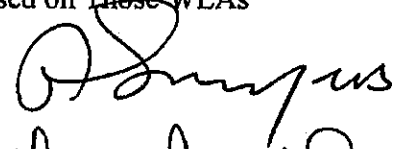
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


NOV 26 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

FROM: Andrew D. Sawyers, Director
Office of Wastewater Management 

Benita Best-Wong, Director
Office of Wetlands, Oceans and Watersheds 

TO: Water Division Directors
Regions 1 - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum"). Today's memorandum replaces the November 12, 2010, memorandum on the same subject; the Water Division Directors should no longer refer to that memorandum for guidance.

This memorandum is guidance. It is not a regulation and does not impose legally binding requirements on EPA or States. EPA and state regulatory authorities should continue to make permitting and TMDL decisions on a case-by-case basis considering the particular facts and circumstances and consistent with applicable statutes, regulations, and case law. The recommendations in this guidance may not be applicable to a particular situation. EPA may change or revoke this guidance at any time.

Background

Stormwater discharges are a significant contributor to water quality impairment in this country, and the challenges from these discharges are growing as more land is developed and more impervious surface is created. Stormwater discharges cause beach closures and contaminate shellfish and surface drinking water supplies. The increased volume and velocity of stormwater discharges causes streambank erosion, flooding, sewer overflows, and basement backups. The decreased natural infiltration of rainwater reduces groundwater recharge, depleting

our underground sources of drinking water.¹ There are stormwater management solutions, such as green infrastructure, that can protect our waterbodies from stormwater discharges and, at the same time, offer many other benefits to communities.

Section III of the 2002 memorandum recommended that for NPDES-regulated municipal and small construction stormwater discharges, effluent limits be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. The 2002 memorandum went on to provide guidance on using “an iterative, adaptive management BMP approach” for improving stormwater management over time as permitting agencies, the regulated community, and other involved stakeholders gain more experience and knowledge. EPA continues to support use of an iterative approach, but with greater emphasis on clear, specific, and measurable permit requirements and, where feasible, numeric NPDES permit provisions, as discussed below.

Since 2002, States and EPA have obtained considerable experience in developing TMDLs and WLAs that address stormwater sources (see Box 1 in the attachment for specific examples). Monitoring of the impacts of stormwater discharges on water quality has become more sophisticated and widespread.² The experience gained during this time has provided better information on the effectiveness of stormwater controls to reduce pollutant loadings and address water quality impairments. In many parts of the country, permitting agencies have issued several rounds of stormwater permits. Notwithstanding these developments, stormwater discharges remain a significant cause of water quality impairment in many places, highlighting a continuing need for more meaningful WLAs and more clear, specific, and measurable NPDES permit provisions to help restore impaired waters to their beneficial uses.

With this additional experience in mind, on November 12, 2010, EPA issued a memorandum updating and revising elements of the 2002 memorandum to better reflect current practices and trends in permits and WLAs for stormwater discharges. On March 17, 2011, EPA sought public comment on the November 2010 memorandum and, earlier this year, completed a nationwide review of current practices used in MS4 permits³ and industrial and construction stormwater discharge permits. As a result of comments received and informed by the reviews of EPA and state-issued stormwater permits, EPA is in this memorandum replacing the

¹ See generally *Urban Stormwater Management in the United States* (National Research Council, 2009), particularly the discussion in Chapter 3, *Hydrologic, Geomorphic, and Biological Effects of Urbanization on Watersheds*.

² Stormwater discharge monitoring programs have expanded the types pollutants and other indices (e.g., biologic integrity) being evaluated. This information is being used to help target priority areas for cleanup and to assess the effectiveness of stormwater BMPs. There are a number of noteworthy monitoring programs that are ongoing, including for example those being carried out by Duluth, MN, Capitol Region Watershed District, MN, Honolulu, HI, Baltimore or Montgomery County, MD, Puget Sound, WA, Los Angeles County, CA, and the Alabama Dept. of Transportation, among many others. See also Section 4.2 (Monitoring/Modeling Requirements) of EPA’s *Municipal Separate Storm Sewer System Permits: Post-Construction Performance Standards & Water Quality-Based Requirements – A Compendium of Permitting Approaches* (EPA, June 2014), or “MS4 Compendium” available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sw_ms4_compendium.pdf, for other examples of note.

³ See EPA’s MS4 Permit Compendium, referenced in the above footnote.

November 2010 memorandum, updating aspects of the 2002 memorandum and providing additional information in the following areas:

- Including clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations in NPDES permits for stormwater discharges;
- Disaggregating stormwater sources in a WLA; and
- Designating additional stormwater sources to regulate and developing permit limits for such sources.

Including Clear, Specific, and Measurable Permit Requirements and, Where Feasible, Numeric Effluent Limitations in NPDES Permits for Stormwater Discharges

At the outset of both the Phase I and Phase II stormwater permit programs, EPA provided guidance on the type of water quality-based effluent limits (WQBELs) that were considered most appropriate for stormwater permits. See Interim Permitting Policy for Water Quality-Based Limitations in Storm Water Permits [61 FR 43761 (August 26, 1996) and 61 FR 57425 (November 6, 1996)] and the Phase II rulemaking preamble 64 FR 68753 (December 8, 1999). Under the approach discussed in these documents, EPA envisioned that in the first two to three rounds of permit issuance, stormwater permits typically would require implementation of increasingly more effective best management practices (BMPs). In subsequent stormwater permit terms, if the BMPs used during prior years were shown to be inadequate to meet the requirements of the Clean Water Act (CWA), including attainment of applicable water quality standards, the permit would need to contain more specific conditions or limitations.

There are many ways to include more effective WQBELs in permits. In the spring of 2014, EPA published the results of a nationwide review of current practices used in MS4 permits in *Municipal Separate Storm Sewer Systems Permits: Post-Construction Performance Standards & Water Quality-Based Requirements – A Compendium of Permitting Approaches* (June 2014). This MS4 Compendium demonstrates how NPDES authorities have been able to effectively establish permit requirements that are more specifically tied to a measurable water quality target, and includes examples of permit requirements expressed in both numeric and non-numeric form. These approaches, while appropriately permit-specific, each share the attribute of being expressed in a clear, specific, and measurable way. For example, EPA found a number of permits that employ numeric, retention-based performance standards for post-construction discharges, as well as instances where permits have effectively incorporated numeric effluent limits or other quantifiable measures to address water quality impairment (see the attachment to this memorandum).

EPA has also found examples where the applicable WLAs have been translated into BMPs, which are required to be implemented during the permit term to reflect reasonable further progress towards meeting the applicable water quality standard (WQS). Incorporating greater specificity and clarity echoes the approach first advanced by EPA in the 1996 Interim Permitting Policy, which anticipated that where necessary to address water quality concerns, permits would be modified in subsequent terms to include “more specific conditions or limitations [which] may include an integrated suite of BMPs, performance objectives, narrative standards, monitoring triggers, numeric WQBELs, action levels, etc.”

EPA also recently completed a review of state-issued NPDES industrial and construction permits, which also revealed a number of examples where WQBELs are expressed using clear, specific, and measurable terms. Permits are exhibiting a number of different approaches, not unlike the types of provisions shown in the MS4 Compendium. For example, some permits are requiring as an effluent limitation compliance with a numeric or narrative WQS, while others require the implementation of specific BMPs that reduce the discharge of the pollutant of concern as necessary to meet applicable WQS or to implement a WLA and/or are requiring their permittees to conduct stormwater monitoring to ensure the effectiveness of those BMPs. EPA intends to publish a compendium of permitting approaches in state-issued industrial and construction stormwater permits in early 2015.

Permits for MS4 Discharges

The CWA provides that stormwater permits for MS4 discharges “shall require controls to reduce the discharge of pollutants to the maximum extent practicable ... and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.” CWA section 402(p)(3)(B)(iii). Under this provision, the NPDES permitting authority has the discretion to include requirements for reducing pollutants in stormwater discharges as necessary for compliance with water quality standards. *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166 (9th Cir. 1999).

The 2002 memorandum stated “EPA expects that most WQBELs for NPDES-regulated municipal and small construction stormwater discharges will be in the form of BMPs, and that numeric limitations will be used only in rare instances.” As demonstrated in the MS4 Compendium, NPDES permitting authorities are using various forms of clear, specific, and measurable requirements, and, where feasible, numeric effluent limitations in order to establish a more objective and accountable means for reducing pollutant discharges that contribute to water quality problems.⁴ Where the NPDES authority determines that MS4 discharges have the reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that the NPDES permitting authority exercise its discretion to include clear, specific, and measurable permit requirements and, where feasible, numeric effluent limitations⁵ as necessary to meet water quality standards.

NPDES authorities have significant flexibility in how they express WQBELs in MS4 permits (see examples in Box 1 of the attachment). WQBELs in MS4 permits can be expressed as system-wide requirements rather than as individual discharge location requirements such as

⁴ The MS4 Compendium presents examples of different permitting approaches that EPA has found during a nationwide review of state MS4 permits. Examples of different WQBEL approaches in the MS4 Compendium include permits that have (1) a list of applicable TMDLs, WLAs, and the affected MS4s; (2) numeric limits and other quantifiable approaches for specific pollutants of concern; (3) requirements to implement specific stormwater controls or management measures to meet the applicable WLA; (4) permitting authority review and approval of TMDL plans; (5) specific impaired waters monitoring and modeling requirements; and (6) requirements for discharges to impaired waters prior to TMDL approval.

⁵ For the purpose of this memorandum, and in the context of NPDES permits for stormwater discharges, “numeric” effluent limitations refer to limitations with a quantifiable or measurable parameter related to a pollutant (or pollutants). Numeric WQBELs may include other types of numeric limits in addition to end-of-pipe limits. Numeric WQBELs may include, among others, limits on pollutant discharges by specifying parameters such as on-site stormwater retention volume or percentage or amount of effective impervious cover, as well as the more traditional pollutant concentration limits and pollutant loads in the discharge.

effluent limitations on discharges from individual outfalls. Moreover, the inclusion of numeric limitations in an MS4 permit does not, by itself, mandate the type of controls that a permittee will use to meet the limitation.

EPA recommends that NPDES permitting authorities establish clear, specific, and measurable permit requirements to implement the minimum control measures in MS4 permits. With respect to requirements for post-construction stormwater management, consistent with guidance in the 1999 Phase II Rule, EPA recommends, where feasible and appropriate, numeric requirements that attempt to maintain pre-development runoff conditions (40 CFR § 122.34(b)(5)) be incorporated into MS4 permits. EPA's MS4 Compendium features examples from 17 states and the District of Columbia that have already implemented retention performance standards for newly developed and redeveloped sites. See Box 2 of the attachment for examples.

Permits for Industrial Stormwater Discharges

The CWA requires that permits for stormwater discharges associated with industrial activity comply with section 301 of the Act, including the requirement under section 301(b)(1)(C) to contain WQBELs to achieve water quality standards for any discharge that the permitting authority determines has the reasonable potential to cause or contribute to a water quality standard excursion. CWA section 402(p)(3)(A), 40 CFR § 122.44(d)(1)(iii). When the permitting authority determines, using the procedures specified at 40 CFR § 122.44(d)(1)(ii), that the discharge causes or has the reasonable potential to cause or contribute to an in-stream excursion of the water quality standards, the permit must contain WQBELs as stringent as necessary to meet any applicable water quality standard for that pollutant. EPA recommends that NPDES permitting authorities use the experience gained in developing WQBELs to design effective permit conditions to create objective and accountable means for controlling stormwater discharges. See box 3 in the attachment for examples.

Permits should contain clear, specific, and measurable elements associated with BMP implementation (*e.g.*, schedule for BMP installation, frequency of a practice, or level of BMP performance), as appropriate, and should be supported by documentation that implementation of selected BMPs will result in achievement of water quality standards. Permitting authorities should also consider including numeric benchmarks for BMPs and associated monitoring protocols for estimating BMP effectiveness in stormwater permits. Benchmarks can support an adaptive approach to meeting applicable water quality standards. While exceeding the benchmark is not generally a permit violation, exceeding the benchmark would typically require the permittee to take additional action, such as evaluating the effectiveness of the BMPs, implementing and/or modifying BMPs, or providing additional measures to protect water quality.⁶ Permitting authorities should consider structuring the permit to clarify that failure to implement required corrective action, including a corrective action for exceeding a benchmark, is a permit violation. EPA notes that, as many stormwater discharges are authorized under a general

⁶ For example, Part 6.2.1 of EPA's 2008 MSGP provides: "This permit stipulates pollutant benchmark concentrations that may be applicable to your discharge. The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. Benchmark monitoring data are primarily for your use to determine the overall effectiveness of your control measures and to assist you in knowing when additional corrective action(s) may be necessary to comply with the effluent limitations ..."

permit, NPDES authorities may find it more appropriate where resources allow to issue individual permits that are better tailored to meeting water quality standards for large industrial stormwater discharges with more complex stormwater management features, such as multiple outfalls and multiple entities responsible for permit compliance.

All Permitted Stormwater Discharges

As stated in the 2002 memorandum, where a State or EPA has established a TMDL, NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the WLAs in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Where the TMDL includes WLAs for stormwater sources that provide numeric pollutant loads, the WLA should, where feasible, be translated into effective, measurable WQBELs that will achieve this objective. This could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA. For MS4 discharges, CWA section 402(p)(3)(B)(iii) provides flexibility for NPDES authorities to set appropriate deadlines for meeting WQBELs consistent with the requirements for compliance schedules in NPDES permits set forth in 40 CFR § 122.47.

The permitting authority's decision as to how to express the WQBEL(s), either as numeric effluent limitations or as BMPs, with clear, specific, and measurable elements, should be based on an analysis of the specific facts and circumstances surrounding the permit, and/or the underlying WLA, including the nature of the stormwater discharge, available data, modeling results, and other relevant information. As discussed in the 2002 memorandum, the permit's administrative record needs to provide an adequate demonstration that, where a BMP-based approach to permit limitations is selected, the BMPs required by the permit will be sufficient to implement applicable WLAs. Permits should also include milestones or other mechanisms where needed to ensure that the progress of implementing BMPs can be tracked. Improved knowledge of BMP effectiveness gained since 2002⁷ should be reflected in the demonstration and supporting rationale that implementation of the BMPs will attain water quality standards and be consistent with WLAs.

EPA's regulations at 40 CFR § 122.47 govern the use of compliance schedules in NPDES permits. Central among the requirements is that the effluent limitation(s) must be met "as soon as possible." 40 CFR § 122.47(a)(1). As previously discussed, by providing discretion to include "such other provisions" as deemed appropriate, CWA section 402(p)(3)(B)(iii) provides flexibility for NPDES authorities to set appropriate deadlines towards meeting WQBELs in MS4 permits consistent with the requirements for compliance schedules in NPDES permits set forth in 40 CFR § 122.47. See *Defenders of Wildlife v Browner*, 191 F.3d at 1166. EPA expects the permitting authority to document in the permit record the basis for determining that the compliance schedule is "appropriate" and consistent with the CWA and 40 CFR § 122.47. Where a TMDL has been established and there is an accompanying implementation plan that provides a schedule for an MS4 to implement the TMDL, or where a comprehensive, integrated plan addressing a municipal government's wastewater and stormwater obligations under the NPDES program has been developed, the permitting authority should consider such

⁷ See compilation of current BMP databases and summary reports available at http://water.epa.gov/infrastructure/greeninfrastructure/gi_performance.cfm, which has compiled current BMP databases and summary reports.

schedules as it decides whether and how to establish enforceable interim requirements and interim dates in the permit.

EPA notes that many permitted stormwater discharges are covered by general permits. Permitting authorities should consider and build into general permits requirements to ensure that permittees take actions necessary to meet the WLAs in approved TMDLs and address impaired waters. A general permit can, for example, identify permittees subject to applicable TMDLs in an appendix, and prescribe the activities that are required to meet an applicable WLA.

Lastly, NPDES permits must specify monitoring requirements necessary to determine compliance with effluent limitations. See CWA section 402(a)(2); 40 CFR 122.44(i). The permit could specify actions that the permittee must take if the BMPs are not performing properly or meeting expected load reductions. When developing monitoring requirements, the NPDES authority should consider the variable nature of stormwater as well as the availability of reliable and applicable field data describing the treatment efficiencies of the BMPs required and supporting modeling analysis.

Disaggregating Stormwater Sources in a WLA

In the 2002 memorandum, EPA said it “may be reasonable to express allocations for NPDES-regulated stormwater discharges from multiple point sources as a single categorical wasteload allocation when data and information are insufficient to assign each source or outfall individual WLAs.” EPA also said that, “[i]n cases where wasteload allocations are developed for categories of discharges, these categories should be defined as narrowly as available information allows.” Furthermore, EPA said it “recognizes that the available data and information usually are not detailed enough to determine waste load allocations for NPDES-regulated stormwater discharges on an outfall-specific basis.”

EPA still recognizes that “[d]ecisions about allocations of pollutant loads within a TMDL are driven by the quantity and quality of existing and readily available water quality data,” but has noted the difficulty of establishing clear, specific, and measurable NPDES permit limitations for sources covered by WLAs that are expressed as single categorical or aggregated wasteload allocations. Today, TMDL writers may have more information—such as more ambient monitoring data, better spatial and temporal representation of stormwater sources, and/or more permit-generated data—than they did in 2002 to develop more disaggregated TMDL WLAs.

Accordingly, for all these reasons, EPA is again recommending that, “when information allows,” WLAs for NPDES-regulated stormwater discharges be expressed “as different WLAs for different identifiable categories” (e.g., separate WLAs for MS4 and industrial stormwater discharges). In addition, as EPA said in 2002, “[t]hese categories should be defined as narrowly as available information allows (e.g., for municipalities, separate WLAs for each municipality and for industrial sources, separate WLAs for different types of industrial stormwater sources or dischargers).” EPA does not expect states to assign WLAs to individual MS4 outfalls; however, some states may choose to do so to support their implementation efforts. These recommendations are consistent with the decision in *Anacostia Riverkeeper, Inc. v. Jackson*, 2011 U.S. Dist. Lexis 80316 (July 25, 2011).

In general, states are encouraged to disaggregate the WLA when circumstances allow to facilitate implementation. TMDL writers may want to consult with permit writers and local authorities to collect additional information such as sewer locations, MS4 jurisdictional boundaries, land use and growth projections, and locations of stormwater controls and infrastructure, to facilitate disaggregation. TMDLs have used different approaches to disaggregate stormwater to facilitate MS4 permit development that is consistent with the assumptions and requirements of the WLA. For example, some TMDLs have used a geographic approach and developed individual WLAs by subwatershed⁸ or MS4 boundary (*i.e.*, the WLA is subdivided by the relative estimated load contribution to the subwatershed or the area served by the MS4). TMDLs have also assigned percent reductions⁹ of the loading based on the estimated wasteload contribution from each MS4 permit holder. Where appropriate, EPA encourages permit writers to identify specific shares of an applicable wasteload allocation for specific permittees during the permitting process, as permit writers may have more detailed information than TMDL writers to effectively identify reductions for specific sources.

Designating Additional Stormwater Sources to Regulate and Developing Permit Limits for Such Sources

The 2002 memorandum states that “stormwater discharges from sources that are not currently subject to NPDES regulation may be addressed by the load allocation component of a TMDL.” Section 402(p)(2) of the Clean Water Act (CWA) requires industrial stormwater sources, certain municipal separate storm sewer systems, and other designated sources to be subject to NPDES permits. Section 402(p)(6) provides EPA with authority to identify additional stormwater discharges as needing a permit.

In addition to the stormwater discharges specifically identified as needing an NPDES permit, the CWA and the NPDES regulations allow for EPA and NPDES authorized States to designate additional stormwater discharges for regulation. See: 40 CFR §§122.26 (a)(9)(i)(C), (a)(9)(i)(D), (b)(4)(iii), (b)(7)(iii), (b)(15)(ii) and 122.32(a)(2). Accordingly, EPA encourages permitting authorities to consider designation of stormwater sources in situations where coverage under NPDES permits would, in the reasonable judgment of the permitting authority and, considering the facts and circumstances in the waterbody, provide the most appropriate mechanism for implementing the pollution controls needed within a watershed to attain and maintain applicable water quality standards.

If a TMDL had previously included a newly permitted source as part of a single aggregated or gross load allocation for all unregulated stormwater sources, or all unregulated sources in a specific category, the NPDES permit authority could identify an appropriate allocation share and include a corresponding limitation specific to the newly permitted stormwater source. EPA recommends that any additional analysis used to identify that share and develop the corresponding limit be included in the administrative record for the permit. The

⁸ Wissahickon Creek Siltation TMDL (Pennsylvania) www.epa.gov/reg3wapd/tmdl/pa_tmdl/wissahickon/index.htm.

⁹ Liberty Bay Watershed Fecal Coliform Bacteria TMDL (Washington). <https://fortress.wa.gov/ecy/publications/SummaryPages/1310014.html> and Upper Minnehaha Creek Watershed Nutrients and Bacteria TMDL (Minnesota) <http://www.pca.state.mn.us/index.php/view-document.html?gid=20792>

permit writer's additional analysis would not change the TMDL, including its overall loading cap.

In situations where a stormwater source addressed in a TMDL's load allocation is not currently regulated by an NPDES permit but may be required to obtain an NPDES permit in the future, the TMDL writer should consider including language in the TMDL explaining that the allocation for the stormwater source is expressed in the TMDL as a "load allocation" contingent on the source remaining unpermitted, but that the "load allocation" would later be deemed a "wasteload allocation" if the stormwater discharge from the source were required to obtain NPDES permit coverage. Such language would help ensure that the allocation is properly characterized by the permit writer should the source's regulatory status change. This will help the permit writer develop limitations for the NPDES permit applicable to the newly permitted source that are consistent with the assumptions and requirements of the TMDL's allocation to that source.

If you have any questions please feel free to contact us or Deborah Nagle, Director of the Water Permits Division, or Tom Wall, Director of the Assessment and Watershed Protection Division.

cc: Association of Clean Water Administrators
TMDL Program Branch Chiefs, Regions 1 – 10
NPDES Permits Branch Chiefs, Regions 1 – 10

Attachment: MS4 and Industrial Stormwater Permit Examples

ATTACHMENT: MS4 and Industrial Stormwater Permit Examples

BOX 1. Examples of WQBELs in MS4 Permits:

1. Numeric expression of the WQBEL: The MS4 Permit includes a specific, quantifiable performance requirement that must be achieved within a set timeframe. For example:
 - Reduce fine sediment particles, total phosphorus, and total nitrogen loads by 10 percent, 7 percent, and 8 percent, respectively, by September 30, 2016 (2011 Lake Tahoe, CA MS4 permit)
 - Restore within the 5-year permit term 20 percent of the previously developed impervious land (2014 Prince George's County, MD MS4 permit)
 - Achieve a minimum net annual planting rate of 4,150 planting annually within the MS4 area, with the objective of an MS4-wide urban tree canopy of 40 percent by 2035 (2011 Washington, DC MS4 permit)
 - Discharges from the MS4 must not cause or contribute to exceedances of receiving water limits for Diazinon of 0.08µg/L for acute exposure (1 hr averaging period) or 0.05µg/L for chronic exposure (4-day averaging period), OR must not exceed Diazinon discharge limits of 0.072 µg/L for acute exposure or 0.045µg/L for chronic exposure (2013 San Diego, CA Regional MS4 permit)

2. Non-numeric expressions of the WQBEL: The MS4 Permit establishes individualized, watershed-based requirements that require each affected MS4 to implement specific BMPs within the permit term, which will ensure reasonable further progress towards meeting applicable water quality standards.
 - To implement the corrective action recommendations of the Issaquah Creek Basin Water Cleanup Plan for Fecal Coliform Bacteria (part of the approved Fecal Coliform Bacteria TMDL for the Issaquah Creek Basin), King County is required during the permit term to install and maintain animal waste education and/or collection stations at municipal parks and other permittee owned and operated lands reasonably expected to have substantial domestic animal use and the potential for stormwater pollution. The County is also required to complete IDDE screening for bacteria sources in 50 percent of the MS4 subbasins, including rural MS4 subbasins, by February 2, 2017 and implement the activities identified in the Phase I permit for responding to any illicit discharges found (2013 Western Washington Small MS4 General Permit)
 - For discharges to Segment 14 of the Upper South Platte River Basin associated with WLAs from the approved *E. coli* TMDL, the MS4 must identify outfalls with dry weather flows; monitor priority outfalls for flow rates and *E. coli* densities; implement a system maintenance program for listed priority basins (which includes storm sewer cleaning and sanitary sewer investigations); install markers on at least 90% of storm drain inlets in areas with public access; and conduct a public outreach program focused on sources that contribute *E. coli* loads to the MS4. By November 30, 2018, dry weather discharges from MS4 outfalls of concern must not contribute to an exceedance of the *E. coli* standard (126 cfu per 100 ml for a geometric mean of all samples collected at a specific outfall in a 30-day period) (2009 Denver, CO MS4 Permit)

3. Hybrid approach with both numeric and non-numeric expressions of the WQBEL:
 - Discharges of trash from the MS4 to the LA River must be reduced to zero by Sept. 2016. Permittees also have the option of complying via the installation of defined "full capture systems" to prevent trash from entering the MS4 (2012 Los Angeles County, CA MS4 Permit).
 - To attain the shared, load allocation of 27,000 metric tons/year of sediment in the Napa River sediment TMDL, municipalities shall determine opportunities to retrofit and/or reconstruction of road crossings to minimize road-related sediment delivery (≤ 500 cubic yards/mile per 20-year period) to stream channels (2013 CA Small MS4 General Permit).

Box 2. Examples of Retention Post Construction Standards for New and Redevelopment in MS4 Permits

- 2009 WV small MS4 permit: Keep and manage on site the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation.
- 2011 DC Phase I MS4 permit: Achieve on-site retention of 1.2" of stormwater from a 24-hour storm with a 72-hour antecedent dry period through evapotranspiration, infiltration and/or stormwater harvesting.
- 2012 Albuquerque, NM Phase I MS4 permit: Capture the 90th percentile storm event runoff to mimic the predevelopment hydrology of the previously undeveloped site.
- 2010 Anchorage, AK Phase I MS4 permit: Keep and manage the runoff generated from the first 0.52 inches of rainfall from a 24 hour event preceded by 48 hours of no measureable precipitation.
- 2013 Western WA small MS4 permit: Implement low impact development performance standards to match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 8% of the 2-year flow to 50% of the 2-year flow.

