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April 28, 2017

VIA DROPBOX

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

Re: San Diego Region Water Permit – Riverside County, 11-TC-03
Response of Joint Test Claimants to Notice of Incomplete Joint Test Claim Filing

Dear Ms. Halsey:

I have been designated as Claimant Representative by all test claimants in the above-referenced Joint Test Claim and am therefore responding on behalf of the Riverside County Flood Control and Water Conservation District ("District"), the County of Riverside ("County") and the Cities of Murrieta, Temecula and Wildomar (collectively, the "Joint Test Claimants") to the Notice of Incomplete Joint Test Claim Filing dated March 8, 2017 ("Notice Letter"), which stated that the original joint test claim filing was incomplete on two grounds.

The Joint Test Claimants were originally informed that their test claim was deemed complete as of November 18, 2011. The Notice Letter required the Joint Test Claimants to undertake significant efforts, including locating old financial records and preparing new declarations, test claim forms and revisions to the Narrative Statement. The Joint Test Claimants thus incurred significant, unforeseeable costs to address the issues raised in the Notice Letter or risk having the test claim rejected for the reasons stated in therein. The Joint Test Claimants respectfully disagree as to the basis for the Notice Letter on grounds of law and equity, and reserve their right to contest the alleged deficiencies identified in the Notice Letter before the Commission on State Mandates.

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

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

As requested in the Notice Letter, the Joint Test Claimants are not re-attaching any supporting documentation.

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

1. "A revised test claim form from each co-claimant."

2. "Revised written narratives and declarations that provide a detailed description of the costs that are modified by the alleged mandate including the *actual* increased costs incurred by each co-claimant during the fiscal year for which the joint test claim was filed as well as the actual or estimated annual costs that will be incurred by each co-claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed. In addition, please provide the statewide cost estimate (in this case the "statewide cost" is the cost for all of the local agency co-permittees, whether named or not, for the alleged new program or higher level of service imposed by the permit at issue) for increased costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the join test claim was filed."

Notice Letter, pp. 3-4, emphasis in original.

In response to item 1, and notwithstanding the addition in 2014 of 2 CCR § 1183.1(b), which necessitated designation of one claimant representative for joint test claimants, the Joint Test Claimants herewith file new test claim forms signed in Section 8 by the General Manager-Chief Engineer for the District, the Auditor-Controller for the County and the City Managers for the Cities of Murrieta, Temecula and Wildomar. The names, addresses and contact information for these individuals are set forth in Section 2 of the forms. Additionally, as noted above, I am designated as the Claimant Representative for all Joint Test Claimants in Section 3.

In response to item 2, both the Declarations and the Section 5 Narrative Statement (in revised sections following the description of each mandated activity) set forth actual increased costs incurred in the relevant fiscal years covered by the Joint Test Claim. Also, the Joint Test Claimants' best estimate of total statewide costs associated with the Joint Test Claim are set forth in Section VII of the Narrative Statement and are supported by the Declarations. New Sections I.A-C of the Narrative Statement sets forth various jurisdictional matters.

Neither the Department of Finance nor the Water Boards have yet commented to the Joint Test Claim. In light of that fact, and because the Joint Test Claimants wish to avoid further delays in consideration of the claim, we have included in the Narrative Statement a discussion of *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749. As you know, the Commission previously has requested special briefing on this important case. We have also updated other sections to reflect developments occurring since the Joint Test Claim was filed in 2011, to avoid having to correct the record at a later time.

In addition, item VI.M in the original Narrative Statement concerned the potential for increased costs to arise from the triggering of Section A.3 of Order No. R9-2010-0016. We have determined that no such costs were in fact incurred by the Joint Test Claimants during the term of the order and have accordingly removed this item from the Narrative Statement and the declarations.

The Joint Test Claimants wish to thank you for your courtesy in extending the deadline for the submission of this response. While the Joint Test Claimants are responding by the April 28 deadline, we respectfully submit that this deadline is not jurisdictional, both because the regulatory authority cited in the Notice Letter applies only to the initial determination of test claim completeness and because the Executive Director has discretion to extend the 30-day time period within which to cure a returned test claim and still allow the test claimant to preserve the original claim filing date.

Nevertheless, we believe that the information and evidence submitted herewith fully address the issues identified in the Notice Letter. If there are any further concerns or issues regarding these matters, please contact the undersigned or, if I am not available, my partner, Howard Gest, who may be reached at 213-629-8787 and hgest@burhenngest.com.

Thank you for your consideration of these matters.

Very truly yours,

David W. Burhenn

DB:dwb

1. TEST CLAIM TITLE

San Diego Region Stormwater Permit – County of Riverside, 11-TC-03

2. CLAIMANT INFORMATION

Riverside Co. Flood Control and Water Conservation District
Name of Local Agency or School District

Jason Uhley, PE
Claimant Contact

General Manager-Chief Engineer
Title

1995 Market Street
Street Address

Riverside, CA 92501
City, State, Zip

951-955-1201
Telephone Number

951-788-9965
Fax Number

juhley@rivco.org
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

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

David W. Burhenn
Claimant Representative Name

Partner
Title

Burhenn & Gest LLP
Organization

624 S. Grand Avenue, Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

213-629-8788
Telephone Number

213-624-1376
Fax Number

dburhenn@burhenngest.com
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

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

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

☐ *Copies of all statutes and executive orders cited are attached.*

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

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

8. CLAIM CERTIFICATION

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

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

Jason Uhley, P.E.
Print or Type Name of Authorized Local Agency or School District Official

General Manager-Chief Engineer
Print or Type Title

Signature of Authorized Local Agency or School District Official

April 24 2017
Date

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

San Diego Region Water Permit - County of Riverside, 11-TC-03

For CSM Use Only
Filing Date:
Test Claim #:

County of Riverside
Name of Local Agency or School District

Paul Angulo, CPA
Claimant Contact

Auditor-Controller
Title

4080 Lemon Street, 11th Floor
Street Address

Riverside, CA 92502
City, State, Zip

951-955-3800
Telephone Number

951-955-3802
Fax Number

pangulo@rivco.org or jmarcy@rivco.org
E-Mail Address

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

David W. Burhenn
Claimant Representative Name

Partner
Title

Burhenn & Gest LLP
Organization

624 S. Grand Avenue, Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

213-629-8788
Telephone Number

213-624-1376
Fax Number

dburhenn@burhenngest.com
E-Mail Address

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

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

☐ *Copies of all statutes and executive orders cited are attached.*

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

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

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

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

Paul Angulo, CPA
Print or Type Name of Authorized Local Agency or School District Official

Auditor-Controller
Print or Type Title

Signature of Authorized Local Agency or School District Official

April 21, 2017
Date

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

San Diego Region Stormwater Permit – County of Riverside 11-TC-03

City of Murrieta
Name of Local Agency or School District

Rick Dudley
Claimant Contact

City Manager
Title

1 Town Square
Street Address

Murrieta, CA 92562
City, State, Zip

951-461-6010
Telephone Number

951-698-9885
Fax Number

rdudley@murrietaCA.gov
E-Mail Address

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

David W. Burhenn
Claimant Representative Name

Partner
Title

Burhenn & Gest LLP
Organization

624 S. Grand Ave., Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

213-629-8788
Telephone Number

213-624-1376
Fax Number

dburhenn@burhenngest.com
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

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

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

☐ *Copies of all statutes and executive orders cited are attached.*

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

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

[redacted]

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

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

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

City Manager
Print or Type Title

Rick Dudley
Signature of Authorized Local Agency or School District Official

April 28, 2017
Date

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

1. TEST CLAIM TITLE

San Diego Region Stormwater Permit -- County of Riverside 11-TC-03

2. CLAIMANT INFORMATION

City of Temecula
Name of Local Agency or School District

Aaron Adams
Claimant Contact

City Manager
Title

41000 Main Street
Street Address

Temecula, CA 92590
City, State, Zip

951-506-5100
Telephone Number

951-694-6499
Fax Number

aaron.adams@temecula.gov
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

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

David W. Burhenn
Claimant Representative Name

Partner
Title

Burhenn & Gest LLP
Organization

624 S. Grand Ave., Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

213-629-8788
Telephone Number

213-624-1376
Fax Number

dburhenn@burhenngest.com
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

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

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

☐ *Copies of all statutes and executive orders cited are attached.*

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

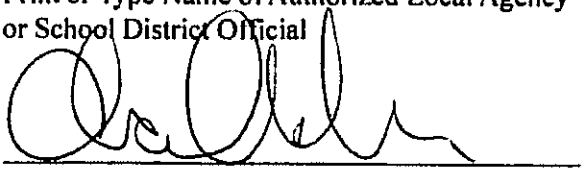
5. Written Narrative: pages _____ to _____.
6. Declarations: pages _____ to _____.
7. Documentation: pages _____ to _____.

8. CLAIM CERTIFICATION

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

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

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



Signature of Authorized Local Agency or School District Official

City Manager
Print or Type Title

April 25, 2017
Date

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

1. TEST CLAIM TITLE

San Diego Regional Stormwater Permit - County of Riverside, 11-TC-03

2. CLAIMANT INFORMATION

City of Wildomar
Name of Local Agency or School District

Gary Nordquist
Claimant Contact

City Manager
Title

23873 Clinton Keith Rd., Suite 201
Street Address

Wildomar, CA 92595
City, State, Zip

(951) 677-7751
Telephone Number

(951) 698-1463
Fax Number

gnordquist@cityofwildomar.org
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

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

David W. Burhenn
Claimant Representative Name

Partner
Title

Burhenn & Gest LLP
Organization

624 S. Grand Ave., Suite 2200
Street Address

Los Angeles, CA 90017
City, State, Zip

(213) 629-8788
Telephone Number

(213) 624-1376
Fax Number

dburhenn@burhenngest.com
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

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

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

☐ *Copies of all statutes and executive orders cited are attached.*

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

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

8. CLAIM CERTIFICATION

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

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

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

City Manager
Print or Type Title

Signature of Authorized Local Agency or School District Official

April 26, 2017
Date

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

Section 5

NARRATIVE STATEMENT

In Support of Joint Test Claims of Riverside County Copermittees Concerning San Diego RWQCB Order No. R9-2010-0016 (NPDES No. CAS 0108766), San Diego Region Stormwater Permit – County of Riverside, 11-TC-03

TABLE OF CONTENTS

NARRATIVE STATEMENT IN SUPPORT OF JOINT TEST CLAIMS

I. INTRODUCTION

On November 10, 2010, the California Regional Water Quality Control Board, San Diego Region ("RWQCB"), adopted a new storm water permit, Order No. R9-2010-0016 (NPDES No. CAS 0108766) ("the 2010 Permit"), regulating discharges from the municipal separate storm sewer systems ("MS4s") operated by a number of municipal entities in the Santa Margarita region of Riverside County, hereinafter referred to as "Copermittees."[1]

The 2010 Permit included numerous new requirements that exceed the requirements of federal law and were not included in the previous MS4 permit issued by the RWQCB, Order No. R9-2004-001 ("the 2004 Permit").[2] These new requirements represent unfunded State mandates for which the 2010 Permit permittees, which are the claimants herein, the Riverside County Flood Control and Water Conservation District ("District"), the County of Riverside ("County"), and the Cities of Murrieta, Temecula and Wildomar (collectively, "Claimants") are entitled to reimbursement under article XIII B section 6 of the California Constitution.

This Section 5 of the Test Claim identifies the activities that constitute unfunded mandates and sets forth the basis for reimbursement for such activities. The mandates for which Claimants seek a subvention of state funds are described in detail below, but encompass the following:

A. The requirement to address three categories of urban irrigation runoff that formerly were considered exempt non-stormwater discharges, contained in Section B.2;

B. The requirement to monitor for, report and address exceedances of non-stormwater action levels, contained in Sections C and F.4;

C. The requirement to monitor for, report and address exceedances of stormwater action levels, contained in Section D;

D. Requirements relating to the Priority Development Projects, local impact development and hydromodification, contained in Section F.1;

E. Requirements to track the construction and operation of post-construction best management practices ("BMPs"), contained in Section F.1;

F. Requirements relating to the control of pollutants from construction sites, contained in Section F.2;

G. Requirements relating to the development and implementation of BMPs for unpaved roads, contained in Sections F.1.i and F.3.a.10;

[1] Copies of the 2010 Permit plus all attachments and Fact Sheet are included in Section 7, filed herewith.

[2] A copy of the 2004 Permit is included in Section 7.

H. Requirements relating the inspection of monitoring of commercial/industrial sources, contained in Section F.3.b;

I. Requirements relating to the retrofitting of existing development, contained in Section F.3.d;

J. Requirements relating to the development and implementation of the Watershed Water Quality Workplan, contained in Section G;

K. Requirements relating to the JRMP Annual Report, contained in Section K.3, and also in Table 5 and in Attachment D;

L. Requirements to perform five special studies, contained in the Monitoring and Reporting Program, Attachment E to the 2010 Permit; and

M. Requirements that programs relating to development, construction, municipal facilities, industrial/commercial facilities, residential areas, retrofitting and education ensure that stormwater runoff not cause or contribute to a violation of a water quality standard and "prevent" illicit discharges into the MS4, contained in Sections F, F.1, F.2, F.3 and F.6.[3]

A. STATEMENT OF INTEREST OF JOINT TEST CLAIMANTS

This Test Claim is filed by Claimants District, County and the Cities of Murrieta, Temecula and Wildomar. The Claimants are filing this Test Claim jointly and, pursuant to Cal. Code Regs., tit. 2, § 1183.1, subd. (g), attest to the following:

1. The Claimants allege state-mandated costs resulting from the same Executive Order, *i.e.*, the 2010 Permit;

2. The Claimants agree on all issues of the Test Claim; and

3. The Claimants have designated one contact person to act as a resource for information regarding the test claim in Section 3 of their Test Claim forms.

4. All Test Claim forms have been executed, respectively, by the Auditor-Controller (on behalf of the County), the General Manager-Chief Engineer (on behalf of the District) and by City Managers (on behalf of the city Claimants). All such individuals are authorized to sign on behalf of their respective Claimants. Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(5).

[3] The previous version of this Narrative Statement included a test claim item concerning Section A.3 of the 2010 Permit. However, no increased costs were incurred by the Claimants from this provision during the term of the 2010 Permit and, thus, it has been omitted from this Narrative Statement and the supporting declarations.

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

The Claimants further state that, as set forth below and in the attached Section 6 Declarations filed herewith in support, the actual and/or estimated costs from the state mandates set forth in this Test Claim exceed $1,000 for each of the Claimants. This Narrative Statement sets forth specific and estimated amounts expended by the Claimants as determined from the perusal of pertinent records and as disclosed in the Section 6 Declarations filed herewith. Such amounts reflect, in many cases, costs associated with the development of programs, and not their later implementation by the Claimants. The Claimants respectfully reserve the right to modify such amounts when or if additional information is received and to adduce additional evidence of costs if required in the course of the Test Claim.

C. THE TEST CLAIM WAS TIMELY FILED

The Test Claim was filed on November 10, 2011, within one year after adoption of the Permit. It was thus timely filed. Cal. Code Regs., tit. 2, § 1183.1, subd. (b).

II. BACKGROUND

This Test Claim concerns the choice made by the RWQCB, acting under its authority granted by California law, to impose requirements under the 2010 Permit that go beyond those required by the federal Clean Water Act ("CWA") and/or which exceed the "maximum extent practicable" ("MEP") standard applicable to MS4 permits under the CWA.

The RWQCB has authority to exceed the requirements of the CWA because, under both the CWA and the Porter-Cologne Water Quality Act, California Water Code § 13000 et seq., a regional board may impose additional requirements on a permittee covered by a federal National Pollutant Discharge Elimination System ("NPDES") permit, such as the 2010 Permit. *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613, 619. As the California Supreme Court noted in *City of Burbank*,

> The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to "enforce any effluent limitation" that is not *"less stringent"* than the federal standard (33 U.S.C. § 1370, italics added)."

City of Burbank, 35 Cal.4th at 627-28.

This Commission previously has found, in two test claims regarding MS4 permits issued by the Los Angeles RWQCB and the San Diego RWQCB, that those regional boards issued permit requirements that exceeded the requirements of federal law and regulation and represented unfunded state mandates. *In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192*, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 ("LA County Test Claim"); *In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001*, Case No. 07-TC-09 ("San Diego County Test Claim").

The Commission's reasoning in the LA County Test Claim was reversed by the Los Angeles County Superior Court, which held that the appropriate test for determining the presence of a federal, as opposed to state, mandate was whether the provision at issue exceeded the MEP standard. The California Court of Appeal affirmed that decision. Subsequently, the California Supreme Court, in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal. 5th 749, reversed, finding that the mandates in question were in fact state, not federal, in nature. *Department of Finance* is discussed in Section V.B below.

III. FEDERAL LAW

The 2010 Permit was issued, in part, under the authority of the CWA, 33 U.S.C. § 1251 *et seq*. The CWA authorizes the EPA, or states with an approved water quality program (such as California), to issue NPDES permits for discharges into waters of the United States. 33 U.S.C. § 1342. The CWA was amended in 1987 to include within its regulation of discharges from "point sources" to "waters of the United States" discharges to such waters from MS4s. 33 U.S.C. § 1342(p)(2). The CWA requires that MS4 permits:

(i) may be issued on a system or jurisdiction-wide basis;

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

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

33 U.S.C. § 1342(p)(3)(B).

The 2010 Permit is an example of a "Phase I" permit, which are required for MS4s serving larger urban populations, as is the case with the MS4 systems in the Santa Margarita region of Riverside County. In 1990, EPA issued regulations to implement Phase I of the MS4 permit program. 55 Fed. Reg. 47990 (November 16, 1990). The requirements of those regulations, as they apply to the provisions of the 2010 Permit relevant to this Test Claim, are discussed in further depth below.

IV. CALIFORNIA LAW

The CWA allows delegation of its NPDES permit powers to the states. 33 U.S.C. § 1342(b). Pursuant to that delegation, in 1972, California became the first state authorized to issue NPDES permits through an amendment of the existing Porter-Cologne Water Quality Act. California Water Code § 13370. The Porter-Cologne Act, adopted in 1969, pre-dated the CWA delegation by three years.

The Porter-Cologne Act's scope is broader than that of the CWA, as it applies not only to navigable surface waters of the United States (the scope of permits issued under the NPDES program) but to any "waters of the state," including "any surface water or groundwater, including

saline waters, within the boundaries of the state." Water Code § 13050(e). The 2010 Permit, in addition to being issued as an NPDES permit under the authority of the CWA, also was issued by the RWQCB as a "waste discharge requirement," pursuant to the authority of Article 4, Chapter 4, Division 7 of the California Water Code, commencing with California Water Code § 13260. *See also* California Water Code § 13263. Thus, the 2010 Permit may, and does, contain programs both authorized under the federal CWA and the state Porter-Cologne Act.

As discussed above, the California Supreme Court, in *City of Burbank*, has expressly held that a regional board has the authority to issue a permit that exceeds the requirements of the CWA and its accompanying federal regulations. *City of Burbank*, 35 Cal.4th at 618. The State Water Resources Control Board ("SWRCB"), which supervises all regional boards in the state, including the RWQCB, has acknowledged that since NPDES permits are adopted as waste discharge requirements, they can more broadly protect "waters of the State" rather than be limited to "waters of the United States," which do not include groundwater. *In re Building Industry Assn. of San Diego County and Western States Petroleum Assn.*, State Board Order WQ 2001-15.

V. STATE MANDATE LAW

A. Introduction

Article XIII B, section 6 of the California Constitution requires that the Legislature provide a subvention of funds to reimburse local agencies any time that the Legislature or a state agency "mandates a new program or higher level of service on any local government." The purpose of section 6 "is to preclude the State from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." *County of San Diego v. State of California* (1991) 15 Cal.4th 68, 81.

The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. Govt. Code § 17500 *et seq*.; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 (statute establishes "procedure by which to implement and enforce section 6").

"Costs mandated by the state" include "any increased costs which a local agency … is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Govt. Code § 17514. Orders issued by any regional board pursuant to the Porter-Cologne Act come within the definition of an "executive order." *County of Los Angeles v. Comm'n on State Mandates* (2007) 150 Cal.App.4th 898, 920.

Govt. Code § 17556 identifies seven exceptions to reimbursement requirement for state mandated costs. The exceptions are as follows:

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

In addition, the program or increased level of service must impose "unique requirements on local government" that "carry out a state policy". (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *see also County of Los Angeles, supra,* 150 Cal.App.4th at 907.)