BOX 3. Examples of WQBELs in Industrial (including Construction) Stormwater Permits:

1. Numeric expression of the WQBEL: The permit includes a specific, quantifiable performance requirement that must be achieved:
 - Pollutant concentrations shall not exceed the stormwater discharge limits specified in the permit (based on state WQS), including (for example): Cadmium-0.003 mg/l; Mercury-0.0024 mg/l; Selenium-0.02 mg/l (2013 Hawaii MSGP)
 - Beginning July 1, 2010, permittees discharging to impaired waters without an EPA-approved TMDL shall comply with the following effluent limits (based on state WQS), including (for example): Turbidity-25 NTU; TSS-30 mg/l; Mercury-0.0021 mg/l; Phosphorus, Ammonia, Lead, Copper, Zinc-site-specific limits to be determined at time of permit coverage (2010 Washington MSGP)
 - If discharging to waters on the 303(d) list (Category 5) impaired for turbidity, fine sediment, or phosphorus, the discharge must comply with the following effluent limit for turbidity: 25 NTU (at the point of discharge from the site), or no more than 5 NTU above background turbidity when the background turbidity is 50 NTU or less, or no more than a 10% increase in turbidity when background turbidity is more than 50 NTU. Discharges to waterbodies on the 303(d) list (Category 5) for high pH must comply with the numeric effluent limit of pH 6.5 to 8.5 su (2010 Washington CGP) (2010 Washington CGP)
2. Narrative expression of the WQBEL: The permit includes narrative effluent limits based on applicable WQS:
 - New discharges or new dischargers to an impaired water are not eligible for permit coverage, unless documentation or data exists to show that (1) all exposure of the pollutant(s) of concern to stormwater is prevented; or (2) the pollutant(s) of concern are not present at the facility; or (3) the discharge of the pollutant(s) of concern will meet instream water quality criteria at the point of discharge (for waters without an EPA-approved TMDL), or there is sufficient remaining WLAs in an EPA-approved TMDL to allow the discharge and that existing dischargers are subject to compliance schedules to bring the waterbody into attainment with WQS (2011 Vermont MSGP; similar requirements in RI, NY, MD, VA, WV, SC, AR, TX, KS, NE, AZ, CA, AK, OR, and WA permits)
 - In addition to other applicable WQBELs, there shall be no discharge that causes visible oil sheen, and no discharge of floating solids or persistent foam in other than trace amounts. Persistent foam is foam that does not dissipate within one half hour of point of discharge (2014 Maryland MSGP)
3. Requirement to implement additional practices or procedures for discharges to impaired waters:
 - For sediment-impaired waters (without an approved TMDL), the permittee is required to maintain a minimum 50-foot buffer zone between any disturbance and all edges of the receiving water (2009 Kentucky CGP)
 - For discharges to impaired waters, implement the following: (1) stabilization of all exposed soil areas immediately, but in no case later than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased (as compared to 14 days for no-impaired waters); (2) temporary sediment basins must meet specified design standards if they will serve an area of 5 or more acres (as compared to 10 or more acres for other sites); (3) retain a water quality volume of 1 inch of runoff from the new impervious surfaces created by the project (though this volume reduction requirement is for discharges to all waters, not just impaired waters) (2013 Minnesota CGP).
 - If the site discharges to a water impaired for sediment or turbidity, or to a water subject to an EPA-approved TMDL, the permittee must implement one or more of the following practices: (1) compost berms, compost blankets, or compost socks; (2) erosion control mats; (3) tackifiers used with a perimeter control BMP; (4) a natural buffer of 50 feet (horizontally) plus 25 feet (horizontally) for 5 degrees of slope; (5) water treatment by electro-coagulation, flocculation, or filtration; and/or (6) other substantially equivalent sediment or turbidity BMP approved by the state (2010 Oregon CGP)

EXHIBIT 5

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Superior Court of California
County of Los Angeles

FEB 09 2018

Sherri R. Carter, Executive Officer/Clerk
By Fernando Becerra, Jr., Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE, et al.,

Petitioners,

vs.

COMMISSION ON STATE MANDATES,

Respondent,

COUNTY OF LOS ANGELES, et al.,

Real Parties in Interest.

Case No.: BS130730

ORDER GRANTING PETITION FOR
WRIT OF MANDATE (POST-REMAND)
AND DENYING CROSS-PETITIONS AS
MOOT

Hearing Date: January 31, 2018
Dept.: 86

AND RELATED CROSS-PETITION.

I. Introduction

In December 2001, the Los Angeles Regional Water Quality Control Board ("Regional Board") issued a municipal stormwater permit (the "permit") to the County of Los Angeles, Los

1 Angeles County Flood Control District, and 84 cities (the "Operators"). (AR 1560-1634.) The
2 permit imposed requirements to regulate discharges from and pollutants entering the Operators'
3 municipal separate storm sewer systems ("MS4s"). Among other provisions, the permit required
4 the permittees to (1) place and maintain trash receptacles at transit stops (AR 1610); and (2) inspect
5 various commercial facilities (AR 1590-92), industrial facilities (AR 1592-93) and construction
6 sites (AR 1604-05).

7 In 2003, the Operators filed "test claims" with the Commission on State Mandates
8 ("Commission") seeking a subvention of funds under article XIII B, section 6 for these permit
9 requirements. Article XIII B, section 6 provides in part that "[w]henever the Legislature or any
10 state agency mandates a new program or higher level of service on any local government, the State
11 shall provide a subvention of funds to reimburse that local government for the costs of the program
12 or increased level of service" The Commission originally refused jurisdiction over the claims
13 because Government Code § 17516(c)'s definition of "executive order" excluded permits issued
14 by the Regional Boards. On appeal, the Second District held that exclusion of the Regional Board
15 permits from the definition of "executive order" was unconstitutional.

16 Thereafter, the Operators re-filed their test claims with the Commission. On July 31, 2009
17 the Commission issued a Statement of Decision (SOD). (AR 5555 – 5626.) In the SOD, the
18 Commission concluded, as to Issue 1, that the challenged permit conditions were subject to article
19 XIII B, section 6 of the California constitution and made the following findings: (A) the permit is
20 an executive order within the meaning of article XIII B, section 6 of the California constitution
21 and Government Code section 17516 (AR 5574); (B) the challenged sections of the permits were
22 not undertaken at the option or discretion of the claimants (AR 5575); and (C) none of the
23 challenged provisions in the permit (the transit trash receptacle and inspection permit provisions
24 in Parts 4C2a, 4C2b, 4E and 4F5c3) was a federal mandate (AR 5576 – 5603). The Commission's
25 SOD concluded, on Issue 2, that all of the challenged provisions imposed a new program or higher
26 level of service within the meaning of article XIII B, section 6 of the California constitution. (AR
27 5603.) Addressing Issue 3, the Commission's SOD examined whether the challenged provisions
28 imposed costs mandated by the state within the meaning of Government Code sections 17514 and

1 17556 or qualified for any exceptions under Government Code section 17556. (AR 5605.) With
2 respect to the provisions requiring inspections, the Commission concluded the exception in Section
3 17556(d) applied because various statutes give the local authorities discretion to impose fees. (AR
4 5625.) However, the Commission concluded the permit's requirements (under part 4F5c3) for the
5 placement and maintenance of trash receptacles was a program that qualified as a state mandate
6 subject to subvention. (AR 5625.)

7 Petitioners Department of Finance, State Water Resources Control Board ("State Board")
8 and Regional Board (collectively "Petitioners" or "State Agencies") filed a petition for writ of
9 mandate to set aside the Commission's decision arguing it was an abuse of discretion to conclude
10 the challenged permit provisions were state mandates subject to article XIII B section 6 and that
11 the SOD was erroneous because (1) the permit terms were required by federal law and thus not
12 state mandates (Petition ¶ 33(a)); (2) the permit terms did not impose a new program or higher
13 level of service (Petition ¶ 34); and (3) the permittees had authority to levy fees to pay for the trash
14 receptacle requirement (Petition ¶ 35). The County and several cities filed a cross-petition seeking
15 to set aside the Commission's determination the inspection costs were not reimbursable because
16 the Operators had the ability to assess fees to cover them.

17 In August 2011, this Court (Judge Ann I. Jones presiding) issued a decision concluding the
18 challenged permit terms were federal mandates and thus not reimbursable state mandates under
19 Government Code section 17556(e). The Court did not address the cross-petition. On October
20 16, 2013, the Second District affirmed this ruling. On August 29, 2016, the Supreme Court
21 reversed holding that the permit requirements were not federal mandates. (*Department of Finance*
22 *v. Commission on State Mandates* (2016) 1 Cal.5th 749, 772.) The Supreme Court remanded the
23 matter back to this Court to address the "other arguments in [the State's] writ petition" as well as
24 "the issues presented in the Operators' cross-petition." (*Id.* at 772.)

25 Petitioners and Cross-Petitioners have both filed briefs in support of their additional
26 arguments. Petitioners seek a writ of mandate setting aside the Commission's decision in part
27 arguing (1) the permit terms did not impose a new program or higher level of service and (2) the
28 permittees had fee authority to pay for the trash receptacle. Cross-Petitioners also seek a writ of

1 mandate setting aside the Commission's decision in part arguing that they did not have authority
2 to levy fees to pay for inspections of commercial, industrial, and construction sites.

3 **II. Statutory Framework**

4 *A. The Clean Water Act*

5
6 The permit at issue in this case was issued pursuant to obligations imposed by the Clean
7 Water Act (CWA) (33 U.S.C. §§ 1251-1387) which was originally enacted as an amendment to
8 the Federal Water Pollution Control Act. Section 1311(a) of the CWA articulates a broad federal
9 prohibition against water pollution ("Except in compliance with this section and [other sections],
10 the discharge of any pollutant by any person shall be unlawful") and imposes criminal penalties
11 against any knowing violation. (33 U.S.C. § 1311(a), § 1319.) The Act's primary means for
12 enforcing effluent limitations and standards is the National Pollution Discharge Elimination
13 System (NPDES). "The NPDES sets out the conditions under which the federal EPA or a state
14 with an [EPA] approved water quality control program can issue permits for the discharge of
15 pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge
16 requirements established by [permits issued by the regional boards] are the equivalent of the
17 NPDES permits required under federal law." (*City of Burbank v. State Water Resources Control*
18 *Bd.* (2005) 35 Cal.4th 613, 621.)

19 In 1987 amendments, "Congress distinguished between industrial and municipal storm
20 water discharges. With respect to *industrial* storm water discharges, Congress provided that
21 NPDES permits 'shall meet all applicable provisions of this section and section 1311 [requiring
22 the EPA to establish effluent limitations under specific timetables]'" (*Building Industry Ass'n*
23 *of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 874
24 [citing 33 U.S.C. § 1342(p)(3)(A)].) "With respect to *municipal* storm water discharges, Congress
25 clarified that the EPA had the authority to fashion NPDES permit requirements to meet water
26 quality standards without specific numerical effluent limits and instead to impose 'controls to

1 reduce the discharge of pollutants to the maximum extent practicable” (*Ibid* [citing 33 U.S.C.
2 § 1342(p)(3)(B)(iii)].) The law requires permits for municipal stormwater discharge to be
3 prohibitory, stating that such permits “shall include a requirement to effectively prohibit non-
4 stormwater discharges into the storm sewers” and “shall require controls to reduce the discharge
5 of pollutants to the maximum extent practicable” (33 U.S.C. 1342(p)(3)(B)(ii) and (iii).)

6 *B. California Porter-Cologne Water Quality Control Act*

7 In 1969, California enacted the Porter-Cologne Water Quality Control Act. (Wat. Code, §
8 13000 *et seq.*) The Act established the State Water Resources Control Board, responsible for
9 establishing statewide policy, as well as nine regional water quality control boards, responsible for
10 creating water quality control plans and issuing permits to govern the discharge of waste. (Wat.
11 Code, § 13001; *Building Industry, supra*, 124 Cal.App.4th at 875.) Shortly after Congress enacted
12 the Clean Water Act in 1972, the California Legislature added chapter 5.5 to the Porter-Cologne
13 Act to ensure that it would obtain approval to implement the provisions of the Clean Water Act.
14 (Wat. Code, § 13370(c); *Building Industry, supra*, 124 Cal.App.4th at 875.) In 1973, California
15 obtained approval to issue NPDES permits. (*Environmental Protection Agency v. California ex*
16 *rel. State Water Resources Control Bd.* (1976) 426 U.S. 200, 209.)

17 Under chapter 5.5 of the Porter-Cologne Act, the Water Boards issue “waste discharge
18 requirements” which “ensure compliance with all applicable provisions of the [Clean Water Act]
19 . . . together with any more stringent effluent standards or limitations necessary to implement water
20 quality control plans” (Wat. Code § 13377.) These “wastewater discharge requirements
21 established by the regional boards are the equivalent of the NPDES permits required by federal
22 law.” (Wat. Code § 13374; *City of Burbank v. State Water Resources Control Bd.* (2005) 35
23 Cal.4th 613, 621.)

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C. The 2001 Permit

In December 2001, the Regional Board issued to the Operators the municipal stormwater permit at issue in this case. (AR 1560-1634.) The permit imposed requirements to regulate discharges from and pollutants entering the Operators' MS4s. Among other provisions, the permit required the permittees to (1) place and maintain trash receptacles at transit stops (AR 1610); and (2) inspect various commercial facilities (AR 1590-92), industrial facilities (AR 1592-93) and construction sites (AR 1604-05). (See *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 758.)

III. Standard of Review

Code of Civil Procedure section 1094.5 is the administrative mandamus provision providing the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles*, (1974) 11 Cal. 3d 506, 514-15.) Section 1094.5(a) states, in pertinent part, that "[w]here the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury." Under Section 1094.5(b), the pertinent issues are: (1) whether the respondent has proceeded without jurisdiction; (2) whether there was a fair trial; and (3) whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc. § 1094.5(b).)

In general, an agency is presumed to have regularly performed its official duties. (Evid. Code § 664.) Therefore, the petitioner seeking administrative mandamus has the burden of proof. (*Steele v. Los Angeles County Civil Service Commission*, (1958) 166 Cal. App. 2d 129, 137; see

1 also *Alford v. Pierno* (1972) 27 Cal.App.3d 682, 691 [“[T]he burden of proof falls upon the party
2 attacking the administrative decision to demonstrate wherein the proceedings were unfair, in
3 excess of jurisdiction or showed prejudicial abuse of discretion.”].)

4 In this case, the determination whether the permit is a state-mandated program or higher
5 level of service under article XIII B, section 6 is a question of law that the Court reviews *de novo*.
6 (*County of San Diego v. State*, (1997) 15 Cal.4th 68, 109; *Carmel Valley Fire Protection Dist. v.*
7 *State of California*, (1987) 190 Cal.App.3d 521, 536.) When reviewing the Commission’s
8 determination, the Court reviews the record to determine if substantial evidence supports the
9 decision. (Gov. Code § 17559(b).)

10 IV. Analysis

11 A. Petitioners Did Not Waive the Arguments in their Writ Petition

12 After determining that the permit conditions were not federally mandated, the Supreme
13 Court remanded the matter with the following instructions:
14

15 Although we have upheld the Commission’s determination on the federal mandate
16 question, the State raised other arguments in its writ petition. Further, the issues presented
17 in the Operators’ cross-petition were not addressed by either the trial court or the Court of
18 Appeal. We remand the matter so those issues can be addressed in the first instance.

19 (*Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 772.) Cross-
20 Petitioners argue that Petitioners waived the arguments they now assert ((1) that the permit
21 requirements did not impose a new program or higher level of service; and (2) that the Operators
22 have fee authority sufficient to pay for the trash receptacle requirement) because they failed to
23 raise those arguments in their original “Memorandum of Points and Authorities in Support of
24 Petition for Writ of Administrative Mandamus” filed on June 10, 2011. However, Petitioners did
25 raise those arguments in their original *writ petition* filed on February 17, 2011. (See Petition ¶ 34,
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1 35.) The Supreme Court’s mandate directs this Court to address the State’s “other arguments in
2 its writ petition.” The Court therefore finds Petitioners may assert them on remand.

3 *B. The Permit Is Not a State Mandated Program or Policy for which the Operators*
4 *Are Entitled to a Subvention of Funds Under Article XIII B*

5 Article XIII B, section 6 provides in part that “[w]henever the Legislature or any state
6 agency mandates a new program or higher level of service on any local government, the State shall
7 provide a subvention of funds to reimburse that local government for the costs of the program or
8 increased level of service” In this action, the Operators seek a subvention of funds to pay for
9 the trash receptacle and inspection requirements imposed by the 2001 municipal stormwater permit
10 (the “permit”).

11 The Commission concluded the receptacle and inspection requirements constituted “a
12 program within the meaning of article B, section 6.” (AR 5603.) It pointed out the requirements
13 “are limited to local government entities” and “[provide] a service to the public by preventing or
14 abating pollution in waterways and beaches in Los Angeles County.” (*Id.*) The Commission also
15 cited page 13 of the permit which states, “The objective of this Order is to protect the beneficial
16 uses of receiving waters in Los Angeles County.” (*Id.*)

17 Petitioners contend that the Operators are not entitled to reimbursement because the Clean
18 Water Act is a law of general applicability that prohibits both public and private entities from
19 discharging pollutants from point sources to waters of the United States without an NPDES permit.
20 In support of this argument, Petitioners cite several cases addressing state legislation: *County of*
21 *Los Angeles v. State of California* (1987) 43 Cal.3d 46, *City of Sacramento v. State of*
22 *California* (1990) 50 Cal.3d 51, and *City of Richmond v. Commission on State Mandates* (1998)
23 64 Cal.App.4th 1190.

24 In *County of Los Angeles*, the County of San Bernardino and City of Los Angeles filed test
25 claims seeking reimbursement for expenditures mandated by newly enacted laws increasing the
26 amounts which employers, including local governments, must pay in workers’ compensation

1 benefits to injured employees and families of deceased employees. (*County of Los Angeles, supra*,
2 43 Cal.3d at 50-51.) The Supreme Court held that the reimbursement claims were properly denied
3 by the State Board because “the state need not provide subvention for, the costs incurred by local
4 agencies in providing to their employees the same increase in workers' compensation benefits that
5 employees of private individuals or organizations receive.” (*Id.* at 57-58.) The Supreme Court
6 explained:

7 “[W]hen the voters adopted article XIII B, section 6, their intent was not to require the state
8 to provide subvention whenever a newly enacted statute resulted incidentally in some cost
9 to local agencies. Rather, the drafters and the electorate had in mind subvention for the
10 expense or increased cost of programs administered locally **and for expenses occasioned
11 by laws that impose unique requirements on local governments and do not apply
12 generally to all state residents or entities.**

13 (*Id.* at 46-50, emphasis added.)

14 In *City of Sacramento*, the City of Sacramento and County of Los Angeles filed claims
15 with the State Board seeking subvention of the costs imposed on them by statutes which extended
16 mandatory coverage under the state’s unemployment insurance law to state and local governments
17 and nonprofit corporations. (*City of Sacramento*, 50 Cal.3d at 59.) The City and County argued
18 that the statutes imposed a unique requirement on them because it applied only to them and
19 compelled costs to which they were not previously subject. (*Id.* at 68.) The Supreme Court held
20 that the statute did not constitute a “new program” or “higher level of service” because “[m]ost
21 private employers in the state already were required to provide unemployment protection to their
22 employees” and thus the statute “merely [made] the local agencies ‘indistinguishable in this respect
23 from private employers.’ ” (*Id.* at 67.)

24 In *City of Richmond*, the city filed a test claim with the Commission on State Mandates
25 seeking subvention of the costs imposed on it by a statute extending workers’ compensation death
26 benefits. (*City of Richmond, supra*, 64 Cal.App.4th at 1193.) The appellate court held that the
27 City was not entitled to reimbursement because “the law ma[de] the workers' compensation death
28 benefit requirements as applicable to local governments as they are to private employers” and thus

1 “impose[d] no ‘unique requirement’ on local governments.” (*Id.* at 1199.) The court observed
2 that, “while the result of chapter 478 is that local safety members of PERS now are eligible for
3 two death benefits and local governments will have to fund the workers’ compensation benefit,
4 chapter 478 does not mandate double death benefits. Instead, it merely eliminates the offset
5 provisions of Labor Code section 4707. In this regard, the law makes the workers’ compensation
6 death benefit requirements as applicable to local governments as they are to private employers. It
7 imposes no “unique requirement” on local governments.” (*Id.* at 1199.)

8 Although in each of these cases, the “state mandate” under consideration was legislation
9 of general applicability, whereas in this case, the “state mandate” is the particular NPDES permit
10 (“executive order”) challenged in the test cases, this Court does not regard that distinction as
11 making any difference. Under Government Code § 17514, “costs mandated by the state” are
12 defined to include statutes and executive orders. In the first round of appeals in this case, the
13 appellate court in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th
14 898 rejected, as unconstitutional, the provision in Section 17516(c), which purported to exempt
15 “any order, plan requirement, rule or regulation” of the State Water Resources Control Board from
16 the definition of an “executive order” potentially subject to subvention. The language in that
17 court’s discussion of the matters to be remanded to the Commission specifies that the “state
18 mandate” under consideration is the permit:

19 “The Commission urges that should this court conclude Section 17516(c) is
20 unconstitutional, the appropriate remedy is to afford the Commission the opportunity to
21 pass on the merits of the subject test claims on the issues of whether (1) *the subject permit*
22 qualifies as a state-mandated program under article XIII B, section 6; (2) *the permit*
23 amounts to a new program or higher level of services; and (3) *the permit* imposes costs on
24 local entities. (Gov. Code, § § 17514, 17556. We find its position persuasive.”

25 (*Id.* at 905, emphasis added.) The court further noted that the question “[w]hether *the permit* in
26 question . . . governs both public and private pollution dischargers to the same extent present[ed]
27 factual issues not yet resolved.” (*Id.* at 919, emphasis added.) Consistent with this language, the
28 Commission concluded “the issue is not whether NPDES permits generally constitute a ‘program’

1 within the meaning of article XIII B, section 6,” but “whether the permit in this test claim . . .
2 constitutes a program because this permit is the only one over which the Commission has
3 jurisdiction.” (AR 5604.) On remand, the Commission resolved this issue, concluding that the
4 permit applied exclusively to local agencies and therefore constituted a “program” within the
5 meaning of article XIII B, section 6. (AR 5603.) Based on the language in *County of Los Angeles*
6 quoted above, this Court agrees with the Commission that the question before this Court is whether
7 the Operators’ permit includes one or more state mandates subject to subvention. As explained
8 below, this Court concludes it does not.

9 In *County of Los Angeles, supra*, the Supreme Court provided two alternative definitions
10 for “program” under article XIII B, section 6, explaining they could either be “programs that carry
11 out the governmental function of providing services to the public, or laws which, to implement a
12 state policy, impose unique requirements on local governments and do not apply generally to all
13 residents and entities in the state.” (*County of Los Angeles, supra*, 43 Cal.3d at 56.) The Supreme
14 Court based these definitions on the intent behind constitutional amendment as evidenced by the
15 Ballot Pamphlet presented to the voters. The court focused on language in the Pamphlet
16 emphasizing the measure would “not allow the state government to force programs on local
17 governments without the state paying for them.” (*Id.*) Based on this language, the Supreme Court
18 concluded “the intent underlying section 6 was to require reimbursement to local agencies for the
19 costs involved in carrying out functions peculiar to government, not for expenses incurred by local
20 agencies as an incidental impact of laws that apply generally to all state residents and entities.”
21 From the Supreme Court’s point of view, “[l]aws of general application are not passed by the
22 Legislature to ‘force’ programs on localities.” (*Id.* at 57.) The Supreme Court concluded “the
23 intent underlying section 6 was to require reimbursement to local agencies for the costs involved
24 in carrying out functions peculiar to government, not for expenses incurred by local agencies as
25 an incidental impact of laws that apply generally to all state residents and entities.” (*Id.* at 56-57.)

26 As noted above, the Commission concluded the receptacle and permitting requirements in
27 the permit constituted “programs” subject to subvention apparently referencing the first alternative
28 definition of “program” in *County of Los Angeles*. This Court is not, however, persuaded the

1 receptacle and inspection requirements are “programs that carry out the governmental function of
2 providing services to the public.” Unlike the executive order establishing minimum clothing and
3 equipment requirements for firefighters addressed in *Carmel Valley Fire Protection District v.*
4 *State of California* (1987) 190 Cal.App.3d 521, 537, an NPDES permit enforcing a prohibition
5 against polluting is not a government program in the usual sense of the word. Indeed, a ban on
6 contaminated discharges is more akin to a criminal law than a program delivering a service to the
7 public at the taxpayers’ expense. It is noteworthy that Section 17556(g) exempts from subvention
8 costs mandated by statutes creating new crimes “for that portion of the crime relating directly to
9 the enforcement of the crime” By analogy, costs incurred to enforce the anti-pollution laws
10 should not be treated as state mandated programs entitled to reimbursement by the state.

11 The Court also disagrees with the Operators’ contention “the collection of trash and the
12 enforcement of statutes and regulations intended to prevent pollution” constitute “programs” for
13 purposes of subvention. (Opp. p. 9.) As noted above, these conditions enforce a prohibition rather
14 than initiate or upgrade “classic” or “peculiarly governmental functions[s]” like the firefighting
15 services affected by the executive order in *Carmel Valley*. (*Id.*) Because the requirements were
16 implemented to prevent pollution (enforce a ban on pollution) rather than to provide a service to
17 the public, it is difficult to regard them as “programs that carry out the governmental function of
18 providing services to the public.”

19 Addressing *County of Los Angeles’* second alternative definition of “programs,” it is a
20 closer question whether the permit’s receptacle and inspection requirements are “laws which, to
21 implement a state policy, impose unique requirements on local governments and do not apply
22 generally to all residents and entities in the state.” (*County of Los Angeles, supra*, 43 Cal.3d at
23 56.) There is no doubt the permit (which only applies to local governments) “uniquely” imposes
24 the receptacle and inspection requirements on local governments. However, the relevant “state
25 policy” implemented by the permit is the federal and state law prohibition against unlawful
26 discharges. That policy “appl[ies] generally to all residents and entities in the state.” In contrast
27 with the upgrade in firefighter clothing and equipment mandated by the executive order in *Carmel*
28

1 Valley, this is not the type of policy the voters intended to embrace in the ballot measure giving
2 rise to section 6.

3 The NPDES policy implemented by the permit effectuates laws of general application that
4 prohibit both public and private entities from discharging contaminants into the waterways except
5 as specified in an NPDES permit. By its terms, the Operators' NPDES permit is the means by
6 which the state ensures that public entities abide by the same prohibitions against contaminated
7 discharges that the law imposes on private parties. Although it is true that, like the workers
8 compensation statute at issue in *County of Los Angeles*, the NPDES permit is "administered by the
9 state," that does not necessarily mean the state has forced the expense of its program or policy onto
10 the local governments. (*Id.* at 58.)

11 Moreover, just because the requirements are "unique" to the local governments and cause
12 them to incur costs does not mean the local entities are necessarily entitled to reimbursement from
13 the state. Whereas a private industrial discharger has considerable power to control its operations
14 and employees to prevent contaminated discharges, municipalities cannot prevent contaminated
15 discharges without inducing or policing the public to refrain from harmful conduct. It is therefore
16 inevitable that the Operators' NPDES permit includes measures "unique" to local governments
17 such as the receptacle and inspection requirements at issue here. Indeed, because the anti-pollution
18 laws, the permit and the policies behind them implement a ban on unlawful discharges that applies
19 to both public and private entities, the state must, as a practical matter, impose "unique"
20 requirements on local governments to ensure that their required compliance is "indistinguishable
21 . . . from private employers." (*Id.*)

22 Given that the "state policy" advanced by the permit is to enforce a ban of general
23 application rather than to initiate or expand waste collection and/or inspection services, it is not
24 reasonable to interpret the receptacle and inspection requirements as a policy (or program) initiated
25 by the State Water Board "to 'force' [trash collection and inspection] programs on localities." (*Id.*)
26 As noted in *County of Los Angeles*, "the intent underlying section 6 was to require reimbursement
27 to local agencies for the costs involved in carrying out functions peculiar to government, *not for*
28

1 *expenses incurred by local agencies as an incidental impact of laws that apply generally to all*
2 *state residents and entities.” (Id. at 56-57, emphasis added.)*

3 In this case, the costs incurred by the local governments are an “incidental impact of laws
4 [and policies] that apply generally to all state residents and entities” rather than the result of a state
5 mandate shifting the costs of a state initiated program to the local governments. (*County of Los*
6 *Angeles*, 43 Cal.3d at 57.) This Court finds the receptacle and inspection requirements are not
7 state mandated programs subject to subvention and grants the petition for writ of mandate.

8 *C. Petitioners’ and Cross-Petitioners’ Remaining Arguments Are Moot*

9 Because the Court has determined the Operators are not entitled to reimbursement for the
10 costs of complying with the permit’s receptacle or inspection requirements, the parties’ remaining
11 arguments (as to whether the Operators had fee authority to levy service charges to pay for the
12 trash receptacle requirement and inspection requirement) are moot.

13
14 **V. Conclusion**

15 For the reasons stated above, the Court GRANTS the Petition for Writ of Mandate and
16 remands this matter to the Commission on State Mandates for proceedings consistent with this
17 decision.

18
19 Dated: FEB 09 2018

20 AMY D. HOGUE, JUDGE

21 JUDGE OF THE SUPERIOR COURT

EXHIBIT 6



ADVERTISEMENT



TIMESOC

Settlement ends 18-month battle surrounding Orange County homeless lawsuit



U.S. District Court Judge David O. Carter takes photos at a homeless encampment along the Santa Ana River in Anaheim in 2018. (File Photo / Los Angeles Times)

BY DANIEL LANGHORNE

JULY 24, 2019 11:05 AM PT



A federal judge called an agreement between Orange County and attorneys representing homeless individuals a model for how county governments should care for those in need of shelter.

U.S. District Judge David O. Carter signed the pact Tuesday at the Ronald Reagan Federal Building in Santa Ana, following unanimous approval by the Board of Supervisors last week.

“You’re far in front of any other county in this state, and I hope the governor recognizes that,” Carter said.

His signature ends an 18-month legal battle that started with a lawsuit filed in January 2018 that blocked the county's effort to clear homeless people who have set up camp along the Santa Ana River trail and prevent three cities — Anaheim, Costa Mesa and Orange — from enforcing anti-camping, trespassing and loitering laws.



NEWS

Newport Beach locals express sympathy for the homeless on their streets, but say enforcement still needed

July 23, 2019

First District Supervisor Andrew Do, who led the county's negotiations with homeless advocates, read a statement that was entered into the court record.

“To say that this is a momentous occasion is to undersell the watershed moment that it is,” Do said.

The agreement requires that homeless individuals be allowed to consult with county health care, social workers or county-contracted service providers before deputy sheriffs can enforce anti-camping and anti-loitering laws.

County officials will prohibit sheriff's deputies from transporting homeless individuals across the three “service planning areas” — North, Central and South County — to house them at a shelter. For example, deputies can no longer move a homeless person from Mission Viejo to Santa Ana.

After giving a homeless person a reasonable opportunity to move their belongings, deputies can move the homeless from O.C. Flood Control District property, John Wayne Airport, county libraries after they've closed for the day, contracted railroad areas and county property otherwise not open to the public.

The settlement also addresses homeless advocates' complaints about the unsanitary conditions of county-funded homeless shelters. The county reaffirmed its commitments to providing facilities that are accessible, clean, safe and pest-free.

Do said he is optimistic the agreement will help the county overcome its conservative image and a stigma that it's adverse to caring for those without shelter.

"This will hopefully dispel some of that," he said.

Attorney Carol Sobel said the settlement doesn't mark the end of advocates' discussions with the county on caring for its homeless population.

Although planned service centers in Placentia and Buena Park will provide beds to the homeless, there's still work to do on increasing the emergency capacity, she said.

"We don't have enough, but we sure have a lot more than when we started litigation," Sobel said.

TIMESOC HOMELESSNESS



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SIGN ME UP

DECLARATION OF JAMES FORTUNA

DECLARATION OF JAMES FORTUNA

I, JAMES FORTUNA, hereby declare and state 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 an Administrative Manager II employed by the County of Orange and work in the OC Environmental Resources service area of OC Public Works. I serve as Manager of the North Orange County Watershed Management Area for the Orange County Stormwater Program ("OC Stormwater"). In that capacity, I supervise Principal Permittee programs required to comply with the requirements of the municipal separate storm sewer system ("MS4") permit issued to the County of Orange, the Orange County Flood Control District and 26 cities (collectively, "permittees") in the northern portion of Orange County ("North County"). The MS4 permit applicable to North County permittees is that issued by the California Regional Water Quality Control Board, Santa Ana Region ("Santa Ana Water Board"), as Order No. R8-2009-0030 (the "2009 Permit"). The County of Orange is the Principal Permittee under the 2009 Permit.

3. OC Stormwater acts as a coordinating agency for the permittees under the 2009 Permit, and in the role, develops compliance strategies, provides program implementation guidance and training for each program element of the 2009 Permit, oversees regional monitoring efforts, leads program management meetings with the permittees, and retains and supervises consultants. As Program Manager for North County, I am familiar with the programs undertaken by OC Stormwater on behalf of the permittees, and also with the requirements of the

2009 Permit applicable to the permittees. I am both aware of the programs and costs set forth in my declaration and have reviewed records setting forth those programs and costs.

4. While OC Stormwater and the North County permittees have engaged in programs to address pollutants within North County watersheds prior to 2009, the 2009 Permit introduced new requirements applicable to the North County permittees, including the incorporation, for the first time, Total Maximum Daily Loads (“TMDLs”) applicable to certain constituents. Included with those requirements were the imposition of wasteload allocations (“WLAs”), which set forth numerically the amounts of pollutants allowed to be discharged by MS4s operated by the North County permittees. Prior to the effective date of the 2009 Permit, WLAs for these constituents were not incorporated into MS4 permits issued to the North County permittees.

5. Since the effective date of the 2009 Permit, and acting on behalf of the North County permittees, OC Stormwater has conducted various programs to comply with the TMDLs/WLAs established in the 2009 Permit. The cost of such programs are shared among those North County permittees whose MS4s discharge into waterbodies covered by the TMDLs/WLAs.

6. With respect to the TMDL for selenium in San Diego Creek and Newport Bay, the following new programs, among others, have been undertaken to comply with the requirements of the TMDL, including compliance with WLAs:

a. Monitoring of bird egg and fish tissue for the presence of selenium (at an approximate cost of \$755,000 since 2010);

b. Design and construction of two projects, the Peters Canyon Channel Water Capture and Reuse Pipeline (at an approximate cost of \$7,728,000) and the Santa Ana-Delhi Diversion (at an approximate cost of \$5,827,000);

c. Programmatic implementation for the TMDL for selenium under the Nitrogen and Selenium Management Program Working Group, which is a collaborative stakeholder group focused on addressing selenium and nitrogen in the Newport Bay watershed. These efforts since the inception of the 2009 Permit include a selenium water balance investigation (at an approximate cost of \$160,000), studies for developing selenium site-specific objectives (at an approximate cost of \$349,000), treatment technology evaluations and additional consultant support (at an approximate cost of \$1,058,000); and

d. I am informed and believe and therefore state that in addition that the City of Newport Beach also conducted restoration and maintenance efforts for Big Canyon Creek (at an approximate cost of \$6,674,318 since 2009), and other selenium reduction efforts (at an approximate cost of \$3,325,368 since 2009), both independent from efforts conducted by OC Stormwater.

7. With respect to the TMDL for organochlorine compounds (“OCs”) in Newport Bay and San Diego Creek, the following new programs, among others, have been undertaken to comply with the requirements of the TMDL, including compliance with WLAs:

a. Additional monitoring costs related to the need to add three groups of compounds, which include seven Aroclor polychlorinated biphenyls (Aroclor PCBs), 34 chlorinated pesticides and 53 PCB congeners to the list of analytes (at an approximate cost of \$816,264 since 2010);

b. Preparation of WLA Evaluation Assessment required to be sent to the Santa Ana Water Board (at an approximate cost of \$44,000); and

c. Bird egg and fish tissue monitoring for OCs (at an approximate cost of \$755,000 since 2010).

8. With respect to the TMDLs for metals in Coyote Creek for wet and dry weather, the following new programs, among others, have been undertaken to comply with the requirements of these TMDLs, including compliance with WLAs:

a. Monitoring, laboratory, and data management costs (with an approximate cost of \$1,121,398 since 2011).

9. With respect to the TMDL for fecal coliform in Newport Bay, the following new programs, among others, having been undertaken to comply with the requirements of the TMDL, including compliance with WLAs:

a. Complete engineering evaluations and analyses for new potential structural BMP projects at locations that drain into Newport Bay (at an approximate cost of \$302,936); and

b. Develop and implement a Source Investigation Study Design to evaluate human sources of fecal contamination and conduct targeted source investigations (presently ongoing, at an approximate cost of \$200,000 as of 2022).

10. In addition to costs associated with particular TMDLs, North County permittees have also incurred costs since the inception of the 2009 Permit through participation in the Newport Bay TMDL Funding Partners, which serves as the planning body to discuss additional studies, research, monitoring, reporting, development and revision of programs related to the

Newport Bay TMDLs. This participation, which covers each of the TMDLs discussed above for the Newport Bay Watershed, cost North County permittees approximately \$5,332,960 in reimbursement of County of Orange labor costs since 2009.

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

Executed November 3, 2022 at Orange, California.

A handwritten signature in black ink, appearing to read 'J. Fortuna', written over a horizontal line.

James Fortuna

DECLARATION OF ROBERT RODARTE AND
EXHIBITS THERETO

DECLARATION OF ROBERT RODARTE

I, ROBERT RODARTE, hereby declare and state as follows:

1. I am employed as an Administrative Manager 1 by the County of Orange (“County”) and serve as Manager, Green Infrastructure Program for the OC Public Works Department. In that capacity, I oversee a variety of NPDES permit compliance responsibilities, including new development and construction requirements for OC Public Works. I am aware of construction requirements set forth in the NPDES permit issued for MS4 discharges from municipalities in North Orange County, including the County, by the California Regional Water Quality Control Board, Santa Ana Region, as Order No. R8-2009-0030 (the “2009 Permit”).

2. In my role as Manager, Green Infrastructure Program, I am aware of County projects that would qualify as “Priority Development Projects” (“PDPs”) as defined in Section XII of the 2009 Permit and which would, by virtue of that status, be required to incorporate Low Impact Development and hydromodification best management practices (“LID-BMP”) to comply with the requirements of Section XII of the 2009 Permit.

3. I have reviewed records of several of the PDPs constructed by the County since the LID-BMP requirement became effective. My review has included a review of Agenda Staff Reports (“ASRs”) for these projects. ASRs are filed with the County Board of Supervisors prior to their taking action on the projects. The ASRs provide Board members with such information as the need for the projects and their financing and contains County staff recommendations for Board action.

4. Among the County PDPs that I have reviewed are the following:

a. County Administration North (“CAN”) (Identified as “Building 14” in the ASR): This project consists of a building needed to provide space for County governing and administrative functions. According to the ASR, CAN is part of the Civic Center Facilities Strategic Plan (“Civic Center FSP”) and provides further that “[k]ey goals of the Civic Center FSP are to improve the delivery of County services to the community by grouping similar and related services; to improve efficiencies through these departmental adjacencies; reduce energy costs by capitalizing on the Central Utilities Facility; and to improve space usage which will result in lower long-term operating and maintenance costs for the County.” A true and correct copy of the ASR for this project, minus attachments, is attached as Exhibit 1 to my Declaration. CAN has been completed and currently houses the Board of Supervisors, the Board of Supervisors meeting room and the offices of various County departments, including the Health Care Agency, the County Executive Office, County Counsel, and Human Resource Services.

b. County Administration South (CAS) (Identified as “Building 16” in the ASR): This project consists of two buildings intended to provide space for County administrative functions. According to the ASR, CAS is part of the Civic Center FSP and provides further that “[k]ey goals of the [Civic Center FSP] are to improve the delivery of County services to the community by grouping similar and related services; to improve efficiencies through these departmental adjacencies; reduce energy costs by capitalizing on the Central Utilities Facility; and to improve space usage which will result in lower long-term operating and maintenance costs for the County.” A true and correct copy of the ASR for this project, minus attachments, is attached as Exhibit 2 to my Declaration. CAS has been completed and consists of a 6-story building currently housing various County departments, including OC Public Works, the Treasurer-Tax Collector, OC Waste & Recycling, and a one-stop public

counter for members of the public, and a 1-story event/conference center for use by both the County and the public and which can serve as an Emergency Administration Center when needed.

c. Yale Transitional Center: This project consists of improvements on County-owned land to provide housing for up to 425 individuals experiencing homelessness in the Central Service Planning Area of the County. According to the ASR for the project, the center “is intended to provide shelter, meals, sanitary facilities and access to case management, employment and housing assistance, healthcare, mental health services and substance abuse treatment among other supportive services and assistance to individuals experiencing homelessness.” The ASR further states that the Yale Transitional Center is focused on “[p]roviding emergency shelter and access to wrap around supportive services will assist individuals experiencing homelessness . . . in accessing the appropriate resources to improve their overall health and stability” and also to “meet a critical need for individuals experiencing homelessness as well as the broader community, while also addressing a pressing social issue that is deeply affecting local businesses and neighborhoods.” A true and correct copy of the ASR for this project, minus attachments, is attached as Exhibit 3 to my Declaration. The Yale Transitional Center is completed.

5. I have also reviewed the Water Quality Management Plans (WQMPs) for such PDPs. The WQMPs set forth, among other items, the size of the project and how applicable LID-BMP requirements of the 2009 Permit will be implemented by the PDP. Based on my review of the WQMPs, I am informed and believe, and therefore state, that the area of the Building 14 project is approximately 5.6 acres, the area of the Building 16 project is approximately 2.7 acres and the area of the Yale Transitional Center is approximately 2.8 acres.

Based on my review of the WQMPs, I am further informed and believe, and therefore state, that modular wetlands with underground detention were employed as LID-BMPs for the CAN and CAS projects, and a Filterra treatment system was employed as a LID-BMP for the Yale Transitional Center project.

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

Executed November 3, 2022 at Orange, California.



Robert Rodarte

EXHIBIT 1



AGENDA STAFF REPORT

ASR Control 18-000944

MEETING DATE: 09/25/18
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 1
SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S): Shane Silsby (714) 667-9700
 Thomas (Mat) Miller (714) 834-6019

SUBJECT: Civic Center Facilities Strategic Plan Revision and Building 14

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Ordinance to Form	CLERK OF THE BOARD Public Hearing 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** See Financial Impact Section **Annual Cost:** See Financial Impact Section

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: See Financial Impact Section **County Audit in last 3 years:** No

Prior Board Action: 6/26/2018 #75, 4/25/2017 #40, 4/23/2013 #37, 8/21/2012 #37

RECOMMENDED ACTION(S):

1. Find that Final Environmental Impact Report No. 626, previously certified by the Board of Supervisors on April 25, 2017, together with Addendum No. 1 reflect the independent judgment of the County of Orange and satisfy the requirements of CEQA for the County of Orange Civic Center Facilities Strategic Plan Revision No. 1, which is a necessarily included element contemplated as part of the whole of the action.
2. Find that the circumstances of the County of Orange Civic Center Facilities Strategic Plan Revision No. 1 are substantially the same and that Final Environmental Impact Report No. 626 and Addendum No. 1 have adequately addressed the effects of the proposed project. No substantial changes have been made in the project; no substantial changes have occurred in the circumstances under which the project is being undertaken; and no new information of substantial importance to the project, which was not known or could not have been known when the previous Environmental Impact Report No. 626 was certified have become known; therefore no further environmental review is required.
3. All mitigation measures are fully enforceable pursuant to CEQA (Public Resources Code) Section 21081.6(b) and have either been adopted as conditions, incorporated as part of the project design, or included in the procedures of project implementation.

4. Approve the County of Orange Civic Center Facilities Strategic Plan Revision No. 1 and approve the construction of Building 14 consistent with the County of Orange Civic Center Facilities Strategic Plan Revision No. 1.
5. Authorize the Chief Real Estate Officer or designee to execute documents necessary for construction of Building 14, including, but not limited to, metes-and-bounds survey and necessary permits from the City of Santa Ana or the County.
6. Read the title of the Ordinance "An Ordinance of the Board of Supervisors of the County of Orange Authorizing the Execution and Delivery of a Facility Lease, a Ground Lease and Other Documents and Matters Related Thereto".
7. Order further reading of the Ordinance to be waived.
8. Conduct a Public Hearing.
9. Consider the matter.
10. Direct Ordinance to be placed on the agenda of the next regularly scheduled Board of Supervisors meeting for adoption.
11. At the next regularly scheduled meeting, consider the matter and adopt the Ordinance.

SUMMARY:

Adoption of the Recommended Actions will allow for full completion of Civic Center Facilities Strategic Plan Phase 2B and approves the continuance of Phase 2A design services and construction of Building 14, the lease and leaseback of the Building 14 property and reinstatement of a nonprofit corporation as it relates to the financing of Building 14 and the Civic Center Facilities Strategic Plan.

BACKGROUND INFORMATION:

On August 21, 2012, the Board of Supervisors (Board) selected Griffin Structures Inc. (Griffin) as the potential primary developer of the Building 16 and Building 14 sites. On April 23, 2013, the Board approved Ordinance 13-003 which authorized a partnership with Related/Griffin, now organized as Griffin to complete a comprehensive Civic Center Facilities Strategic Plan (Civic Center FSP) and, based upon the recommendations, to develop the Building 16 site, with an option to develop the Building 14 site. The Civic Center FSP includes the construction of a new Building 16 as part of Phase 1 and the construction of a new Building 14 as part of Phase 2. On April 25, 2017, the Board certified the Final Environmental Impact Report No. 626 (Final EIR No. 626) for the Civic Center FSP and approved actions required for public financing of Phase 1B the construction of the new Building 16 and Building 18. The construction of Buildings 16 and 18 are ongoing and currently on schedule. On June 26, 2018, the Board approved an agreement with Griffin for program management and initial design phase services for Phase 2A, which is the planning and design of the new Building 14.

Phase 2B of the Civic Center FSP, as amended, will include the demolition of existing Buildings 11, 12 and 14 of the County Civic Center Superblock and the construction of a new Building 14, which will replace the current County Hall of Administration.

The actions presented for consideration at this time would: (1) adopt Addendum No. 1 to Final EIR No. 626; (2) approve the Civic Center FSP Revision No. 1; and (3) take actions required for the public financing of the new Building 14 by the Corporation and repayment of that financing through a lease agreement with the County.

Revision No.1 County of Orange Civic Center FSP

The approved Civic Center FSP involves the +/- 11-acre County “superblock” (bounded by Ross Street, Civic Center Drive, Broadway and Santa Ana Boulevard), as well as County satellite buildings within the vicinity of the Civic Center. Key goals of the Civic Center FSP are to improve the delivery of County services to the community by grouping similar and related services; to improve efficiencies through these departmental adjacencies; reduce energy costs by capitalizing on the Central Utilities Facility; and to improve space usage which will result in lower long-term operating and maintenance costs for the County. To accomplish these goals, the Civic Center FSP anticipates the renovation of several existing facilities and the replacement of several older facilities with new construction. These activities would result in the replacement of older facilities with approximately 700,000 square feet of newly constructed government office uses within the Civic Center FSP area. The Civic Center FSP also anticipates the sale of several County owned buildings, which would result in a net decrease of 400,000 square feet of older owned properties in the Civic Center. Implementation would occur in four phases over approximately 18 years. Phase 1 activity spans from 2016 to 2020 and includes replacement of the existing Building 16 with new facilities, construction of a County conference and events center Building 18 and renovation of the H.G. Osborne Building. Phase 2 activity spans from 2020 to 2023 and includes the replacement of existing Building 14 with new facilities, demolition of Buildings 10, 11, 12 and 14. Building 10 and 12 sites become interim public use surface parking. Through the planning process for Buildings 14, 16 and 18 and the ongoing construction of Building 16 and 18, certain revision to the Civic Center FSP have become necessary. Those revisions are set forth in the attached Civic Center FSP Revision No. 1 and include a reduction of 36,201 net new building square feet within Phases 1 and 2 of the Civic Center FSP (including new Buildings 14, 16 and 18), total renovation reduction of 43,160 square feet, demolition increase of 38,420 square feet and new construction increase of 2,219 square feet.

Building 14 Implementation

Building 14 is proposed as a six-story, approximately 254,000-square foot office building located on Ross Street north of Santa Ana Boulevard. The building will include a new Board hearing room. With approval of the actions presented, construction is targeted to begin in spring 2020, with completion slated for August 2022 and public use surface parking completion in early 2023. The building will be constructed by Griffin pursuant to a Development Agreement with the Corporation, who will lease the property from the County and lease the building back to the County.

Public Financing – Lease Revenue Bonds

The Corporation was formed as part of the financing and construction of Building 16 and is a nonprofit public benefit corporation for the purpose of facilitating financings, acquisitions of property and other financial and property related transactions, by or for the benefit of the County. The Corporation is governed by a three member Board of Directors consisting of the County Executive Officer, Chief Real Estate Officer and Director of OC Public Works. Since the County owns the land on which Building 14 will be constructed, the County will enter into a Ground Lease with the Corporation. In order to finance the Building 14 project, the California Municipal Finance Authority (of which the County is a member), will issue tax-exempt bonds, to be designated as the “California Municipal Finance Authority Lease

Revenue Bonds, Series 2018A (Orange County Civic Center Infrastructure Improvement Program – Phase II).” The California Municipal Finance Authority will loan the bond proceeds, which will be utilized to construct Building 14, to the Corporation pursuant to a Loan Agreement.

The Corporation will enter into a Facility Lease with the County in which the Corporation will undertake the Building 14 project and lease the new Building 14 to the County. The base rental payments by the County under the Facility Lease will be used to repay the loan to the California Municipal Finance Authority, which pays the debt service on the Bonds to the bank trustee.

The Development Agreement is between Griffin, the developer and the Corporation for the actual construction of the new building. The Corporation will oversee the financing and construction of the Building 14 project.

The estimated par amount of the proposed California Municipal Finance Authority Lease Revenue Bonds, Series 2018A (Orange County Civic Center Infrastructure Improvement Program – Phase II) Bonds (Bonds) is \$198.2 million.

Sources and uses of bond proceeds are estimated as follows:

Sources:	Par Amount	\$198,220,000
	Premium	\$16,529,573
	Investment Earnings-project fund	\$12,398,375
	Total Sources:	\$227,147,948
Uses:	Project Fund	\$185,788,613
	Capitalized Interest Fund	\$39,570,637
	Cost of Bond Issuance	\$1,783,980
	Contingency	\$4,718
	Total Uses:	\$227,147,948

Public Finance staff recommends a 30-year debt service schedule, with an optional redemption provision after 10 years. The true interest cost is estimated to be 4.4%. Estimated annual base rental payments/debt service is \$13.8 million, for a total cost of \$393 million. An estimated \$39.6 million in interest cost will be capitalized through June 1, 2023, six months beyond the expected construction period. Base rental payments will commence once the County takes occupancy of the building and the Certificate of Substantial Completion is accepted. Current year estimated \$1.8 million cost of bond issuance will be paid from bond proceeds.

Credit Ratings

Presentations to Standard and Poor’s Global Ratings and Fitch Ratings are scheduled for late October 2018, with formal ratings to be received prior to issuance in December 2018.

Financing Documents

Following is a description of the financing documents attached.

Ordinance of the Board of Supervisors – Ordinance to be adopted by the Board, which identifies the legal authority for the issuance of bonds, authorizes the maximum amount of bonds to be issued by the

authority, approves the Ground Lease, the Facility Lease and Appendix A of the Preliminary Official Statement. Adoption of the Ordinance by the Board will also form the Corporation.

Ground Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions relating to the lease of the Building 14 site between the County of Orange and the Corporation.

Facility Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions of the use of certain real property, improvements and facilities to be to be constructed, acquired and equipped by the Corporation, including Building 14.

Development Agreement– An agreement between the Corporation and Griffin whereby Griffin is engaged to develop, administer and manage the design, permitting and construction of the Building 14 project, including pursuant to a guaranteed maximum construction price, approved construction drawings and an approved project schedule.

Articles of Incorporation – Document that establishes the Corporation.

Bylaws of the Corporation – Document that describes the purpose and directors of the Corporation and sets forth its governance.

Loan Agreement – An agreement between the California Municipal Finance Authority, as issuer, and the Corporation, which sets forth the general terms and conditions of the loan financing, loan repayment and construction draws.

Indenture – An agreement between the California Municipal Finance Authority, as issuer, and Trustee (Zions Bank) pursuant to which the bonds will be issued and which sets forth the general terms and conditions and requirements governing the Bonds.

Preliminary Official Statement (POS) – Discloses material information pertaining to the issuance of the Bonds, including purpose, collateralization, repayment process, financial, economic and demographic characteristics of the County. The POS provides potential investors an opportunity to review data about the County (Appendix A) to determine the credit quality of the Bonds.

Continuing Disclosure Certificate – Provides documentation to bondholders and credit rating agencies of County certification that it will report material events that may affect the rating or payment of the Bonds and contents required in the Continuing Disclosure Annual Report.

Bond Purchase Agreement – An agreement that defines the terms and conditions under which the underwriters will purchase the Bonds. The agreement states the principal amount of the Bonds, the interest rate and maturity dates.

Compliance with CEQA: The Project is a necessarily included element of the project considered in Final EIR No. 626, which was certified by the Board on April 25, 2017, together with Addendum No. 1, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project which not know or could not have been known when the Final EIR No. 626 was certified have become known; therefore no further environmental review is required.

FINANCIAL IMPACT:

Issuing the California Municipal Finance Authority, Lease Revenue Bonds, Series 2018A, (Orange County Infrastructure Improvement Program – Phase II) in the amount of \$198.2 million for 30 years will cost approximately \$13.8 million annual base rental payments/debt service, for a total cost of \$393 million. The financing allows for an optional redemption after 10 years, and execution of this option will be evaluated during the County's annual Strategic Financial Planning process.

The source of base rental payments/debt service will be the occupant County departments including those identified in the table below. The allocation of base rental payments/debt service, by department, will be based upon square foot usage and is expected to be approximately 51% paid from non-general fund (NGF) sources.