None of these exceptions would bar reimbursement for the state mandates identified in this Test Claim. First, the exceptions identified in Govt. Code §§ 17556(a), (b), (e), (f) and (g) are not relevant to this Test Claim, and will not be discussed further. The exception identified in Govt. Code § 17556(c), relating to federal mandates, is expected to be raised in potential opposition to the Test Claim and will be discussed further below. Also, as will be demonstrated below, the requirements of the mandates in this Test Claim represent "unique requirements on local government" and not requirements that fall equally upon local governments and private parties, so as to obviate the need for a subvention of state funds under Article XIII B, section 6.

In particular, when a new program or level of service is in part federally required, California courts have held that where the state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *Long Beach Unified School Dist. v State of California* (1990) 225 Cal.App.3d 155, 172-73. Moreover, a "new program or higher level of service" imposed by the State upon a local agency as a result of a federal law or federal program is not necessarily a "federal mandate." In order to be a federal mandate, the obligation must be imposed upon the local agency by federal law itself. The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has a "true choice" in the matter of implementation, *i.e.*, whether the state freely chose to impose that program on local municipalities as opposed to performing the obligation itself. *Hayes v. Comm'n on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

With respect to the provisions of Govt. Code § 17556(d), concerning the ability of a local agency to impose fees to recoup the cost of a state mandated program, with the passage of Proposition 26 in November 2010, it is clear that the costs associated with developing and implementing many programs called for in the 2010 Permit are not recoverable through fees. The impact of Proposition 26 on MS4 compliance efforts already is being seen. For example, in the City of Poway, an existing stormwater fee developed and used by that municipality to fund MS4 permit compliance programs was overturned and has been abandoned due to the passage of Proposition 26. *See* online news article, attached in Section 7. Proposition 26, enacted by the voters to amend Article XIII C of the California Constitution, defined virtually any revenue device enacted by a local government as a tax requiring voter approval, unless it fell within certain enumerated exceptions.

Article XIII C, section 2(d) provides that:

> No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

Article XIII C, section 1(d) defines "special tax" as

> … any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund

Article XIII C, section 1(e) defines a "tax" as

> … any levy, charge, or exaction of any kind imposed by a local government, except the following:
>
> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

In order not to be characterized as a tax subject to voter approval, a fee must fall within the express exemptions authorized by Article XIII C, section 1(e). The fee must be such that it recovers no more than the amount necessary to recover costs of the governmental program being funded by the fee. Further, the person or business being charged the fee, the payor, may only be charged a fee based on the portion of the total government costs attributable to burdens being placed on the government by *that payor* or an amount based on the *direct benefits* the payor receives from the program or facility being funded by the fee.

A fee or charge that does not fall within the seven exceptions listed in Article XIII C, section 1(e) is automatically deemed a tax, which must be approved by the voters. Any fee that does not fall within one of the one of the exceptions listed in Article XIII C, section 1(e) and that is imposed for a specific purpose, such as funding all or part of a program designed to comply with a municipality's obligation under an MS4 Permit, would constitute a "special tax." Article XIII A, section 4 and Article XIII C, section 2(d) would thus require it to be approved by 2/3 of the voters of the portion of the jurisdiction subject to the fee.

The 2010 Permit imposed new requirements establishing new and higher levels of service on the permittees thereunder, including the Claimants, and that were unique to the permittees' function as local government entities. As will be clear from a review of the mandated activities set forth below, all of the requirements relate to the Claimants' role as local governmental agencies. The provisions of the 2010 Permit set forth in this Test Claim are state mandates for which Claimants, as the permittees under the 2010 Permit, are entitled to reimbursement pursuant to Article XIII B, section 6 of the California Constitution.

The Commission has sole jurisdiction to determine whether a mandate constitutes a federal mandate pursuant to Govt. Code § 17556(c): "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation." Under the statutory scheme, it is the Commission, and not a regional board, that is exclusively charged with determining whether a "federal mandate" has been created in an MS4 permit. *Department of Finance, supra,* 1 Cal. 5th at 768-69; *County of Los Angeles, supra,* 150 Cal.App.4th at 917-18.

If the issue of what constitutes "MEP" is relevant to this Test Claim, this is an issue, like all others regarding the existence of a federal or state mandate, reserved to the Commission. The Commission has *sole authority* to determine what constitutes a state mandate, and if that determination requires the Commission to determine that a particular requirement effectuates, or goes beyond, the MEP standard, the Commission cannot defer to the RWQCB's assertion of what constitutes MEP, but must instead make that determination based on the law and the facts before it. *Department of Finance,* 1 Cal. 5th at 768; *County of Los Angeles,* 150 Cal.App.4th at 917-18.

The Commission of course can refer to the state's interpretation of what constitutes MEP. In that regard, a February 11, 1993 memorandum written by the SWRCB's Office of Chief Counsel regarding the "*Definition of 'Maximum Extent Practicable*" ("MEP Memo") (attached in Section 7 and excerpted in the Definitions Section of the 2010 Permit, Attachment C), concluded:

> On its face, it is possible to discern some outline of the intent of Congress in establishing the MEP standard. First, the requirement is to <u>reduce</u> the discharge of pollutants, rather than totally prohibit such discharge. Presumably, the reason for this standard (and the difference from the more stringent standard applied to industrial dischargers in Section 402(p)(3)(A), **is the knowledge that it is not possible for municipal dischargers to prevent the discharge of all pollutants in storm water**. (MEP Memo, p. 2, bolding added, underlining in original.)

The MEP Memo found that the following factors should be considered in making a determination on whether a BMP is consistent with the "MEP" standard: effectiveness, regulatory compliance, public acceptance, cost (whether the cost of BMPs being considered have a "reasonable relationship" to the pollution control benefit to be achieved) and technical feasibility. MEP Memo, pp. 4-5.

B. In *Department of Finance,* the California Supreme Court Established Definitive Guidance as to How the Commission Must Assess Requirements in MS4 Permits as State or Federal Mandates

Definitive guidance as to what constitutes a state, as opposed to a federal mandate in MS4 permits and the role that the Commission plays in that determination, was provided by the California Supreme Court in *Department of Finance.* In that case, the Court found that the requirements in the Los Angeles County MS4 permit to install trash receptacles at transit stops and to inspect various sites and facilities were state, not federal, mandates.

In determining what constituted a federal versus state mandate, the Supreme Court set forth this test:

> 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," that requirement is not federally mandated.

1 Cal. 5th at 765.

Department of Finance involved a challenge to the Commission's decision in the LA County Test Claim, which found that certain provisions in the LA County MS4 permit constituted state mandates and, concerning a provision requiring the installation and maintenance of trash receptacles at transit stops, required a subvention of state funds. The Commission similarly found, in the San Diego County Test Claim, that a number of provisions in the 2007 San Diego County MS4 permit constituted state mandates. That test claim is presently on appeal with the Court of Appeal, as discussed in Section IX.B below.

Significantly, the process used by the Commission to evaluate these test claims, an examination of federal statutory or regulatory authority for the MS4 permit provisions, at the text of previous permits, at evidence of other stormwater permits issued by the federal government and at evidence from the permit development process, was itself used and validated by the Supreme Court in *Department of Finance.* In affirming the Commission's decision on the LA County test claims, the Court explicitly rejected the argument which has been repeatedly raised by the State in Test Claim comments and court filings, *i.e.*, that the provisions at issue were simply expressions of the MEP standard required of stormwater permittees in the CWA,[4] and thus were purely federal mandated requirements, exempt from consideration as state mandates pursuant to Govt. Code § 17756(c).

1. The Supreme Court Applied Existing Mandates Case Law in Reaching Its Decision: The question posed by the Court was this:

[4] 33 U.S.C. § 1342(p)(3)(B)(iii).

> [H]ow to apply [the federal mandate] exception when federal law requires a local agency to obtain a permit, authorizes the state to issue the permit, and provides the state discretion in determining which conditions are necessary to achieve a general standard established by federal law, and when state law allows the imposition of conditions that exceed the federal standard.

1 Cal. 5th at 763.

Key to the Supreme Court's analysis was its careful application of existing mandate jurisprudence in determining a mandate was federal or state. The Court considered three key cases.[5] The first was *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, where the Supreme Court found that a state law requiring local governments to participate in the State's unemployment insurance program was in fact compelled by federal law, since the failure to do so would result in the loss of federal subsidies and federal tax credits for California corporations. The Court found that because of the "certain and severe federal penalties" that would accrue, the State was left "*without discretion"* and thus the State "'acted in response to a federal "mandate."'" *Department of Finance,* 1 Cal. 5th at 764, quoting *City of Sacramento,* 50 Cal.3d at 74 (emphasis in *Department of Finance*).

The second case was *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, in which the county alleged that a state requirement to provide indigent criminal defendants with funding for expert witnesses was a state mandate. The court disagreed, finding that because this requirement reflected a binding Supreme Court precedent interpreting the federal Constitution (*Gideon v. Wainwright* (1963) 372 U.S. 335), even absent the state law, the county still would have been bound to fund defense experts. Thus, the legislation "merely codified an existing federal mandate." 1 Cal. 5th at 764.

The Court finally considered *Hayes, supra,* where a state plan adopted under a federal special education law required local school districts to provide disabled children with certain educational opportunities. While the state argued that the plan was federally mandated, the *Hayes* court found that this was merely the "starting point" of its analysis, which was whether the "'manner of implementation of the federal program was left to the *true discretion* of the state.'" *Department of Finance,* 1 Cal. 5th at 765, quoting *Hayes* at 1593 (emphasis added by Supreme Court). *Hayes* concluded that if the State "'freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.'" 1 Cal. 5th at 765, quoting *Hayes* at 1594.

From these cases, the Supreme Court distilled the "federally compelled" test set forth above, holding that "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. 1 Cal. 5th at 765. The Court

[5] Because these are cases involving the scope of the Commission's actions, they are not attached.

also held that it is the State, not the test claimants, which has the burden to show that a challenged permit condition was mandated by federal law. *Id.* at 769.

Thus, the Commission must employ this test, allocating to the State the burden of proof, in its analysis of this Test Claim.

2. The Supreme Court Examined the Nature of CWA Stormwater Permitting and Determined That Water Boards Have Great Discretion in Establishing Permit Requirements: The Court reviewed the interplay between the federal CWA and California law set forth in the Water Code (1 Cal. 5th at 767-69) and determined that with respect to MS4 permits, the State had chosen to administer its own permitting program to implement CWA requirements (*citing* Water Code § 13370(d)). 1 Cal. 5th at 767.

The Court (at 1 Cal. 5th 767-68) found that the State's permitting authority under the CWA was similar to that in *Division of Occupational Safety & Health v. State Bd. Of Control* (1987) 189 Cal.App.3d 794. There, the State had the choice of being covered by federal occupational safety and health ("OSHA") requirements or adopting its own OSHA program, which had to meet federal minimums and had to extend its standards to State and local employees. In that case, state OSHA requirements called for three-person firefighting teams instead of the two-person teams that would have been allowed under the federal program. The Court of Appeal found that because the State had freely exercised its option to adopt a state OSHA program, and was not compelled to do so by federal law, the three-person team requirement was a state mandate.

The Supreme Court also distinguished the broad discretion provided to the State under the federal CWA stormwater permitting regulations with the facts in *City of Sacramento, supra,* where the State risked the loss of subsidies and tax credits if it failed to comply with federal law:

> Here, the State was not compelled by federal law to impose any particular requirement. Instead, as in *Hayes, supra* . . . the Regional Board has discretion to fashion requirements which it determined would meet the CWA's maximum extent practicable standard.

1 Cal. 5th at 768 (citation omitted). The Court held that the EPA regulations "gave the Board discretion to determine which specific controls were necessary to meet the [MEP] standard." *Id.*

3. The Court Rejected the Argument That the Commission Must Defer to the Water Boards' Determination of What Constitutes a Federal Mandate: The Supreme Court rejected one of the State's key arguments, that the Commission should have deferred to a regional board's determination of what in a stormwater permit constitutes a federal, versus state, mandate. 1 Cal. 5th at 768-69.

The Court first addressed the Water Boards' arguments that the Commission ignored "the flexibility in the CWA's regulatory scheme, which conferred discretion on the State and regional boards in deciding what conditions were necessary to comply with the CWA" and that the LA County MS4 permit "itself is the best indication of what requirements *would have been imposed* by the EPA if the Regional Board had not done so," such that the Commission "should have

deferred to the board's determination of what conditions federal law required." 1 Cal. 5th at 768 (emphasis in original).

The Court flatly rejected these arguments, finding that in issuing the permit, "the Regional Board was implementing both state and federal law and was authorized to include conditions more exacting than federal law required. [citation omitted]. It is simply not the case that, because a condition was in the Permit, it was, ipso facto, required by federal law." *Id.* The Court (at 1 Cal. 5th 768) cited as authority its decision in *City of Burbank, supra*, 35 Cal. 4th at 627-28, where it held that a federal NPDES permit issued by a water board (such as the 2010 Permit) may contain State-imposed conditions that are more stringent than federal law requirements.

The Court next addressed the Water Boards' argument that the Commission should have deferred to the regional board's conclusion that the challenged requirements in the LA County MS4 permit were federally mandated. Finding that this determination "is largely a question of law," the Court distinguished situations where the question involved the regional board's authority to *impose* specific permit conditions from those involving the question of who would *pay* for such conditions. In the former situation, "the board's findings regarding what conditions satisfied the federal [MEP] standard would be entitled to deference." 1 Cal. 5th at 768. But, the Court held,

> Reimbursement proceedings before the Commission are different. The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.

Id. at 769.

The Court held that "the State must explain why federal law mandated these requirements, rather than forcing the Operators to prove the opposite." *Id.* In placing that burden on the State, the Court held that because article XIII B, section 6 of the Constitution established a "general rule requiring reimbursement of all state-mandated costs," a party claiming an exception to that general rule, such as the federal mandate exception in Govt. Code § 17556(c), "bears the burden of demonstrating that it applies." *Id.* at 769.

The Supreme Court concluded that the State's proposed rule of "requiring the Commission to defer to the Regional Board" would "leave the Commission with no role to play on the narrow question of who must pay. Such a result would fail to honor the Legislature's intent in creating the Commission." *Id.* Looking to the policies underlying article XIII B, section 6, the Court concluded that the Constitution "would be undermined if the Commission were required to defer to the Regional Board on the federal mandate question." *Id.*

The only circumstance under which the Court found that deference to the Water Boards' expertise would be appropriate was if a regional board had "found, when imposing the disputed permit conditions, that those conditions were the only means by which the [MEP] standard could

be implemented." 1 Cal. 5th at 768. As discussed below, there is no such finding in the 2010 Permit.

The Court noted that the "central purpose" of article XIII B is to rein in local government spending (citing *City of Sacramento,* 50 Cal.3d at 58-59) and that the purpose of section 6 "is to protect local governments from state attempts *to impose or shift the costs* of new programs or increased levels of service by entitling local governments to reimbursement" (citing *County of San Diego v. State of California* (1997) 15 Cal. 4th 68, 81), 1 Cal. 5th at 769, emphasis supplied). Requiring the State to establish that a permit requirement is federally mandated, the Court found, "serves those purposes." *Id.*

4. **Applying Its Test, the Court Upheld the Commission's Determination that Inspection and Trash Receptacle Requirements In The LA County MS4 Permit Were State Mandates:** Applying its "federally compelled" test, the Supreme Court reviewed and upheld the Commission's determination that the inspection and trash receptacle requirements in the LA County MS4 Permit were in fact state mandates.

First, with respect to the inspection requirements, the test claimants had argued that a requirement in the permit that MS4 operators inspect certain industrial facilities and construction sites was a state mandate. The Commission agreed and the Supreme Court upheld that determination, citing the grounds employed by the Commission.

The Court noted that there was no requirement in the CWA, including the MEP provision, which "expressly required the Operators to inspect these particular facilities or construction sites." 1 Cal. 5th at 770. While the Act did not mention inspections, the implementing federal regulations required inspections of certain industrial facilities and construction sites (not at issue in the test claim) but did not mention commercial facility inspections "at all." *Id.* The Court also agreed with the test claimants that state law gave the regional board itself "an overarching mandate" to inspect the facilities and sites. *Id.*

The Court further found that with respect to a requirement to inspect facilities covered by general industrial and general construction stormwater permits, "the State Board had placed responsibility for inspecting facilities and sites on the *Regional Board"* and that in fact the State Board was authorized to charge a fee for permittees, part of which "was earmarked to pay the Regional Board for 'inspection and regulatory compliance issues.'" *Id.* (emphasis in original). The Court further cited evidence before the Commission that the regional board had offered to pay LA County to inspect industrial facilities, an offer that made no sense "if federal law required the County to inspect those facilities." *Id.*

The Court, citing *Hayes, supra,* found that since the regional board had primary responsibility for inspecting the facilities and sites, it had "shifted that responsibility to the Operators by imposing these Permit conditions." 1 Cal. 5th at 771. The Court further rejected the State's argument that the inspections were federally mandated "because the CWA required the Regional Board to impose permit controls, and the EPA regulations contemplated that some kind of operator inspections would be required." *Id.* The Court held that the mere fact that federal regulations "contemplated some form of inspections, however, does not mean that federal law

required *the scope and detail* of inspections required by the Permit conditions." *Id.* (emphasis supplied).

Second, the Court upheld the Commission's determination that the requirement to place trash receptacles at transit stops was a state mandate. The Court found, as did the Commission, that while MS4 operators were required to "include a description of practices and procedures in their permit application," the permitting agency had "discretion whether to make those practices conditions of the permit." *Id.* As the Commission had previously found, the Court found that the State cited no CWA regulation which required trash receptacles at transit stops, and there was evidence that EPA-issued permits in other cities did not require trash receptacles at transit stops. *Id.* at 772. This latter fact, that "the EPA itself had issued permits in other cities, but did not include the trash receptacle condition," in the Court's view, "undermines the argument that the requirement was federally mandated." *Id.*

The Claimants respectfully submit that *Department of Finance* answers the question of whether the mandates identified in this Test Claim are federal or state in nature. As set forth below, each requirement represents the "true choice" of the RWQCB to impose the conditions at issue and to specify the means of compliance with general federal requirements. In some cases, the requirements are not even linked to federal law or regulation but rather to the RWQCB's concurrent state law powers under the Porter-Cologne Act. Nowhere in the 2010 Permit is there any RWQCB finding that the specific requirements at issue in this Test Claim were determined to be the only way in which the MEP standard could be achieved. As the Supreme Court held, a regional board cannot simply argue that the imposition of such requirements represents the board's imposition of the federal MEP standard, thus rendering those requirements as federal.

Under *Department of Finance,* and the other mandate jurisprudence cited above, the requirements in this Test Claim are state, not federal, mandates.

VI. STATE MANDATED ACTIVITIES

A. Removal of Categories of Irrigation Runoff from Non-Prohibited Non-Stormwater Discharges

Section B.2 of the 2010 Permit deleted three categories of irrigation runoff, "landscape irrigation," irrigation water" and "lawn watering," from categories of non-stormwater discharges not prohibited by the 2010 Permit, a new requirement that exceeded the plain requirements of federal regulations governing such discharges and representing a choice by the RWQCB to impose such requirements.

1. Applicable Requirements in the 2010 Permit

Section B.2

The 2010 Permit, in Section B.2, identified the following categories of non-stormwater discharges as exempt from the requirement to prohibit their entry into Claimants' MS4s:

a. Diverted stream flows;
b. Rising ground waters;
c. Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to MS4s;
d. Uncontaminated pumped ground water;
e. Foundation drains;
f. Springs;
g. Water from crawl space pumps;
h. Footing drains;
i. Air conditioning condensation;
j. Flows from riparian habitats and wetlands;
k. Water line flushing;
l. Discharges from potable water sources not subject to NPDES Permit No. CAG679001, other than water main breaks;
m. Individual residential car washing; and
n. Dechlorinated swimming pool discharges.

[All footnotes omitted]

The 2004 Permit (in Section B.2) included "landscape irrigation, "irrigation water" and "lawn watering" among the exempted non-stormwater discharges. The 2010 Permit removed three categories, meaning that Claimants were required to develop and implement new programs to prohibit all discharges entering the MS4 from "landscape irrigation," irrigation water" and "lawn watering."

2. Requirements of Federal Law

The RWQCB provided no legal justification or authority for requiring Claimants to impose such an outright prohibition on irrigation waters, other than to cite alleged authority under the federal CWA regulations, in 40 CFR § 122.26(d)(2)(iv)(B). As discussed below, such regulation does not provide authority for the prohibition. Thus, the removal of these three categories of irrigation water discharges from the list of exempted discharges is not required anywhere by federal law.