The table below illustrates the anticipated user department rent allocation and general fund (GF) share.

Annual Base Rental Payment/Debt Service		\$13,792,750	
County Department - Occupant	Square Foot	Percent	Base Rent Allocation
Health Care Agency - NGF	76,800	30	\$4,166,568
OC Community Resources - NGF	28,560	11	1,549,442
To Be Determined - NGF	15,260	6	827,889
CEO/Risk Management - NGF	8,320	3	451,378
Board of Supervisors - GF	32,036	13	1,738,023
County Counsel - GF	23,140	9	1,255,396
Human Resource Services - GF	19,240	8	1,043,812
County Executive Office - GF	18,460	7	1,001,495
Clerk of the Board - GF	7,280	3	394,956
OIR/Perf Audit/TBD - GF	3,640	1	197,478
Board Meeting Room - GF	21,498	9	1,166,313
Total Allocation	254,234	100.00%	\$13,792,750
Non-General Fund Allocation	128,940	51	6,995,277
General Fund Allocation	125,294	49	6,797,473
Total Allocation	254,234	100.00%	\$13,792,750

Numbers may not foot due to rounding. Actual occupancy may change during the programming process.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Addendum No. 1 to Final EIR No. 626
Attachment B - Final EIR No. 626 March 2017
Attachment C - Civic Center Facilities Strategic Plan April 2017
Attachment D - Civic Center Facilities Strategic Plan Revision No. 1
Attachment E - Ordinance of the Board of Supervisors
Attachment F - Ground Lease Agreement
Attachment G - Facility Lease Agreement
Attachment H - Development Agreement with Exhibits A-T
Attachment I - Capital Facilities Development Corporation Articles of Incorporation
Attachment J - Capital Facilities Development Corporation Bylaws
Attachment K - Loan Agreement
Attachment L - Indenture
Attachment M - Preliminary Official Statement
Attachment N - Appendix A
Attachment O - Continuing Disclosure Certificate
Attachment P - Bond Purchase Agreement
Attachment Q - Public Resources Code Section 21081.6(b)

EXHIBIT 2



AGENDA STAFF REPORT

ASR Control 17-000365

MEETING DATE: 04/25/17
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 1
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Scott Mayer (714) 834-3046
 Shane Silsby (714) 667-9700

SUBJECT: Civic Center Facilities Strategic Plan and Building 16

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Resolution(s) and Ordinance(s)	CLERK OF THE BOARD Public Hearing 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A
Staffing Impact: No **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: 3/22/2016 #32SE, 6/23/2015 #S77C, 4/23/2013 #37, 8/21/2012 #37

RECOMMENDED ACTION(S):

1. Adopt attached Resolution:
 - Certifying Final Environmental Impact Report No. 626 for the County of Orange Civic Center Facilities Strategic Plan;
 - Adopting Statement of Facts, Findings and Statement of Overriding Considerations for Final Environmental Impact Report No. 626;
 - Adopting Mitigation Monitoring and Reporting Program for Final Environmental Impact Report No. 626, and;
 - Approving the County of Orange Civic Center Facilities Strategic Plan and the construction of Building 16 consistent with the County of Orange Civic Center Facilities Strategic Plan.
2. Find that Final Environmental Impact Report No. 626 reflects the independent judgment of the County of Orange and satisfies the requirements of CEQA for the construction of Building 16 consistent with the County of Orange Civic Center Facilities Strategic Plan and the formation of Capital Facilities Development Corporation.
3. Authorize the Chief Real Estate Officer or designee to execute documents necessary for construction of Building 16, including, but not limited to, lot line adjustments and necessary permits from the City of Santa Ana or the County.

4. Read the title of the Ordinance “An Ordinance of the Board of Supervisors of the County of Orange Authorizing the Execution and Delivery of a Facility Lease, a Ground Lease and Other Documents and Matters Related Thereto.”
5. Order further reading of the Ordinance to be waived.
6. Conduct a Public Hearing.
7. Consider the matter.
8. Direct Ordinance to be placed on the agenda of the next regularly scheduled Board of Supervisors meeting for adoption.
9. At the next regularly scheduled meeting, consider the matter, and adopt the Ordinance.

SUMMARY:

Adoption of the Recommended Actions approves the County of Orange Civic Center Facilities Strategic Plan, the construction of a new Building 16 within the Civic Center, the lease and leaseback of the Building 16 property, and establishment of a nonprofit corporation as it relates to the financing of Building 16 and the Civic Center Facilities Strategic Plan.

BACKGROUND INFORMATION:

On August 21, 2012, the Board of Supervisors (Board) selected Griffin Structures Inc. (Griffin) as the potential primary developer of the Building 16 site. On April 23, 2013, the Board adopted an ordinance approving a public/private partnership with Griffin to complete a comprehensive Civic Center Facilities Strategic Plan Study (Civic Center Master Plan) for the Orange County Civic Center area and, specifically, to complete a Building 16 Development Master Plan Study. On June 23, 2015, the Board approved an amendment to the contract with Griffin to further develop and finalize the Civic Center Master Plan Study. On February 24, 2016, the Board received a presentation on the Facilities Strategic Plan and, on March 22, 2016, approved a Program Management and Design Agreement with Griffin for the planning and design phase services for a new Building 16 within the Orange County Civic Center (Civic Center).

The actions presented for consideration at this time would: 1) certify Final Environmental Impact Report No. 626 (FEIR No. 626), which analyzes the potential environmental effects of the Facilities Strategic Plan and of Building 16; 2) approve the Facilities Strategic Plan; 3) implement the public/private partnership with Griffin to develop Building 16 through the approval of the formation of Capital Facilities Development Corporation (Corporation); 4) approve business terms in a Development Agreement between Griffin and the Corporation for the construction of Building 16; and 5) take actions required for public financing.

County of Orange Civic Center Facilities Strategic Plan

The Facilities Strategic Plan involves the +/- 11-acre County “superblock” (bounded by Ross Street, Civic Center Drive, Broadway and Santa Ana Boulevard), as well as County satellite buildings within the vicinity of the Civic Center. Key goals of the Facilities Strategic Plan are to improve the delivery of County services to the community by grouping similar and related services; to improve efficiencies through these

departmental adjacencies; reduce energy costs by capitalizing on the Central Utilities Facility; and to improve space usage which will result in lower long-term operating and maintenance costs for the County. To accomplish these goals, the Facilities Strategic Plan anticipates the renovation of several existing facilities and the replacement of several older facilities with new construction. These activities would result in the replacement of older facilities with 390,000 square feet of newly constructed government office uses within the Facilities Strategic Plan area. The Facilities Strategic Plan also anticipates the sale of several County owned buildings, which would result in a net decrease of 400,000 square feet of older owned properties in the Civic Center. Implementation would occur in four phases over approximately 18 years. Phase 1 activity spans from 2016 to 2021 and includes replacement of the existing Building 16 with new facilities, demolition of Building 11, construction of a County conference and events center and renovation of the H.G. Osborne Building. The complete Facilities Strategic Plan, which contains a total of four possible phases, is attached for the Board's review and approval.

Building 16 Implementation

Building 16 is proposed as a six-story, approximately 251,000-square foot office building located on Ross Street north of Santa Ana Boulevard. The building will include a one-stop public counter and a single story, approximately 6,600-square foot event/conference center (Building 18), which is planned for use by both the County and the public, and will also serve as an Emergency Administration Center when needed to serve the County. With approval of the actions presented, construction is targeted to begin in fall 2017, with completion slated for January 2020. The building will be constructed by Griffin pursuant to a Development Agreement with the Corporation (the formation of which is addressed below), who will lease the property from the County and lease the building back to the County.

Public Financing – Lease Revenue Bonds

The Corporation will be formed as a nonprofit public benefit corporation for the purpose of facilitating financings, acquisitions of property, and other financial and property related transactions, by or for the benefit of the County of Orange. The Corporation is governed by a three member Board of Directors consisting of the County Chief Executive Officer, Chief Real Estate Officer and Director of OC Public Works. Since the County owns the land on which Building 16 will be constructed, the County will enter into a Ground Lease with the Corporation. In order to finance the Building 16 project, the California Municipal Finance Authority (of which the County is a member), will issue tax-exempt bonds, to be designated as the "California Municipal Finance Authority Lease Revenue Bonds, Series 2017A (Orange County Civic Center Infrastructure Improvement Program – Phase I)." The California Municipal Finance Authority will loan the bond proceeds, which will be utilized to construct Building 16, to the Corporation pursuant to a Loan Agreement.

The Corporation will enter into a Facility Lease with the County in which the Corporation will undertake the Building 16 project and lease the new Building 16 to the County. The base rental payments by the County under the Facility Lease will be used to repay the loan to the California Municipal Finance Authority, which pays the debt service on the Bonds to the bank trustee.

The Development Agreement is between Griffin, the developer, and the Corporation. The Corporation will oversee the financing and construction of the Building 16 project.

The estimated par amount of the proposed California Municipal Finance Authority Lease Revenue Bonds, Series 2017A (Orange County Civic Center Infrastructure Improvement Program – Phase I) Bonds (Bonds) is \$158.4 million.

Sources and uses of bond proceeds are estimated as follows:

Sources:	Par Amount	\$158,380,000
	Premium	19,644,602
	Total Sources:	\$178,024,602
Uses:	Project Fund	\$152,924,256
	Capitalized Interest Fund	23,839,841
	Cost of Bond Issuance	1,255,953
	Contingency	4,552
	Total Uses:	\$178,024,602

Public Finance staff recommends a 30-year debt service schedule, with an optional redemption provision after 10 years. The true interest cost is estimated to be 4.05%. Estimated annual base rental payments/debt service is \$10.8 million, for a total cost of \$315.3 million. An estimated \$23,839,841 in interest cost will be capitalized through July 2020, six months beyond the expected construction period. Base rental payments will commence once the County takes occupancy of the building and the Certificate of Substantial Completion is accepted. Current year estimated \$1.25 million cost of bond issuance will be paid from bond proceeds.

Credit Ratings

Presentations to Standard and Poor's Global Ratings and Fitch Ratings are scheduled for the week of April 17, 2017, with formal ratings to be received prior to issuance in June 2017.

Financing Documents

Following is a description of the financing documents attached.

Ordinance of the Board of Supervisors – Ordinance to be adopted by the Board of Supervisors, which identifies the legal authority for the issuance of bonds, authorizes the maximum amount of bonds to be issued by the authority, approves the Ground Lease, the Facility Lease and Appendix A of the Preliminary Official Statement. Adoption of the Ordinance by the Board of Supervisors will also form the Corporation.

Ground Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions relating to the lease of the Building 16 site between the County of Orange and the Corporation.

Facility Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions of the use of certain real property, improvements, and facilities to be to be constructed, acquired, and equipped by the Corporation, including Building 16.

Development Agreement– An agreement between the Corporation and Griffin whereby Griffin is engaged to develop, administer, and manage the design, permitting, and construction of the Building 16 project, including pursuant to a guaranteed maximum construction price, approved construction drawings, and an approved project schedule.

Articles of Incorporation – Document that establishes the Corporation.

Bylaws of the Corporation – Document that describes the purpose and directors of the Corporation and sets forth its governance.

Loan Agreement – An agreement between the California Municipal Finance Authority, as issuer, and the Corporation, which sets forth the general terms and conditions of the loan financing, loan repayment, and construction draws.

Indenture – An agreement between the California Municipal Finance Authority, as issuer, and Trustee (Zions Bank) pursuant to which the bonds will be issued and which sets forth the general terms and conditions and requirements governing the Bonds.

Preliminary Official Statement (POS) – Discloses material information pertaining to the issuance of the Bonds, including purpose, collateralization, repayment process, and financial, economic, and demographic characteristics of the County. The POS provides potential investors an opportunity to review data about the County (Appendix A) to determine the credit quality of the Bonds.

Continuing Disclosure Certificate – Provides documentation to bondholders and credit rating agencies of the County’s certification that it will report material events that may affect the rating or payment of the Bonds and contents required in the Continuing Disclosure Annual Report.

Bond Purchase Agreement – An agreement that defines the terms and conditions under which the underwriters will purchase the Bonds. The agreement states the principal amount of the Bonds, the interest rate, and maturity dates.

FINANCIAL IMPACT:

Issuing the California Municipal Finance Authority, Lease Revenue Bonds, Series 2017A, (Orange County Infrastructure Improvement Program – Phase I) in the amount of \$158.4 million for 30 years will cost approximately \$10.8 million annual base rental payments/debt service, for a total cost of \$315.3 million. The financing allows for an optional redemption after 10 years, and execution of this option will be evaluated during the County's annual Strategic Financial Planning process.

The source of base rental payments/debt service will be the occupant County departments: Orange County Public Works, Orange County Waste and Recycling, the Treasurer-Tax Collector, and departments to be determined. The allocation of base rental payments/debt service, by department, will be based upon square foot usage and is expected to be over 65% paid from non-general fund (NGF) sources.

The table below illustrates the anticipated user department rent allocation and general fund (GF) share.

Annual Base Rental Payment/Debt Service	\$10,814,000
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County Department - Occupant	Square Foot	Percent	Base Rent Allocation
OC Public Works – GF Base Budget	50,722	19.96	2,157,934
OC Public Works - NGF	56,183	22.10	2,390,230

Treasurer-Tax Collector - GF	31,840	12.53	1,354,600
OC Waste & Recycling - NGF	18,644	7.33	793,190
CEO-Real Estate - GF	8,944	3.52	380,513
TBD - GF	36,920	14.52	1,570,724
TBD - NGF	30,326	11.93	1,290,189
One Stop Shop/Conference Center - GF	7,720	3.04	328,455
One Stop Shop/Conference Center - NGF	12,885	5.07	548,164
Total Allocation	254,184	100.00%	\$10,814,000
General Fund Allocation	85,424	33.61	3,634,293
Non-General Fund Allocation/GF Base Budget	168,760	66.39	7,179,707
Total Allocation	254,184	100.00%	\$10,814,000

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

OC Public Works

ATTACHMENT(S):

- Attachment A - Environmental Impact Report No. 626
- Attachment A - Volume II Technical Appendices is on file with the office of the Clerk of the Board.
- Attachment B - FEIR/Comments & Responses to Comments
- Attachment C - Resolution
- Attachment D - Civic Center Facilities Strategic Plan
- Attachment E - Ordinance
- Attachment F - Ground Lease Agreement
- Attachment G - Facility Lease Agreement
- Attachment H - Development Agreement (Exhibit E of Facility Lease)
- Attachment I - Capital Facilities Development Corporation Articles of Incorporation
- Attachment J - Capital Facilities Development Corporation Bylaws
- Attachment K - Loan Agreement
- Attachment L - Indenture
- Attachment M - Preliminary Official Statement
- Attachment N - Appendix A
- Attachment O - Continuing Disclosure Certificate
- Attachment P - Bond Purchase Agreement
- Attachment Q - Word Version of Attachment C Resolution



AGENDA STAFF REPORT

ASR Control 18-000944

MEETING DATE: 09/25/18
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 1
SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S): Shane Silsby (714) 667-9700
 Thomas (Mat) Miller (714) 834-6019

SUBJECT: Civic Center Facilities Strategic Plan Revision and Building 14

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Ordinance to Form	CLERK OF THE BOARD Public Hearing 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** See Financial Impact Section **Annual Cost:** See Financial Impact Section

Staffing Impact: No **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section **County Audit in last 3 years:** No

Prior Board Action: 6/26/2018 #75, 4/25/2017 #40, 4/23/2013 #37, 8/21/2012 #37

RECOMMENDED ACTION(S):

1. Find that Final Environmental Impact Report No. 626, previously certified by the Board of Supervisors on April 25, 2017, together with Addendum No. 1 reflect the independent judgment of the County of Orange and satisfy the requirements of CEQA for the County of Orange Civic Center Facilities Strategic Plan Revision No. 1, which is a necessarily included element contemplated as part of the whole of the action.
2. Find that the circumstances of the County of Orange Civic Center Facilities Strategic Plan Revision No. 1 are substantially the same and that Final Environmental Impact Report No. 626 and Addendum No. 1 have adequately addressed the effects of the proposed project. No substantial changes have been made in the project; no substantial changes have occurred in the circumstances under which the project is being undertaken; and no new information of substantial importance to the project, which was not known or could not have been known when the previous Environmental Impact Report No. 626 was certified have become known; therefore no further environmental review is required.
3. All mitigation measures are fully enforceable pursuant to CEQA (Public Resources Code) Section 21081.6(b) and have either been adopted as conditions, incorporated as part of the project design, or included in the procedures of project implementation.

4. Approve the County of Orange Civic Center Facilities Strategic Plan Revision No. 1 and approve the construction of Building 14 consistent with the County of Orange Civic Center Facilities Strategic Plan Revision No. 1.
5. Authorize the Chief Real Estate Officer or designee to execute documents necessary for construction of Building 14, including, but not limited to, metes-and-bounds survey and necessary permits from the City of Santa Ana or the County.
6. Read the title of the Ordinance "An Ordinance of the Board of Supervisors of the County of Orange Authorizing the Execution and Delivery of a Facility Lease, a Ground Lease and Other Documents and Matters Related Thereto".
7. Order further reading of the Ordinance to be waived.
8. Conduct a Public Hearing.
9. Consider the matter.
10. Direct Ordinance to be placed on the agenda of the next regularly scheduled Board of Supervisors meeting for adoption.
11. At the next regularly scheduled meeting, consider the matter and adopt the Ordinance.

SUMMARY:

Adoption of the Recommended Actions will allow for full completion of Civic Center Facilities Strategic Plan Phase 2B and approves the continuance of Phase 2A design services and construction of Building 14, the lease and leaseback of the Building 14 property and reinstatement of a nonprofit corporation as it relates to the financing of Building 14 and the Civic Center Facilities Strategic Plan.

BACKGROUND INFORMATION:

On August 21, 2012, the Board of Supervisors (Board) selected Griffin Structures Inc. (Griffin) as the potential primary developer of the Building 16 and Building 14 sites. On April 23, 2013, the Board approved Ordinance 13-003 which authorized a partnership with Related/Griffin, now organized as Griffin to complete a comprehensive Civic Center Facilities Strategic Plan (Civic Center FSP) and, based upon the recommendations, to develop the Building 16 site, with an option to develop the Building 14 site. The Civic Center FSP includes the construction of a new Building 16 as part of Phase 1 and the construction of a new Building 14 as part of Phase 2. On April 25, 2017, the Board certified the Final Environmental Impact Report No. 626 (Final EIR No. 626) for the Civic Center FSP and approved actions required for public financing of Phase 1B the construction of the new Building 16 and Building 18. The construction of Buildings 16 and 18 are ongoing and currently on schedule. On June 26, 2018, the Board approved an agreement with Griffin for program management and initial design phase services for Phase 2A, which is the planning and design of the new Building 14.

Phase 2B of the Civic Center FSP, as amended, will include the demolition of existing Buildings 11, 12 and 14 of the County Civic Center Superblock and the construction of a new Building 14, which will replace the current County Hall of Administration.

The actions presented for consideration at this time would: (1) adopt Addendum No. 1 to Final EIR No. 626; (2) approve the Civic Center FSP Revision No. 1; and (3) take actions required for the public financing of the new Building 14 by the Corporation and repayment of that financing through a lease agreement with the County.

Revision No.1 County of Orange Civic Center FSP

The approved Civic Center FSP involves the +/- 11-acre County “superblock” (bounded by Ross Street, Civic Center Drive, Broadway and Santa Ana Boulevard), as well as County satellite buildings within the vicinity of the Civic Center. Key goals of the Civic Center FSP are to improve the delivery of County services to the community by grouping similar and related services; to improve efficiencies through these departmental adjacencies; reduce energy costs by capitalizing on the Central Utilities Facility; and to improve space usage which will result in lower long-term operating and maintenance costs for the County. To accomplish these goals, the Civic Center FSP anticipates the renovation of several existing facilities and the replacement of several older facilities with new construction. These activities would result in the replacement of older facilities with approximately 700,000 square feet of newly constructed government office uses within the Civic Center FSP area. The Civic Center FSP also anticipates the sale of several County owned buildings, which would result in a net decrease of 400,000 square feet of older owned properties in the Civic Center. Implementation would occur in four phases over approximately 18 years. Phase 1 activity spans from 2016 to 2020 and includes replacement of the existing Building 16 with new facilities, construction of a County conference and events center Building 18 and renovation of the H.G. Osborne Building. Phase 2 activity spans from 2020 to 2023 and includes the replacement of existing Building 14 with new facilities, demolition of Buildings 10, 11, 12 and 14. Building 10 and 12 sites become interim public use surface parking. Through the planning process for Buildings 14, 16 and 18 and the ongoing construction of Building 16 and 18, certain revision to the Civic Center FSP have become necessary. Those revisions are set forth in the attached Civic Center FSP Revision No. 1 and include a reduction of 36,201 net new building square feet within Phases 1 and 2 of the Civic Center FSP (including new Buildings 14, 16 and 18), total renovation reduction of 43,160 square feet, demolition increase of 38,420 square feet and new construction increase of 2,219 square feet.

Building 14 Implementation

Building 14 is proposed as a six-story, approximately 254,000-square foot office building located on Ross Street north of Santa Ana Boulevard. The building will include a new Board hearing room. With approval of the actions presented, construction is targeted to begin in spring 2020, with completion slated for August 2022 and public use surface parking completion in early 2023. The building will be constructed by Griffin pursuant to a Development Agreement with the Corporation, who will lease the property from the County and lease the building back to the County.

Public Financing – Lease Revenue Bonds

The Corporation was formed as part of the financing and construction of Building 16 and is a nonprofit public benefit corporation for the purpose of facilitating financings, acquisitions of property and other financial and property related transactions, by or for the benefit of the County. The Corporation is governed by a three member Board of Directors consisting of the County Executive Officer, Chief Real Estate Officer and Director of OC Public Works. Since the County owns the land on which Building 14 will be constructed, the County will enter into a Ground Lease with the Corporation. In order to finance the Building 14 project, the California Municipal Finance Authority (of which the County is a member), will issue tax-exempt bonds, to be designated as the “California Municipal Finance Authority Lease

Revenue Bonds, Series 2018A (Orange County Civic Center Infrastructure Improvement Program – Phase II).” The California Municipal Finance Authority will loan the bond proceeds, which will be utilized to construct Building 14, to the Corporation pursuant to a Loan Agreement.

The Corporation will enter into a Facility Lease with the County in which the Corporation will undertake the Building 14 project and lease the new Building 14 to the County. The base rental payments by the County under the Facility Lease will be used to repay the loan to the California Municipal Finance Authority, which pays the debt service on the Bonds to the bank trustee.

The Development Agreement is between Griffin, the developer and the Corporation for the actual construction of the new building. The Corporation will oversee the financing and construction of the Building 14 project.

The estimated par amount of the proposed California Municipal Finance Authority Lease Revenue Bonds, Series 2018A (Orange County Civic Center Infrastructure Improvement Program – Phase II) Bonds (Bonds) is \$198.2 million.

Sources and uses of bond proceeds are estimated as follows:

Sources:	Par Amount	\$198,220,000
	Premium	\$16,529,573
	Investment Earnings-project fund	\$12,398,375
	Total Sources:	\$227,147,948
Uses:	Project Fund	\$185,788,613
	Capitalized Interest Fund	\$39,570,637
	Cost of Bond Issuance	\$1,783,980
	Contingency	\$4,718
	Total Uses:	\$227,147,948

Public Finance staff recommends a 30-year debt service schedule, with an optional redemption provision after 10 years. The true interest cost is estimated to be 4.4%. Estimated annual base rental payments/debt service is \$13.8 million, for a total cost of \$393 million. An estimated \$39.6 million in interest cost will be capitalized through June 1, 2023, six months beyond the expected construction period. Base rental payments will commence once the County takes occupancy of the building and the Certificate of Substantial Completion is accepted. Current year estimated \$1.8 million cost of bond issuance will be paid from bond proceeds.

Credit Ratings

Presentations to Standard and Poor’s Global Ratings and Fitch Ratings are scheduled for late October 2018, with formal ratings to be received prior to issuance in December 2018.

Financing Documents

Following is a description of the financing documents attached.

Ordinance of the Board of Supervisors – Ordinance to be adopted by the Board, which identifies the legal authority for the issuance of bonds, authorizes the maximum amount of bonds to be issued by the

authority, approves the Ground Lease, the Facility Lease and Appendix A of the Preliminary Official Statement. Adoption of the Ordinance by the Board will also form the Corporation.

Ground Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions relating to the lease of the Building 14 site between the County of Orange and the Corporation.

Facility Lease – An agreement between the County of Orange and the Corporation, which sets forth the terms and conditions of the use of certain real property, improvements and facilities to be to be constructed, acquired and equipped by the Corporation, including Building 14.

Development Agreement– An agreement between the Corporation and Griffin whereby Griffin is engaged to develop, administer and manage the design, permitting and construction of the Building 14 project, including pursuant to a guaranteed maximum construction price, approved construction drawings and an approved project schedule.

Articles of Incorporation – Document that establishes the Corporation.

Bylaws of the Corporation – Document that describes the purpose and directors of the Corporation and sets forth its governance.

Loan Agreement – An agreement between the California Municipal Finance Authority, as issuer, and the Corporation, which sets forth the general terms and conditions of the loan financing, loan repayment and construction draws.

Indenture – An agreement between the California Municipal Finance Authority, as issuer, and Trustee (Zions Bank) pursuant to which the bonds will be issued and which sets forth the general terms and conditions and requirements governing the Bonds.

Preliminary Official Statement (POS) – Discloses material information pertaining to the issuance of the Bonds, including purpose, collateralization, repayment process, financial, economic and demographic characteristics of the County. The POS provides potential investors an opportunity to review data about the County (Appendix A) to determine the credit quality of the Bonds.

Continuing Disclosure Certificate – Provides documentation to bondholders and credit rating agencies of County certification that it will report material events that may affect the rating or payment of the Bonds and contents required in the Continuing Disclosure Annual Report.

Bond Purchase Agreement – An agreement that defines the terms and conditions under which the underwriters will purchase the Bonds. The agreement states the principal amount of the Bonds, the interest rate and maturity dates.

Compliance with CEQA: The Project is a necessarily included element of the project considered in Final EIR No. 626, which was certified by the Board on April 25, 2017, together with Addendum No. 1, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken and no new information of substantial importance to the project which not know or could not have been known when the Final EIR No. 626 was certified have become known; therefore no further environmental review is required.

FINANCIAL IMPACT:

Issuing the California Municipal Finance Authority, Lease Revenue Bonds, Series 2018A, (Orange County Infrastructure Improvement Program – Phase II) in the amount of \$198.2 million for 30 years will cost approximately \$13.8 million annual base rental payments/debt service, for a total cost of \$393 million. The financing allows for an optional redemption after 10 years, and execution of this option will be evaluated during the County's annual Strategic Financial Planning process.

The source of base rental payments/debt service will be the occupant County departments including those identified in the table below. The allocation of base rental payments/debt service, by department, will be based upon square foot usage and is expected to be approximately 51% paid from non-general fund (NGF) sources.

The table below illustrates the anticipated user department rent allocation and general fund (GF) share.

Annual Base Rental Payment/Debt Service	\$13,792,750		
County Department - Occupant	Square Foot	Percent	Base Rent Allocation
Health Care Agency - NGF	76,800	30	\$4,166,568
OC Community Resources - NGF	28,560	11	1,549,442
To Be Determined - NGF	15,260	6	827,889
CEO/Risk Management - NGF	8,320	3	451,378
Board of Supervisors - GF	32,036	13	1,738,023
County Counsel - GF	23,140	9	1,255,396
Human Resource Services - GF	19,240	8	1,043,812
County Executive Office - GF	18,460	7	1,001,495
Clerk of the Board - GF	7,280	3	394,956
OIR/Perf Audit/TBD - GF	3,640	1	197,478
Board Meeting Room - GF	21,498	9	1,166,313
Total Allocation	254,234	100.00%	\$13,792,750
Non-General Fund Allocation	128,940	51	6,995,277
General Fund Allocation	125,294	49	6,797,473
Total Allocation	254,234	100.00%	\$13,792,750

Numbers may not foot due to rounding. Actual occupancy may change during the programming process.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

- Attachment A - Addendum No. 1 to Final EIR No. 626
- Attachment B - Final EIR No. 626 March 2017
- Attachment C - Civic Center Facilities Strategic Plan April 2017
- Attachment D - Civic Center Facilities Strategic Plan Revision No. 1
- Attachment E - Ordinance of the Board of Supervisors
- Attachment F - Ground Lease Agreement
- Attachment G - Facility Lease Agreement
- Attachment H - Development Agreement with Exhibits A-T
- Attachment I - Capital Facilities Development Corporation Articles of Incorporation
- Attachment J - Capital Facilities Development Corporation Bylaws
- Attachment K - Loan Agreement
- Attachment L - Indenture
- Attachment M - Preliminary Official Statement
- Attachment N - Appendix A
- Attachment O - Continuing Disclosure Certificate
- Attachment P - Bond Purchase Agreement
- Attachment Q - Public Resources Code Section 21081.6(b)

EXHIBIT 3



AGENDA STAFF REPORT

ASR Control 19-001157

MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 1
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Thomas A. Miller (714) 834-6019
Tim Corbett (714) 834-3046

SUBJECT: Yale Transitional Center Lease

Table with 3 columns: CEO CONCUR, COUNTY COUNSEL REVIEW, CLERK OF THE BOARD. Includes details on concurring, review status, and board discussion.

Budgeted: Yes
Current Year Cost: See Financial Impact Section
Annual Cost: See Financial Impact Section
Staffing Impact: No
of Positions:
Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section
County Audit in last 3 years: No

Prior Board Action: 11/20/2018 #S41D

RECOMMENDED ACTION(S):

- 1. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA), Class 32 (In-Fill Development Project) pursuant to CEQA Guidelines, Section 15332.
2. Find that the County may forgo the competitive bidding process for the construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness, because the process would not result in an economic advantage for the County.
3. Adopt the Resolution making certain findings pursuant to Government Code 26227 related to the approval of a Ground Lease with Shelter Providers of Orange County, Inc. dba HomeAid Orange County for construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness.
4. Approve the Cooperation and Implementation Agreement with Shelter Providers of Orange County, Inc. dba HomeAid Orange County outlining conditions for the Ground Lease for construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness, and authorize the Chief Real Estate Officer or designee to execute the agreement in substantially the form attached, with approval of

County Counsel.

5. Approve the Ground Lease with a two-year term, with a one-year option to extend, with Shelter Providers of Orange County, Inc. dba HomeAid Orange County for the construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness, and authorize the Chief Real Estate Officer or designee to execute the Ground Lease in substantially the form attached, with approval of County Counsel.
6. Direct Auditor-Controller, upon notification from Chief Real Estate Officer, or designee, to issue payments to Shelter Providers of Orange County, Inc. dba HomeAid Orange County not to exceed the total amount of \$25,275,703 for construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness, in two equal disbursements of \$12,637,851 at execution of the Ground Lease and at 50 percent completion of construction, upon notification by Chief Real Estate Officer, or designee.
7. Authorize the Chief Real Estate Officer or designee to sign any and all necessary documents related to the construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness, as set forth in the Ground Lease, including minor modifications and amendments to the Ground Lease that do not materially alter the terms or financial obligations to the County, and perform all activities specified under the terms of the Ground Lease and Cooperation and Implementation Agreement.

SUMMARY:

Approval of the Cooperation and Implementation Agreement and Ground Lease with Shelter Providers of Orange County, Inc. dba HomeAid Orange County will allow for the construction of improvements on County-owned property located at 2229 South Yale Street, Santa Ana for the Yale Transitional Center for individuals experiencing homelessness.

BACKGROUND INFORMATION:

On October 25, 2018, the County received a letter from the City of Santa Ana (City) recommending a parcel located at 2229 S. Yale Street, Santa Ana (Property) as a viable site for a full-service shelter (Attachment F) and a replacement for the Courtyard Transitional Center (Courtyard) facility in Santa Ana. The Courtyard facility will cease to operate as the Yale Transitional Center becomes operational. The County and the City previously had negotiated and entered into a Memorandum of Understanding related to the relocation of the Courtyard. This Memorandum of Understanding has been terminated at the request of the City. CEO Real Estate coordinated a collective review of the property with County stakeholder agencies and received a similar recommendation. On November 20, 2018, the Board authorized the Chief Real Estate Officer to execute a Purchase and Sale Agreement with Omega Engineering, Inc. for the purchase of the Property for \$12.25 million. The County closed escrow on the Property on January 11, 2019.

The Yale Transitional Center will shelter up to 425 individuals experiencing homelessness from the Central Service Planning Area. Families with minor children will not be served at this location. The proposed renovation project to permit the operation of the Property as a transitional center will include restrooms, showers and dormitory-style sleeping areas for men, women and couples. The second floor will consist of a separate dorm for women, couples and transitional living spaces. Additionally, the renovated Yale Transitional Center will have 24 hour, 7-days per week security, an intake area, full commercial kitchen, dining area, laundry facility, administrative and supportive services offices and storage. To permit the operation of a residential sheltering program on site, all of the major building systems, including plumbing, electrical, HVAC and fire/life safety systems, must be renovated and upgraded. Exterior upgrades include site security fencing, ADA compliant parking, an area for the mobile medical clinic, outdoor dining patio area and patios adjacent to the building dormitories, improved natural lighting, improved fresh air ventilation, fence screening, seating areas and landscaping and outdoor spaces to provide an area for individuals and their service animals, companion animals and/or pets. Parking areas will be for staff, program residents, and mobile medical and support services vehicles. Site plans for the Yale Transitional Center are included as Attachment I.

As a County-owned property, the Yale Transitional Center is under the jurisdiction of the County and is not subject to the development and operational standards for shelters in the City. Further, pursuant to County Zoning Code Section 7-9-20(i) (Attachment K), land owned in fee by the County is not subject to County land use regulations. Therefore, the site is available for the County's desired homeless transitional center use regardless of the land use designation and zoning, including development and operational standards. Nevertheless, according to the City-adopted, land use regulations, the site is zoned Light Industrial (M1) and its General Plan land use designation is Industrial. Emergency shelters and transitional centers for persons experiencing homelessness are permitted uses on any parcels within the M1 zone. Additionally, the Property is within the City's SB-2 zone.

Shelter Providers of Orange County, Inc. dba HomeAid Orange County (HomeAid) is a leading non-profit housing developer that works as a liaison between service providers, community volunteers, builders and specialty contractors to build and renovate multi-unit housing developments including emergency shelters, interim/bridge housing and permanent supportive housing for families and individuals experiencing homelessness throughout the United States. To date, the organization has completed 55 developments with over 20 non-profit homeless services provider partners that serve victims of domestic violence, pregnant women, unaccompanied minors, adults living with HIV/AIDS and families. HomeAid has proposed collaborating with the County and general contractor, C.W. Driver, to construct the improvements necessary for the Property to be used as a transitional center for individuals experiencing homelessness. The HomeAid offer letter to the County is included as Attachment G.

Open House for the Yale Transitional Center

On October 23, 2019, the County hosted an open house in partnership with Supervisor Do, First District, to discuss the Yale Transitional Center and to solicit input from the public. The open house provided attendees an opportunity to speak one-on-one with County staff at three separate stations to learn about the building design and features, security and good neighbor plan, and the operational plan and wraparound services at the Yale Transitional Center.

Management and Operations Plan

The Yale Transitional Center is intended to provide shelter, meals, sanitary facilities and access to case management, employment and housing assistance, healthcare, mental health services and substance abuse treatment among other supportive services and assistance to individuals experiencing homelessness. The program will serve up to 425 individuals experiencing homelessness currently accessing shelter and supportive services at the Courtyard Transitional Center in Santa Ana. Providing emergency shelter and

access to wrap around supportive services will assist individuals experiencing homelessness in the Central Service Planning Area in accessing the appropriate resources to improve their overall health and stability. Establishing the Yale Transitional Center will meet a critical need for individuals experiencing homelessness as well as the broader community, while also addressing a pressing social issue that is deeply affecting local businesses and neighborhoods. The overall purpose of the program is to connect individuals experiencing homelessness to supportive services and to achieve permanent housing and self-sufficiency.

The Management and Operations Plan (MOPS) for the Yale Transitional Center will identify core emergency shelter services, establish policies and procedures and promote the use of best practices and evidenced-based approaches to maintain a safe and healthy environment for those who access the shelter resources and the community at large. A summary of the MOPS is included as **Attachment D**. The full version of the MOPS will be presented to the Board for approval along with the Yale Transition Center operator agreement.

Construction Costs and Schedule

The HomeAid proposal offers a project cost at \$25,275,703 with a 12-month construction period. Conversely, the project engineer estimate of cost is \$29,234,623 with a 21-month period for bid and construction. Comparatively, the HomeAid offer avoids \$3,958,920 in direct construction costs and delivers the project nine months in advance of the County's traditional public solicitation and design build schedule. The reduction in overall schedule carries a subsequent value in reduced cost of funding at \$1,644,447 for the nine-month term assuming a 7.5 percent escalation. Through the effective use of HomeAid as a non-profit partner, the County will realize an overall cost avoidance of \$5,603,367 and save nine months in completing this critical project. Additionally, HomeAid plans to leverage community partners to solicit in-kind donations as well as the donation of materials. The Cooperation and Implementation Agreement (**Attachment C**) with HomeAid outlines the partnership between the County, HomeAid and C.W. Driver that will set the stage for the Yale Transitional Center. The agreement also provides for the efforts that HomeAid plans to make to obtain donations of in-kind labor and materials or cash donations for construction and operations, as well as for the indemnification of HomeAid by the County for the County's approval of the agreements and the County permitted use of the property.

Under normal circumstances, the County would follow the public works competitive bidding processes found in the Public Contract Code when procuring construction services. Generally, competitive bidding is mandatory when required by statute. The purpose of the public bidding statutes are to "guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent the waste of public funds and to obtain the best economic result for the public." *Graydon v. Pasadena Redevelopment Agency*, 104 Cal.App.3d 631, 636 (1980). "One exception is where the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible." *Id.* Here the proposed construction for the facility will be done pursuant to the attached Ground Lease (Lease) with HomeAid, a nonprofit whose purpose is facilitating the construction of this type of facility. HomeAid is able to leverage their status to obtain various services at lower cost or by donation. Because of this and the participation of HomeAid, the cost avoidance to the County on the total design and construction cost will be in excess of \$5.6 million. Thus, the competitive bidding of this project will not result in any advantage to the County or the public. Additionally, as mentioned previously, HomeAid will work during the Lease term to further leverage donations and in-kind services to achieve further cost avoidance.

Project Funding

Upon execution of the Lease, the County will fund \$12,637,851 as the initial funding for the completion of the Yale Transitional Center. Upon completion of 50 percent of the Yale Transitional Center, as

evidenced by a written verification by the Project’s architect and verified by the County, the County will fund the additional \$12,637,851 to complete the County’s full financial contribution. The County’s financial contribution will be applied by HomeAid only towards the Yale Transitional Center. If additional cost avoidance is realized during the Lease term, the funds will be applied towards furniture, fixtures and equipment for the operation of the Yale Transitional Center. If any funds remain at the end of the Lease term, the funds will be returned to the County.

Ground Lease

CEO Real Estate has worked closely with HomeAid to finalize the terms of the Lease. Per the terms of the Lease (Attachment B), the County would lease the Property to HomeAid for the purposes of entitling, permitting and constructing the Yale Transitional Center. The Lease term is 24 months or upon receipt of Certificate of Occupancy. One option to extend the term for one additional 12-month period. The annual rent will be \$1 which takes into consideration the public benefit afforded by the Project and HomeAid’s construction of the Yale Transitional Center. The findings in the attached resolution, pursuant to Government Code Section 26227 (Attachment J), permit the approval of the Lease with the reduced annual rent and allows the Board to dedicate County resources to the support of HomeAid and the Yale Transitional Center. The resolution also includes the project as a program under the County Sponsorship Program Marketing Plan to permit the pursuit of marketing, sponsorship or fundraising partnerships to further support the Yale Transitional Center.

During the Lease term, construction and operating costs and any possessory interest taxes will be paid by HomeAid. The County shall be responsible for the cost of the utilities for the Property, including any and all applicable taxes, assessments or similar impositions related to the utilities.

CEQA COMPLIANCE

The proposed Project is Categorically Exempt (Class 32) from the provisions of CEQA pursuant to Section 15332, because it involves an infill development project located within city limits, on a site of less than 5 acres that is substantially surrounded by urban uses and can be adequately served by all required utilities and public services. The Project is consistent with all applicable General Plan and zoning regulations and would not result in any significant effects relating to traffic, noise, air quality or water. In addition, the project site has no value as habitat for endangered, rare or threatened species.

FINANCIAL IMPACT:

Total Project Cost for the County: \$25,275,703

Appropriations for the initial funding of \$12,637,851 are included in Budget Control 036 FY 2019-20 Budget. FY 2019-20 cost for this project will be funded by \$2.5 million one-time revenue from Single Family Housing Fund 15B, \$5.9 million revenue from California Homeless Housing, Assistance and Prevention Program (HHAP), and the County General Fund. Appropriations for the remaining \$12,637,851 million will be requested and included as an Expand Augmentation for the FY 2020-21 Budget, which may receive some offsetting revenue from HHAP and other funding sources.

Yale Transitional Center Project Funding:

Amount (\$)	Funding Source
\$ 2,500,000	Single Family Housing Fund 15B
\$ 5,900,000	HHAP
\$ 4,237,851	County General Fund
\$12,637,851	FY 2019-20 Funding

\$12,637,851	FY 2020-21 Expand Augmentation 100-036*
\$25,275,702	Total Yale Transitional Center Project Cost

*May receive some offsetting revenue from HHAP or other funding sources.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

OC Community Resources
Health Care Agency

ATTACHMENT(S):

- Attachment A - Location Map and Aerial View
- Attachment B - Ground Lease
- Attachment C - Cooperation and Implementation Agreement
- Attachment D- Summary of the Management and Operations Plan
- Attachment E - Yale Board Resolution
- Attachment F - City of Santa Ana Yale Recommendation Letter
- Attachment G - HomeAid Offer Letter
- Attachment H - County A&E Estimation of Project Schedule and Cost
- Attachment I - Site Plans
- Attachment J - Government Code 26227
- Attachment K - County Zoning Code Section 7-9-20(i)

DECLARATION OF SARAH CHIANG AND
EXHIBITS THERETO

DECLARATION OF SARAH CHIANG

I, SARAH CHIANG, hereby state and 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 an Environmental Resources Specialist working with the North Orange County Stormwater group at the OC Environmental Resources division of the OC Public Works Department (“OC Public Works”). In that capacity, I work with permittees under the current Municipal Separate Storm Sewer System (“MS4”) permit, Order No. R8-2009-0030 (the “2009 Permit”) on a variety of issues, including the coordination of filings required to be made under the 2009 Permit to the California Regional Water Quality Control Board, Santa Ana Region (“Santa Ana Water Board”).

3. As part of my duties, I am required to be familiar with the content of filings required to be made by permittees under the 2009 Permit and how copies of those filings are kept in the ordinary course of business at OC Public Works.

4. One requirement of the 2009 Permit is that permittees annually submit a report, referred to as a “Program Effectiveness Assessment” (“PEA”), to the Santa Ana Water Board’s Executive Officer. These PEAS, in the form of compact discs (“CDs”) are delivered to OC Public Works by the permittees. The County maintains copies of permittee PEAs in its files and records in the form of compact discs (“CDs”).

5. OC Public Works hand-delivers the CDs containing permittees’ PEAs to the Santa Ana Water Board office, accompanied by a “wet-ink” copy of a Signed Certified

Statement which is to accompany each PEA. A true and correct copy of an example of such a Statement is attached as Exhibit 1 to this Declaration.


6. One section of the PEA, Section C-2.4, is a "Fiscal Analysis." In that section, permittees "depict all NPDES compliance related costs" for the city. Also in this section of the PEA, permittees are required to set forth annual funding sources, divided into various categories, including "General Fund" and "Gas Tax," for these costs.

7. Attached as Exhibits 2-6 to my Declaration are true and correct copies of excerpts of PEAs containing Section C-2.4, Fiscal Analysis, that were retrieved by me from CDs in the possession of OC Public Works covering various fiscal years between 2009-10 and 2020-21 for the Cities of Costa Mesa (Exhibit 2), Irvine (Exhibit 3), Lake Forest (Exhibit 4), Seal Beach (Exhibit 5) and Villa Park (Exhibit 6).

8. In addition, from my review of PEAs filed by other permittees, I am familiar with reports made by other permittees regarding the sources of funding used by them for 2009 Permit activities, including the City of Cypress. The PEAs filed by the City of Cypress state that the city used general funds for 100 percent of funding for permit obligations.

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

Executed October 21, 2022 at Orange, California.



Sarah Chiang

EXHIBIT 1



Program Effectiveness Assessment 2012-2013 Certified Statement

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

David Spitz, P.E.
Associate Engineer
November 13, 2013

EXHIBIT 2

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>
Ad Hoc Annual Report	<input type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, Program Management

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2009-10 Expenditures	2010-11 Expenditures	2011-12 Projected Costs
Totals	\$0	\$65,700	\$260,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2009-10 Expenditures	2010-11 Expenditures	2011-12 Projected Costs
Totals	\$2,025,303	\$1,441,942	\$1,906,523

FUNDING SOURCES

LIP Funding Sources	FY 2009-10 Funding Sources	FY 2010-11 Funding Sources	FY 2011-12 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special District Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Other	0%	0%	0%

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following: During the 2010-11 fiscal year, the entire LIP document was updated to reflect changes in the organization along with new permit requirements.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2010-11 Expenditures	2011-12 Expenditures	2012-13 Projected Costs
Totals		\$176,500	\$180,000

SECTION C-2, Program Management

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2010-11 Expenditures	2011-12 Expenditures	2012-13 Projected Costs
Totals		\$1,841,839	\$1,887,696

FUNDING SOURCES

LIP Funding Sources	FY 10-11 Funding Sources	FY 2011-12 Funding Sources	FY 2012-13 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following: No modifications have been made to this section during this reporting period.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
Public Projects - BMPs	\$176,500	\$100,000	\$100,000
Construction BMPs for Public Construction Projects	\$50,000	\$50,000	\$50,000

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	0	0	0
Totals	\$226,500	\$150,000	\$150,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$143,392	\$124,021	\$96,452
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$134,503	\$134,503	\$134,503
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$174,846	\$96,982	\$121,788
Municipal Activities (LIP Section 5.0) Street Sweeping	\$491,562	\$566,507	\$590,369
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$9,270	\$10,580	\$7,134
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$115,721	\$128,733	\$134,280
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$135,327	\$121,300	\$122,916
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$126,420	\$124,014	\$124,401
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$57,468	\$58,240	\$47,901
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$168,237	\$213,073	\$181,064

SECTION C-2, Program Management

Agency Contribution to Regional Program	\$117,863	\$104,789	\$134,000
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$1,688,109.00	\$1,696,242.00	\$1,708,308.00

FUNDING SOURCES

LIP Funding Sources	2011-12 Funding Sources	2012-13 Funding Sources	2013-14 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other:			

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following: No modifications have been made to this section during this reporting period.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2012-13 Expenditures	2013-14 Expenditures	2014-15 Projected Costs
Public Projects - BMPs	\$50,000	\$50,000	\$50,000
Construction BMPs for Public Construction Projects	\$0	\$0	\$0

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	\$100,000	0	\$100,000
Totals	\$150,000	\$50,000	\$150,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2012-13 Expenditures	2013-14 Expenditures	2013-14 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$124,021	\$99,216	\$111,618
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$134,503	\$147,000	\$150,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$96,982	\$100,194	\$81,971
Municipal Activities (LIP Section 5.0) Street Sweeping	\$566,507	\$570,178	\$462,469
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$10,580	\$8,464	\$9,522
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$128,733	\$7,000	\$7,500
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$8,100	\$9,450
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$121,300	\$97,040	\$109,170
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$124,014	\$99,211	\$124,401
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$58,240	\$46,592	\$52,416
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$213,073	\$170,458	\$191,765

SECTION C-2, Program Management

Agency Contribution to Regional Program	\$104,789	\$94,310	\$99,550
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$1,696,242.00	\$1,453,587.00	\$1,297,043.00

FUNDING SOURCES

LIP Funding Sources	2012-13 Funding Sources	2013-14 Funding Sources	2014-15 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other:			

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following: No modifications have been made to this section during this reporting period.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2013-14 Expenditures	2014-15 Expenditures	2015-16 Projected Costs
Public Projects - BMPs	\$50,000	\$130,000	\$50,000
Construction BMPs for Public Construction Projects	\$50,000	\$57,050	\$60,986

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	\$100,000	\$100,000	\$100,000
Totals	\$150,000	\$287,050	\$210,096

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2013-14 Expenditures	2014-15 Expenditures	2015-16 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$99,216	\$104,177	\$109,386
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$147,000	\$143,794	\$111,208
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$100,194	\$81,971	\$129,590
Municipal Activities (LIP Section 5.0) Street Sweeping	\$570,178	\$462,469	\$771,562
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$8,464	\$8,887	\$10,665
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$7,000	\$7,000	\$7,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$121,300	\$127,365	\$133,733
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$124,014	\$130,215	\$136,725
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$46,592	\$48,922	\$51,368
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$170,458	\$178,981	\$187,930

SECTION C-2, Program Management

Agency Contribution to Regional Program	\$104,789	\$104,789	\$134,000
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$1,696,242	\$1,441,808	\$1,814,249

FUNDING SOURCES

LIP Funding Sources	2013-14 Funding Sources	2014-15 Funding Sources	2015-16 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Air Quality Improvement Fund			
Other: Measure M2			
Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: the City has hired one full-time staff member that will share NPDES program coordination responsibilities with existing staff members of the City. The new staff member will assist with preparation of the annual report, conduct inspections of construction projects within the City, review project plans and WQMPs, and participate in meetings and other events pertaining to stormwater quality and management on behalf of the City.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2014-15 Expenditures	2015-16 Expenditures	2016-17 Projected Costs
Public Projects - BMPs	\$130,000	\$50,000	\$50,000
Construction BMPs for Public Construction Projects	\$57,050	\$74,110	\$41,350

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	\$100,000	\$100,000	\$100,000
Totals	\$287,050	\$224,110	\$191,350

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2014-15 Expenditures	2015-16 Expenditures	2016-17 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$104,177	\$490,411	\$341,762
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$143,794	\$122,200	\$150,100
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$81,971	\$129,590	\$199,973
Municipal Activities (LIP Section 5.0) Street Sweeping	\$462,469	\$699,600	\$699,600
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$8,887	\$9,331.35	\$9,797.92
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$7,000	\$7,000	\$7,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$127,365	\$133,733	\$140,420
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$130,215	\$136,726	\$143,562
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$48,922	\$19,719	\$20,000
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$178,981	\$187,930	\$197,327

SECTION C-2, Program Management

Agency Contribution to Regional Program	\$104,789	\$137,447	\$155,590
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$1,412,070	\$2,087,188	\$2,078,632

FUNDING SOURCES

LIP Funding Sources	2014-15 Funding Sources	2015-16 Funding Sources	2016-17 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Air Quality Improvement Fund			
Other: Measure M2			
Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: the City plans to hire one full-time staff member that will share half of the NPDES program coordination responsibilities with existing staff members of the City. The new staff member will assist with preparation of the annual report, conduct inspections of construction projects within the City, respond to water quality incidents and carry out enforcement, review project plans and WQMPs, and participate in meetings and other events pertaining to stormwater quality and management on behalf of the City.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
Public Projects - BMPs	\$50,000	\$650,000	\$50,000

SECTION C-2, Program Management

Construction BMPs for Public Construction Projects	\$51,835	\$51,001	\$59,340
Other Capital Projects / Major Equipment Purchases	\$67,000	\$300,000	\$100,000
Totals	\$168,835	\$1,001,001	\$209,340

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$96,162	\$160,099	\$282,798
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$122,200	\$108,112	\$120,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$190,154	\$191,620	\$199,821
Municipal Activities (LIP Section 5.0) Street Sweeping	\$757,460	\$801,934	\$821,823
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$10,000	\$54,430	\$49,830
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$75,000	\$75,000	\$75,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$6,334	\$19,035	\$64,779
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$97,879	\$61,230	\$66,234
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$34,405	\$34,405	\$35,000

SECTION C-2, Program Management

Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$3,483	\$24,015	\$42,420
Agency Contribution to Regional Program	\$120,464	\$147,985	\$154,811
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$	\$	\$

FUNDING SOURCES

LIP Funding Sources	2016-17 Funding Sources	2017-18 Funding Sources	2018-19 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Air Quality Improvement Fund			
Other: Measure M2			
Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: no modifications are planned for the 18-19 reporting year.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
Public Projects - BMPs	\$650,000	\$50,000	\$50,000

SECTION C-2, Program Management

Construction BMPs for Public Construction Projects	\$51,001	\$52,021	\$53,061
Other Capital Projects / Major Equipment Purchases	\$30,000	\$300,000	\$100,000
Totals	\$731,001	\$402,021	\$203,061

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$26,474	\$282,798	\$96,490
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$108,112	\$115,782	\$120,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$170,466	\$171,925	\$267,712
Municipal Activities (LIP Section 5.0) Street Sweeping	\$759,986	\$821,823	\$792,212
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$54,430	\$50,000	\$120,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$75,000	\$75,000	\$75,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$5,529	\$25,977	\$26,459
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$71,397	\$66,184	\$88,694
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$42,000	\$42,000	\$45,000

SECTION C-2, Program Management

Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$3,791	\$14,140	\$9,649
Agency Contribution to Regional Program	\$147,985	\$154,81	\$161,000
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$	\$	\$

FUNDING SOURCES

LIP Funding Sources	2017-18 Funding Sources	2018-19 Funding Sources	2019-20 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Air Quality Improvement Fund			
Other: Measure M2			
Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: no modifications are planned for the 19-20 reporting year.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2018-19 Expenditures	2019-20 Expenditures	2020-21 Projected Costs
Public Projects - BMPs	\$50,000	\$50,000	\$50,000
Construction BMPs for Public Construction Projects	\$52,021	\$74,418	\$55,997

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	\$300,000	\$100,000	\$100,000
Totals	\$402,021	\$224,418	\$205,997

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2018-19 Expenditures	2019-20 Expenditures	2020-21 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$282,798	\$192,880	\$109,573
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$126,899	\$162,100	\$162,800
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$175,404	\$269,312	\$274,536
Municipal Activities (LIP Section 5.0) Street Sweeping	\$760,912	\$792,212	\$340,359
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$50,000	\$50,000	\$120,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$75,000	\$75,000	\$75,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$27,875	\$26,459	\$25,786
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$57,704	\$58,694	\$87,854
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$45,000	\$45,000	\$45,000
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$14,140	\$11,998	\$9,128

SECTION C-2, Program Management

Agency Contribution to Regional Program	\$154,810	\$160,907	\$152,534
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$	\$	\$

FUNDING SOURCES

LIP Funding Sources	2018-19 Funding Sources	2019-20 Funding Sources	2020-21 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Air Quality Improvement Fund			
Other: Measure M2			
Other			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: One additional Principal Civil Engineer will be involved in the overall coordination and implementation of the City's NPDES program.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Costa Mesa. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
Public Projects - BMPs	\$50,000	\$50,000	\$50,000
Construction BMPs for Public Construction Projects	\$52,021	\$74,418	\$55,997

SECTION C-2, Program Management

Other Capital Projects / Major Equipment Purchases	\$300,000	\$100,000	\$100,000
Totals	\$402,021	\$224,418	\$205,997

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$192,880	\$202,524	\$212,650
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$148,021	\$162,800	\$162,400
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$260,295	\$274,537	\$289,456
Municipal Activities (LIP Section 5.0) Street Sweeping	\$764,260	\$340,359	\$814,984
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$50,000	\$50,000	\$120,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$75,000	\$75,000	\$75,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$13,500	\$13,500	\$13,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$24,229	\$25,786	\$37,756
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$42,675	\$52,712	\$57,885
Existing Development	\$45,000	\$45,000	\$45,000

SECTION C-2, Program Management

(LIP Section 9.0) Industrial/Comm./HOA Inspections			
Illicit Connections/Discharge Ident. & Elimination (LIP Section10.0) Investigations	\$14,140	\$11,998	\$9,128
Agency Contribution to Regional Program	\$154,810	\$160,907	\$152,534
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Totals	\$	\$	\$

FUNDING SOURCES

LIP Funding Sources	2019-20 Funding Sources	2020-21 Funding Sources	2021-22 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
Other: Measure M2			

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following: One additional Associate Engineer will be involved in the overall coordination and implementation of the City's NPDES program. The City also intends to utilize the results of the Storm Drain System Master Plan update to improve the City's stormwater management methods and improve compliance outcomes.