The cited regulation, 40 CFR § 122.26(d)(2)(iv)(B)(1), provides that "the following categories of non-storm water discharges or flows shall be *addressed* where such discharges are identified by the *municipality* as sources of pollutants to waters of the United States: . . . landscape irrigation . . . irrigation water . . . [and] lawn watering." (emphasis added). This regulation thus provides that a municipality must "***address***" such categories of non-storm water discharges, but not that it must "prohibit" all such discharges regardless of the quality or quantity of the irrigation water. Further evidence of the fact that federal law does not require an outright prohibition of all such waters from entering the MS4 comes from the text of the 2004 Permit, which did not require that such discharges be "prohibited," and there has been no subsequent change in the CWA or federal regulations in this regard since then. *See* 2004 Permit, Section B.2.

Moreover, 40 CFR § 122.26(d)(2)(iv)(B)(1) only requires the addressing of such discharges where the ***municipality*** first identifies these discharges as specific sources of pollutants.

While the 2010 Permit Fact Sheet states that educational outreach materials utilized by the Copermittees identified these categories of runoff as a source and conveyance of pollutants to the MS4 (Fact Sheet, pp. 108-09), those materials were prepared as a preventative measure, to educate the public and prevent these discharges from becoming problematic, and did not represent a determination by Claimants that those discharges were a demonstrated problem within the watershed. In comments to the RWQCB during the development of the 2010 Permit, Claimants in fact stated that none of the municipalities had identified irrigation runoff as a source of pollutants requiring prohibition.[6] (*See* District Comment Letter dated September 7, 2010 and Attachment 6 (included in Section 7)). Thus, in adding this provision, the RWQCB relied on no actual determination of impairment within the jurisdiction of the Claimants.

Also, there is an important distinction between identifying a *particular discharger* as a source of pollutants and identifying *the entire category of discharge* as a source of pollutants. In the preamble to the federal regulations, the U.S. EPA makes clear that the permittees' illicit discharge program need not prevent discharges of the "exempt" categories into the MS4 "unless such discharges are specifically identified on a case-by-case basis as needing to be addressed." 55 Fed. Reg. at 47995. In other words, individual discharges within exempt categories must be addressed when the particular discharge is a source of pollutants to waters of the U.S. The federal regulations do not allow for removing entire categories of exempt non-storm water discharges. EPA confirmed this case-by-case approach in its Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewer Systems (November 1992) ("Part 2 Guidance Manual"), where it states:

> If an applicant knows . . . that landscape ***irrigation water from a particular site*** flows through and picks up pesticides or excess nutrients from fertilizer applications, there may be a reasonable potential for a storm water discharge to result in a water quality impact. In such an event, the applicant should contact the NPDES permitting authority to request that the authority order ***the discharger*** to the MS4 to obtain a separate NPDES permit (or in this case, the discharge could be controlled through the storm water management program of the MS4.)

Part 2 Guidance Manual at 6-33 (emphasis supplied) (attached in Section 7).

As evidenced by the Guidance Manual, the removal of these three irrigation water discharge categories from the list of exempted discharges is not required by federal law. Even if the Copermittees were to have identified a specific category or subcategory of non-storm water discharges as a potential source of pollutants in any particular instance (which has not happened), this does not mean that the RWQCB is required under federal law to prohibit that entire category of non-storm water discharges throughout all of the Copermittees' jurisdictions (as has been done in the 2010 Permit).

[6] The Fact Sheet also cites other support for the elimination of the exemption for irrigation water runoff, but this "evidence" relates to findings for other municipalities, or generally for the state, and not for the Copermittees. *See* Fact Sheet, pp. 109-10.

Also, not only does federal law not require that the discharge of all irrigation waters be "prohibited" (*i.e.*, it only requires them to be "addressed"), it further does not require that "all" types of "sources" of irrigation water be "addressed" in the event that one or more types or subtypes of irrigation water, under certain conditions, are determined by that municipality to be sources of pollutants. Finally, removing all landscape irrigation, irrigation water and lawn watering discharges from the list of exempted discharges, *i.e.*, in effect, requiring that no amount of irrigation runoff from any source (including from residences) enters the MS4, is not only not required by federal law, it is also impracticable. The "MS4" is defined to include street systems and associated gutters (*see* 2010 Permit, Attachment C, definition of "MS4"). Furthermore, such irrigation runoff that may flow into such gutters may not be significant enough to ever be discharged from the MS4 into receiving waters or contain pollutants in violation of any water quality standard. However such a prohibition requires the Claimants to prohibit that discharge regardless, and potentially conduct enforcement for every such de-minimis discharge. Irrigation runoff, such as that from lawns, invariably will flow into such gutters. Thus, it was not practicable for the Claimants to "effectively prohibit" such discharges from entering the MS4, given the potentially enormous task involved. By requiring such prohibition, the RWQCB exceeded the requirements of the CWA (33 U.S.C. § 1342(p)(3)(B)(ii)) and imposing a new non-federal requirement and/or higher level of service, representing a new state mandated program.

The Supreme Court's decision in *Department of Finance* supports the conclusion that this requirement was not a federal mandate. Here, the RWQCB mandated the removal of the irrigation streams from the list of exempt discharges without reference to the findings of the Claimants and in excess of the requirements of federal regulations. This mandate can be analogized to the trash receptacle requirements in *Department of Finance*, which were imposed on the LA County MS4 permittees without federal authority, beyond a vague requirement to address "practices for operating and maintaining public street, roads and highways." There, the Court found that the Commission correctly found no federal mandate due to the specific requirement to install and maintain trash receptacle. Here, the specific requirements imposed by the RWQCB also do not represent a federal mandate.

3. Requirements of 2004 Permit

The 2004 Permit included landscape irrigation, irrigation water and lawn watering in its list of exempted non-stormwater discharges. *See* 2004 Permit, Section B.2.

4. Mandated Activities

Section B.2 of the 2010 Permit required Claimants to perform activities that were not required under either federal law or the 2004 Permit. By removing landscape irrigation, irrigation water and lawn watering from the list of exempted non-storm water discharges, the RWQCB required that each Copermittee take steps to "prohibit" all discharges resulting from landscape irrigation, irrigation water and lawn watering of any type or quantity, from entering the Copermittees' MS4, *e.g.*, from entering the public streets, gutters, or any portion of the storm water conveyance system.

In response to this requirement, the District, using funding contributed by the Claimants through their Implementation Agreement, updated the Coordinated Monitoring Program ("CMP") to address the prohibition of the irrigation flows, which included procedures for response, and monitoring and analysis relating to such flows. Other program updates included revisions to the Jurisdictional Runoff Management Plan ("JRMP") template, training program and community outreach program. Claimants also incurred additional direct costs implementing these requirements. *See* Section 6 Declarations of the Claimants, Paragraph 5(a).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(a), Claimants incurred increased costs of $98,302.20 during Fiscal Year ("FY") 2010-11 and increased costs of $92,373.97 in FY 2011-12 to address these mandated requirements.

B. Requirement to Meet Non-Stormwater Action Levels or "NALs"

Sections C and portions of F.4 of the 2010 Permit (as well as the provisions of Section II.C of the Permit's Monitoring and Reporting Program ("MRP"), Attachment E) required Claimants to comply with new requirements relating to "Non-Stormwater Dry Weather Action Levels" or "NALs." These requirements included programmatic investigation, monitoring and reporting requirements, as well as action items stemming from a NAL exceedance.

1. Applicable Requirements in the 2010 Permit

Section C

NON-STORM WATER DRY WEATHER ACTION LEVELS

1. Each Copermittee, beginning no later than July 1, 2012, must implement the nonstormwater dry weather action level (NAL) monitoring as described in Attachment E of this Order.

2. In response to an exceedance of an NAL, the Copermittee(s) having jurisdiction must investigate and seek to identify the source of the exceedance in a timely manner. However, if any Copermittee identifies a number of NAL exceedances that prevents it from adequately conducting source investigations at all sites in a timely manner, then that Copermittee may submit a prioritization plan and timeline that identifies the timeframe and planned actions to investigate and report its findings on all of the exceedances. Depending on the source of the pollutant exceedance, the Copermittee(s) having jurisdiction must take action as follows:

a. If the Copermittee identifies the source of the exceedance as natural (nonanthropogenically influenced) in origin and in conveyance into the MS4; then the Copermittee must report its findings and documentation of its source investigation to the San Diego Water Board in its Annual Report.

b. If the Copermittee identifies the source of the exceedance as an illicit discharge or connection, then the Copermittee must eliminate the discharge to its MS4 pursuant to Section F.4.f and report the findings, including any enforcement

action(s) taken, and documentation of the source investigation to the San Diego Water Board in the Annual Report. If the Copermittee is unable to eliminate the source of discharge prior to the Annual Report submittal, then the Copermittee must submit, as part of its Annual Report, its plan and timeframe to eliminate the source of the exceedance. Those dischargers seeking to continue such a discharge must become subject to a separate NPDES permit prior to continuing any such discharge.

c. If the Copermittee identifies the source of the exceedance as an exempted category of non-storm water discharge, then the Copermittees must determine if this is an isolated circumstance or if the category of discharges must be addressed through the prevention or prohibition of that category of discharge as an illicit discharge. The Copermittee must submit its findings including a description of the steps taken to address the discharge and the category of discharge, to the San Diego Water Board for review in its Annual Report. Such description must include relevant updates to or new ordinances, orders, or other legal means of addressing the category of discharge, and the anticipated schedule for doing so. The Copermittees must also submit a summary of its findings with the Report of Waste Discharge.

d. If the Copermittee identifies the source of the exceedance as a non-storm water discharge in violation or potential violation of an existing separate NPDES permit (e.g. the groundwater dewatering permit), then the Copermittee must report, within three business days, the findings to the San Diego Water Board including all pertinent information regarding the discharger and discharge characteristics.

e. If the Copermittee is unable to identify the source of the exceedance after taking and documenting reasonable steps to do so, then the Copermittee must perform additional focused sampling. If the results of the additional sampling indicate a recurring exceedance of NALs with an unidentified source, then the Copermittee must update its programs within a year to address the common contributing sources that may be causing such an exceedance. The Copermittee's annual report must include these updates to its programs including, where applicable, updates to their watershed workplans (Section G.2), retrofitting consideration (Section F.3.d) and program effectiveness work plans (Section J.4).

f. The Copermittees, or any interested party, may evaluate existing NALs and propose revised NALs for future Board consideration.

3. NALs can help provide an assessment of the effectiveness of the prohibition of nonstormwater discharges and of the appropriateness of exempted non-storm water discharges. An exceedance of an NAL does not alone constitute a violation of the provisions of this Order. An exceedance of an NAL may indicate a lack of compliance with the requirement that Copermittees effectively prohibit all types of unauthorized non-storm water discharges into the MS4 or other prohibitions set forth in Sections A and B of this Order. Failure to timely implement required actions specified in this Order following an exceedance of an NAL constitutes a violation of this Order. Neither the absence of exceedances of NALs nor compliance with required actions following observed exceedances, excuses any non-compliance with the requirement to effectively prohibit all types of unauthorized non-storm water discharges into the MS4s or any non-compliance with the prohibitions in Sections A and B of this Order. During any annual reporting period in which one or

more exceedances of NALs have been documented the Copermittee must report in response to Section C.2 above, a description of whether and how the observed exceedances did or did not result in a discharge from the MS4 that caused, or threatened to cause or contribute to a condition of pollution, contamination, or
nuisance in the receiving waters.

4. Monitoring of effluent will occur at the end-of-pipe prior to discharge into the receiving waters, with a focus on Major Outfalls, as defined in 40 CFR 122.26(B 5-6) and Attachment E of this Order. The Copermittees must develop their monitoring plans to sample a representative percentage of major outfalls and identified stations within each hydrologic subarea. At a minimum, outfalls that exceed any NALs once during any year must be monitored in the subsequent year. Any station that does not exceed an NAL, or only has exceedances that are identified as natural in origin and conveyance into the MS4 pursuant to Section C.2.a, for 3 successive years may be replaced with a different station.

5. Each Copermittee must monitor for the non-storm water dry weather action levels, which are incorporated into this Order as follows:

Action levels for discharges to inland surface waters: [table omitted]

Section F.4

d. **DRY WEATHER FIELD SCREENING AND ANALYTICAL MONITORING**

Each Copermittee must conduct dry weather field screening and analytical monitoring of MS4 outfalls and other portions of its MS4 within its jurisdiction to detect illicit discharges and connections in accordance with Receiving Waters and MS4 Discharge Monitoring and Reporting Program No. R9-2010-0016 in Attachment E of this Order.

e. **INVESTIGATION / INSPECTION AND FOLLOW-UP**

Each Copermittee must implement procedures to investigate and inspect portions of its MS4 that, based on the results of field screening, analytical monitoring, or other appropriate information, indicate a reasonable potential of containing illicit discharges, illicit connections, or other sources of pollutants in non-storm water.

> (1) Develop response criteria for data: Each Copermittee must develop, update, and use numeric criteria action levels (or other actions level criteria where appropriate) to determine when follow-up investigations will be performed in response to water quality monitoring. The criteria must include required nonstorm water action levels (see Section C) and a consideration of 303(d)-listed waterbodies and environmentally sensitive areas (ESAs) as defined in Attachment C.
>
> (2) Respond to data: Each Copermittee must investigate portions of the MS4 for which water quality data or conditions indicates a potential illegal discharge or connection.
>
> . . .
>
> (b) Field screen data: Within two business days of receiving dry weather field

> screening results that exceed action levels, the Copermittee(s) having jurisdiction must either initiate an investigation to identify the source of the discharge or document the rationale for why the discharge does not pose a threat to water quality and does not need further investigation. This documentation must be included in the Annual Report.
>
> (c) Analytical data: Within five business days of receiving analytical laboratory results that exceed action levels, the Copermittee(s) having jurisdiction must either initiate an investigation to identify the source of the discharge or document the rationale for why the discharge does not pose a threat to water quality and does not need further investigation. This documentation must be included in the Annual Report.

In addition, Claimants also incorporate the text of Section II.C of the MRP, Attachment E of the 2010 Permit.

2. Requirements of Federal Law

No federal statute, regulation, or policy requires that MS4 permits include monitoring, reporting and/or compliance obligations in connection with NALs or any other numeric action levels. In fact, nothing in the CWA nor the regulations thereunder requires the inclusion of numeric NALs in any fashion in an MS4 permit.

The language of the CWA, as well as the relevant authority discussing federal requirements for an MS4 NPDES Permit under the Act, confirm that no numeric limits, whether or not styled as "action levels," are *required* to be included within an MS4 permit. (*See, e.g., Defenders of Wildlife, supra*, 191 F.3d at 1163 and 1165 ["Industrial discharges must comply strictly with State water-quality standards," while "Congress chose not to include a similar provision for municipal storm-sewer discharges;" "the *statute unambiguously demonstrates* that Congress did not require municipal storm-sewer dischargers to strictly comply with 33 U.S.C. § 1311(b)(1)(C)."]; *Building Industry Association of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 874 ("*BIA*") ("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 to instead impose 'controls to reduce the discharge of pollutants to the maximum extent practicable.'"); *Divers' Environmental Conservation Organization v. State Water Resources Control Board* (2006) 145 Cal.App.4th 246, 256 ("In regulating stormwater permits the EPA has repeatedly expressed a preference for doing so by the way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations."); State Board Order No. 2000-11, p. 3 ("In prior orders this Board has explained the need for the municipal stormwater programs *and the emphasis on BMPs in lieu of numeric effluent limitations*.")(emphasis supplied); State Board Order No. 2006-12, p. 17 ["Federal regulations do not require numeric effluent limitations for discharges of stormwater."]; and State Board Order No. 91-03, pgs. 30-31 ("*We . . . conclude that numeric effluent limitations are not legally required.* Further we have determined that the program of prohibitions, source control measures and 'best management practices' set forth in the Permit constitutes effluent limitations as required by law.'")(emphasis supplied).

While NALs are not traditional "strict" numeric effluent limits, in that an exceedance of a NAL does not automatically constitute a permit "violation," numeric NALs are similar to strict numeric effluent limits in that they imposed new mandated requirements on Claimants to address exceedances of the NALs. If the Copermittees' non-stormwater discharges exceeded the NALs, Claimants were thereafter required to implement various measures to comply with the NALs, regardless of the feasibility of complying. Failure to address NAL exceedances, under the 2010 Permit, constituted a permit violation.

In light of these facts, the NAL mandates went beyond what is required to be imposed in an MS4 permit, and was therefore not a federal mandate. Having only general authority in the CWA regulations, the RWQCB made a "true choice" in deciding to impose these specific mandates, *Department of Finance, supra*, 1 Cal. 5th at 765; *Hayes, supra*, 11 Cal.App.4th at 1593, and the NAL requirements constituted a new program and/or higher level of service imposed by the state.

3. Requirements of 2004 Permit

No NAL-related requirements were contained in the 2004 Permit. The inclusion of such requirements in the 2010 Permit represents a new program and/or higher level of service imposed on Claimants.

4. Mandated Activities

Sections C and F.4.d and e, as well as Section II.C of the MRP, required Claimants to identify and perform field verification of major outfalls, perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry weather NALs, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, investigations and enforcement, and where necessary, update Copermittee compliance programs as necessary to address NAL exceedances.

In response to these requirements, the District, with funding contributed by the Claimants through the Implementation Agreement, retained a consultant to develop and finalize a sampling and analysis plan, develop a followup response program and procedures and laboratory coordination, conduct initial required NAL sampling and analysis on behalf of each Claimant and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. The Claimants incurred additional direct costs implementing these requirements. *See* Section 6 Declarations, Paragraph 5(b).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(b), the Claimants incurred increased costs to address the requirements of this mandate of $44,632.46 in FY 2010-11 and $46,089.89 in FY 2011-12.

C. Requirement to Meet Stormwater Action Levels or "SALs"

Section D of the 2010 Permit required Claimants to monitor their major MS4 outfalls into receiving waters for the presence of pollutants that exceeded SALs and, if such pollutants were detected, to address the exceedances.

1. Applicable Requirements in the 2010 Permit

Section D

STORM WATER ACTION LEVELS

1. The Copermittees must implement the Wet Weather MS4 Discharge Monitoring as described in Attachment E of this Order, and beginning three years after the Order adoption date, the Copermittees must annually evaluate their data compared to the Stormwater Action Levels (SALs). At each monitoring station, a running average of twenty percent or greater of exceedances of any discharge of storm water from the MS4 to waters of the U.S. that exceed the SALs for each of the pollutants listed in Table 4 (below) requires the Copermittee(s) having jurisdiction to affirmatively augment and implement all necessary storm water controls and measures to reduce the discharge of the associated class of pollutants(s) to the MEP. The Copermittees must utilize the exceedance information when adjusting and executing annual work plans, as required by this Order. Copermittees must take the magnitude, frequency, and number of constituents exceeding the SAL(s), in addition to receiving water quality data and other information, into consideration when prioritizing and reacting to SAL exceedances in an iterative manner. Failure to appropriately consider and react to SAL exceedances in an iterative manner creates a presumption that the Copermittee(s) have not reduced pollutants in storm water discharges to the MEP.

[table omitted]

2. The end-of-pipe assessment points for the determination of SAL compliance are major outfalls, as defined in 40 CFR 122.26(b)(5) and (b)(6) and Attachment E of this Order. The Copermittees must develop their monitoring plans to sample a representative percentage of the major outfalls within each hydrologic subarea. At a minimum, outfalls that exceed SALs must be monitored in the subsequent year. Any station that does not exceed an SAL for 3 successive years may be replaced with a different station. SAL samples must be 24 hour time-weighted composites.

3. The absence of SAL exceedances does not relieve the Copermittees from implementing all other required elements of this Order.

4. This Order does not regulate natural sources and conveyances into the MS4 of constituents listed in Table 5. To be relieved of the requirements to take action as described in D.1 above, the Copermittee must demonstrate that the likely and expected cause of the SAL exceedance is not anthropogenic in nature. This demonstration does not need to be repeated for subsequent exceedances of the same SAL at the same monitoring station.

5. The SALs will be reviewed and updated at the end of every permit cycle. The data collected pursuant to D.2 above and Attachment E can be used to create SALs based upon local data. The

purpose of establishing the SALs is that through the iterative and MEP process, outfall storm water discharges will meet all applicable water quality standards.

2. Requirements of Federal Law

Nothing in the CWA or the regulations thereunder requires the inclusion of SALs within an MS4 permit. In addition, there is no federal requirement that MS4 permits include monitoring, reporting or compliance obligations that are triggered by an exceedance of a SAL.

Contrary to any requirement to include a SAL-related mandate within an MS4 permit, the plain language of the CWA, as well as controlling case authority interpreting the Act, make clear that no form of SALs or any related mandates are required to be included within a municipal NPDES Permit by federal law. *See Defenders of Wildlife, supra*, 191 F.3d 1159, 1163 (**"Industrial discharges must strictly comply with State water-quality standards" while "Congress chose not to include a similar provision for municipal storm-sewer discharges.")** (emphasis supplied); *Divers' Environmental, supra*, 145 Cal.App.4th at 256 ("In regulating stormwater permits the EPA has repeatedly expressed a preference for doing so by the way of BMPs, rather than by way of imposing either technology-based or water quality-based numerical limitations."); *BIA, supra*, 124 Cal.App.4th at 874 ("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 to instead impose 'controls to reduce the discharge of pollutants to the maximum extent practicable.'") (emphasis supplied); State Board Order No. 2006-12, p. 17 (**"Federal regulations do not require numeric effluent limitations for discharges of stormwater.")** (emphasis supplied); and State Board Order No. 91-03, pgs. 30-31 ("***We . . . conclude that numeric effluent limitations are not legally required***. Further we have determined that the program of prohibitions, source control measures and 'best management practices' set forth in the Permit constitutes effluent limitations as required by law.'") (emphasis supplied).

Like NALs, SALs are not traditional "strict" numeric effluent limits that result in violations if exceeded, but are nonetheless similar to such limits in that they are new programs imposed on Claimants that are tied to achieving compliance with specific numeric limits. As with the NALs, if discharges from Copermittees' MS4s exceeded the SALs, Claimants were subject to additional and costly requirements, regardless of the feasibility or practicability of complying with the SALs. In short, all of these new requirements were tied to determining and achieving compliance with a set of numbers, none of which is required under federal law. Thus, like the NAL mandates, the SAL mandates went beyond what is required to be imposed in an MS4 permit, and the RWQCB had a "true choice" in deciding to impose the SAL mandates. *Department of Finance, supra,* 1 Cal. 5th at 765; *Hayes, supra*, 11 Cal.App.4th at 1593.

3. Requirements of 2004 Permit

No SAL-related requirements were in the 2004 Permit. The inclusion of such requirements in the 2010 Permit therefore represented a new program and/or higher level of service imposed on Claimants.

4. Mandated Activities

Section D of the Permit required Claimants to conduct end-of-pipe assessments to determine SAL compliance metrics at major outfalls during wet weather. Claimants were required to identify and perform field verification of major outfalls owned by them, perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, perform analysis and prepare reports on the status and outcome of SAL exceedances, and where necessary, update their compliance programs to address SAL exceedances.

In response to these requirements, the District, with funding contributed by the Claimants through the Implementation Agreement, retained a consultant to develop and finalize a sampling and analysis plan, develop a followup response program and procedures and laboratory coordination, conduct SAL sampling and analysis on behalf of each Claimant, utilize analysis and source identification results in develop annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. The Claimants incurred additional direct costs implementing these requirements. *See* Section 6 Declarations, Paragraph 5(c).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(c), the Claimants incurred increased costs to address the requirements of this mandate of $24,932.46 in FY 2010-11 and $26,089.89 in FY 2011-12.

D. Priority Development Project and Hydromodification Requirements

Portions of Section F.1.d and Section F.1.h of the 2010 Permit required Claimants to develop and implement a program to ensure that new development and significant redevelopment, as those terms are defined in the 2010 Permit, comply with strict low impact development ("LID") and hydromodification prevention requirements, including development and implementation of a Hydromodification Management Plan ("HMP").

1. Applicable Requirements in the 2010 Permit

Section F.1.d

(1) Definition of Priority Development Project:

Priority Development Projects are:

. . .

(c) One acre threshold: In addition to the Priority Development Project Categories identified in section F.1.d.(2), Priority Development Projects must also include all other

> post-construction pollutant-generating new Development Projects that result in the disturbance of one acre or more of land by July 1, 2012. [footnote omitted]

(2) Priority Development Project Categories

Where a new Development Project feature, such as a parking lot, falls into a Priority Development Project Category, the entire project footprint is subject to SSMP requirements.

> (a) New development projects that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site) including commercial, industrial, residential, mixed-use, and public projects. This category includes development projects on public or private land which fall under the planning and building authority of the Copermittees.

...

(4) Low Impact Development BMP Requirements

Each Copermittee must require each Priority Development Project to implement LID BMPs which will collectively minimize directly connected impervious areas, limit loss of existing infiltration capacity, and protect areas that provide important water quality benefits necessary to maintain riparian and aquatic biota, and/or are particularly susceptible to erosion and sediment loss.

> (a) The Copermittees must take the following measures to ensure that LID BMPs are implemented at Priority Development Projects:
>
> > (i) Each Copermittee must require LID BMPs or make a finding of technical infeasibility for each Priority Development Project in accordance with the LID waiver program in Section F.1.d.(7);
> >
> > (ii) Each Copermittee must incorporate formalized consideration, such as thorough checklists, ordinances, and/or other means, of LID BMPs into the plan review process for Priority Development Projects; and
> >
> > (iii) On or before July 1, 2012, each Copermittee must review its local codes, policies, and ordinances and identify barriers therein to implementation of LID BMPs. Following the identification of these barriers to LID implementation, where feasible, the Copermittee must take, by the end of the permit cycle, appropriate actions to remove such barriers. The Copermittees must include this review with the updated JRMP.
>
> (b) The following LID BMPs must be implemented at each Priority Development Project:
>
> ...
>
> > (iii) Projects with low traffic areas and appropriate soil conditions must

be constructed with permeable surfaces.

(7) Low Impact Development (LID) BMP Waiver Program

The Copermittees must develop, collectively or individually, a LID waiver program for incorporation into the SSMP, which would allow a Priority Development Project to substitute implementation of all or a portion of required LID BMPs in Section F.1.d(4) with implementation of treatment control BMPs and either 1) on-site mitigation, 2) an off-site mitigation project, and/or 3) other mitigation developed by the Copermittees. The Copermittees must submit the LID waiver program as part of their updated SSMP. At a minimum, the program must meet the requirements below:

(a) Prior to implementation, the LID waiver program must clearly exhibit that it will not allow Priority Development Projects to result in a net impact (after consideration of any mitigation) from pollutant loadings over and above the impact caused by projects meeting the onsite LID retention requirements;

(b) For each Priority Development Project participating, the Copermittee must find that it is technically infeasible to implement LID BMPs that comply with the requirements of Section F.1.(d)(4). The Copermittee(s) must develop criteria to determine the technical feasibility of implementing LID BMPs . Each Priority Development Project participating must demonstrate that LID BMPs were implemented as much as feasible given the site's unique conditions. Technical infeasibility may result from conditions including, but not limited to:

(i) Locations that cannot meet the infiltration and groundwater protection requirements in section F.1.c.(6) for large, centralized infiltration BMPs. Where infiltration is technically infeasible, the project must still examine the feasibility of other onsite LID BMPs;

(ii) Insufficient demand for storm water reuse;

(iii) Smart growth and infill or redevelopment locations where the density and/or nature of the project would create significant difficulty for compliance with the LID BMP requirements; and

(iv) Other site, geologic, soil, or implementation constraints identified in the Copermittees updated SSMP document.

Section F.1.h

HYDROMODIFICATION – LIMITATIONS ON INCREASES OF RUNOFF DISCHARGE RATES AND DURATIONS [footnote omitted]

Each Copermittee shall collaborate with the other Copermittees to develop and implement a Hydromodification Management Plan (HMP) to manage increases in runoff discharge rates and durations from all Priority Development Projects. The HMP must be incorporated into the SSMP

and implemented by each Copermittee so that estimated post-project runoff discharge rates and durations must not exceed pre-development discharge rates and durations. Where the proposed project is located on an already developed site, the pre-project discharge rate and duration must be that of the pre-developed, naturally occurring condition. The draft HMP must be submitted to the San Diego Water Board on or before June 30, 2013. The HMP will be made available for public review and comment and the San Diego Water Board Executive Officer will determine whether to hold a public hearing before the full San Diego Water Board or whether public input will be through written comments to the Executive Officer only.

(1) The HMP must:

(a) Identify a method for assessing susceptibility and geomorphic stability of channel segments which receive runoff discharges from Priority Development Projects. A performance standard must be established that ensures that the geomorphic stability within the channel will not be compromised as a result of receiving runoff discharges from Priority Development Projects.

(b) Identify a range of runoff flows [footnote omitted] based on continuous simulation of the entire rainfall record (or other analytical method proposed by the Copermittees and deemed acceptable by the San Diego Water Board) for which Priority Development Project post-project runoff flow rates and durations must not exceed pre-development (naturally occurring) runoff flow rates and durations by more than 10 percent, where the increased flow rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses. The lower boundary of the range of runoff flows identified must correspond with the critical channel flow that produces the critical shear stress that initiates channel bed movement or that erodes the toe of channel banks. The identified range of runoff flows may be different for specific watersheds, channels, or channel reaches. In the case of an artificially hardened (concrete lined, rip rap, etc.) channel, the lower boundary of the range of runoff flows identified must correspond with the critical channel flow that produces the critical shear stress that initiates channel bed movement or that erodes the toe of channel banks of a comparable natural channel (i.e.non-hardened, pre-development).

(c) Identify a method to assess and compensate for the loss of sediment supply to streams due to development. A performance and/or design standard must be created and required to be met by Priority Development Projects to ensure that the loss of sediment supply due to development does not cause or contribute to increased erosion within channel segments downstream of Priority Development Project discharge points.

(d) Designate and require Priority Development Projects to implement control measures so that (1) post-project runoff flow rates and durations do not exceed pre-development (naturally occurring) runoff flow rates and durations by more than 10 percent for the range of runoff flows identified under section F.1.h.(1)(b), where the increased flow rates and durations will result in increased potential for erosion or other significant adverse impacts to beneficial uses; (2) post-project runoff flow rates and durations do not result in channel conditions which do not meet the channel standard developed under section F.1.h.(1)(a) for channel segments downstream of Priority Development Project discharge points; and (3) the design of the project and/or control measures compensate for the loss of sediment supply due to development.

(e) Include a protocol to evaluate potential hydrograph change impacts to downstream watercourses from Priority Development Projects to meet the range of runoff flows identified under Section F.1.h.(1)(b).

(f) Include other performance criteria (numeric or otherwise) for Priority Development Projects as necessary to prevent runoff from the projects from increasing and/or continuing unnatural rates of erosion of channel beds and banks, silt pollutants generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

(g) Include a review of pertinent literature.

(h) Identify areas within the Santa Margarita Hydrologic Unit for potential opportunities to restore or rehabilitate stream channels with historic hydromodification of receiving waters that are tributary to documented low or very low Index of Biotic Integrity (IBI) scores.

(i) Include a description of how the Copermittees will incorporate the HMP requirements into their local approval processes.

(j) Include criteria on selection and design of management practices and measures (such as detention, retention, and infiltration) to control flow rates and durations and address potential hydromodification impacts.

(k) Include technical information, including references, supporting any standards and criteria proposed.

(l) Include a description of inspections and maintenance to be conducted for management practices and measures to control flow rates and durations and address potential hydromodification impacts.

(m)Include a description of monitoring and other program evaluations to be conducted to assess the effectiveness of implementation of the HMP. Monitoring and other program evaluations must include an evaluation of changes to physical (e.g., cross-section, slope, discharge rate, vegetation, pervious/impervious area) and biological (e.g., habitat quality, benthic flora and fauna, IBI scores) conditions of receiving water channels as areas with Priority Development Projects are constructed (i.e. pre- and postproject), as appropriate.

(n) Include mechanisms for assessing and addressing cumulative impacts of Priority Development Projects within a watershed on channel morphology.

(2) In addition to the control measures that must be implemented by Priority Development Projects per section F.1.h.(1)(d), the HMP must include a suite of management measures that can be used on Priority Development Projects to mitigate hydromodification impacts, protect and restore downstream beneficial uses and prevent or further prevent adverse physical changes to downstream channels. The measures must be based on a prioritized consideration of the following elements in this order:

(a) Site design control measures;
(b) On-site management measures;
(c) Regional control measures located upstream of receiving waters; and
(d) In-stream management and control measures.

Where stream channels are adjacent to, or are to be modified as part of a Priority Development Project, management measures must include buffer zones and setbacks. The suite of management measures must also include stream restoration as a viable option to achieve the channel standard in section F.1.h.(1)(a). In-stream controls used as management measures to protect and restore downstream beneficial uses and for preventing or minimizing further adverse physical changes must not include the use of nonnaturally occurring hardscape materials such as concrete, riprap, gabions, etc. to reinforce stream channels.

(3) As part of the HMP, the Copermittees may develop a waiver program that allows a redevelopment Priority Development Project, as defined in Section F.1.d.(1)(b), to implement offsite mitigation measures. A waiver may be granted if onsite management and control measures are technically infeasible to fully achieve post-project runoff flow rates and durations that do not exceed the pre-development (naturally occurring) runoff flow rates and durations.
Redevelopment projects that are granted a waiver under the program must not have post-project runoff flow rates and durations that exceed the pre-project runoff flow rates and durations. The estimated incremental hydromodification impacts from not achieving the pre-development (naturally occurring) runoff flow rates and durations for the project site must be fully mitigated. The offsite mitigation must be within the same stream channel system to which the project discharges. Mitigation projects not within the same stream channel system but within the same hydrologic unit may be approved provided that the project proponent demonstrates that mitigation within the same stream channel is infeasible and that the mitigation project will address similar impacts as expected from the project.

(4) Each individual Copermittee has the discretion to not require Section F.1.h. at Priority Development Projects where the project:

(a) Discharges storm water runoff into underground storm drains discharging directly to water storage reservoirs and lakes;
(b) Discharges storm water runoff into conveyance channels whose bed and bank are concrete lined all the way from the point of discharge to water storage reservoirs and lakes; or
(c) Discharges storm water runoff into other areas identified in the HMP as acceptable to not need to meet the requirements of Section F.1.h by the San Diego Water Board Executive Officer.

(5) HMP Reporting and Implementation

(a) On or before June 30, 2013, the Copermittees must submit to the San Diego Water Board a draft HMP that has been reviewed by the public, including the identification of the appropriate limiting range of flow rates per section F.1.h.(1)(b).
(b) Within 180 days of receiving San Diego Water Board comments on the draft HMP, the Copermittees must submit a final HMP that addressed the San Diego Water Board's comments.
(c) Within 90 days of receiving a determination of adequacy from the San Diego Water Board, each Copermittee must incorporate and implement the HMP for all Priority Development Projects.

(d) Prior to acceptance of the HMP by the San Diego Water Board, the early implementation measures likely to be included in the HMP must be encouraged by the Copermittees.

(6) Interim Hydromodification Criteria

Immediately following adoption of this Order and until the final HMP required by this Order has been determined by the San Diego Water Board to be adequate, each Copermittee must ensure that all Priority Development Projects are implementing the hydromodification (aka Hydrologic Condition of Concern) requirements found in Section 4.4 of the 2006 Riverside County WQMP (updated in 2009) unless one of the following conditions in lieu of those specified in the WQMP are met:

(a) Runoff from the Priority Development Project discharges (1) directly to a conveyance channel or storm drain that is concrete lined all the way from the point of discharge to the ocean, bay, lagoon, water storage reservoir or lake; and (2) the discharge is in full compliance with Copermittee requirements for connections and discharges to the MS4 (including both quality and quantity requirements); and (3) the discharge will not cause increased upstream or downstream erosion or adversely impact downstream habitat; and (4) the discharge is authorized by the Copermittee.

(b) The Priority Development Project disturbs less than one acre. The Copermittee has the discretion to require a project specific WQMP to address hydrologic condition concerns on projects less than one acre on a case by case basis. The disturbed area calculation should include all disturbances associated with larger common plans of development.

(c) The runoff flow rate, volume, velocity, and duration for the postdevelopment condition of the Priority Development Project do not exceed the pre-development (i.e. naturally occurring) condition for the 2-year, 24-hour and 10-year, 24-hour rainfall events. This condition must be substantiated by hydrologic modeling acceptable to the Copermittee.

Once a final HMP is determined to be adequate and is required to be implemented, compliance with the final HMP is required by this Order and compliance with the 2004 WQMP (updated in 2009) or the in-lieu interim hydromodification criteria set forth above no longer satisfies the requirements of this Order.

(7) No part of section F.1.h eliminates the Copermittees' responsibilities for implementing the Low Impact Development requirements under section F.1.d.(4).

2. Requirements of Federal Law

Nothing in the CWA, its regulations, or case law requires local agencies to develop programs to require LID practices as described in 2010 Permit Sections F.1.d.(4) and F.1.d(7), or to develop an HMP as described in 2010 Permit Section F.1.h., or to require projects that meet the requirements of 2010 Permit Sections F.1.d.(1) and F.1.d.(2) to implement the above described LID and HMP requirements. Indeed, the issue of whether similar requirements exceed the requirements of federal law, and represent reimbursable state mandates was considered by the Commission in the San Diego County Test Claim. In its decision, the Commission determined that "nothing in the federal regulation requires agencies to update local or model SSMPs." San

Diego County Test Claim, p. 51. In addition, the Commission determined that the hydromodification requirement constituted "a state-mandated, new program or higher level of service." *Id. Department of Finance* confirms that the imposition of these detailed requirements represents a state, not federal mandate. *See* discussion in Section V.B, above.

The CWA only requires MS4 permits to impose controls that reduce the discharge of pollutants to the MEP. MEP is not defined, but the CWA suggests management practices, control techniques, and system, design, and engineering methods as options for attaining the maximum reduction possible. 33 U.S.C. § 1342(p)(3)(B)(iii). When suggestions are no longer merely being suggested as options for consideration "but are required acts, [t]hese requirements constitute a higher level of service." San Diego County Test Claim at 51. The Commission's analysis was confirmed by the Supreme Court in *Department of Finance*: "[T]he State was not compelled by federal law to impose any particular requirement. Instead . . . the Regional Board had discretion to fashion requirements which it determined would meet the CWA's [MEP] standard." 1 Cal. 5th at 768.

Federal regulations (40 CFR § 122.26(d)(2)(iv)(A)(2)) require as part of an MS4 permit application a plan for developing, implementing and enforcing controls to reduce the discharge from MS4s that originate in areas of new development. Requiring post-construction controls to limit pollutant discharges originating in areas of new development may be within these requirements, but the specific LID and HMP requirements contained in the 2010 Permit are not required in the regulations. By adopting permit provisions that require Copermittees to implement LID requirements and to develop and implement an HMP, the RWQCB freely chose to impose requirements and related costs that were not federally mandated and that, when mandated by the state, constituted a new program or higher level of service.

In the San Diego County Test Claim, the Commission found that the LID and hydromodification requirements were not reimbursable, because the County of San Diego and the other permittees retained the ability to assess fees for new development. With the passage of California's Proposition 26 in November 2010, however, all costs associated with ***developing*** the LID and hydromodification programs may not be recoverable through fees. As discussed in Section V above, Proposition 26, which amends Article XIII C of the California Constitution, defines virtually any revenue device enacted by a local government as a "tax" requiring voter approval, unless it falls within certain enumerated exceptions.

In the San Diego County Test Claim, the Commission found that the LID and hydromodification requirements applicable to municipal projects were not reimbursable state mandates because the permittees were under no obligation to construct projects that would trigger these requirements. *Id.* at pp. 46, 52. The Commission cited the California Supreme Court's decision in *Department of Finance v. Commission on State Mandates (KHSD)* (2003) 30 Cal.4th 727. In *KHSD*, the Court held that certain hearing requirements imposed upon school districts did not constitute a reimbursable state mandate because they were a requirement of voluntary program the school districts had elected to participate in. The Court held that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal

compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement." *Id.* at 742.

The Supreme Court relied on *City of Merced v State of California* (1984) 153 Cal.App.3d 777. In that case, the city elected to take property by eminent domain, under which it was required by then-recent legislation to compensate the owner for loss of "business goodwill." The city sought reimbursement from the state, arguing that this new statutory requirement was a reimbursable state mandate. The Court of Appeal concluded that the city's increased costs flowed from its optional decision to condemn the property, and, "whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. . . .Thus, payment for loss of goodwill is not a state-mandated cost." 153 Cal.App.3d at 783.

The facts that dictated the Court's decision in *KHSD* are not present in the 2010 Permit. For one, the 2010 Permit was not a voluntary program, but one requiring Claimants to take immediate actions related to LID and hydromodification, including requirements that were not triggered by any voluntary action on the part of the Permittees. The 2010 Permit *required* Claimants to incur costs related to LID and hydromodification on municipal projects, such as recreational facilities, parking lots, streets, roads, highways. Moreover, the development and upkeep of these municipal land uses is not optional. These projects are integral to Claimants' function as municipal entities, and the failure to make necessary repairs, upgrades and extensions can result in public health and safety issues and expose Claimants to liability.