EXHIBIT 3



SECTION C-2, Program Management

The General Permittee Committee meets eleven times per year. The City of Irvine had representatives at the following meetings:

Meeting Date

July 23, 2009	<input checked="" type="checkbox"/>
August 27, 2009	<input checked="" type="checkbox"/>
September 24, 2009	<input checked="" type="checkbox"/>
October 29, 2009	<input type="checkbox"/>
December 17, 2009	<input checked="" type="checkbox"/>
January 28, 2010	<input checked="" type="checkbox"/>
February 25, 2010	<input checked="" type="checkbox"/>
March 25, 2010	<input checked="" type="checkbox"/>
April 22, 2010	<input checked="" type="checkbox"/>
May 27, 2010	<input checked="" type="checkbox"/>
June 24, 2010	<input checked="" type="checkbox"/>

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
▪ LIP/PEA	<input checked="" type="checkbox"/>
▪ Inspection	<input checked="" type="checkbox"/>
▪ Trash & Debris	<input type="checkbox"/>
▪ Legal/Regulatory Authority	<input checked="" type="checkbox"/>
▪ Public Education	<input checked="" type="checkbox"/>
▪ Water Quality	<input checked="" type="checkbox"/>
▪ Ad Hoc Annual Report	<input checked="" type="checkbox"/>
▪ Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2:2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.



SECTION C-2, Program Management

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, Program Management



CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	FY 2009-10 Costs	Projected FY 2010-11 Costs*
(LIP Section A-8)	\$215,000	\$175,000
Totals	\$215,000	\$175,000*

* these are estimates only and actual FY 2010-11 costs may differ significantly

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	FY 2009-10 Costs	Projected FY 2010-11 Costs**
Program Management (LIP Section A-2)	\$1,019,400	\$981,200
Municipal Activities (LIP Section A-5)	\$2,916,550	\$3,239,300
Public Education (LIP Section A-6)	\$35,000	\$9,000
New Development / Redevelopment (LIP Section A-7)	\$59,000	\$60,800
Construction (LIP Section A-8)	\$150,000	\$202,000
Existing Development (LIP Section A-9)	\$72,500	\$74,600
Illicit Discharges / Illicit Connection (LIP Section A-10)	\$4,300	\$4,400
Totals	\$4,256,750	\$4,571,300

** these are estimates only and actual FY 2010-11 costs may differ significantly

FUNDING SOURCES

LIP Program Elements	FY 2009-10 Costs	Projected FY 2010-11 Costs
General Fund	\$4,007,550	4,367,300
Special Fund 180 (Great Park)	\$464,200	\$379,000
Totals	\$4,471,750	\$4,746,300

C-2.5 Program Management Modifications

The City does not anticipate making modifications to the Plan Management section at this time.



SECTION C-2, PROGRAM MANAGEMENT

The General Permittee Committee meets eleven times per year. The City of Irvine had representatives at the following meetings:

<u>Meeting Date</u>	<u>Attended</u>
July 22, 2010	<input checked="" type="checkbox"/>
August 26, 2010	<input checked="" type="checkbox"/>
September 23, 2010	<input checked="" type="checkbox"/>
October 28, 2010	<input checked="" type="checkbox"/>
December 16, 2010 (no meeting)	<input type="checkbox"/>
January 27, 2011	<input checked="" type="checkbox"/>
February 24, 2011	<input checked="" type="checkbox"/>
March 24, 2011	<input checked="" type="checkbox"/>
April 28, 2011	<input checked="" type="checkbox"/>
May 26, 2011	<input checked="" type="checkbox"/>
June 23, 2011	<input checked="" type="checkbox"/>

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>
Ad Hoc Annual Report	<input checked="" type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.



SECTION C-2, PROGRAM MANAGEMENT

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

CAPITAL COSTS
(Land, Large Equipment and Structures)

LIP Program Elements	FY 2009-10 Expenditures	FY 2010-11 Expenditures	FY 2011-12 Projected Costs
Totals	\$215,000	\$191,763	\$201,351

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	FY 2009-10 Expenditures	FY 2010-11 Expenditures	FY 2011-12 Projected Costs
Totals	\$4,256,750	\$3,598,027	\$4,036,418

FUNDING SOURCES

LIP FUNDING SOURCES	FY 209-10 Funding Sources	FY 2010-11 Funding Sources	FY 2010-11 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges	%	%	%
Separate Utility Billing Item	%	%	%
Gas Tax	%	%	%
Special Restricted Fund	%	%	%
- Sanitation Fee	%	%	%
- Benefit Assessment	%	%	%
- Fleet Maintenance Fund	%	%	%
- Community Services Fund	%	%	%
- Water Fund	%	%	%
- Sewer & Storm Drain Maintenance Fee	%	%	%
- Others	%	%	%
TOTALS	100%	100%	100%

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	FY 2011-12 Projected Costs	2011-12 Expenditures	2012-13 Projected Costs
Totals	\$201,351	\$51,770.21	\$79,827.23



SECTION C-2, PROGRAM MANAGEMENT

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	FY 2011-12 Projected Costs	2011-12 Expenditures	2012-13 Projected Costs
Totals	\$4,036,418	\$3,860,657.34	\$4,042,435.83

FUNDING SOURCES

LIP Funding Sources	FY 2011-12 Funding Sources	FY 2012-13 Projected Funding Sources
General Fund	98.5%	98.5%
Other	1.5%*	1.5%*

*activities at the Great Park are funded through a separate funding source

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following:

The City of Irvine does not plan to modify the Plan Management section of the City's LIP during the FY 2011-12 reporting period.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

Amanda Carr served as the chair of the Public Education sub-committee for fiscal year 2012-13.

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
Totals	\$51,770.21	\$90,890.22	\$340,000.00



SECTION C-2, PROGRAM MANAGEMENT

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
Totals	\$3,860,657	\$4,280,021	\$4,540,277

FUNDING SOURCES

LIP Funding Sources	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
General Fund	98.5%	98.3%	98.4%
Other*	1.5%	1.7%	1.6%

*activities at the Great Park are funded through a separate funding source

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following:

The City of Irvine does not plan to modify the Plan Management section of the City's LIP during the FY 2013-14 reporting period.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	☒
Inspection	☒
Trash & Debris	☒
Legal/Regulatory Authority	☒
Public Education	☒
Water Quality	☒

Amanda Carr continued to serve as the chair of the Public Education sub-committee for fiscal year 2013-2014.

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2012-13 Expenditures	2013-14 Expenditures	2014-15 Projected Costs
Totals	\$90,890	\$489,014	\$495,000

The increase in capital cost expenditures reflects the City’s share of the costs for the Peters Canyon Wash Channel Water Capture and Reuse Pipeline project. The project is a joint effort between the City of Irvine, City of Tustin, County of Orange, Orange County Flood Control District, Irvine Ranch Water District and California Department of Transportation. The proposed project is to divert high nitrogen and selenium groundwater and surface flows from two stormdrains, a drainage channel and the Caltrans 261 dewatering facility into a buried pipeline along the east side of Peters Canyon Wash. The pipeline will carry the water to the Orange County Sanitation District (OCSD) trunk sewer line at Main Street. The water will then be treated at the Fountain Valley OCSD facility and transferred to the Orange County Water District Groundwater Replenishment System for further treatment and eventual groundwater recharge and beneficial reuse. Activities in FY2013-14 included project engineering design, environmental documentation and permitting. Construction is anticipated in FY2014-15. Total project cost is estimated at \$8.6 M.

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2012-13 Expenditures	2013-14 Expenditures	2014-15 Projected Costs
Totals	\$4,280,021	\$4,691,905	\$4,922,312

FUNDING SOURCES

LIP Funding Sources	2012-13 Expenditures	2013-14 Expenditures	2014-15 Projected Costs
General Fund	98.3%	100%	100%
Other*	1.7%	0%	0%

*activities at the Great Park had historically been funded through a separate funding source

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City’s LIP include the following:

The City of Irvine will update the Plan Management section of the City’s LIP during the FY 2014-15 reporting period as necessary in response to the adopted 5th Term NPDES permit. Regional Board approval of the 5th Term NPDES permit is anticipated in late 2014.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2013-14 Expenditures	2014-15 Expenditures	2015-16 Projected Costs
Totals	\$489,014.00	\$1,859,599.41	\$538,282.10

The increase in capital cost expenditures reflects the City's share of the costs for the Peters Canyon Wash Channel Water Capture and Reuse Pipeline project. The project is a joint effort between the City of Irvine, City of Tustin, County of Orange, Orange County Flood Control District, Irvine Ranch Water District and California Department of Transportation. The proposed project is to divert high nitrogen and selenium groundwater and surface flows from two stormdrains, a drainage channel and the Caltrans 261 dewatering facility into a buried pipeline along the east side of Peters Canyon Wash. The pipeline will carry the water to the Orange County Sanitation District (OCSD) trunk sewer line at Main Street. The water will then be treated at the Fountain Valley OCSD facility and transferred to the Orange County Water District Groundwater Replenishment System for further treatment and eventual groundwater recharge and beneficial reuse. Activities in FY2014-15 included completion of project engineering design, environmental documentation and permitting, construction bid advertisement, selection and contract award and final project partner funding contributions. Construction began in July 2015. Total project cost is estimated at \$12.8M, an increase of \$4.2M over the original cost estimate of \$8.6M which was based on a 15% design estimate.

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2013-14 Expenditures	2014-15 Expenditures	2015-16 Projected Costs
Totals	\$4,691,905.25	\$4,661,116.28	\$4,897,963.89

FUNDING SOURCES

LIP Funding Sources	2013-14 Expenditures	2013-14 Expenditures	2014-15 Projected Costs
General Fund	100%	99.76%	100%
Other - Great Park Development Funds	0%	0.24%	0%

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following:

The City of Irvine will update the Plan Management section of the City's LIP during the FY 2015-16 reporting period as necessary in response to the adopted 5th Term NPDES permit. Regional Board approval of the 5th Term NPDES permit is anticipated in late 2015.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2015-16 Expenditures	2016-17 Expenditures	2017-18 Projected Costs
Totals	\$432,334.93	\$195,365.13	\$515,000

In FY2016-17, the decrease in capital cost expenditures reflects no major capital purchase as was the case in 2015-16 for a street sweeper.

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2015-16 Expenditures	2016-17 Expenditures	2017-18 Projected Costs
Totals	\$4,990,480.46	\$5,245,006.03	\$4,953,876.52

FUNDING SOURCES

LIP Funding Sources	2015-16 Expenditures	2016-17 Expenditures	2017-18 Projected Costs
General Fund	99.95%	99.65%	99.65%
Other – Great Park Development Funds	0.05%	0.35%	0.35%

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following:

If Regional Board approval of 5th Term NPDES permit occurs in FY2018, the City of Irvine will update as necessary the Plan Management section of the City's LIP during the FY 2017-18 reporting period in response to adoption of a 5th Term NPDES permit. Regional Board approval of the 5th Term NPDES permit is not anticipated during FY2017-18.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Trash Provisions Subcommittee	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality - (no meeting)	<input type="checkbox"/>
Newport Bay Watershed TMDL Meetings	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
Totals	\$195,365.13	\$599,381.24	\$265,769.00

In FY2017-18, the increase in capital cost expenditures reflects a major capital purchase of a street sweeper.

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
Totals	\$5,245,006.03	\$5,046,365.84	\$5,178,706.00

FUNDING SOURCES

LIP Funding Sources	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
General Fund	99.65%	99.75%	99.70%
Other - Great Park Development Funds	0.35%	0.25%	0.30%

C-2.5 Program Management Modifications

The modifications that will be made to the Plan Management section of the City's LIP include the following:

If Regional Board approval of 5th Term NPDES permit occurs in FY2018-19, the City of Irvine will update as necessary the Plan Management section of the City's LIP during the FY 2018-19 reporting period in response to adoption of a 5th Term NPDES permit. Regional Board approval of the 5th Term NPDES permit is not anticipated during FY2018-19.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Trash Provisions Subcommittee	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality - (no meeting)	<input type="checkbox"/>
Newport Bay Watershed TMDL Meetings	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
Totals	\$599,381.24	\$175,000	\$180,250

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
Totals	\$5,046,365.84	\$5,633,686.71	\$6,147,048.00

FUNDING SOURCES

LIP Funding Sources	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
General Fund	99.75%	99.61%	99.60%
Other - Great Park Development Funds	0.25%	0.39%	0.40%

C-2.5 Program Management Modifications

The modifications to be made to the Plan Management section of the City's LIP include the following:

If Regional Board approval of 5th Term NPDES permit occurs in FY2019-20, the City of Irvine will update as necessary the Plan Management section of the City's LIP during the FY 2019-20 reporting period in response to adoption of a 5th Term NPDES permit. However, Regional Board approval of the 5th Term NPDES permit is not anticipated during FY2019-20.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Trash Provisions Subcommittee	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality - (no meeting)	<input type="checkbox"/>
Newport Bay Watershed TMDL Meetings	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2018-19 Expenditures	2019-20 Expenditures	2020-21 Projected Costs
Totals	\$175,000	\$59,000	\$60,770

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2018-19 Expenditures	2019-20 Expenditures	2020-21 Projected Costs
Totals	\$5,633,686.71	\$5,716,836.92	\$5,869,814.89

FUNDING SOURCES

LIP Funding Sources	2018-19 Expenditures	2019-20 Expenditures	2020-21 Projected Costs
General Fund	99.61%	99.59%	99.60%
Other - Great Park Development Funds	0.39%	0.41%	0.40%

C-2.5 Program Management Modifications

The modifications to be made to the Plan Management section of the City’s LIP include the following:

If Regional Board approval of 5th Term NPDES permit occurs in FY2020-21, the City of Irvine will update as necessary the Plan Management section of the City’s LIP during the FY2020-21 reporting period in response to adoption of a 5th Term NPDES permit. However, Regional Board approval of the 5th Term NPDES permit is not anticipated during FY2020-21.



SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Trash Provisions Subcommittee	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality - (no meeting)	<input type="checkbox"/>
Newport Bay Watershed TMDL Meetings	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Irvine. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.



SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
Totals	\$59,000	\$153,200	\$155,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
Totals	\$5,716,836.92	\$5,410,795.81	\$5,630,236.00

FUNDING SOURCES

LIP Funding Sources	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
General Fund	99.57%	99.83%	99.50%
Other - Great Park Development Funds	0.43%	0.17%	0.50%

C-2.5 Program Management Modifications

The modifications to be made to the Plan Management section of the City's LIP include the following:

If Regional Board approval of 5th Term NPDES permit occurs in FY2021-22, the City of Irvine will update as necessary the Plan Management section of the City's LIP during the FY2021-22 reporting period in response to adoption of a 5th Term NPDES permit. However, Regional Board approval of the 5th Term NPDES permit is not anticipated during FY2021-22.



EXHIBIT 4

SECTION C-2, Program Management

May 27, 2010
June 24, 2010

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>
Ad Hoc Annual Report	<input checked="" type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Laguna Coastal Streams	<input type="checkbox"/>
Aliso Creek	<input checked="" type="checkbox"/>
Dana Point Coastal Streams	<input type="checkbox"/>
San Juan Creek	<input type="checkbox"/>
San Clemente Coastal Streams	<input type="checkbox"/>
Newport Bay	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year
- The City's projected budget for the next fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

SECTION C-2, Program Management

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	Costs FY 2009-10	Projected Costs FY 2010-11
Equipment Purchases	\$60,000	\$30,000
Totals	\$60,000	\$30,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2008-2009	Costs FY 2009-10	Projected Costs FY 2010-11
Supportive of Program Administration (LIP Section 2.0)	\$212,467	\$234,892	\$245,500
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$101,280	\$80,597	\$84,200
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$58,617	\$71,316	\$74,550
Municipal Activities (LIP Section 5.0) Street Sweeping	\$327,644	\$332,998	\$348,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$72,696	\$99,952	\$104,450
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$58,158	\$52,856	\$55,250
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$24,854	\$26,786	\$28,000
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$30,000	\$30,000	\$30,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$19,061	\$13,642	\$30,000

SECTION C-2, Program Management

Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0))	\$19,548	\$22,702	\$23,700
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$101,751	\$116,023	\$121,250
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$88,105	\$102,703	\$107,300
Agency Contribution to Regional Program	\$123,208	\$120,570	\$126,000
Totals	\$1,237,389	\$1,305,037	\$1,378,200

FUNDING SOURCES

LIP Funding Sources	FY 2009-10 Funding Sources	FY 2010-11 Projected Funding Sources
General Fund	100%	100%
Utility Tax/Charges		
Separate Utility Billing Item		
Gas Tax		
Special District Fund		
- Sanitation Fee		
- Benefit Assessment		
- Fleet Maintenance Fund		
- Community Services Fund		
- Water Fund		
- Sewer & Storm Drain Maintenance Fee		
- Other		

A review of the costs for fiscal year 2008-09 and fiscal year 2009-10 indicate that there was a 25 percent or great change for program elements concerning municipal activities for environmental performance/BMP implementation and new development BMPs. The change observed in the municipal activities BMP implementation is most likely due to the additional inspection activities and BMP implementation realized at additional municipal parks added to the City's inventory. The change observed in the new development BMP requirements is most likely due to the significant down-turn in the economy during the last fiscal year which resulted in corresponding reductions in new development activities and fewer development applications.

SECTION C-2, Program Management

May 26, 2011
June 23, 2011

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>
Ad Hoc Annual Report	<input checked="" type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Laguna Coastal Streams	<input type="checkbox"/>
Aliso Creek	<input checked="" type="checkbox"/>
Dana Point Coastal Streams	<input type="checkbox"/>
San Juan Creek	<input type="checkbox"/>
San Clemente Coastal Streams	<input type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2..2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

SECTION C-2, Program Management

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2009-10 Expenditures	2010-11 Expenditures	2011-12 Projected Costs
Totals	\$60,000	\$25,000	\$30,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2009-2010	Costs FY 2010-11	Projected Costs FY 2011-12
Supportive of Program Administration (LIP Section 2.0)	\$234,892	\$210,655	\$220,134
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$80,597	\$62,318	\$65,122
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$71,316	\$65,789	\$69,078
Municipal Activities (LIP Section 5.0) Street Sweeping	\$332,998	\$335,679	\$350,785
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$99,952	\$79,424	\$82,998
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$52,856	\$56,314	\$58,848
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$26,786	\$25,325	\$26,465
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$30,000	\$30,000	\$30,00
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$13,642	\$48,157	\$50,324

SECTION C-2, Program Management

Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0)	\$22,702	\$18,960	\$19,815
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$116,023	\$118,972	\$124,326
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$102,703	\$107,187	\$112,010
Agency Contribution to Regional Program	\$120,570	\$112,888	\$117,968
Totals	\$1,305,037	\$1,209,205	\$1,317,795

FUNDING SOURCES

LIP Funding Sources	FY 2009-10 Funding Sources	FY 2010-11 Funding Sources	FY 2011-12 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other			

A review of the costs for fiscal year 2009-10 and fiscal year 2010-11 indicate that there was 25 percent or greater change for program elements concerning requiring new development BMPs. The change observed in the new development BMPs implementation is due to the significantly increased workload associated with developing a comprehensively updated New Development and Significant Redevelopment program including the development of a new Model Water Quality Management Plan and associated technical resource and reference documents. The costs associated with these tasks in very conservative. Actual costs associated with staff time for these efforts is likely much more; however, they were not directly tracked.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Aliso Creek*	<input checked="" type="checkbox"/>
San Juan Creek/San Clemente Coastal Streams**	<input type="checkbox"/>

* Laguna Coastal Streams watershed permittees are also part of the Aliso Creek watershed and meet concurrently with that group.

** Dana Point Coastal Streams watershed permittees are also part of the San Juan Creek watershed and meet concurrently with that group.

The City of Lake Forest is not a part of the San Juan Creek Watershed; therefore, the City did not participate in this committee.

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

SECTION C-2, Program Management

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2010-11 Expenditures	2011-12 Expenditures	2012-13 Projected Costs
Public Projects - BMPs		\$470,765	\$60,000
Construction BMPs for Public Construction Projects		\$97,100	\$60,000
Totals	\$60,000	\$567,865	\$90,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2010-2011	Costs FY 2011-12	Projected Costs FY 2012-12
Supportive of Program Administration (LIP Section 2.0)	\$210,655	\$198,550	\$208,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$62,318	\$63,760	\$66,629
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$65,789	\$63,018	\$66,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$335,679	\$315,867	\$333,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$79,424	\$101,306	\$106,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$56,314	\$62,095	\$65,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$25,325	\$24,360	\$25,500
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$30,000	\$30,000	\$30,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$48,157	\$37,223	\$39,000
Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0)	\$18,960	\$29,238	\$30,300

SECTION C-2, Program Management

Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$118,972	\$192,562	\$201,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$107,187	\$110,260	\$115,500
Agency Contribution to Regional Program	\$112,888	\$116,661	\$122,000
Totals	\$1,209,205	\$1,344,900	\$1,407,929

FUNDING SOURCES

LIP Funding Sources	FY 10-11 Funding Sources	FY 2011-12 Funding Sources	FY 2012-13 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other			

A review of the costs for fiscal year 2010-11 and fiscal year 2011-12 indicate that there was 25 percent or greater change for program elements concerning municipal activities BMP implementation, requiring construction BMPs supportive of plan check and inspection, and existing development inspections. The municipal activities BMP implementation realized a reported cost increase during this reporting period. The increase was attributable to increased need for BMP deployment and implementation at numerous locations throughout the city. The costs reported this year match closely to prior reporting years; however, the previous reporting year (FY 2010-11) saw a decrease in expenditures associated with these activities. Therefore, the current reported expenditures appear to be more consistent with recent historical expenditures and do not reflect any significant programmatic changes. The change observed in expenditures related to requiring construction BMPs supportive of plan check and inspection reflect a change in reporting for the current reporting period. City staff worked with the Building and Safety Division to improve the assessment of costs associated with these activities. Therefore, the

SECTION C-2, Program Management

reported increase in cost reported for this reporting period reflects a more accurate assessment of expenditures related to the specific LIP activities. This improved assessment will be carried forward in future annual reports. Finally, the existing development inspection expenditures increased during this reporting period partially due to increased burden associated with tracking and inspecting post construction structural BMPs and WQMP implementation throughout the City's jurisdiction more formalized tracking of inspections through a GIS-related data base, and a contract change for water quality inspection services.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Aliso Creek*	<input checked="" type="checkbox"/>
San Juan Creek/San Clemente Coastal Streams**	<input type="checkbox"/>

* Laguna Coastal Streams watershed permittees are also part of the Aliso Creek watershed and meet concurrently with that group.

** Dana Point Coastal Streams watershed permittees are also part of the San Juan Creek watershed and meet concurrently with that group.

The City of Lake Forest is not a part of the San Juan Creek Watershed; therefore, the City did not participate in this committee.