The rationale of *City of Merced* is likewise inapplicable. In that case, the city could have *chosen* to avoid the goodwill reimbursement by purchasing the property rather than taking it by eminent domain. Under the 2010 Permit, Claimants had no such option, as the permit required Claimants to incur new, additional costs on every qualifying municipal project.

Moreover, the California Supreme Court has rejected the applicability of *City of Merced* in circumstances beyond those present in *KHSD*. In *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, the Court considered similar regulatory requirements to those at issue in *KHSD*. The Court discussed its decision in *KHSD*, at length, and cautioned against future reliance on *City of Merced*, holding:

> [W]e agree with the District and amici curiae that ***there is reason to question an extension of the holding of City of Merced so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514 whenever an entity makes an initial discretionary decision that in turn triggers mandated costs***. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, an executive order requiring that county firefighters be provided

> with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (Id., at pp. 537–538.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result.

33 Cal.4th at 887-88 (emphasis supplied).

Thus, strict reliance on *City of Merced* is only appropriate in the very limited circumstances presented in *KHSD*. Those conditions are not present in the 2010 Permit, which imposes requirements on Claimants that are either wholly unrelated to voluntary action by Claimants, or are triggered by municipal projects that Claimants must implement with little to no discretion because they are integral to Claimants function as municipal entities. As set forth above, and in greater detail below, these requirements exceed federal law and represent reimbursable state mandates.

In addition, an additional specific requirement of Section F.1.h of the 2010 permit raises specific MEP issues. This requirement, contained in Section F.1.h.(2), required Claimants to not use "nonnaturally occurring hardscape materials such as concrete, riprap, gabions, etc. to reinforce stream channels" when employing in-stream controls used as management measures to protect and restore downstream beneficial uses and for preventing or minimizing further adverse physical changes. This requirement in particular is not practicable. As set forth in the Declaration of Jason Uhley Regarding Additional Factual Issues, ¶ 6 ("Uhley Declaration") (attached in Section 7) because in a majority of situations, such materials are necessary to protect lives and property in the process of reinforcing stream channels.

3. Requirements of 2004 Permit

The 2004 Permit, while containing provisions relating to PDPs, did not include the provisions relating to the one-acre construction site threshold or new development projects that create 10,000 square feet or more of impervious surface. The 2004 Permit also did not require Claimants to develop and implement LID permit requirements or an HMP.

4. Mandated Activities

To comply with the LID and hydromodification requirements in the 2010 Permit, the Claimants were required to develop and implement a number of new programs. The specific mandated activities are set forth above and included:

- Applying Standard Stormwater Mitigation Plan ("SSMP") requirements to an increased range of municipal projects implemented by the Claimants, which meet the requirements of to F.1.d(1) and F.1.d.(2).

- Requiring implementation of LID practices and development and implementation of an LID Waiver program, as described in F.1.d(4) and F.1.d(7), on municipal PDPs implemented by the Claimants. This will require creating a formalized review process for all PDPs, developing protocols for assessing each PDP for various required types of LID, training staff on the new protocols, assessing potential on- or off-site collection and reuse of storm water, amending local ordinances to remove barriers to LID implementation, maintaining or restoring natural storage reservoirs and drainage corridors, draining a portion of impervious areas into pervious areas, and constructing low-traffic areas with permeable surfaces. Projects that are subject to these requirements include municipal yards, recreation centers, civic centers, and road improvements, and any other municipal projects meeting the permit-specified thresholds or geographical criteria.

- Requiring development of an HMP, and implementation of those HMP requirements on municipal PDPs implemented by the Claimants pursuant to Part F.1.h. To comply with part F.1.h, the Copermittees must invest significant resources to hold public hearings, hold collaborative meetings, perform studies and develop an HMP, train staff and the public, and adopt the local SSMP. In addition, as noted above, Claimants are prohibited from using non-natural materials in reinforcing stream channels, a prohibition which is not practicable. Continued compliance with these sections will also require Copermittees to add requirements to municipal projects and will significantly increase the costs of design and construction.

In response to these requirements, the District, using funding contributed by the Claimants through the Implementation Agreement, developed a SSMP, an HMP with publicly available hydromodification modelling software, a BMP Design Manual, developed and provided training for the Claimants and the development community and revised the JRMP template. The Claimants incurred additional direct costs implementing these requirements. *See* Section 6 Declarations, Paragraph 5(d).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(d), the Claimants incurred increased costs to address the requirements of this mandate of $61,122.06 in FY 2010-11 and $685,201.78 in FY 2011-12.

E. BMP Maintenance Tracking Requirements

Provisions in Section F.1.f of the 2010 Permit required Claimants to develop and maintain a watershed-based database to track all projects that have a final approved SSMP and structural BMPs, including projects dating back to July 2005 (before the effective date of the 2010 Permit) and to inspect such BMPs on a routine basis.

1. Applicable Requirements in 2010 Permit

Section F.1.f

BMP MAINTENANCE TRACKING

(1) Inventory of SSMP projects: Each Copermittee must develop and maintain a watershed-based database to track and inventory all projects constructed within their jurisdiction, that have a final approved SSMP (SSMP projects), and its structural post-construction BMPs implemented therein since July, 2005. LID BMPs implemented on a lot by lot basis at single family residential houses, such as rain barrels, are not required to be tracked or inventoried. At a minimum, the database must include information on BMP type(s), location, watershed, date of construction, party responsible for maintenance, dates and findings of maintenance verifications, and corrective actions, including whether the site was referred to the local vector control agency or department.

(2) Each Copermittee must verify that approved post-construction BMPs are operating effectively and have been adequately maintained by implementing the following measures:

. . .

(b) Beginning on July 1, 2012, each Copermittee must verify that the required structural post-construction BMPs on the inventoried SSMP projects have been implemented, are maintained, and are operating effectively through inspections, self-certifications, surveys, or other equally effective approaches with the following conditions:

(i) The implementation, operation, and maintenance of all (100 percent) approved and inventoried final project public and private SSMPs (a.k.a. WQMPs) must be verified every five years;
(ii) All (100 percent) projects with BMPs that are high priority must be inspected by the Copermittee annually prior to each rainy season;
(iii) All (100 percent) Copermittee projects with BMPs must be inspected by the Copermittee annually;
(iv) At the discretion of the Copermittee, its inspections may be coordinated with the facility inspections implemented pursuant to

> section F.3. of this Order;
> (v) For verifications performed through a means other than direct Copermittee inspection, adequate documentation must be submitted to the Copermittee to provide assurance that the required maintenance has been completed;
> (vi) Appropriate follow-up measures (including re-inspections, enforcement, maintenance, etc.) must be conducted to ensure the treatment BMPs continue to reduce storm water pollutants as originally designed; and
> (vii) Inspections must note observations of vector conditions, such as mosquitoes. Where conditions are identified as contributing to mosquito production, the Copermittee must notify its local vector control agency.

2. Requirements of Federal Law

Nothing in the CWA, its regulations, or case law requires local agencies to develop, fund, and implement a retroactive BMP maintenance tracking database and inspection program. EPA regulations require MS4 permits to include "[a] description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers." 40 CFR § 122.26(d)(2)(iv)(A)(1). This general requirement did not mandate the actions required by Section F.1.f of the 2010 Permit. Like the general requirements in the CWA regulations reviewed by the Supreme Court in *Department of Finance,* this requirement cannot be bootstrapped into a federal mandate, given that the RWQCB exercised its "true choice" to impose the specific requirements in Section F.1.f of the 2010 Permit. 1 Cal. 5th at 765. *Accord, Long Beach Unified School Dist., supra,* 225 Cal.App.3d at 172-73 (when state exercises its discretion to impose requirements that exceed the express requirements of a federal law or program, it imposes a state mandate).

3. Requirements of 2004 Permit

The 2004 Permit contained no requirements found in the above-referenced provisions of Section F.1.f of the 2010 Permit. These requirements thus represented a new program and/or higher level of service.

4. Mandated Activities

- The Permittees were required to retroactively develop and populate a database of information for each SSMP project that has been built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions. The retroactive component of this requirement will require the claimants to incur costs that cannot otherwise be recovered through fees.

- The Permittees were required to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects.

To address these requirements, the District, through the cost-sharing mechanism in the Implementation Agreement among the Claimants, developed a template BMP tracking spreadsheet and an update of the JRMP template. The Claimants incurred additional direct costs implementing these requirements. *See* Section 6 Declarations, Paragraph 5(e).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(e), the Claimants incurred increased costs to address the requirements of this mandate of $58,475.07 in FY 2010-11 and $56,807.30 in FY 2011-12.

F. Construction Site Requirements

Provisions of Section F.2 of the 2010 Permit mandated Claimants to require (and at their own construction sites, to adopt) Active/Passive Sediment Treatment ("AST") at construction sites determined to be "an exceptional threat to water quality" based on various factors set forth in the 2010 Permit. The provisions also required Claimants to, during inspections of construction sites, review site monitoring data results if the construction site monitored its runoff.

1. Applicable Requirements in 2010 Permit

Section F.2.d

(3) Active/Passive Sediment Treatment (AST): Each Copermittee must require implementation of AST for sediment at construction sites (or portions thereof) that are determined by the Copermittee to be an exceptional threat to water quality. In evaluating the threat to water quality, the following factors must be considered by the Copermittee:

(a) Soil erosion potential or soil type;
(b) The site's slopes;
(c) Project size and type;
(d) Sensitivity of receiving water bodies;
(e) Proximity to receiving water bodies;
(f) Non-storm water discharges;
(g) Ineffectiveness of other BMPs;
(h) Proximity and sensitivity of aquatic threatened and endangered species of concern;
(i) Known effects of AST chemicals; and
(j) Any other relevant factors.

Section F.2.e

INSPECTION OF CONSTRUCTION SITES

Each Copermittee must conduct construction site inspections for compliance with its ordinances (grading, storm water, etc.), permits (construction, grading, etc.), and this Order. Priorities for inspecting sites must consider the nature and size of the construction activity, topography, and the characteristics of soils and receiving water quality.

. . .

(6) Inspections of construction sites must include, but not be limited to:

. . .

(e) Review of site monitoring data results, if the site monitors its runoff

2. Requirements of Federal Law

The CWA requires that MS4 permits shall require controls "to reduce the discharge of pollutants to the maximum extent practicable." 33 U.S.C. § 1342(p)(3)(B)(iii). The CWA regulations (40 CFR § 122.26(d)(2)(iv)(D)) provide that the proposed management program to be implemented by MS4 permittees include a "description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system." Nothing in the CWA or the implementing regulations requires the installation of AST technology at high priority construction sites, or the identification of such sites by permittees. The RWQCB's exercise of its discretion to specify these requirements represents a federal mandate. *Department of Finance*, 1 Cal. 5th at 768.

As also noted above, an NPDES permit can contain both federal and non-federal requirements. *City of Burbank, supra*, 35 Cal.4th at 618, 628. Where state-mandated activities exceed federal requirements, those mandates constitute a reimbursable state mandate. *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at 172-73.

Moreover, as noted above, a "new program or higher level of service" imposed by the State upon a municipality as a result of a federal law or federal program is not necessarily a "federal mandate." The test for determining whether the "new program or higher level of service" is a state mandate is whether the state has freely chosen to impose that program on local municipalities as opposed to performing the obligation itself. *Department of Finance*, 1 Cal. 5th at 771; *Hayes*, 11 Cal.App.4th at 1593-94. This is the case with the requirement in Section F.2.e.6(e) for Claimants to review collected monitoring data. Such a requirement to review data is already delegated to the state (through the RWQCB) in the state General Construction Permit, a permit issued by the state and for which the state collects fees. By shifting the review function to Claimants, the state has created a state mandate pursuant to *Department of Finance* and *Hayes.*

3. Requirements of 2004 Permit

The requirements to install ASTs and to review monitoring data were not included in the 2004 Permit and represent a new program and/or higher level of service.

4. Mandated Activities

- Claimants were required to install AST technology at specified construction sites, potentially including municipal projects.

- Claimants were required, when they inspected construction sites, to review any collected monitoring data. This required Claimants to ensure that their inspection staff were trained at the same level as state inspectors, such as those from the RWQCB. It should be noted that Claimants cannot collect fees to cover the increased costs to train on and review this data, as the State already collects fees for such a service as part of the General Construction Permit.

To address these requirements, the District, through the cost-sharing mechanism in the Implementation Agreement, conducted training of Claimant staff and updated the JRMP template. The Claimants incurred additional direct costs implementing these requirements. *See* Section 6 Declarations, Paragraph 5(f).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(f), the Claimants incurred increased costs to address the requirements of this mandate of $3,825.77 in FY 2010-11 and $3,161.85 in FY 2011-12.

G. Unpaved Roads BMP Requirements

Sections F.1.i. and F.3.a.10 of the 2010 Permit required Claimants to develop and implement BMPs to address erosion and sediment and other impacts from the development and maintenance of unpaved roads. Claimants were also required to develop and implement BMPs for erosion and sediment control during maintenance of unpaved roads, maintain such roads to reduce erosion and sediment transport, re-grade the roads in specified manners or employ alternative equally effective BMPs and examine the feasibility of replacing existing culverts or design of new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology.

1. Applicable Requirements in 2010 Permit

Section F.1.i

UNPAVED ROADS DEVELOPMENT

The Copermittees must develop, where they do not already exist, and implement or require implementation of erosion and sediment control BMPs after construction of new unpaved roads. At a minimum, the BMPs must include the following, or alternative BMPs that are equally effective:

(1) Practices to minimize road related erosion and sediment transport;
(2) Grading of unpaved roads to slope outward where consistent with road engineering safety standards;
(3) Installation of water bars as appropriate; and
(4) Unpaved roads and culvert designs that do not impact creek functions and where applicable, that maintain migratory fish passage.

Section F.3.a.10

Copermittee Maintained Unpaved Roads Maintenance

(a) The Copermittees must develop, where they do not already exist, and implement or require implementation of BMPs for erosion and sediment control measures during their maintenance activities on Copermittee maintained unpaved roads, particularly in or adjacent to receiving waters.

(b) The Copermittees must develop and implement or require implementation of appropriate BMPs to minimize impacts on streams and wetlands during their unpaved road maintenance activities.

(c) The Copermittees must maintain as necessary their unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport;

(d) Re-grading of unpaved roads during maintenance must be sloped outward where consistent with road engineering safety standards or alternative equally effective BMPs must be implemented to minimize erosion and sedimentation from unpaved roads; and

(e) Through their maintenance of unpaved roads, the Copermittees must examine the feasibility of replacing existing culverts or design of new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology.

2. Requirements of Federal Law

The CWA regulations require that in the MS4 management program, there be a **"**description for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems." 40 CFR § 122.26(d)(2)(iv)(A)(3). The unpaved roads requirements in the 2010 Permit, however, did not address discharges from the MS4, but rather all discharges (including sheet, non-point source discharges) from any unpaved roads, without any link to discharges from the MS4. As such, this requirement goes beyond the "four corners" of the 2010 Permit, which is expressly intended to address discharges from Claimants' MS4. *See* Section A of the 2010 Permit, whose prohibitions address only discharges "into and from MS4s."

Nothing in Sections F.1.i or F.3.a.10 limits the development and implementation of BMPs with respect to the maintenance of unpaved roads to those which would discharge into or from an MS4. In fact, as set forth in ¶7 of the Uhley Declaration, many unpaved roads within the Santa Margarita Region of Riverside County do not qualify as MS4s or do not discharge into the MS4 serving municipalities within that region. Thus, discharges of sediment from such roads are not discharges into or from the MS4. Because these provisions went beyond the basic scope of the 2010 Permit, and indeed the MS4 provisions of the CWA (which address discharges from MS4s, 33 U.S.C. § 1342(p)(3)(B)(ii)-(iii)), the requirements were imposed by the RWQCB apparently as a function of their authority under the state Porter-Cologne Act, which applies to all waters of the state. That imposition, while within the RWQCB's authority under Porter-Cologne, is not a federal mandate. Were it to be concluded that at least in part, the unpaved road BMP requirements related to MS4 discharges, the specific and detailed requirements set forth in the 2010 Permit represent

the exercise by the RWQCB of its "true choice" to impose such requirements. *Department of Finance,* 1 Cal. 5th at 765.

3. Requirements of 2004 Permit

The 2004 Permit does not address any requirements for the development and implementation of BMPs for unpaved roads, nor even identifies unpaved roads as a source of concern. As such, the requirements of Sections F.1.i and F.3.a.10 of the 2010 Permit represented new programs and/or higher levels of service.

4. Mandated Activities

Claimants were required under Section F.1.i. to develop and implement or require implementation of erosion and sediment control BMPs, including with respect to erosion and sediment transport, road grading to slope the grade outwards, installation of water bars as appropriate and design of unpaved roads and culverts that do not impact creek functions and maintain migratory fish passage. Claimants were required under Section F.3.a.10 to develop and implement BMPs for erosion and sediment control measures during maintenance of unpaved roads, to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance, maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, re-grade unpaved roads to slope outward where consistent with safety standards or adopt alternative equally effective BMPs to minimize erosion and sedimentation from unpaved roads, and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology.

To address these requirements, the District, through the cost-sharing mechanism in the Implementation Agreement, revised the JRMP template and SSMP to incorporate the road maintenance provisions. The Claimants incurred additional direct costs in implementing these requirements. *See* Section 6 Declarations, Paragraph 5(g).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(g), the Claimants incurred increased costs to address the requirements of this mandate of $465,662.82 in FY 2010-11 and $596,439.14 in FY 2011-12.

H. Industrial/Commercial Inspection Requirement

Section F.3.b.4(a)(ii) of the 2010 Permit provided that Claimants review facility monitoring data as part of an inspection program of commercial/industrial facilities if the facility monitored its runoff.

1. Applicable Requirements in 2010 Permit

Section F.3.b.4

Inspection of Industrial and Commercial Sites/Sources

Each Copermittee must conduct industrial and commercial site inspections for compliance with its ordinances, permits, and this Order. Mobile businesses must be inspected as needed pursuant to section F.3.b.(3).

(a) Inspection Procedures: Inspections must include but not be limited to:

. . .

(ii) Review of facility monitoring data, if the site monitors its runoff;

2. Requirements of Federal Law

The CWA regulations set forth the list of facilities required to be inspected pursuant to the Act, which are municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986 and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system. 40 C.F.R. § 122.26(d)(2)(iv)(C). Nothing in the CWA or its regulations addresses any requirement for Claimants, as Copermittees, to review stormwater monitoring data. Such a review requirement is, in fact, a shifting of responsibility from the state to the local agencies.

As noted above, one test for determining whether the "new program or higher level of service" is a state mandate, even where the underlying requirement may arise from federal law, is whether the state has freely chosen to impose that program on local municipalities as opposed to performing the obligation itself. *Hayes, supra,* 11 Cal.App.4th at 1593-94. The Supreme Court addressed this issue in *Department of Finance,* where it held that an LA County permit requirement that similarly shifted inspection requirements to the MS4 operators represented a state mandate. 1 Cal. 5th at 771. This is the case with the requirement in Section F.3.b.4(a)(ii) to review collected monitoring data. Such a requirement to review data is already delegated to the state (through the RWQCB) in the state General Industrial Permit, a permit issued by the state and for which the state collects fees. By shifting the review function to Claimants, the state has created a state mandate pursuant to *Department of Finance* and *Hayes.*

3. Requirements of 2004 Permit

The 2004 Permit, while it required inspections of various commercial and industrial facilities in Section H.2.d, did not require review of monitoring data. Such review represented an additional new program and/or higher level of service.

4. Mandated Activities

Section F.3.b.4(a)(ii) of the 2010 Permit required Claimants to, when they inspected industrial/commercial facilities, review any collected monitoring data. This required Claimants to ensure that their inspection staff were trained at the same level as state inspectors, such as those from the RWQCB. It should be noted that the Claimants could not collect fees to cover the increased costs to train on and review this data, as the State already collected fees for such a service as part of the statewide General Industrial Permit.

To address these requirements, the District, through the cost-sharing mechanism in the Implementation Agreement, provided various training updates and revised the JRMP template to incorporate these requirements. The Claimants also incurred additional direct costs to implement these requirements. *See* Section Declarations, Paragraph 5(h).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(h), the Claimants incurred increased costs to address the requirements of this mandate of $15,330.14 in FY 2010-11 and $15,384.24 in FY 2011-12.

I. Requirement to Develop Program to Retrofit Existing Development

Section F.3.d of the 2010 Permit required Claimants to develop and implement a new program, which is not required under federal law or previous permits, to retrofit existing development. The 2010 Permit required Claimants to identify areas of existing developments, including municipal developments, as candidates for retrofitting, evaluate and rank candidates according to pre-established criteria, prioritize work plans for implementation according to the evaluation, cooperate with landowners to encourage retrofit of private improvements, and track and inspect retrofitting projects. Permittees were required to invest significant staff time and other valuable resources into developing and implementing this new program.

1. Applicable Requirements of 2010 Permit

Section F.3.d

(1) The Copermittee(s) must identify and inventory existing areas of development (i.e. municipal, industrial, commercial, residential) as candidates for retrofitting. Potential retrofitting candidates must include but are not limited to:

(a) Areas of development that generate pollutants of concern to a TMDL or an ESA;
(b) Receiving waters that are channelized or otherwise hardened;
(c) Areas of development tributary to receiving waters that are channelized or otherwise hardened;
(d) Areas of development tributary to receiving waters that are significantly eroded; and
(e) Areas of development tributary to an ASBS or SWQPA.

(2) Each Copermittee must evaluate and rank the inventoried areas of existing developments to prioritize retrofitting. Criteria for evaluation must include but is not limited to:

(a) Feasibility;
(b) Cost effectiveness;
(c) Pollutant removal effectiveness, including reducing pollutants exceeding action level;
(d) Tributary area potentially treated;
(e) Maintenance requirements;
(f) Landowner cooperation;

(g) Neighborhood acceptance;
(h) Aesthetic qualities;
(i) Efficacy at addressing concern; and
(j) Potential improvements on public health and safety.

(3) Each Copermittee must consider the results of the evaluation in prioritizing work plans for the following year in accordance with Sections G.1 and J. Highly feasible projects expected to benefit water quality should be given a high priority to implement source control and treatment control BMPs. Where feasible, the retrofit projects may be designed in accordance with the SSMP requirements within sections F.1.d.(3) through F.1.d.(8) and the Hydromodification requirements in Section F.1.h.

(4) The Copermittees must cooperate with private landowners to encourage site specific retrofitting projects. The Copermittee must consider the following practices in cooperating and encouraging private landowners to retrofit their existing development:

(a) Demonstration retrofit projects;
(b) Retrofits on public land and easements that treat runoff from private developments;
(c) Education and outreach;
(d) Subsidies for retrofit projects;
(e) Requiring retrofit projects as enforcement, mitigation or ordinance compliance;
(f) Public and private partnerships; and
(g) Fees for existing discharges to the MS4 and reduction of fees for retrofit implementation.

(5) The known completed retrofit BMPs must be tracked in accordance with Section F.1.f. Retrofit BMPs on publicly owned properties must be inspected per section F.1.f . Privately owned retrofit BMPs must be inspected as needed.
. . .

2. Requirements of Federal Law

Nothing in the CWA, its regulations, or case law requires local agencies to develop, fund, and implement a retrofitting program. The only retrofitting requirement in the CWA regulations is one which requires MS4 permits to include "[a] description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible." 40 CFR § 122.26(d)(2)(iv)(A)(1). This requirement, however, applies only to structural flood control devices and does not apply to the type of comprehensive program required in Section F.3.d of the 2010 Permit.

The 2010 Permit Fact Sheet cited, in a footnote, the MS4 Permit Improvement guidance published by U.S. EPA. 2010 Permit Fact Sheet, p. 158, n.220. Such guidance, of course, has no legal or regulatory effect. Moreover, the provisions of this guidance did not specify any requirements except the assembling of an inventory of potential retrofitting sites and then evaluating and ranking such sites. Section F.3.d of the 2010 Permit, however, went further in

requiring Claimants to, among other things, consider the results of the evaluation in prioritizing work plans, to cooperate with private landowners to "encourage site specific retrofitting projects" and to track known completed retrofit BMPs. *Id.* The extensive retrofitting requirements in the 2010 Permit are analogous to, though more prescriptive than, the inspection and trash receptacle requirements found to be state mandates in the LA County permit. *Department of Finance*, 1 Cal. 5th at 770-72. The RWQCB, in imposing these specific requirements, was imposing a state mandate. *Id.* at 768.

3. Requirements in 2004 Permit

Nothing in the 2004 Permit required a retrofitting program. Thus, the retrofitting requirements found in Section F.3.d of the 2010 Permit represented a new program and/or higher level of service.

4. Mandated Activities

Section F.3.d imposed at least five new requirements on Claimants, requirements which were not required by federal law and represented state mandates for which Claimants are entitled to reimbursement. The costs of developing and implementing the retrofitting program for existing development for which Permittees should be reimbursed arise from the extensive list of requirements in the 2010 Permit. These requirements include:

- Identifying potential retrofitting candidates by researching and locating developments that contribute to a TMDL or ESA, that are channelized or hardened, that are tributary to receiving waters which are an ASBS, SWQPA, or are significantly eroded;

- Evaluating the feasibility, cost effectiveness, pollutant removal effectiveness, tributary area, maintenance requirements, landowner cooperation, neighborhood acceptance, aesthetic qualities, efficacy at addressing concern, and potential for improvement in public health and safety for each potential retrofitting candidate and then ranking each candidate accordingly;

- Prioritizing retrofit projects in the following year's municipal work plan and designing retrofit projects according to the SSMP requirements and hydromodification where feasible;

- Cooperating with and encouraging private landowners to undertake site-specific retrofit projects; and

- Tracking and inspecting retrofit BMPs.

To address these requirements, the Claimants, through the cost-sharing mechanism set forth in the Implementation Agreement, retained a consultant to develop a Retrofit Study and revised the JRMP template to incorporate these requirements. The Claimants incurred additional direct costs to implement these requirements. *See* Section 6 Declarations, Paragraph 5(i).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(i), the Claimants incurred increased costs to address the requirements of this mandate of $2,284.39 in FY 2010-11 and $190,178.22 in FY 2011-12.

J. Watershed Water Quality Workplan Requirements

Section G of the 2010 Permit required Claimants to develop and implement a Watershed Water Quality Workplan ("Watershed Workplan") to identify, prioritize, address and mitigate "the highest priority water quality issues/pollutants in the Upper Santa Margarita Watershed." 2010 Permit at 74.

1. Applicable Requirements in 2010 Permit

Section G

WATERSHED WATER QUALITY WORKPLAN

Each Copermittee must collaborate with other Copermittees to develop and implement a Watershed Water Quality Workplan (Watershed Workplan) to identify, prioritize, address, and mitigate the highest priority water quality issues/pollutants in the Upper Santa Margarita Watershed.

1. Watershed Workplan Components

The work plan must, at a minimum:

> a. Characterize the receiving water quality in the watershed. Characterization must include assessment and analysis of regularly collected water quality data, reports, monitoring and analysis generated in accordance with the requirements of the Receiving Waters Monitoring and Reporting Program, as well as applicable information available from other public and private organizations. This characterization must include an updated watershed map.
>
> b. Identify and prioritize water quality problem(s) in terms of constituents by location, in the watershed's receiving waters. In identifying water quality problem(s), the Copermittees must, at a minimum, give consideration to TMDLs, receiving waters listed on the CWA section 303(d) list, waters with persistent violations of water quality standards, toxicity, or other impacts to beneficial uses, and other pertinent conditions.
>
> c. Identify the likely sources, pollutant discharges and/or other factors causing the highest water quality problem(s) within the watershed. Efforts to determine such sources must include, but not be limited to: use of information from the construction, industrial/commercial, municipal, and residential source identification programs required within the JRMP of this Order; water quality monitoring data collected as part of the

Receiving Water Monitoring and Reporting Program required by this Order, and dditional focused water quality monitoring to identify specific sources within the watershed.

d. Develop a watershed BMP implementation strategy to attain receiving water quality objectives in the identified highest priority water quality problem(s) and locations. The BMP implementation strategy must include a schedule for implementation of the BMPs to abate specific receiving water quality problems and a list of criteria to be used to evaluate BMP effectiveness. Identified watershed water quality problems may be the result of jurisdictional discharges that will need to be addressed with BMPs applied in a specific jurisdiction in order to generate a benefit to the watershed. This implementation strategy must include a map of any implemented and/or proposed BMPs.

e. Develop a strategy to monitor improvements in receiving water quality directly Workplan. The monitoring strategy must review the necessary data to report on the measured pollutant reduction that results from proper BMP implementation. Monitoring must, at a minimum, be conducted in the receiving water to demonstrate reduction in pollutant concentrations and progression towards attainment of receiving water quality objectives.

f. Establish a schedule for development and implementation of the Watershed strategy outlined in the Workplan. The schedule must, at a minimum, include forecasted dates of planned actions to address Provisions E.2(a) through E.2(e) and dates for watershed review meetings through the remaining portion of this Permit cycle. Annual watershed workplan review meetings must be open to the public and appropriately publically noticed such that interested parties may come and provide comments on the watershed program.

2. Watershed Workplan Implementation

Watershed Copermittee's must implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the San Diego Water Board.

3. Copermittee Collaboration

Watershed Copermittees must collaborate to develop and implement the accepted Watershed Workplan. Watershed Copermittee collaboration must include frequent regularly scheduled meetings. The Copermittees must pursue efforts to obtain any interagency agreements, or other coordination efforts, with non-Copermittee owners of the MS4 (such as Caltrans, Native American tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4. . . .

4. Public Participation

Watershed Copermittees must implement a watershed-specific public participation mechanism within each watershed. A required component of the watershed-specific public participation mechanism must be a minimum 30-day public review of and opportunity to comment on the Watershed Workplan prior to submittal to the San Diego Water Board. The Workplan must include a description of the public participation mechanisms to be used and identification of the persons or entities anticipated to be involved during the development and implementation of the

Watershed Workplan.

5. Watershed Workplan Review and Updates

Watershed Copermittees must review and update the Watershed Workplan annually to identify needed changes to the prioritized water quality problem(s) listed in the workplan. All updates to the Watershed Workplan must be presented during an Annual Watershed Review Meeting. Annual Watershed Review Meetings must occur once every calendar year and be conducted by the Watershed Copermittees. Annual Watershed Review Meetings must be open to the public and adequately noticed. Individual Watershed Copermittees must also review and modify their jurisdictional programs and JRMP Annual Reports, as necessary, so that they are consistent with the updated Watershed Workplan.

2. Requirements of Federal Law

Nothing in the CWA or its implementing regulations required Claimants to prepare and implement the Watershed Workplan. The 2010 Permit Fact Sheet cites only to provisions in the regulations allowing for the establishment of watershed-based programs. *See, e.g.*, 40 CFR § 122.26(d)(2)(iv) ("Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.") However, these regulations do not require adoption of a workplan approach, which was specifically adopted by the RWQCB for the 2010 Permit. *See* 2010 Permit Fact Sheet at 166-67 ("Order No. R9-2010-0016 requires the watershed Copermittees to develop and follow a workplan approach towards assessing receiving water body conditions, prioritizing the highest priority water quality problems, implementing effective BMPs, and measuring water quality improvement in the receiving water.")

The imposition of the specific requirements set forth in Section G of the 2010 Permit represents the exercise of the RWQCB's choice to impose the workplan requirements. As such, they are state mandates. *Department of Finance*, 1 Cal. 5th at 765.

3. Requirements in 2004 Permit

While the 2004 Permit contained a requirement for permittees to develop and implement a Watershed SWMP (2004 Permit, Section K), the requirements of the 2010 Permit were significantly different and more demanding than in the earlier permit. Significant differences included the requirement to not only review monitoring data collected under the permit, but also data from "applicable information available from other public and private organizations;" to prioritize water quality problems "in terms of constituents by locations" not merely in the watershed generally; to identify likely sources, pollutant discharges and/or other factors causing the highest water quality problems within the watershed, including the requirement to conduct "additional focused water quality monitoring to identify specific sources within the watershed;" to develop a watershed BMP implementation strategy, including a schedule for implementing BMPs to abate specific receiving water quality problems; to develop a strategy to monitor improvements in receiving water quality directly resulting from BMP described in the Watershed Workplan; to "pursue efforts to obtain" interagency agreements with non-permittee MS4s to control contribution of pollutants "from one portion of the shared MS4 to another portion of the shared MS4 (the 2004

Permit only required a description of any such agreements); to offer a 30-day public review and comment period prior to submittal of the Watershed Workplan to the RWQCB; and, to hold an Annual Watershed Review Meeting, open to the public and "adequately noticed." *Compare* Sections G.1-G.5 of the 2010 Permit *with* Section K of the 2004 Permit.

These additional requirements were not just an incremental change to an existing program providing existing activities but rather represented a significant increase in the actual level and type of activities required of Claimants by the RWQCB. As such, it constituted a requirement for a "higher level of service" within the meaning of Article XIII B, section 6 of the California Constitution. *San Diego Unified School Dist., supra,* 33 Cal.4th at 877. The additional program elements described above therefore constitute unfunded mandates for which Claimants are constitutionally entitled to be reimbursed.

4. Mandated Activities

The above-cited provisions of Section G of the 2010 Permit required Claimants, in developing and implementing the Watershed Workplan, to:

-- Characterize watershed receiving water quality, including analyzing monitoring data collected under the 2010 Permit and from other public and private organizations;

-- Identify and prioritize water quality problems by constituent and by location, giving consideration to total maximum daily loads, waters listed as impaired pursuant to CWA section 303(d), and other pertinent conditions;

-- Identify likely sources causing the highest water quality problems within the watershed, including from monitoring conducted under the 2010 Permit and additional focused water quality monitoring to identify specific sources;

-- Develop a watershed BMP implementation strategy, including a schedule to implement BMPs to abate specific receiving water quality problems;

-- Develop a strategy to monitor improvements in receiving water quality stemming from implementation of BMPs described in the Watershed Workplan, including required monitoring in the receiving water;

-- Establish a schedule for development and implementation of the watershed strategy outlined in the Watershed Workplan, including the holding of annual watershed workplan review meetings open to the public;

-- Implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the RWQCB;

-- Cooperate among permittees to develop and implement the Watershed Workplan, including the requirement to pursue interagency agreements with non-permittee MS4 operators;

-- Implement a public participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and

-- As part of the review and annual update of the Watershed Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed.

To address these requirements, the District, on behalf of the Claimants, retained a consultant through the cost-sharing mechanism in the Implementation Agreement to gather and analyze historic water quality monitoring data, develop, draft and submit the Watershed Workplan and revise the JRMP template. The Claimants incurred additional direct costs to implement these requirements. *See* Section 6 Declarations, Paragraph 5(j).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(j), the Claimants incurred increased costs to address the requirements of this mandate of $11,746.43 in FY 2010-11 and $21,513.94 in FY 2011-12.

K. Requirements Relating to JRMP Annual Report

Section K.3 of the 2010 Permit (including Table 5), and a checklist set forth in Attachment D, contained requirements relating to the preparation of an extensive JRMP Annual Report by Claimants covering implementation of jurisdictional activities, as well as extensive other requirements.

1. Applicable Requirements in 2010 Permit

Section K.3

Annual Reports

JURISDICTIONAL RUNOFF MANAGEMENT PROGRAM (JRMP) ANNUAL REPORTS

a. Each Copermittee must generate individual JRMP Annual Reports that cover implementation of its jurisdictional activities during the past annual reporting period. Each Annual Report must verify and document compliance with this Order as directed in this section. Each Copermittee must retain records in accordance with the Standard Provisions in Attachment B of this Order, available for review, that document compliance with each requirement of this Order. The reporting period for these annual reports must be the previous fiscal year.

b. Each Copermittee must submit its JRMP Annual Reports to the San Diego Water Board by October 31of each year, beginning on October 31, 2013.

c. Each JRMP Annual Report must contain, at a minimum, the following information, as applicable to the Copermittee:

> (1) Information required to be reported annually in Section H (Fiscal Analysis) of this Order;
> (2) Information required to be reported annually in Section J (Program Effectiveness) of this Order;
> (3) The completed Reporting Checklist found in Attachment D; and
> (4) Information for each program component as described in the following Table 5:

[Table 5 is not included, but can be found on pages 82-85 of the 2010 Permit. Also, Attachment D is not included, but is included in Section 7.]

2. Requirements of Federal Law

The CWA regulations, at 40 CFR § 122.42(c), require that MS4 permittees must submit an annual report by the anniversary of the date of the issuance of the permit. The report shall include: (1) The status of implementing the components of the storm water management program that are established as permit conditions; (2) Proposed changes to the storm water management program that are established as permit condition, consistent with § 122.26(d)(2)(iii); (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v); (4) A summary of data, including monitoring data, accumulated throughout the reporting year; (5) Annual expenditures and budget for year following each annual report; (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and, (7) Identification of water quality improvements or degradation.

While certain requirements in Section K.3 were mandated by the regulations, the provision considerably exceeded federal law. The regulations require that the annual report provide a "summary of data, including monitoring data" and a summary describing the number and nature of enforcement actions, inspections and public educations programs. Section K.3 (incorporating Table 5) required far more: that the report include detailed tracking of various elements, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implement at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Claimants were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implement retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, Claimants were required to submit a checklist that required, among other things, the listing of active and inactive construction

sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected.

Such additional requirements, and others, represented a higher level of service and/or new program constituted an unfunded state mandate. In fact, the RWQCB's Fact Sheet for the 2010 Permit cites Water Code § 13267 as additional authority for these requirements. 2010 Permit Fact Sheet, p. 174. The imposition of these additional requirements represents the "true choice" of the RWQCB and is, therefore a state mandate. *Department of Finance,* 1 Cal. 5th at 765, 768.

3. Requirements of 2004 Permit

The 2004 Permit did not contain the detailed requirements set forth in Section K.3.c. of the 2010 Permit, but rather, in the 2004 Permit's Standard Provisions section, simply recited the requirements of 40 CFR § 122.42(c). *See* 2004 Permit, Page B-6.

4. Mandated Activities

New requirements not in the 2004 Permit included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Claimants were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, Claimants were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected.

To address these requirements, the District, through the cost-sharing mechanism in the Implementation Agreement, developed revisions to the JRMP and annual report templates. The Claimants incurred additional direct costs in implementing these requirements. *See* Section 6 Declarations, Paragraph 5(k).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(k), the Claimants incurred increased costs to address the requirements of this mandate of $132,166.33 in FY 2010-11 and $131,321.50 in FY 2011-12.

L. Special Studies Requirements

Attachment E to the 2010 Permit, the Monitoring and Reporting Program ("MRP") included requirements that Claimants conduct several "special studies" regarding waters within the Santa Margarita Region. These studies were not required by the CWA or its implementing regulations, and instead represented the RWQCB's choice and mandate that Claimants undertake such studies.

1. Applicable Requirements in 2010 Permit

Attachment E to 2010 Permit

E. Special Studies

1. The Copermittees must conduct special studies, including any monitoring and/or modeling required for TMDL development and implementation, as directed by the San Diego Water Board.

2. Sediment Toxicity Study

The Copermittees must develop and submit to the San Diego Water Board by April 01, 2012, a special study workplan to investigate the toxicity of sediment in streams and potential impact on benthic macroinvertebrate IBI scores. The Sediment Toxicity Special Study must be implemented in conjunction with the Stream Assessment Monitoring in II.A.2. The Copermittees must implement the special study unless otherwise directed in writing by the San Diego Water Board. The Sediment Toxicity Special Study must include the following elements:

> a. Sampling Locations: At least 4 stream assessment locations must be sampled, including 1 reference site and 1 mass loading site. Selection of sites must be done with consideration of subjectivity of receiving waters to discharges from residential and agricultural land uses.
>
> b. Frequency: At a minimum, sampling must occur once per year at each site for at least 2 years. Sampling must be done in conjunction with the stream assessment sampling required under Section II.A.2 of the Monitoring and Reporting Program of this Order.
>
> c. Parameters/Methods: At a minimum, sediment toxicity analysis must include the measurement of metals, pyrethroids and organochlorine pesticides. The analysis must include estimates of bioavailability based upon sediment grain size, organic carbon and receiving water temperature at the sampling site. Acute and chronic toxicity testing must be done using *Hyalella azteca* in accordance with Table 2.

d. Results: Results and a Discussion must be included in the Monitoring Annual Report (see III.A). The Discussion must include an assessment of the relationship between observed IBI scores under Section II.A.2 and all variables measured.