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

SECTION C-2, Program Management

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2011-12 Expenditures	2012-13 Expenditures	2013-14 Projected Costs
Public Projects - BMPs	\$470,765	\$654,254	\$100,000
Construction BMPs for Public Construction Projects	\$97,100	\$352,435	\$100,000
Other Capital Projects/Major Equipment Purchases			\$10,000
Totals	\$567,865	\$1,006,689	\$210,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2011-2012	Costs FY 2012-13	Projected Costs FY 2013-14
Supportive of Program Administration (LIP Section 2.0)	\$198,550	\$196,279	\$205,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$63,760	\$49,588	\$52,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$63,018	\$74,862	\$78,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$315,867	\$278,916	\$292,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$101,306	\$79,935	\$84,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$62,095	\$70,408	\$74,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$24,360	\$22,182	\$23,000
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$30,000	\$30,000	\$30,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$37,223	\$29,092	\$31,000
Requiring Construction BMPs	\$29,238	\$30,081	\$32,000

SECTION C-2, Program Management

(Supportive of Plan Check & Inspection (LIP Section 8.0))			
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$192,562	\$180,409	\$189,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$110,260	\$101,681	\$106,000
Agency Contribution to Regional Program	\$116,661	\$130,743	\$137,000
Totals	\$1,344,900	\$1,274,176	\$1,333,000

FUNDING SOURCES

LIP Funding Sources	FY 11-12 Funding Sources	FY 2012-13 Funding Sources	FY 2013-14 Projected Funding Sources
General Fund	100%	97%	97%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax		1%	1%
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding		2%	2%

An assessment of the costs for Fiscal Year 2011-12 and Fiscal Year 2012-13 indicate that there were no program element expenditures that experienced a 25 percent or greater change. During this reporting year, the City of Lake Forest submitted competitive grant applications for proposed catch basin retrofit projects at various locations throughout the City. The City was awarded grant funding for two proposed projects that accounted for approximately 2% funding of this Fiscal Year's expenditures. The City was awarded two competitive grants that funded two similar projects to retrofit selected catch basins with Automatic Retractable Screens (ARS). The catch basin locations selected for ARS retrofits were based upon land uses typically generating high use vehicle and pedestrian traffic, and an elevated potential for generating gross pollutants. The purpose of the projects is to prevent trash, debris, and particles carrying pollutants generated and transported at street level from entering the storm drain system and

impacting downstream waterbodies. These projects represent an important BMP retrofit opportunity within existing development areas that can be significantly impacted but provide for limited structural BMP implementation opportunities due to multiple constraints including private properties, limited right-of-way, and constraints inherent in "built-out" urban conditions. Moreover, these projects also represent an example of successful progress completed within the City's fiscal constraints posed by finite resources and a depressed economy, facilitated through financial assistance awarded through competitive grant funding.

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Aliso Creek*	<input checked="" type="checkbox"/>
San Juan Creek/San Clemente Coastal Streams**	<input type="checkbox"/>

* Laguna Coastal Streams watershed permittees are also part of the Aliso Creek watershed and meet concurrently with that group.

** Dana Point Coastal Streams watershed permittees are also part of the San Juan Creek watershed and meet concurrently with that group.

The City of Lake Forest is not a part of the San Juan Creek Watershed; therefore, the City did not participate in this committee. However, on a few occasions, the Aliso Creek and San Juan Creek Watershed permittees held joint meetings in preparation for anticipated budgeting planning and planning for future WQIP development.

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

SECTION C-2, Program Management

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2013-14 Expenditures	2014-15 Expenditures	2015-16 Projected Costs
Public Projects - BMPs	\$21,000	\$103,336	\$200,000
Construction BMPs for Public Construction Projects	\$17,700	\$33,000	\$30,000
Other Capital Projects/Major Equipment Purchases	\$50,000	\$0	\$0
Totals	\$88,700	\$136,336	\$230,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2013-14	Costs FY 2014-15	Projected Costs FY 2015-16
Supportive of Program Administration (LIP Section 2.0)	\$219,223	\$214,533	\$250,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$54,357	\$47,906	\$49,500
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$50,934	\$49,144	\$51,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$316,866	\$319,962	\$331,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$107,637	\$102,133	\$106,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$51,580	\$68,923	\$71,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$29,403	\$18,342	\$19,000
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0	\$60,000	\$30,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$36,811	\$36,105	\$37,000

SECTION C-2, Program Management

Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0))	\$32,000	\$35,303	\$37,000
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$180,655	\$75,816	\$79,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$108,387	\$101,904	\$105,000
Agency Contribution to Regional Program	\$104,476	\$93,481	\$100,000
Totals	\$1,292,329	\$1,223,552	\$1,266,000

FUNDING SOURCES

LIP Funding Sources	FY 13-14 Funding Sources	FY 2014-15 Funding Sources	FY 2015-16 Projected Funding Sources
General Fund	97%	91%	91%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax	1%	1%	1%
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding	6%	8%	8%

An assessment of the costs for Fiscal Year 2013-14 and Fiscal Year 2014-15 indicate that there were a few program element expenditures that experienced a 25 percent or greater change. A review of the change in expenditures calculated for drainage facility maintenance and pesticide & fertilizer management is most likely reflective of additional storm drain infrastructure and BMP retrofit locations that were added to the maintenance program. A review of the decreased expenditures for public information, non-point source pollution awareness indicates the recent changes in solid waste contractors caused delays in the ability to print and distribute billing inserts as in previous years. The increase in hazardous waste collections was anticipated and was reported in the last reporting period. The household hazardous waste collections resumed

this reporting period after transitioning the City's solid waste franchise agreement to a new contractor. A review of the decreased expenditures calculated for industrial and commercial inspections is most likely reflective of terminating inspection services with an outside contractor and implementing the inspection program in-house.

Similar to the previous reporting year, the City of Lake Forest, submitted competitive grant applications for proposed catch basin retrofit projects at various locations throughout the City. Two projects were completed during the reporting period. Funding for the two projects accounts for approximately 8% for FY 2014-15 and approximately 8% projected for next Fiscal Year's expenditures.

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Aliso Creek*	<input checked="" type="checkbox"/>
San Juan Creek/San Clemente Coastal Streams**	<input checked="" type="checkbox"/>

* Laguna Coastal Streams watershed permittees are also part of the Aliso Creek watershed and meet concurrently with that group.

** Dana Point Coastal Streams watershed permittees are also part of the San Juan Creek watershed and meet concurrently with that group.

The City of Lake Forest is not a part of the San Juan Creek Watershed; however, in light of collaborative cross-watershed issues and Water Quality Improvement Plan development, the City has participated in joint sessions of this committee.

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

SECTION C-2, Program Management

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2014-15 Expenditures	2015-16 Expenditures	2016-17 Projected Costs
Public Projects - BMPs	\$103,336	\$170,000	\$150,000
Construction BMPs for Public Construction Projects	\$33,000	\$1,200	\$5,000
Other Capital Projects/Major Equipment Purchases	\$0	NA	NA
Totals	\$136,336	\$171,200	\$155,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2014-15	Costs FY 2015-16	Projected Costs FY 2016-17
Supportive of Program Administration (LIP Section 2.0)	\$214,533	\$206,615	\$213,705
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$47,906	\$75,354	\$77,940
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$49,144	\$55,775	\$57,690
Municipal Activities (LIP Section 5.0) Street Sweeping	\$319,962	\$297,882	\$308,100
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$102,133	\$167,449	\$173,195
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$68,923	\$72,648	\$75,140
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$18,342	\$18,960	\$19,610
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$60,000	\$30,000	\$30,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$36,105	\$27,593	\$28,550

SECTION C-2, Program Management

Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0))	\$35,303	\$40,909	\$54,950
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$75,816	\$78,541	\$81,300
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$101,904	\$113,907	\$117,850
Agency Contribution to Regional Program	\$93,481	\$122,721	\$127,000
Totals	\$1,223,552	1,308,354	\$1,365,030

FUNDING SOURCES

LIP Funding Sources	FY 14-15 Funding Sources	FY 2015-16 Funding Sources	FY 2016-17 Projected Funding Sources
General Fund	91%	91%	91%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax	1%	1%	1%
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding	8%	8%	8%

An assessment of the costs for Fiscal Year 2014-15 and Fiscal Year 2015-16 indicate that there were a few program element expenditures that experienced a 25 percent or greater change. A review of the change in expenditures calculated for trash and debris control and environmental performance/BMP implementation is most likely reflective of a contract change for solid waste disposal and recycling, and the addition of City facilities including a large sports park. The decrease in expenditures for Household Hazardous Waste Collection was due to an atypical circumstance where the City held two Household Hazardous Waste collection events instead of one. A review of the change in expenditures calculated for agency contributions for regional

SECTION C-2, Program Management

programs was reflective of increasing complexity and implementation costs associated with these programs.

Similar to the previous reporting year, the City of Lake Forest, submitted competitive grant applications for proposed catch basin retrofit projects at various locations throughout the City. One project was completed during the reporting period consisting of installation of connector pipe screens and automatic retractable debris screens on numerous catch basins. Funding for the project accounts for approximately 8% for FY 2015-16 and approximately 8% projected for next Fiscal Year's expenditures.

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
Water Quality Improvement Plan	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

SECTION C-2, Program Management

(Land, Large Equipment and Structures)

LIP Program Elements	2016-17 Expenditures	2017-18 Expenditures	2018-19 Projected Costs
Public Projects - BMPs	\$284,000	\$798,200	\$10,000
Construction BMPs for Public Construction Projects	\$18,520.00	\$80,000	\$30,000
Other Capital Projects/Major Equipment Purchases	NA	NA	NA
Totals	\$302,520	\$878,200	\$40,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2016-17	Costs FY 2017-18	Projected Costs FY 2018-19
Supportive of Program Administration (LIP Section 2.0)	\$233,217	\$232,019	\$240,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$33,808	\$43,335	\$45,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$50,736	\$43,452	\$45,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$287,893	\$293,471	\$304,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$76,944	\$98,635	\$102,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$8,405	\$10,197	\$10,600
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$19,843	\$22,114	\$23,000
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$60,000	\$60,000	\$60,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$38,448	\$23,129	\$20,000

SECTION C-2, Program Management

Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0))	\$44,153	\$50,449	\$52,000
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$82,443	\$87,186	\$91,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$114,720	\$127,578	\$132,000
Agency Contribution to Regional Program	\$117,270	\$140,176	\$145,000
Totals	\$1,137,880	\$1,227,731	\$1,269,600

FUNDING SOURCES

LIP Funding Sources	FY 16-17 Funding Sources	FY 2017-18 Funding Sources	FY 2018-198 Projected Funding Sources
General Fund	91%	98.8%	98.8%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax	1%	1%	1%
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding	8%	0.2%	0.2%

A comparison of the costs for Fiscal Year 2016-17 and Fiscal Year 2017-18 indicate that there were a couple program element expenditures that experienced a 25 percent or greater change. A review of the change in expenditures calculated for environmental performance/BMP implementation appears to be indicative of the increasing operations and maintenance costs associated with LID BMP maintenance and resolving issues with water conservation irrigation practices and recycled water use within large public parks and facilities. The change in expenditures for requiring new development BMPs is most likely indicative of the increase in project applications and corresponding review and processing of Water Quality Management Plans and grading plans.

Similar to the previous reporting year, the City of Lake Forest, submitted a competitive grant application for proposed catch basin retrofit projects at various locations throughout the City. One project was completed during the reporting period consisting of installation of connector pipe screens and automatic retractable debris screens on numerous catch basins. Funding for the project accounts for approximately 0.2% of the total expenditures for FY 2017-18.

SECTION C-2, Program Management

The General Permittee Committee meets nine times per year. The City of Lake Forest had representatives at the following meetings:

<u>Meeting Date</u>	<u>Attended</u>
July 26, 2018 General Permittee	<input type="checkbox"/>
October 25, 2018 General Permittee	<input type="checkbox"/>
December 13, 2018 Trash Provisions	<input type="checkbox"/>
January 24, 2019 General Permittee	<input type="checkbox"/>
April 25, 2019 General Permittee	<input checked="" type="checkbox"/>
June 13, 2019 LIP/PEA	<input type="checkbox"/>

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>

SAN DIEGO REGION

Also, City representatives participated in the following watershed-committees:

<u>Watershed Committee</u>	<u>Attended</u>
South OC WQIP	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

SECTION C-2, Program Management

The Fiscal Analysis is intended to summarize NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2017-18 Expenditures	2018-19 Expenditures	2019-20 Projected Costs
Public Projects - BMPs	\$284,000	191,881	\$120,000
Construction BMPs for Public Construction Projects	\$18,520.00	132,675	\$65,000
Other Capital Projects/Major Equipment Purchases	NA	NA	NA
Totals	\$302,520	\$324,556	\$185,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2017-18	Costs FY 2018-19	Projected Costs FY 2019-20
Supportive of Program Administration (LIP Section 2.0)	\$233,217	\$254,380	\$265,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$33,808	\$42,157	\$44,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$50,736	\$42,672	\$45,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$287,893	\$300,495	\$311,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$76,944	\$93,135	\$102,500
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$8,405	\$9,562	\$10,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$19,843	\$21,206	\$21,000
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$60,000	\$60,000	\$60,000

SECTION C-2, Program Management

Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$38,448	\$30,372	\$32,000
Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0)	\$44,153	\$50,622	\$53,000
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$82,443	\$89,958	\$93,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$114,720	\$122,680	\$127,000
Agency Contribution to Regional Program	\$117,270	\$99,645	\$103,000
Totals	\$1,137,880	\$1,216,884	\$1,266,500

FUNDING SOURCES

LIP Funding Sources	FY 17-18 Funding Sources	FY 2018-19 Funding Sources	FY 2019-20 Projected Funding Sources
General Fund	91%	99%	95%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax	1%	1%	1%
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding	8%	0%	4%

A comparison of the expenditures for Fiscal Year 2017-18 and Fiscal Year 2018-19 indicate that there were a few program element expenditures that experienced a 25 percent or greater change. A review of the change in expenditures calculated for trash and debris control indicates the initial cost increases of controlling trash and debris because of increased operations and maintenance requirements for BMPs installed to comply with the statewide trash provisions. The City has installed numbers connector pipe screens and automatic retractable screens throughout its jurisdiction. Similarly, the environmental performance/BMP implementation

SECTION C-2, Program Management

costs have increased due to increasing costs for implementation, operations and maintenance costs associated with BMPs city-wide. Moreover, the City incurs annual operations and maintenance costs associated with the Dairy Fork regional BMP.

Similar to the previous reporting year, the City of Lake Forest, submitted competitive grant applications for proposed catch basin retrofit projects at various locations throughout the City. If the City's proposed project is awarded grant funding, the City will install additional connector pipe screens and automatic retractable screens at selected locations throughout the City. It is anticipated that the project grant funding would represent approximately four percent of the City's funding sources, with approximately one percent coming from gas tax and the remaining 95 percent coming from the City's general fund.

C-2.3 City Internal Coordination (LIP Section A-2.2)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.2.5)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to summarize NPDES compliance related costs for the City of Lake Forest. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2019-20 Expenditures	2020-21 Expenditures	2021-22 Projected Costs
Public Projects - BMPs	\$272,295	\$366,133	\$50,000
Construction BMPs for Public Construction Projects	\$47,000	\$34,370	\$20,000
Other Capital Projects/Major Equipment Purchases	NA	NA	NA
Totals	\$319,295	\$400,503	\$70,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs FY 2019-20	Costs FY 2020-21	Projected Costs FY 2021-22
Supportive of Program Administration (LIP Section 2.0)	\$246,227	\$234,578	\$243,000
Municipal Activities (LIP Section 5.0) Trash & Debris Control	\$32,637	\$27,880	\$29,000
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$62,644	\$52,876	\$55,000
Municipal Activities (LIP Section 5.0) Street Sweeping	\$308,631	\$371,618	\$385,000
Municipal Activities (LIP Section 5.0) Environmental Performance/BMP Implementation	\$79,259	\$49,277	\$51,000
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$8,460	\$6,474	\$8,000
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$21,334	\$20,413	\$21,100
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$60,000	\$60,000	\$60,000
Requiring New Development BMPs (Supportive of Planning, etc.) (LIP Section 7.0)	\$24,641	\$11,998	\$15,000
Requiring Construction BMPs (Supportive of Plan Check & Inspection (LIP Section 8.0)	\$45,275	\$50,832	\$50,000
Existing Development (LIP Section 9.0) Industrial/Commercial Inspections	\$90,668	\$93,317	\$95,000
Illicit Connections/Illegal Discharge (LIP Section 10.0) Investigations	\$137,012	\$147,213	\$150,000
Agency Contribution to Regional Program	\$100,035	\$137,839	\$150,000
Totals	\$1,216,843	\$1,264,315	\$1,312,100

FUNDING SOURCES

LIP Funding Sources	FY 2019-20 Funding Sources	FY 2020-21 Funding Sources	FY 2021-22 Projected Funding Sources
General Fund	99%	100%	99%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax	1%		
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other: M2 Grant Funding	0%		1%

A comparison of the expenditures for Fiscal Year 2019-20 and Fiscal Year 2020-21 indicate that there were a few program element expenditures that experienced a 25 percent or greater change. A review of the change in expenditures calculated for municipal activities – environmental performance indicates there was a difference this year in the amount of BMP implementation and covid-19 impacted the activities due to statewide stay at home orders and other orders. In addition, a comparison of fiscal years indicates that there was a decrease in expenditures related to requiring new development BMPs. The decrease appears to be related to the fact that new development and redevelopment within the city has decreased. The decrease in development was also undoubtedly affected by the impacts caused by the covid-19 pandemic including the temporary suspension of work related to new development and construction and the uncertainty it caused within the local and global market place. Lastly, the assessment of the last two fiscal years indicates a notable increase for agency contributions to regional programs. The increases realized during the last fiscal year are directly related to watershed efforts completed by the City and in collaboration with other agencies in implementing programs such as the Water Quality Improvement Plan elements in south Orange County and for the Aliso Creek Watershed, as well as several TMDL implementation elements and other initiatives for north Orange County and for the Newport Bay Watershed.

EXHIBIT 5

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input type="checkbox"/>
Ad Hoc Annual Report	<input type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2009-10 Costs	Projected 2010-11 Costs
Public Projects - BMPs	10,000.00	20,000.00
Construction BMPs for Public Construction Projects	43,000.00	46,000.00
Totals	43,000.00	46,000.00

OPERATION AND MAINTENANCE COSTS

2009-10 Costs	Projected 2010-11 Costs
379,900.00	391,800.00

FUNDING SOURCES

LIP Program Elements	2009-10 Costs	Projected 2010-11 Costs
General Fund	90%	90%
Utility Tax/Charges	%	%
Separate Utility Billing Item	%	%
Gas Tax	%	%
Special Restricted Fund	%	%
- Sanitation Fee	%	%
- Benefit Assessment	%	%
- Fleet Maintenance Fund	%	%
- Community Services Fund	%	%
- Water Fund	%	%
- Sewer & Storm Drain Maintenance Fee	%	%
- Others	10%	10%
Totals	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to this section of the City's LIP are currently being developed, based on a template recently provided by the County.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input type="checkbox"/>
Ad Hoc Annual Report	<input type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2009-10 Expenditures	2010-11 Expenditures	2011-12 Projected Costs
Public Projects - BMPs	\$10,000.00	\$8,500.00	\$8,925.00
Construction BMPs for Public Construction Projects	\$43,000.00	\$21,000.00	\$22,050.00
Totals	\$53,000.00	\$29,500.00	\$30,975.00

SECTION C-2, Program Management

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2009-10 Expenditures	2010-11 Expenditures	2011-12 Projected Costs
Totals	\$379,900.00	\$395,321.00	\$403,879.56

FUNDING SOURCES

LIP Funding Sources	FY 2009-10 Funding Sources	FY 2010-11 Funding Sources	FY 2011-12 Projected Funding Sources
General Fund	90%	95%	95%
Utility Tax/Charges	%	%	%
Separate Utility Billing Item	%	%	%
Gas Tax	%	%	%
Special District Fund	%	%	%
- Sanitation Fee	%	%	%
- Benefit Assessment	%	%	%
- Fleet Maintenance Fund	%	%	%
- Community Services Fund	%	%	%
- Water Fund	%	%	%
- Sewer & Storm Drain Maintenance Fee	%	%	%
- Other	10%	5%	5%
Totals	100%	100%	100%

C-2.5 Program Management Modifications

The Program Management section of the City's LIP has been updated to reflect the current NPDES permit. The updated LIP is included as an attachment.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>

C-2.3 City Internal Coordination

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP.

C-2.4 Fiscal Analysis

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2010-2011 Expenditures	2011-2012 Expenditures	2012-13 Projected Costs
Public Projects - BMPs	\$8,500.00	\$115,000.00	\$10,000.00
Construction BMPs for Public Construction Projects	\$21,000.00	\$45,000.00	\$35,000.00
Totals	\$29,500.00	\$160,000.00	\$45,000.00

SECTION C-2, Program Management

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2010-2011 Expenditures	2011-2012 Expenditures	2012-13 Projected Costs
Totals	\$395,300.00	\$446,500.00	\$461,900.00

FUNDING SOURCES

LIP Funding Sources	FY 2010-2011 Funding Sources	FY 2011-2012 Funding Sources	FY 2012-2013 Projected Funding Sources
General Fund	90%	100%	100%
Utility Tax/Charges	%	%	%
Separate Utility Billing Item	%	%	%
Gas Tax	%	%	%
Special District Fund	%	%	%
- Sanitation Fee	%	%	%
- Benefit Assessment	%	%	%
- Fleet Maintenance Fund	%	%	%
- Community Services Fund	%	%	%
- Water Fund	%	%	%
- Sewer & Storm Drain Maintenance Fee	%	%	%
- Other	10%	%	%
Totals	100%	100%	100%

C-2.5 Program Management Modifications

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
Public Projects - BMPs	\$115,000.00	\$10,000.00	\$10,000.00
Construction BMPs for Public Construction Projects	\$45,000.00	\$35,000.00	\$35,000.00
Totals	\$160,000.00	\$45,000.00	\$125,2000.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
Totals	\$446,500.00	\$462,000.00	\$479,138.43

FUNDING SOURCES

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
General Fund	90%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	10%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
Public Projects - BMPs	\$10,000.00	\$125,000.00	\$20,000
Construction BMPs for Public Construction Projects	\$35,000.00	\$40,000.00	\$40,000
Other Capital Projects / Major Equipment Purchases	\$0	\$55,000.00	
Totals	\$45,000.00	\$220,000.00	\$60,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
Totals	\$460,900.00	\$476,000.00	\$489,000.00

FUNDING SOURCES

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2013-14 Costs	2014-15 Costs	Projected 2015-16 Costs
Public Projects - BMPs	\$125,000.00	\$9,000.00	\$0.00
Construction BMPs for Public Construction Projects	\$40,000.00	\$28,000.00	\$39,000.00
Other Capital Projects / Major Equipment Purchases	\$55,000.00	\$0.00	\$0.00
Totals	\$220,000.00	\$37,000.00	\$39,000.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2013-14 Costs	2014-15 Costs	Projected 2015-16 Costs
Totals	\$476,000.00	\$497,100.00	\$487,100.00

FUNDING SOURCES

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
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The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$125,000.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$40,000.00	\$10,000.00	\$60,000.00
Other Capital Projects / Major Equipment Purchases	\$55,000.00	\$0.00	\$0.00
Totals	\$220,000.00	\$10,000.00	\$60,000.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Totals	\$476,000.00	\$497,100.00	\$487,100.00

FUNDING SOURCES

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

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C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

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OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$125,000.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$40,000.00	\$15,000.00	\$65,000.00
Other Capital Projects / Major Equipment Purchases	\$30,000.00	\$0.00	\$0.00
Totals	\$195,000.00	\$15,000.00	\$65,000.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Totals	\$476,000.00	\$500,100.00	\$500,100.00

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

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OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$5,000.00	\$5,000.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$151,000.00	\$151,000.00	\$151,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$15,000.00	\$15,000.00	\$15,000.00
Other Capital Projects / Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Totals	\$15,000.00	\$15,000.00	\$15,000.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Totals	\$500,000.00	\$500,000.00	\$500,000.00

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

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C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

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CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$5,000.00	\$5,000.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$151,000.00	\$151,000.00	\$151,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

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OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$147,000.00	\$147,000.00	\$147,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

EXHIBIT 6

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input type="checkbox"/>
Public Education	<input type="checkbox"/>
Water Quality	<input type="checkbox"/>
Ad Hoc Annual Report	<input type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Villa Park. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the LIP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	Costs	Projected Costs
Totals	\$1,851	\$3,000

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs	Projected Costs
Totals	\$132,358	\$133,500

FUNDING SOURCES

LIP Funding Sources	FY 2009-10 Funding Sources	FY 2010-11 Projected Funding Sources
General Fund	100 %	100%
Utility Tax/Charges		
Separate Utility Billing Item		
Gas Tax		
Special District Fund		
- Sanitation Fee		
- Benefit Assessment		
- Fleet Maintenance Fund		
- Community Services Fund		
- Water Fund		
- Sewer & Storm Drain Maintenance Fee		
- Other		

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following:

During the 10/11 FY the city will update the Program Management element to comply with the fourth term NPDES Permit.

SECTION C-2, Program Management

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input type="checkbox"/>
Public Education	<input type="checkbox"/>
Water Quality	<input type="checkbox"/>
Ad Hoc Annual Report	<input type="checkbox"/>
Permittee Advisory Group (PAG) for the Development of the Model WQMP	<input type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Villa Park. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the LIP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	Costs	Projected Costs
Totals	\$87,100	\$2,000

SECTION C-2, Program Management

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Costs	Projected Costs
Totals	\$136,746	\$137,500

FUNDING SOURCES

LIP Funding Sources	FY 2010-11 Funding Sources	FY 2010-11 Proposed Funding Sources
General Fund	100 %	100%
Utility Tax/Charges		
Separate Utility Billing Item		
Gas Tax		
Special District Fund		
- Sanitation Fee		
- Benefit Assessment		
- Fleet Maintenance Fund		
- Community Services Fund		
- Water Fund		
- Sewer & Storm Drain Maintenance Fee		
- Other		

C-2.5 Program Management Modifications

The modifications that will be made to the Program Management section of the City's LIP include the following:

During the FY 11/12 the City will continue to update the Program Management element to comply with the fourth term NPDES Permit.

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input type="checkbox"/>
Public Education	<input type="checkbox"/>
Water Quality	<input type="checkbox"/>

C-2.3 City Internal Coordination (LIP Section A-2.3)

The responsibilities of City departments for the internal coordination of LIP activities are detailed in LIP Table A- 2.2

C-2.4 Fiscal Analysis (LIP Section A-2.4)

The Fiscal Analysis includes the following:

- The City’s expenditures for the previous fiscal year;
- The City’s budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City of Villa Park. The tables below report costs that include the costs of Permittee operations and contracted services.