3. Trash and Litter Investigation

The Copermittees must develop and submit to the San Diego Water Board by September 01, 2012, a special study workplan to assess trash (including litter) as a pollutant within receiving waters on a watershed based scale. Litter is defined in California Government Code 68055.1g as "…improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or container constructed of steel, aluminum, glass, paper, plastic and other natural and synthetic, materials, thrown or deposited on lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing." A lead Copermittee must be selected for the Santa Margarita HU for the purposes of this Special Study. The Copermittees must implement the special study unless otherwise directed in writi9ng by the San Diego Water Board

The Trash and Litter Investigation must include the following elements:

a. Locations: The lead Copermittee must identify suitable sampling locations within the Santa Margarita HU.

b. Frequency: Trash at each location must be monitored a minimum of twice during the wet season following a qualified monitoring storm event (minimum of 0.1 inches preceded by 72 hours of dry weather) and twice during the dry season.

c. Protocol: The lead Copermittee for the Santa Margarita HU must use the "Final Monitoring Workplan for the Assessment of Trash in San Diego County Watersheds" and "A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region" to develop a monitoring protocol for the Santa Margarita HU.

d. Results and Discussion from the Trash and Litter Study must be included in the Monitoring Annual Report. The Results and Discussion must, at a minimum, include source identification, an evaluation of BMPs for trash reduction and prevention, and a description of any BMPs implemented in response to study results.

4. Agricultural, Federal and Tribal Input Study

The Copermittees must develop and submit to the San Diego Water Board by September 01, 2012, a special study workplan to investigate the water quality of agricultural, federal and tribal runoff that is discharged into their MS4 (see Finding D.3.c of the Order). The Copermittees must implement the special study unless otherwise directed in writing by the San Diego Water Board. The Agricultural, Federal and Tribal Input Special Study must include the following elements:

a. Locations: The Copermittees must identify a representative number of sampling stations within their MS4 that receive discharges of agricultural, federal, and tribal runoff that has not co-mingled with any other source. At least one station from each category must be identified.

b. Frequency: One storm event must be monitored at each sampling location each year for at least 2 years.

c. Parameters/Methods: At a minimum, analysis must include those constituents listed in Table 1 of the MRP (see II.A.1). Grab samples may be utilized, though composite samples are preferred. Copermittees must also measure or estimate flow rates and volumes of discharges into the MS4.

d. Results: Results and Discussion from the Agricultural, Federal and Tribal Input Study must be included in the Monitoring Annual Report.

5. MS4 and Receiving Water Maintenance Study

The Copermittees must develop and submit to the San Diego Water Board by April 01, 2012, a special study workplan to investigate receiving waters that are also considered part of the MS4 (see Finding D.3.c of the Order) and which are subject to continual vegetative clearance activities (e.g. mowing). The study must be designed to assess the effects of vegetation removal activities and water quality, including, but not limited to, modification of biogeochemical functions, in-stream temperatures, receiving water bed and bank erosion potential and sediment transport. The Copermittees must implement the special study unless otherwise directed in writing by the San Diego Water Board.

The MS4 and Receiving Water Maintenance Special Study must include the following elements:

a. Locations: The Copermittees must identify suitable sampling locations, including at least one reference system that is not subject to maintenance activities.

b. Parameters/Methods: At a minimum, the Copermittees must monitor pre and post maintenance activities for indicator bacteria, turbidity (NTU), temperature, dissolved oxygen and nutrients (Nitrite, Nitrate, Total Kjeldahl Nitrogen, Ammonia and Total Phosphorous). Copermittees must also measure or estimate flow rates and volumes.

c. Results and Discussion from the MS4 and Receiving Water Maintenance Study must be included in the Annual Monitoring Report. The Discussion must include relevance of findings to CWA Section 303(d) listed impaired waters.

2. Requirements of Federal Law

The federal CWA regulations, at 40 CFR § 122.26(d)(2)(iii), require NPDES permittees, such as Claimants, to conduct a monitoring program. Moreover, the regulations at 40 CFR § 122.42(c) requires that the operator of a large or medium MS4 system to submit an annual report by the anniversary of the date of the issuance of the permit for such system. The regulations provide that the report shall include: "(1) The status of implementing the components of the storm water management program that are established as permit conditions; (2) Proposed changes to the storm water management program that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and

(d)(2)(v) of this part; (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year; (5) Annual expenditures and budget for year following each annual report; (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; (7) Identification of water quality improvements or degradation."

There is no authority, however, in the CWA or its implementing regulations for the RWQCB to require the special studies set forth in the MRP. Such studies represented the intent of the RWQCB to shift its investigatory responsibility to the Claimants. Under *Department of Finance*, this shifting of responsibility (in this case, not even federally based but state law-based under Porter-Cologne) represented a state mandate. 1 Cal. 5th at 771.

With regard to the Sediment Toxicity Study (required by Section E.2 of the MRP), such study bore no basis to conditions found in the Santa Margarita watershed covered by the 2010 Permit. As set forth in the comments of the District on the draft 2010 Permit, the primary focus of sediment toxicity monitoring across the state is on perennial streams and estuaries that have continual flows, such as the California Delta. (*See* District comments and Attachment 4 thereto, contained in Section 7). By contrast, most receiving waters in the Santa Margarita watershed are ephemeral and dry most of the year. Using the RWQCB's working definition of "MEP" (found in Attachment C, Definitions, in the 2010 Permit), where there is not commensurate value for the resources utilized, MEP is not being met. Additionally, the issue of sediment monitoring is of statewide interest, and should be conducted on a statewide basis by the SWRCB and/or the RWQCBs. By requiring Claimants to conduct such a study, the RWQCB was shifting its responsibility or the responsibility of the state to local agencies. Under *Department of Finance* and *Hayes*, such a shifting of a state obligation represents a state mandate.

With regard to the trash and litter study, the requirement in the MRP did not establish any link to discharges from the MS4, which is the purview of the 2010 Permit and the source of federal authority for this requirement. Instead, the study was linked only to the presence of trash and litter within the receiving waters of the watershed. Such trash and litter may have entered the receiving waters as the result of the wind, or may have been directly deposited there. The study does not, however, exclude such trash nor limit the study to trash contained in discharges from the MS4 into receiving waters. As such, it was a requirement not founded in federal law and is a mandate of the state.

With regard to the study of agricultural, federal and tribal inputs, the 2010 Permit Fact Sheet (without citing any federal justification) asserted that the purpose of the study was to determine whether there is information to back Claimants' assertion in their Report of Waste Discharge that discharges from such lands were affecting water quality in Claimants' MS4. 2010 Permit Fact Sheet, p. 197. Thus, the RWQCB was making Claimants sample MS4 discharges from *non-permittee* sources, a task that is nowhere required in the CWA or the implementing regulations. The CWA requires MS4 permittees to address pollutants that they discharge. Nothing in the CWA or the implementing regulations required MS4 dischargers to sample sources that are not within their jurisdictional control, which is the case for agricultural, federal and tribal lands waters that enter their jurisdictions.

The RWQCB had the ability to require such sampling pursuant to the Porter-Cologne Act, and in the Fact Sheet, the RWQCB specifically cited Water Code § 13267 as additional, separate authority for the MRP. 2010 Permit Fact Sheet, p. 188. This statute authorizes the RWQCB to obtain technical reports from any dischargers. Such authority is, of course *state*, and not *federal*. The RWQCB has the authority under that section to require the agricultural, federal and tribal sources to conduct the sampling sought in the special study. It *chose* not to do so, but instead applied the requirement to Claimants. As such, it was a clear unfunded state mandate for which Claimants are entitled to a subvention of funds. *Hayes, supra,* 11 Cal.App.4th at 1593-94.

With regard to the MS4 and Receiving Water Maintenance Study, the rationale for this study – that the MS4 and the "receiving water" can be the same water body – was based on a 2010 Permit finding (Finding D.3.C.), which states:

> Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Urban streams used in this manner are part of the municipalities' MS4s regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the urban stream is both an MS4 and receiving water.

2010 Permit, p. 11. This reading, however, both ignores the plain definition of "MS4" in the federal regulations (which is included into the 2010 Permit in the Definitions in Attachment C) and is contradicted by the ruling of the United States Court of Appeals for the Ninth Circuit in *NRDC v. County of Los Angeles,* 673 F.3d 880 (9th Cir. 2011), *reversed in part sub nom., Los Angeles County Flood Control Dist. v. NRDC,* __ U.S. __, 133 S. Ct. 710 (2013).

The definition of "MS4" in the 2010 Permit, Attachment C, stated that it is:

> A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designated or used for collecting or conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.26.

2010 Permit, Attachment C, page C-8. This definition made clear that natural waterbodies cannot serve as "receiving waters" as they are not "man-made channels," "storm drains" or other non-natural waterbodies. Also, such natural waterbodies are not "owned or operated" by a municipality, another qualification of an "MS4."

In *NRDC*, the Ninth Circuit held that "as a matter of law and fact," the MS4 is "separate and distinct" from a navigable water of the United States, i.e., a receiving water. *NRDC*, 673 F.3d at 899. The court held that such MS4s are in fact "point sources" that *discharge* into receiving waters, which are defined in the 2010 Permit to be "waters of the United States." 2010 Permit, Attachment C, p. C-10.

Since beneficial uses do not exist within MS4s (since they are not "waters of the United States"), there is no CWA rationale (if one ever existed, *see* discussion above regarding lack of authority for special studies) for this study. Claimants understand that the RWQCB could have required the study under the authority of the Porter-Cologne Act through Water Code § 13267, which as noted above, is cited as authority for the MRP in the Fact Sheet. However, this authority derives from state, and not federal, law.

The Permit also contained the requirement for conducting a fifth special study, a study into intermittent and ephemeral stream perennial conversions due to the flow of various flows into such streams. Permit Attachment E.6. After the effective date of the Permit, the Claimants negotiated with the RWQCB to replace the fifth special study and the remainder of the fourth study (for which a workplan had already been prepared) with a study of the impacts of the implementation of LID protections on downstream flows to Camp Pendleton and potential impacts on beneficial uses in downstream waters. This LID impacts study, as was true of all the other special studies, was not required by the CWA or its implementing regulations. The study had nothing to do with the requirements that the CWA establishes for MS4 permittees, *i.e.,* to control the discharge of pollutants from the MS4 to the MEP and to effectively prohibit the discharge of non-stormwater into the MS4 (*see* Section III above), but instead represented the RWQCB's interest in having Claimants investigate flow volumes and impacts on beneficial uses from LID BMPs. Such investigations were not authorized under the CWA, but were a function of the RWQCB's choice to require such work under state authority. As such, it was a state mandate. *Department of Finance*, 1 Cal. 5th 765.

3. Requirements of 2004 Permit

No special studies were required in the 2004 Permit.

4. Mandated Activities

These studies required Claimants to retain consultants to provide support in locating suitable waterbodies in which to conduct the studies, to develop and submit workplans, to conduct monitoring activities as specified in the MRP and the approved workplans, to conduct analysis of the monitoring results and to report the results of the analysis to the RWQCB in the final study reports. The County also incurred direct costs in association with this requirement. *See* Section 6 Declarations, Paragraph 5(l).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(l), the Claimants incurred increased costs to address the requirements of this mandate of $27,728.71 in FY 2011-12 and $103,789.60 in FY 2012-13.

M. Requirements that 2010 Permit Programs Ensure No Violations of Water Quality Standards and Other Requirements

Provisions in the 2010 Permit contained language that required Claimants, in developing and implementing programs required in Section F of the Permit, to meet various standards, including that of preventing discharges from the MS4 (or from certain projects) from "causing or contributing to a violation of water quality standards" or "preventing" illicit discharges or non-stormwater discharges While the CWA's implementing regulations require permittees, in some cases, to develop various programs designed to reduce pollutants in runoff, the 2010 Permit instead made specific reductions enforceable under the Permit, and appeared to subject Claimants to sanctions, including civil penalties and injunctive relief, for the programs' failure to achieve the goals. As such, these requirements go beyond the MEP requirement in the CWA, as the 2010 Permit does not limit the efforts of Claimants to achieving such goals to the MEP.

1. Applicable Requirements in 2010 Permit

Several provisions in Section F of the 2010 Permit, set forth below, required Claimants to develop and implement programs that will, *inter alia*, prevent stormwater runoff discharges "from causing or contributing to "a violation of water quality standards" as well as to prevent illicit discharges into the MS4. These requirements apply to development planning programs, programs for discharges from municipal, commercial/industrial and residential facilities and areas; the retrofitting of existing development; and, the education component. Section F of the 2010 Permit contains numerous specific requirements, some of which are set forth above as separate unfunded state mandates. This section focuses on the requirement that Claimants, through the development and implementation of these programs, must meet the absolute requirement of ensuring no violation of water quality standards and the prevention of illicit discharges. The language at issue is highlighted in *italics.*

Section F

Each Copermittee must implement all requirements of section F of this Order no later than July 1, 2012, unless otherwise specified. Upon adoption of this Order and until an updated JRMP is developed and implemented or July 1, 2012, whichever occurs first, each Copermittee must at a minimum implement its JRMP document, as the document was developed and amended to comply with the requirements of Order No. R9-2004-001.

Each Copermittee must develop and implement an updated JRMP for its jurisdiction no later than July 1, 2012. Each updated JRMP must meet the requirements of section F of this Order, . . . *effectively prohibit non-storm water discharges, and prevent runoff discharges from the MS4 from causing or contributing to a violation of water quality standards*. . . .

Section F.1

DEVELOPMENT PLANNING COMPONENT

Each Copermittee must implement a program which meets the requirements of this section and . . . *(2) prevents Development Project discharges from the MS4 from causing or contributing to a violation of water quality standards; (3) prevents illicit discharges into the MS4*; . . .

Section F.1.d.

STANDARD STORM WATER MITIGATION PLANS (SSMPS) – APPROVAL PROCESS CRITERIA AND REQUIREMENTS FOR PRIORITY DEVELOPMENT PROJECTS

On or before June 30, 2012, the Copermittees must submit an updated SSMP, to the San Diego Water Board's Executive Officer for a 30 day public review and comment period. . . .*The SSMP must meet the requirements of section F.1.d of this Order to . . . (2) prevent Priority Development Project runoff discharges from the MS4 from causing or contributing to a violation of water quality standards*. [footnote omitted]

Section F.2

CONSTRUCTION COMPONENT

Each Copermittee must implement a construction program which meets the requirements of this section, *prevents illicit discharges into the MS4, . . . and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards*.

Section F.3.a

MUNICIPAL

Each Copermittee must implement a municipal program for the Copermittee's areas and activities that meets the requirements of this section, *prevents illicit discharges into the MS4, . . . and prevents municipal discharges from the MS4 from causing or contributing to a violation of water quality standards.*

Section F.3.b

COMMERCIAL / INDUSTRIAL

Each Copermittee must implement a commercial / industrial program that meets the requirements of this section, *prevents illicit discharges into the MS4, . . . and prevents commercial / industrial discharges from the MS4 from causing or contributing to a violation of water quality standards.*

Section F.3.c

RESIDENTIAL

Each Copermittee must implement a residential program that meets the requirements of this section, *prevents illicit discharges into the MS4, . . . and prevents residential discharges from the MS4 from causing or contributing to a violation of water quality standards.*

Section F.3.d

RETROFITTING EXISTING DEVELOPMENT

Each Copermittee must develop and implement a retrofitting program that meets the requirements of this section. The goals of the existing development retrofitting program are to . . . *prevent discharges from the MS4 from causing or contributing to a violation of water quality standards. . . .*

Section F.6

EDUCATION COMPONENT

Each Copermittee must implement education programs to . . . (2) to measurably change the behavior of target communities and thereby . . . *eliminate prohibited non-storm water discharges to MS4s and the environment.*

2. Requirements of Federal Law

The CWA requires that municipalities, in developing and implementing MS4 permits, ensure that they "effectively prohibit non-stormwater discharges into the storm sewers" and that discharges of pollutants from MS4s are reduced to the "maximum extent practicable." 33 U.S.C. § 1342(p)(3)(B)(ii)-(iii). Thus, there are two separate requirements: the "effective prohibition" of non-stormwater discharges into the MS4 and the reduction of pollutants discharged from the MS4 to the MEP. The above-cited requirements of the 2010 Permit exceeded these statutory requirements. First, by requiring the "prevention" of non-stormwater discharges into the MS4, the Copermittees were required to go beyond merely "effectively prohibiting" such discharges. Second, with respect to ensuring the non-violation of water quality standards without regard to the MEP standard, the RWQCB was requiring a compliance standard not required of municipalities under federal law. *Defenders of Wildlife, supra,* 191 F.3d at 1165.

The MS4 regulations, not surprisingly, also do not require the absolute achievement of water quality standards as a matter of compliance with a particular MS4 permit. For example, with respect to development projects, 40 CFR § 122.26(d)(2)(iv)(A)(2) provides that permittees must develop and implement a management program which is to include a "description of planning procedures including a comprehensive master plan to develop, implement and enforce controls *to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plans shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is*

completed." (emphasis added.) Thus, regulatory focus is on reducing pollutants from MS4 discharges, not on ensuring that such discharges do not cause or contribute to a violation of water quality standards.

With regard to construction site impacts, the regulations (40 CFR § 122.26(d)(2)(iv)(D)) provide that the proposed management program include a "description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system." Again, there is no requirement that program ensure that the discharges do not cause or contribute to an exceedance of a water quality standard, but to "reduce pollutants in storm water runoff from constructions to the municipal storm sewer system."

With regard to municipal facilities, the regulations require, in 40 CFR § 122.26(d)(2)(iv)(A)(1), that the proposed management program include a "description of maintenance activities and a maintenance schedule for structural controls *to reduce pollutants* (including floatables) in discharges from municipal separate storm sewers." (emphasis added.) Further, 40 CFR § 122.26(d)(2)(iv)(A)(3) provides that the proposed management program include a "description for operating and maintaining public streets, roads and highways and procedures *for reducing the impact on receiving waters* of discharges from municipal storm sewer systems, including pollutants discharged as a result of de-icing activities." (emphasis added.) Finally, 40 CFR § 122.26(d)(2)(iv)(A)(6) provides that the proposed management program include a "description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities." In all cases, the regulatory requirement is to *reduce* pollutants.

With regard to industrial/commercial facilities, 40 CFR § 122.26(d)(2)(iv)(C) provides that the proposed management program include a "description of a program to monitor and *control pollutants in storm water discharges* to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system." (emphasis added.) This regulation, in addition to speaking of the "control of pollutants" but not to the point of guaranteeing no violation of a water quality standard, also addresses discharges *to MS4s* from industrial facilities, not discharges *from* such facilities, which is the requirement set forth in Section F.3 of the 2010 Permit.

With regard to residential areas, 40 CFR § 122.26(d)(2)(iv)(A) provides that the permittees are to develop a proposed management program which includes a "description of structural and source control measures *to reduce pollutants from runoff* from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and

a proposed schedule for implementing such controls." Again, the regulatory requirement is to reduce pollutants, not to ensure that the runoff does not cause or contribute to a violation of a water quality standard, to prevent illicit discharges into MS4 systems.

There are no federal requirements, either in the CWA or in the regulations, requiring retrofitting of existing development (*see* further discussion in Section VI.I, above). In the 2010 Permit Fact Sheet, the RWQCB relied on the regulatory provisions for municipal, commercial, industrial and residential developments, pertinent provisions of which are cited above and none of which require programs that ensure no causing or contributing to violations of water quality standards. 2010 Permit Fact Sheet, p. 155.

Finally, with regard to the education component of the 2010 Permit, federal regulatory authority is somewhat diffuse, but in no sense authorizes the requirements contained in Section F.6 of the 2010 Permit. In 40 CFR § 122.26(d)(2)(iv)(A)(6), the regulation provides that the proposed management program include a "description of a program *to reduce to the maximum extent practicable*, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as *educational activities*, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities." (emphasis added.) The proposed management program is required, pursuant to 40 CFR § 122.26(d)(2)(iv)(B)(6) to include a "description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials." This regulation is silent on attainment of water quality standards. Finally, 40 CFR § 122.26(d)(2)(iv)(D)(4) requires the proposed management program to include a " description of appropriate educational and training measures for construction site operators." This regulation also does not require that discharges not cause or contribute to a vi8olation of water quality standards.