Capital Costs

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

Operations and Maintenance Costs

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, Program Management

CAPITAL COSTS

(Land, Large Equipment and Structures)

LIP Program Elements	2010-11 Expenditures	2011-12 Expenditures	2012-13 Projected Costs
Public Projects - BMPs	\$700.00	\$2,130.00	\$2,000.00
Construction BMPs for Public Construction Projects	\$0.00	\$0.00	\$0.00
Other Capital Projects / Major Equipment Purchases	\$86,400.00	\$0.00	\$0.00
Totals	\$87,100.00	\$2,130.00	\$2,000.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2010-11 Expenditures	2011-12 Expenditures	2012-13 Projected Costs
Supportive of Program Administration (LIP Section 2.0)	\$17,318.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$31,768.00	\$31,114.00	\$32,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$23,545.00	\$23,600.00	\$24,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$35,417.00	\$17,709.00	\$0.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$3,354.00	\$1,941.00	\$2,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$692.00	\$533.00	\$500.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$954.00	\$999.00	\$1,000.00
Requiring New Development	\$0.00	\$0.00	\$0.00

SECTION C-2, Program Management

BMPs (Supportive of Planning, etc) (LIP Section 7.0)			
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$6,568.00	\$4,034.00	\$4,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,200.00	\$1,200.00	\$1,200.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,318.00	\$799.00	\$1,000.00
Agency Contribution to Regional Program	\$14,612.00	\$14,928.00	\$15,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Totals	\$136,746.00	\$116,857.00	\$100,700.00

FUNDING SOURCES

LIP Funding Sources	FY 10-11 Funding Sources	FY 2011-12 Funding Sources	FY 2012-13 Projected Funding Sources
General Fund	100%	100%	100%
Utility Tax/Charges			
Separate Utility Billing Item			
Gas Tax			
Special District Fund			
- Sanitation Fee			
- Benefit Assessment			
- Fleet Maintenance Fund			
- Community Services Fund			
- Water Fund			
- Sewer & Storm Drain Maintenance Fee			
- Other			

SECTION C-2, PROGRAM MANAGEMENT

LIP/PEA	<input type="checkbox"/>
Inspection	<input type="checkbox"/>
Trash & Debris	<input type="checkbox"/>
Legal/Regulatory Authority	<input type="checkbox"/>
Public Education	<input type="checkbox"/>
Water Quality	<input type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
Public Projects - BMPs	\$2,130.00	\$0.00	\$2,000.00
Construction BMPs for Public Construction Projects	\$0.00	\$1,730.20	\$0.00
Other Capital Projects / Major Equipment Purchases	\$0.00	\$0.00	\$0.00
TOTALS	\$2,130.00	\$1,730.20	\$2,000.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$19,577.64	\$19,600.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$31,114.00	\$33,270.72	\$33,500.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$23,600.00	\$27,935.14	\$28,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$17,709.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$1,941.00	\$2,586.35	\$2,600.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$533.00	\$1,085.56	\$1,100.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$999.00	\$513.05	\$500.00

SECTION C-2, PROGRAM MANAGEMENT

Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$0.00	\$771.89	\$0.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$4,034.00	\$3,499.65	\$3,500.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,200.00	\$633.36	\$700.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$799.00	\$1,450.42	\$1,500.00
Agency Contribution to Regional Program	\$14,928.00	\$14,659.82	\$14,700.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	0	0
TOTALS	\$116,857.00	\$105,983.60	\$105,700.00

FUNDING SOURCES

LIP Program Elements	2011-12 Costs	2012-13 Costs	Projected 2013-14 Costs
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

Committee/Task Force

Attended

LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input type="checkbox"/>
Public Education	<input type="checkbox"/>
Water Quality	<input type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,730	\$1,591	\$1,600
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
TOTALS	\$1,730	\$1,591	\$1,600

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
Supportive of Program Administration (LIP Section 2.0)	\$19,577.64	\$19,871.55	\$20,600.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$33,270.72	\$33,170.17	\$33,990.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$27,935.14	\$26,330.81	\$26,780.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$2,586.35	\$2,830.57	\$3,090.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,085.56	\$438.94	\$0.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$513.05	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$771.89	\$465.86	\$0.00

SECTION C-2, PROGRAM MANAGEMENT

Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,499.65	\$2,069.08	\$2,060.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$633.36	\$680.75	\$1,030.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,450.42	\$373.72	\$0.00
Agency Contribution to Regional Program	\$14,659.82	\$15,017.46	\$15,450.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	0	\$0.00	\$0.00
TOTALS	\$105,983.60	\$101,248.91	\$103,000.00

FUNDING SOURCES

LIP Program Elements	2012-13 Costs	2013-14 Costs	Projected 2014-15 Costs
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

<u>Committee/Task Force</u>	<u>Attended</u>
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	2013-14 Costs	2014-15 Costs	Projected 2015-16
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,591	\$1,153	\$1,700
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
TOTALS	\$1,591	\$1,153	\$1,700

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	2013-14 Costs	2014-15 Costs	Projected 2015-16 Costs
Supportive of Program Administration (LIP Section 2.0)	\$19,871.55	\$10,745.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$33,170.17	\$46,988.00	\$48,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$26,330.81	\$27,387.00	\$29,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$0.00	\$25,000.00	\$25,750.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$2,830.57	\$5,795.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$438.94	\$989.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$465.86	\$560.00	\$700.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$2,069.08	\$2,644.00	\$2,800.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$680.75	\$71.25	\$73.39
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$373.72	\$989.00	\$1,000.00
Agency Contribution to Regional Program	\$15,017.46	\$16,109.00	\$17,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
TOTALS	\$101,248.91	\$137,277.25	\$150,323.39

SECTION C-2, PROGRAM MANAGEMENT

FUNDING SOURCES

LIP Program Elements	2013-14 Costs	2014-15 Costs	Projected 2015-16 Costs
General Fund	100%	95%	94%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	5%	6%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

Committee/Task Force

Attended

LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

CAPITAL COSTS (Land, Large Equipment and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,000.00	\$3,200.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
TOTALS	\$1,000.00	\$3,200.00	\$1,500.00

OPERATION AND MAINTENANCE COSTS

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$11,000.00	\$25,000.00	\$25,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$47,000.00	\$47,000.00	\$49,440.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$27,000.00	\$22,400.00	\$25,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$25,000.00	\$26,000.00	\$26,780.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$6,000.00	\$3,100.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,030.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$500.00	\$3,000.00	\$721.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$2,500.00	\$2,500.00	\$2,500.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$100.00	\$100.00	\$103.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,030.00
Agency Contribution to Regional Program	\$16,109.00	\$12,516.26	\$12,912.18
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
TOTALS	\$137,209.00	\$143,616.26	\$149,516.18

SECTION C-2, PROGRAM MANAGEMENT

FUNDING SOURCES

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Totals	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$5,000.00	\$5,000.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$151,000.00	\$151,000.00	\$151,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Legal/Regulatory Authority	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$5,000.00	\$5,000.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$151,000.00	\$151,000.00	\$151,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City’s LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

In addition, City representatives participated in the following sub-committees and task forces:

Committee/Task Force	Attended
LIP/PEA	<input checked="" type="checkbox"/>
Inspection	<input checked="" type="checkbox"/>
Trash & Debris	<input checked="" type="checkbox"/>
Public Education	<input checked="" type="checkbox"/>
Water Quality	<input checked="" type="checkbox"/>

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$5,000.00	\$5,000.00	\$5,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$151,000.00	\$151,000.00	\$151,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City’s LIP are not planned at this time.

SECTION C-2, PROGRAM MANAGEMENT

C-2.3 CITY INTERNAL COORDINATION

The responsibilities of City departments for the internal coordination of LIP activities are detailed in the LIP.

C-2.4 FISCAL ANALYSIS

The Fiscal Analysis includes the following:

- The City's expenditures for the previous fiscal year;
- The City's budget for the current fiscal year; and
- A description of the source of funds.

The Fiscal Analysis is intended to depict all NPDES compliance related costs for the City. The tables below report costs that include the costs of Permittee operations and contracted services.

CAPITAL COSTS

Capital costs include any capital expended for each one of the DAMP elements. This would consist of any land, large equipment, and structures.

OPERATIONS AND MAINTENANCE COSTS

Operations and Maintenance costs refer to normal costs of operation including the cost of keeping equipment and facilities in working order.

SECTION C-2, PROGRAM MANAGEMENT

Capital Costs (Land, Large Equipment, and Structures)

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Public Projects - BMPs	\$0.00	\$0.00	\$0.00
Construction BMPs for Public Construction Projects	\$1,500.00	\$1,500.00	\$1,500.00
Other Capital Projects/Major Equipment Purchases	\$0.00	\$0.00	\$0.00
Total	\$1,500.00	\$1,500.00	\$1,500.00

Operation and Maintenance Costs

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
Supportive of Program Administration (LIP Section 2.0)	\$20,000.00	\$20,000.00	\$20,000.00
Municipal Activities (LIP Section 5.0) Trash & Debris Control (formerly "Litter Control")	\$50,000.00	\$50,000.00	\$50,000.00
Municipal Activities (LIP Section 5.0) Drainage Facility Maintenance	\$30,000.00	\$30,000.00	\$30,000.00
Municipal Activities (LIP Section 5.0) Street Sweeping	\$26,000.00	\$26,000.00	\$26,000.00
Municipal Activities (LIP Section 5.0) Environmental Performance (BMP Implementation)	\$0.00	\$0.00	\$0.00
Municipal Activities (LIP Section 5.0) Pesticide & Fertilizer Management	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Nonpoint Source Pollution Awareness	\$1,000.00	\$1,000.00	\$1,000.00
Public Information (LIP Section 6.0) Household Hazardous Waste Collection	\$0.00	\$0.00	\$0.00
Requiring New Development BMPs (Supportive of Planning, etc) (LIP Section 7.0)	\$1,000.00	\$1,000.00	\$1,000.00
Requiring Construction BMPs (Supportive of Plan Check & Inspection) (LIP Section 8.0)	\$3,000.00	\$3,000.00	\$3,000.00
Existing Development (LIP Section 9.0) Industrial/Comm./HOA Inspections	\$1,000.00	\$1,000.00	\$1,000.00
Illicit Connections/Discharge Ident. & Elimination (LIP Section 10.0) Investigations	\$1,000.00	\$1,000.00	\$1,000.00
Agency Contribution to Regional Program	\$13,000.00	\$13,000.00	\$13,000.00
Other - Household Hazardous Waste	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$147,000.00	\$147,000.00	\$147,000.00

SECTION C-2, PROGRAM MANAGEMENT

Funding Sources

LIP Program Elements	Prior Reporting Year Costs	Reporting Year Costs	Projected Costs for Next Reporting Year
General Fund	100%	100%	100%
Utility Tax/Charges	0%	0%	0%
Separate Utility Billing Item	0%	0%	0%
Gas Tax	0%	0%	0%
Special Restricted Fund	0%	0%	0%
- Sanitation Fee	0%	0%	0%
- Benefit Assessment	0%	0%	0%
- Fleet Maintenance Fund	0%	0%	0%
- Community Services Fund	0%	0%	0%
- Water Fund	0%	0%	0%
- Sewer & Storm Drain Maintenance Fee	0%	0%	0%
- Others	0%	0%	0%
Total	100%	100%	100%

C-2.5 PROGRAM MANAGEMENT MODIFICATIONS

Modifications to the Program Management section of the City's LIP are not planned at this time.

DECLARATION OF SEUNG YANG, P.E.

DECLARATION OF SEUNG YANG, CITY ENGINEER, CITY OF COSTA MESA

I, SEUNG YANG, hereby declare and state as follows:

1. I am the City Engineer for the City of Costa Mesa (“City”). In that capacity, I have responsibility for supervising compliance of the City and its departments with the applicable requirements of Order No. R8-2009-0030, the National Pollutant Discharge Elimination System (“NPDES”) permit (“2009 Permit”) issued to the City and other cities within Orange County regulating discharging from the municipal separate storm sewer system (“MS4”).

2. In that capacity, I am familiar with the requirements of the 2009 permit applicable to the City and also the source of funds utilized by the City to pay for those requirements.

3. As required by the 2009 Permit, each year the City must prepare an annual Program Effectiveness Assessment (“PEA”). The City submits its PEA to the Orange County Stormwater Program, and I understand that the Program in turn provides the PEA to the Santa Ana Water Board and U.S. EPA, Region 9, as required by the 2009 Permit.

4. I am aware that each PEA must be accompanied by a “Signed Certified Statement” that certifies “under penalty of law” that the PEA and all attachments were prepared under the signatory’s “direction or supervision” and further that, based on the signatory’s inquiry of responsible persons, “the information submitted, is, to the best of [the signatory’s] knowledge and belief, true, accurate and complete.” I am further aware that the Statement further provides that the signatory is “aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

5. One section of the PEA, "Fiscal Analysis," requires among other items, information on funding sources utilized by the City for "all NPDES compliance related costs" for the City during the fiscal year covered by the PEA. I understand this to encompass all costs incurred by the City in complying with the requirements of the 2009 Permit.

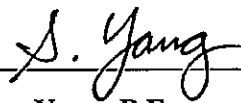
6. Funding sources are listed in the PEA form under various categories, including "General Fund." The category "General Fund" means general fund revenues of the City.

7. I have reviewed what I have been informed are, and which appear to be, excerpts of PEAs prepared by the City for fiscal years between 2010-2011 and 2020-2021, and which include the fiscal analysis section of the PEA, including information on funding sources.

8. Based on my knowledge of the funding sources utilized by the City to pay for requirements of the 2009 Permit, as well as my review of the PEA excerpts, I declare, and am further informed and believe, that the City utilized its General Fund for 100 percent of the costs of complying with the 2009 Permit during the period 2009-2010 through 2020-2021.

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

Executed October 17, 2022 at Costa Mesa, California.



Seung Yang, P.E.
City Engineer
City of Costa Mesa

DECLARATION OF THOMAS LO

DECLARATION OF THOMAS LO

I, Thomas Lo, hereby declare and state as follows:

1. I am the Water Quality Administrator for the City of Irvine (“City”), which is within the City’s Community Development Department. In that capacity, I have responsibility for supervising compliance of the City and its departments with respect to the applicable requirements of Order No. R8-2009-0030, the National Pollutant Discharge Elimination System (“NPDES”) permit (“2009 Permit”) issued to the City and other cities within Orange County regulating discharging from the municipal separate storm sewer system (“MS4”).

2. In that capacity, I am familiar with the requirements of the 2009 Permit applicable to the City and also the source of funds utilized by the City to pay for those requirements since I am involved with the budgeting process in my role within the Community Development Department.

3. As required by the 2009 Permit, each year the City must prepare an annual Program Effectiveness Assessment (“PEA”). The City submits its PEA to the Orange County Stormwater Program (“Program”), and I understand that the Program in turn provides the PEA to the Santa Ana Water Regional Water Quality Control Board and U.S. EPA, Region 9, as required by the 2009 Permit.

4. I am aware that each PEA must be accompanied by a “Signed Certified Statement” that certifies “under penalty of law” that the PEA and all attachments were prepared under the signatory’s “direction or supervision” and further that, based on the signatory’s inquiry of responsible persons, “the information submitted, is, to the best of [the signatory’s] knowledge and belief, true, accurate and complete.” I am further aware that the Statement further provides

that the signatory is “aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

5. One section of the PEA, “Fiscal Analysis,” requires among other items, information on funding sources utilized by the City for “all NPDES compliance related costs” for the City during the fiscal year covered by the PEA. I understand this to encompass all costs incurred by the City in complying with the requirements of the 2009 Permit.

6. Funding sources are listed in the PEA form under various categories, including “General Fund.” The category “General Fund” means general fund revenues of the City.

7. I have reviewed what I have been informed are, and which appear to be, excerpts of PEAs prepared by the City for fiscal years between 2010-2011 and 2020-2021, and which include the fiscal analysis section of the PEA, including information on funding sources.

8. Based on my knowledge of the funding sources utilized by the City to pay for requirements of the 2009 Permit, as well as my review of the PEA excerpts, I declare, and am further informed and believe, that the City utilized its General Fund for nearly all of the costs of complying with the terms of the 2009 Permit during the period 2009-2010 through 2020-2021, to the following effect:

- In Fiscal Year (FY) 2009-2010, approximately 89.6% of the City’s stormwater quality costs were paid for via the City’s General Fund revenues.
- In FY 2010-2011, 100% of the City’s stormwater quality costs were paid for via the City’s General Fund revenues.
- In FY 2011-2012, approximately 98.5% of the City’s stormwater quality costs were paid for via the City’s General Fund revenues.

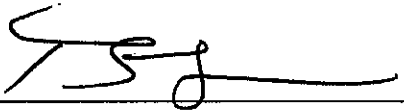
- In FY 2012-2013, approximately 98.3% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2013-2014, 100% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2014-2015, 99.76% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2015-2016, 99.95% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2016-2017, 99.65% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2017-2018, 99.75% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2018-2019, 99.61% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2019-2020, 99.59% of the City's stormwater quality costs were paid for via the City's General Fund revenues.
- In FY 2020-2021, 99.83% of the City's stormwater quality costs were paid for via the City's General Fund revenues.

9. In addition to those General Fund revenues, the small remainder of the City's cost of complying with the 2009 Permit (less than 1% for every fiscal year other than FY 2009-2010) has been paid for with funds from the City's Special Fund 180, or the "Great Park Operating Fund", to pay for certain improvement projects within the Great Park. The funds within Special Fund 180 are sourced from revenue received from the Great Park's operations, certain special

assessments, miscellaneous revenues, and program/service fees. It is my understanding that Special Fund 180 is a limited use fund, meaning that its funds can only be used for projects and programs within the Great Park. The funds from Special Fund 180 were used to comply with certain portions of the 2009 Permit for work done on and in connection with the Great Park.

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

Executed October 31, 2022 at Irvine, California.

A handwritten signature in black ink, appearing to read 'T. Lo', is written over a horizontal line.

Thomas Lo

DECLARATION OF DEVIN SLAVEN

DECLARATION OF DEVIN SLAVEN

I, Devin Slaven, hereby declare and state as follows:

1. I am the Environmental Manager for the City of Lake Forest ("City"). In that capacity, I oversee and coordinate the City's implementation program for stormwater management including the applicable requirements of Order No. R8-2009-0030, the National Pollutant Discharge Elimination System ("NPDES") permit ("2009 Permit") issued to the City and other cities within Orange County regulating discharging from the municipal separate storm sewer system ("MS4").

2. In that capacity, I am familiar with the requirements of the 2009 permit applicable to the City and also the source of funds utilized by the City to pay for those requirements. I prepare the principal budget components for the City's implementation program and also prepare and submit fiscal reporting, on an annual basis.

3. As required by the 2009 Permit, each year the City must prepare an annual Program Effectiveness Assessment ("PEA"). The City delivers its PEA to the County of Orange/Principal Permittee ("County"), and I understand that the County submits the City's PEA, along with the other Co-permittees respective PEAs to the Santa Ana Regional Water Quality Control Board and U.S. EPA, Region 9, as required by the 2009 Permit.

4. I am aware that each PEA must be accompanied by a "Signed Certified Statement" that certifies "under penalty of law" that the PEA and all attachments were prepared under the signatory's "direction or supervision" and further that, based on the signatory's inquiry of responsible persons, "the information submitted, is, to the best of [the signatory's] knowledge and belief, true, accurate and complete." I am further aware that the Statement further provides

that the signatory is “aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

5. One section of the PEA, “Fiscal Analysis,” includes among other items, information on funding sources utilized by the City for “all NPDES compliance related costs” for the City during the fiscal year covered by the PEA. I understand this to encompass all costs incurred by the City in complying with the requirements of the 2009 Permit.

6. Funding sources are listed in the PEA form under various categories, including “General Fund.” The category “General Fund” means general fund revenues of the City.

7. I have reviewed excerpts of PEAs prepared by the City for fiscal years between 2009-2010 and 2018-2019, and which include the fiscal analysis section of the PEA, including information on funding sources.

8. Based on my knowledge of the funding sources utilized by the City to pay for requirements of the 2009 Permit, as well as my review of the PEA excerpts, I declare, and am further informed and believe, that the City utilized its General Fund and in some years gas taxes for the costs of complying with the 2009 Permit during the period 2009-2010 through 2019-2020 as follows:

In FY 2009-2010, 100% of costs were paid for by General Fund and gas taxes

In FY 2010-2011, 100% of costs were paid for by General Fund and gas taxes

In FY 2011-2012, 100% of costs were paid for General Fund and gas taxes

In FY 2012-2013, 98% of costs were paid for by General Fund and gas taxes

In FY 2013-2014, 93% of costs were paid for by General Fund and gas taxes

In FY 2014-2015, 91% of costs were paid for by General Fund and gas taxes

In FY 2015-2016, 91% of costs were paid for by General Fund and gas taxes

In FY 2016-2017, 91% of costs were paid for by General Fund and gas taxes

In FY 2017-2018, 98.8% of costs were paid for by General Fund and gas taxes

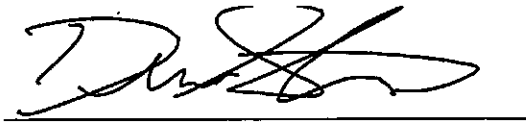
In FY 2018-2019, 99% of costs were paid for by General Fund and gas taxes

In FY 2019-2020, 99% of costs were paid for by General Fund and gas taxes

9. Based upon my knowledge and review of the PEA excerpts, the Measure M2 funds were utilized for storm drain retrofit projects including automatic retractable screens and connector pipe screens for catch basins.

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

Executed October 20, 2022 at Lake Forest, California.

A handwritten signature in black ink, appearing to read 'Devin Slaven', written over a horizontal line.

Devin Slaven

DECLARATION OF DAVID SPITZ, P.E.

DECLARATION OF DAVID SPITZ

I, David Spitz, hereby declare and state as follows:

1. I am an Associate Engineer for the City of Seal Beach ("City"). In that capacity, I have operational oversight of program staff in several key program areas, including construction and development, watershed structural treatment controls, and regulatory reporting and program assessment. I also coordinate the City's stormwater compliance efforts with the municipal stormwater co-permittees and implement, on behalf of the City, applicable requirements of Order No. R8-2009-0030, the National Pollutant Discharge Elimination System ("NPDES") permit ("2009 Permit") issued to the City and other cities within Orange County regulating discharging from the municipal separate storm sewer system ("MS4").

2. In that capacity, I am familiar with the requirements of the 2009 Permit applicable to the City and also the source of funds utilized by the City to pay for those requirements. I am responsible for tracking staff time and resources committed to implementing the 2009 Permit and managing consultant contracts for services related to the 2009 Permit.

3. As required by the 2009 Permit, each year the City must prepare an annual Program Effectiveness Assessment ("PEA"). The City submits its PEA to the Orange County Stormwater Program, and I understand that the Program in turn provides the PEA to the Santa Ana Water Board and U.S. EPA, Region 9, as required by the 2009 Permit.

4. I am aware that each PEA must be accompanied by a "Signed Certified Statement" that certifies "under penalty of law" that the PEA and all attachments were prepared under the signatory's "direction or supervision" and further that, based on the signatory's inquiry

of responsible persons, “the information submitted, is, to the best of [the signatory’s] knowledge and belief, true, accurate and complete.” I am further aware that the Statement further provides that the signatory is “aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

5. One section of the PEA, “Fiscal Analysis,” requires among other items, information on funding sources utilized by the City for “all NPDES compliance related costs” for the City during the fiscal year covered by the PEA. I understand this to encompass all costs incurred by the City in complying with the requirements of the 2009 Permit.

6. Funding sources are listed in the PEA form under various categories, including “General Fund.” The category “General Fund” means general fund revenues of the City.

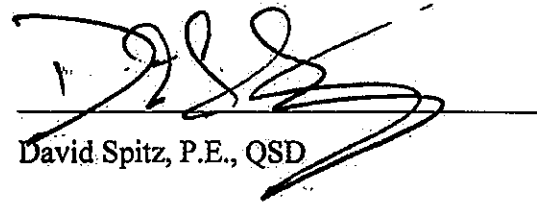
7. I have reviewed what I have been informed are, and which appear to be, excerpts of PEAs prepared by the City for fiscal years between 2009-2010 and 2020-2021, and which include the fiscal analysis section of the PEA, including information on funding sources.

8. Based on my knowledge of the funding sources utilized by the City to pay for requirements of the 2009 Permit, as well as my review of the PEA excerpts, I declare, and am further informed and believe, that the City utilized its General Fund for 100 percent of the costs of complying with the 2009 Permit during the period 2009-2010 through 2020-2021, with the exception of Fiscal Year (FY) 2009-2010, in which 90% of the costs were covered by General Fund sources and FY 2010-2011, when at least 90% were covered by General Fund sources. It is my belief that during these fiscal years, costs associated with the City’s review and approval of

project-specific water quality management plans (WQMP) for new developments were paid for by third-party developers, and such WQMP costs were excluded from the cost figures identified in the City's annual PEA.

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

Executed October 21, 2022 at Seal Beach, California.



David Spitz, P.E., QSD

DECLARATION OF STEVE FRANKS

DECLARATION OF STEVE FRANKS

I, Steve Franks, hereby declare and state as follows:

1. I am the City Manager for the City of Villa Park ("City"). In that capacity, I have the responsibility to oversee the City's various departments, including those portions of the City that ensure the City's compliance with the applicable requirements of Order No. R8-2009-0030, the National Pollutant Discharge Elimination System ("NPDES") permit ("2009 Permit") issued to the City and other cities within Orange County regulating discharging from the municipal separate storm sewer system ("MS4").

2. In that capacity, I am familiar with the requirements of the 2009 permit applicable to the City and also the source of funds utilized by the City to pay for those requirements.

3. As required by the 2009 Permit, each year the City must prepare an annual Program Effectiveness Assessment ("PEA"). The City submits its PEA to the Orange County Stormwater Program ("Program"), and I understand that the Program in turn provides the PEA to the Santa Ana Water Board and U.S. EPA, Region 9, as required by the 2009 Permit.

4. I am aware that each PEA must be accompanied by a "Signed Certified Statement" that certifies "under penalty of law" that the PEA and all attachments were prepared under the signatory's "direction or supervision" and further that, based on the signatory's inquiry of responsible persons, "the information submitted, is, to the best of [the signatory's] knowledge and belief, true, accurate and complete." I am further aware that the Statement further provides that the signatory is "aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. One section of the PEA, "Fiscal Analysis," requires among other items, information on funding sources utilized by the City for "all NPDES compliance related costs" for the City during the fiscal year covered by the PEA. I understand this to encompass all costs incurred by the City in complying with the requirements of the 2009 Permit.

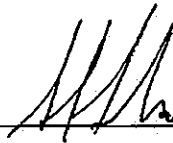
6. Funding sources are listed in the PEA form under various categories, including "General Fund." The category "General Fund" means general fund revenues of the City.

7. I have reviewed what I have been informed are, and which appear to be, excerpts of PEAs prepared by the City for fiscal years between 2009-2010 and 2020-2021, and which include the fiscal analysis section of the PEA, including information on funding sources.

8. Based on my knowledge of the funding sources utilized by the City to pay for requirements of the 2009 Permit, as well as my review of the PEA excerpts, I declare, and am further informed and believe, that the City utilized its General Fund for 100 percent of the costs of complying with the 2009 Permit during the period 2009-2010 through 2020-2021, with the exception of Fiscal Year 2014-2015. In that fiscal year, 95% of the City's costs of complying with the requirements of the 2009 Permit were paid for with funds that from the City's General Fund.

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

Executed October 27, 2022 at Villa Park, California.



Steve Franks
City Manager, City of Villa Park

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 November 7, 2022, I served the:

- **Cities of Alameda's and Union City's and Alameda Countywide Clean Water Program's Comments on the Draft Proposed Decision filed November 4, 2022**
- **Claimants' Comments on the Draft Proposed Decision filed November 4, 2022**
- **Finance's Comments on the Draft Proposed Decision filed November 4, 2022**
- **Water Boards' Comments on the Draft Proposed Decision filed November 4, 2022**

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, 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 November 7, 2022 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/28/22

Claim Number: 09-TC-03

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

Claimants: City of Anaheim
City of Brea
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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