Nothing in federal law or regulation authorized the RWQCB to require Claimants to develop or implement programs that will prevent non-stormwater discharges from entering the MS4 or control pollutants in runoff from the MS4 such that they can guarantee that such discharges will not cause or contribute to a violation of a water quality standard. The only apparent justification offered by the RWQCB for this requirement in the Fact Sheet is 40 CFR § 122.44(d)(1)(i), which requires NPDES permits to contain limitations which "control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." Under the holding in *Defenders of Wildlife, supra,* this regulation does not apply to MS4 permits, which operate under the MEP standard and not the requirement for strict compliance with water quality standards. Moreover, 40 CFR § 122.44 provides that the "following requirements" (including § 122.44(d)(1)(i)) apply only "when applicable." Under *Defenders of Wildlife*, the requirements of 40 CFR § 122.44(d)(1)(i) are, as a matter of law, not applicable to an MS4 permit such as the 2010 Permit, and do not provide authority to the RWQCB. *See also* 40 CFR § 122.44(k)(2), which authorizes the use of BMPs to

"control or abate the discharge of pollutants when . . . authorized under section 402(p) [the provision relating to MS4 permits] of the CWA for the control of storm water discharges."

See also Tualatin River Keepers, et al. v. Oregon Department of Environmental Quality (2010) 235 Ore. App. 132, where the court considered whether wasteload allocations from adopted TMDLs were required to be enforced as strict numeric effluent limits within a municipal NPDES permit. Petitioners argued that the Oregon Department of Environmental Quality had erred by issuing a permit that did not "specify wasteload allocations in the form of numeric effluent limits." *Id*. at 137. The Oregon court disagreed, finding that under the CWA, best management practices were considered to be a "type of effluent limitation," and that such best management practices were authorized to be used pursuant to the CWA, section 33 U.S.C. § 1342(p) as a means of controlling "storm water discharges." *Id*. at 141-42, citing 33 U.S.C. § 1342(p) and 40 CFR § 122.44(k)(2)-(3). This case demonstrates further that requirements for NPDES permits to meet water quality standards must, in the case of MS4 permits, be addressed through BMPs, not absolute adherence to such standards.

Under *Defenders of Wildlife*, the RWQCB could choose (here as an exercise of its state powers, *see NRDC, supra*) to impose the requirement to attain numeric effluent limits. But to do so would represent an affirmative *choice* by the RWQCB, not a requirement of federal law. As such, the cited requirements in the 2010 permit represent a state mandate as a new program and/or higher level of service. And, because the RWQCB made this choice, it was not imposing a federal mandate but rather a state mandate. *Department of Finance,* 1 Cal. 5th at 765.

Moreover, the requirements were themselves not practicable, as the power to actually reduce the discharge of pollutants in runoff to the level required by the 2010 Permit was, with the exception of municipal facilities, in the hands of and subject to the actions or inactions of third parties (developers, commercial/industrial site operators or residential homeowners). While the Claimants can implement programs to enforce requirements upon those third parties within their jurisdiction, Claimants cannot guarantee that each third party will comply with those programs and requirements. And, as set forth in the Uhley Declaration, the very variability of stormwater and urban runoff discharges makes it nearly impossible to assure compliance with all water quality standards at all times. Uhley Declaration, ¶¶11-12. The requirements thus exceeded the MEP standard, further evidence that they represented a state, and not federal, mandate.

3. Requirements of 2004 Permit

Nothing in the 2004 Permit required Claimants to ensure that discharges from construction, municipal, industrial, commercial or residential sources would not cause or contribute to a violation of water quality standards, or required the educational component of the 2004 Permit to so assure. For example, Section I of the 2004 Permit merely required that Copermittees implement the education component to "measurably change the behavior of target communities and thereby reduce pollutant releases to MS4s and the environment." The 2004 Permit required that BMPs for industrial/commercial facilities be implemented "to reduce the discharge of pollutants in runoff to the MEP." 2004 Permit, Section H.2.c. The BMP programs for residential areas and municipal facilities were required to reduce pollutants "to the MEP." 2004 Permit, Sections

H.1c.(1); H.3.c. However, this requirement did not also mandate that permittees' programs attain this goal, or mentioned the violation of water quality standards.

In summary, the "guarantee" language found in the above-cited provisions in Section F of the 2010 Permit were new requirements of the RWQCB, constituting a new program and/or higher level of service.

4. Mandated Activities

The above-noted provisions of the 2010 Permit on their face require that Claimants develop and implement programs in Sections F in a manner that guarantees that those programs will prevent the discharge of pollutants at a level that could cause or contribute to a violation of any water quality standard as well as to prevent illicit discharges to the MS4. Such requirements went beyond federal law and regulation, including the MEP standard, and constituted a new and/or higher level of service. The costs of the design and implementation of such additional requirements were incorporated into programs required by the RWQCB in the 2010 Permit, including the NALs and SALs requirement, the priority development and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements and the water quality workplan requirements (described in Sections VI.B-D, F-J above). In addition, in the implementation of the Section F requirements, Claimants incurred additional direct costs. *See* Section 6 Declarations, Paragraph 5(m).

5. Actual Increased Costs of Mandate

As set forth in the Section 6 Declarations, Paragraph 5(m), the Claimants incurred as yet to be determined portions of the total increased shared costs for the above-described Permit requirements of $18,696.29 in FY 2010-11 and $271,720.61 in FY 2011-12, as well as additional direct costs of $533,377.36 in FY 2010-11 and $546,647.15 in FY 2011-12.

VII. STATEWIDE COST ESTIMATE

This Test Claim concerns a municipal stormwater permit applicable only to local agencies located in a portion of Riverside County within the jurisdiction of the RWQCB. Therefore, any statewide cost estimate must, by virtue of this limitation, apply only to costs incurred by such local agencies. The Claimants estimate that, for all requirements set forth in the 2010 Permit that are the subject of this Test Claim, increased costs in the amount of $1,446,317.50 were expended in FY 2010-11 and $2,438,936.90 in FY 2011-12, and an as yet undetermined share of $18,696.29 in FY 2010-11 and $271,720.61 in FY 2011-12. In addition, for the special studies requirement in the 2010 Permit (Section VI.L above), the statewide estimate of increased costs was $103,789.60 in FY 2012-13. *See* Section 6 Claimant Declarations, Paragraphs 5(a)-(m).

VIII. FUNDING SOURCES

The Claimants are not aware of any designated State, federal or non-local agency funds that are or will be available to fund the mandated activities set forth in this Test Claim. As set forth in the declarations contained in Section 6, some Claimants have access to a Riverside County stormwater fund, to fuel tax and community services revenue, to lighting and maintenance revenues and/or development/business registration fees and the District has access to a Benefit Assessment for stormwater costs. However, as also set forth in the declarations, these funding sources do not cover the entire cost of compliance with the provisions set forth in this Test Claim. Additionally, Claimants are subject to the limitations of Proposition 26 (*see* discussion in Section V, above), which limits their ability to recover costs through fees.

IX. PRIOR MANDATE DETERMINATIONS

A. Los Angeles County Test Claim

In 2003 and 2007, the County of Los Angeles and 14 cities within the county ("Los Angeles County claimants") submitted test claims 03-TC-04, 03-TC-19, 03-TC-19, 03-TC-20 and 03-TC-21. These test claims asserted that provisions of Los Angeles RWQCB Order No. 01-182 constituted unfunded state mandates. Order No. 01-182, like the 2010 Permit at issue in this Test Claim, was a renewal of an existing MS4 permit. The provisions challenged in these test claims concerned the requirement for the Los Angeles County claimants to install and maintain trash receptacles at transit stops and to inspect certain industrial, construction and commercial facilities for compliance with local and/or state storm water requirements.

The Commission, in a final decision issued on September 3, 2009, determined that the trash receptacle requirement was a reimbursable state mandate. *In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192*, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21. The Commission found that the portion of the test claims relating to the inspection requirement was a state mandate, but that the Los Angeles County claimants had fee authority sufficient to fund such inspections.

The Commission's decision was challenged by the Department of Finance, the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board in an action filed in superior court. In September 2011, the Los Angeles County Superior Court set aside the Statement of Decision issued by the Commission, ruling that the appropriate test for determining whether a requirement in the MS4 permit was a federal or state mandate was whether the requirement met the MEP standard. The Superior Court's ruling was affirmed by the California Court of Appeal on different grounds. In turn, the California Supreme Court reversed the Superior Court in *Department of Finance*, as discussed in Section V.B above. This case is presently before the Los Angeles County Superior Court.

B. San Diego County Test Claim

In 2007, the County of San Diego and 21 cities within the county (the "San Diego County claimants") submitted test claim 07-TC-09. This test claim asserted that several provisions of San

Diego RWQCB Order No. R9-2007-0001 constituted reimbursable state mandates. This order was the renewal of the existing MS4 permit for the San Diego County claimants.

On March 30, 2010, the Commission issued a final decision entitled *In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001,* Case No. 07-TC-09. In that decision, the Commission found the following requirements to be reimbursable state mandates:

1. A requirement to conduct and report on street sweeping activities;

2. A requirement conduct and report on storm sewer cleaning;

3. A requirement to conduct public education with respect to specific target communities and on specific topics;

4. A requirement to conduct mandatory watershed activities and collaborate in a Watershed Urban Management Program;

5. A requirement to conduct program effectiveness assessments;

6. A requirement to conduct long-term effectiveness assessments; and

7. A requirement for permittee collaboration.

The Commission also found requirements for hydromodification and low impact development programs to be state mandates, but determined that because local agencies could charge fees to pay for these programs, they were not reimbursable state mandates.

On January 5, 2012, the Commission's decision was overturned by the Sacramento County Superior Court and remanded to the Commission as the result of an action for writ of mandate brought by the State Department of Finance, the State Board and the San Diego RWQCB. The San Diego County claimants appealed to the California Court of Appeal, which has not yet heard argument on the appeal.

X. CONCLUSION

Important elements of the 2010 Permit represent significant and expensive mandates at a time when the budgets of all local agencies, especially those in Riverside County, have been dramatically impacted by the recession and many other demands. The Claimants believe that the mandates set forth in this Test Claim represent state mandates for which a subvention of funds is required pursuant to article XIII B, section 6 of the California Constitution. Claimants respectfully request that the Commission make such finding as to each of the programs and activities set forth herein.

SECTION 6

DECLARATIONS OF CLAIMANTS

In Support of Joint Test Claims of Riverside County Local Agencies Concerning San Diego RWQCB Order No. R9-2010-0016, San Diego Region Stormwater Permit – County of Riverside, 11-TC-03

DECLARATION OF STUART MCKIBBIN

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

I, Stuart McKibbin, hereby declare and state as follows:

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

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

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

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit required the District to undertake the following new and/or upgraded activities and which are unique to local government entities and which were not required in the 2004 Permit:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removed from the list of discharges exempted from the prohibition against discharges of non-stormwater to the municipal separate storm sewer system ("MS4") the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. The removal of these three categories of exempted discharges required the creation of new public education and outreach materials, the potential need to amend ordinances to facilitate the required prohibition, tracking and response to reports of over-irrigation, enforcement and monitoring. It is my understanding and belief that using funds contributed from each Copermittee, including the District, through an Implementation Agreement, the District updated the Coordinated Monitoring Program ("CMP"), including procedures for response, monitoring and analysis relating to such flows and revised the Jurisdictional Runoff Management Plan ("JRMP") template, training programs and community outreach programs to address these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the District's calculated share of such shared costs was $1,714.18 and that during FY 2011-12, the District's calculated share of that cost was $1,461.61.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program ("MRP") of the Permit, required Copermittees, including the District, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new follow-up investigations and source tracking activities triggered by each exceedance of dry weather non-stormwater action levels ("NALs"). These sections required the Copermittees, including the District, to perform field verification of major outfalls owned by the District, perform any required outfall sampling and analysis within the District's jurisdiction that was not

otherwise performed by the District on behalf of the District, conduct and implement any follow-up source identification investigations for NAL exceedances at District outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations /enforcement, and where necessary, update District compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the District, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. I am informed and believe that in FY 2010-11, the District's calculated share of such shared costs was $1,491.85 and that during FY 2011-12, the District's calculated share of that cost was $3,226.58.

c. Stormwater Action Levels: Section D of the Permit required the District to conduct end-of-pipe assessments to determine stormwater action level ("SAL") compliance metrics at major outfalls during wet weather. Under the Permit, the District was required to perform field verification of major outfalls owned by the District, perform any required outfall sampling and analysis within the District's jurisdiction that is not otherwise performed by the District on behalf of the District, and where necessary, update the District's compliance programs to address SAL exceedances. I am informed and believe that, using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and

analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the District, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. I am informed and believe that in FY 2010-11, the District's calculated share of such shared costs was $1,491.85 and that during FY 2011-12, the District's calculated share of that cost was $3,226.58.

d. Priority Development Projects ("PDPs") and Hydromodification Requirements: Section F.1.d of the Permit required Copermittees, including the District, to develop and implement low impact development ("LID") principles and structural features into District-owned PDPs, which beginning on July 1, 2012, included all District-owned projects that resulted in the disturbance of one acre or more of land, as well as new public development projects that created 10,000 square feet or more of impervious surface. The Permit further required the District to review each of its PDPs to implement LID best management practices ("BMPs"), including requiring specific types of LID Principles and LID BMPs or to make a finding of technical infeasibility, incorporate formalized consideration of LID BMPs into the plan review process and review its local codes, policies and ordinances for barriers to LID implementation and take actions to remove such barriers. Additionally, the District was required to develop an LID waiver program for incorporation into the Standard Stormwater Mitigation Plan ("SSMP"), to allow a District-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit required the Copermittees, including the District, to develop and implement a Hydromodification Management Plan ("HMP") to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees,

including the District, were required to hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibited Copermittees, including the District, from using non-natural materials, including concrete, riprap or gabions, to reinforce stream channels as mitigation for a PDP. I am informed and believe that, using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District retained a consultant to perform the studies and analysis and a revised Standard Stormwater Mitigation Plan, an HMP with publically available hydromodification modelling software and a BMP Design Manual, developed and provided training for the Copermittees and the development community and revised the JRMP template. I am informed and believe that in FY 2010-11, the District's calculated share of such shared costs was $4,175.47 and that during FY 2011-12, the District's calculated share of that cost was $23,257.36. I am further informed and believe that the District incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit required the Copermittees to develop and maintain a watershed-based database to track all projects with a final approved SSMP and structural post-construction BMPs, including those PDPs dating back to July 2005, and to inspect such projects on a routine basis. This program required the Copermittees to develop and populate a database of information for each SSMP project built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct

inspections. I am informed and believe that, using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District developed a template BMP tracking spreadsheet and updated the JRMP template to reflect these requirements. I am informed and believe that in FY 2010-11, the District's calculated share of such shared costs was $329.90 and that during FY 2011-12, the District's calculated share of that cost was $268.54.

f. Construction Site Requirements: Section F.2.d of the Permit required Copermittees, including the District, to implement active/passive sediment treatment ("AST") at District-owned construction sites or portions thereof that were determined to be an "exceptional threat" to water quality. Section F.2.e of the Permit required District inspectors at construction sites to review site monitoring data results, if the site monitored its runoff. These requirements would add costs to require AST to every District-owned construction site determined to pose such a threat to water quality and for enhanced inspection training. I am informed and believe that the District, using funds contributed from each Copermittee including the District through the Implementation Agreement, conducted training of Copermittee staff and updated the JRMP template with regard to such requirements. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $202.72 and that during FY 2011-12, the District's calculated share of that cost was $245.25. I am further informed and believe that the District may have incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit required the Copermittees, including the District, to develop and implement, or require implementation of, BMPs for erosion and sediment control on District-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road

maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. I am informed and believe that the District, using funds contributed from each Copermittee including the District through the Implementation Agreement, revised the JRMP template and the SSMP to incorporate road maintenance provisions. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $126.30 and that during FY 2011-12, the District's calculated share of that cost was $186.69. I am further informed and believe that the District incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit required the Copermittees, as part of their inspection of commercial/industrial facilities, to review facility monitoring data if the facility monitored its runoff. This provision required inspectors at commercial/industrial sites to spend greater time in the inspection or in analyzing data thereafter. Additionally, inspectors were required to be further trained so as to be able to read and interpret monitoring and sampling analysis data. I am informed and believe that the District, using funds contributed from each Copermittee including the District through the Implementation Agreement, provided training updates and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $125.30 and that during FY 2011-12, the District's calculated share of that cost was $230.87.

i. Retrofitting of Existing Development: Section F.3.d of the Permit required the Copermittees to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. I am informed and believe and therefore state that using funds contributed from the Copermittees, including the District, through the Implementation Agreement, the District retained a consultant to perform necessary studies and develop a Retrofit Study, and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $192.91 and that during FY 2011-12, the District's calculated share of that cost was $43,564.03. I am further informed and believe that the District may have incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

j. Watershed Water Quality Workplan ("Watershed Workplan"): Section G of the Permit required the Copermittees, including the District, to develop and annually update a Watershed Workplan. This required the Copermittees, including the District, to: characterize watershed receiving water quality, including analyzing monitoring data collected under the Permit and from other public and private organizations; identify and prioritize water quality problems by constituent and by location, giving consideration to total maximum daily load programs, waters listed as impaired pursuant to Clean Water Act section 303(d), and other pertinent conditions; identify likely sources causing the highest water quality problems within

the watershed, including from monitoring conducted under the Permit and additional focused water quality monitoring to identify specific sources; develop a watershed BMP implementation strategy, including a schedule to implement BMPs to abate specific receiving water quality problems; develop a strategy to monitor improvements in receiving water quality stemming from implementation of BMPs described in the Watershed Workplan, including required monitoring in the receiving water; establish a schedule for development and implementation of the watershed strategy outlined in the Watershed Workplan, including the holding of annual watershed workplan review meetings open to the public; implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the RWQCB; cooperate among Copermittees to develop and implement the Watershed Workplan, including the requirement to pursue interagency agreements with non-Copermittee MS4 operators; implement a public participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and, as part of the review and annual update of the Watershed Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed. I am informed and believe that using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District hired a consultant to gather and analyze historic water quality monitoring data, develop draft and submit the Watershed Workplan and revise the JRMP template. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $1,287.66 and that during FY 2011-12, the District's calculated share of that cost was $4,798.33.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit required, among other items, that the Copermittees, including the District, submit a JRMP report each year, beginning on October 31, 2013. The JRMP

requirements included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the District, were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, the Copermittees, including the District, were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. I am informed and believe that using funds contributed from each Copermittee, including the District, through the Implementation Agreement, the District developed revisions to the JRMP and Annual Report templates to incorporate these requirements. I am informed and believe that in FY 2010-11, the District's calculated share of such costs was $633.25 and that

during FY 2011-12, the District's calculated share of that cost was $1,058.79. I am further informed and believe that the District incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

l. Special Studies: The Monitoring and Reporting Program of the Permit required Copermittees, including the District, to conduct special studies, including (1) a sediment toxicity study, (2) a trash and litter study, (3) a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, (4) a MS4 and receiving water maintenance study and (5) an intermittent and ephemeral stream perennial conversion study. I am informed and believe that the District, using funds contributed by the Copermittees, including the District, conducted the first three studies, performed a work plan for the fourth study and then performed one additional study on the impacts of LID implementation, in return for not doing the remainder of the fourth study and the fifth study. I am informed and believe that using funds from each Copermittee, including the District, through the Implementation Agreement, the District retained a consultant to develop and perform these studies and to submit them to the Regional Board. I am informed and believe that in FY 2011-12, the District's calculated share of such costs was $7,047.68 and that during FY 2012-13, the District's calculated share of such costs was $26,399.42.

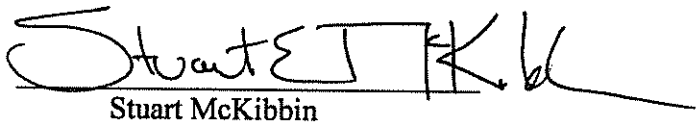
m. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit required Copermittees, including the District, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges did not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of

the Permit required Copermittees, including the District, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the maximum extent practicable ("MEP"). Section F.6 of the Permit required Copermittees, including the District, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. I am informed and believe and therefore state that these requirements were incorporated into the design and implementation of other programs required by the Permit and set forth above, including the NALs and SALs requirement, the priority development project and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements, and the water quality workplan requirements. I am informed and believe and therefore state that in total, the District incurred a yet to be determined share of calculated costs of $6,139.20 in FY 2010-11 and $78,741.68 in FY 2011-12 with respect to these requirements. I am further informed and believe that the District incurred additional direct costs during FY 2010-11 and FY 2011-12 to address these requirements but that the District cannot at this time quantify those costs.

6. I am informed and believe that there are no dedicated state or federal funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. In 1991, the District established the Santa Margarita Watershed Benefit Assessment to fund its MS4 compliance activities. The Benefit Assessment paid for aspects of the District's compliance with the Permit. There was no increase in the fees generated by the Benefit Assessment over the course of the Permit. I am not aware of any other fee or tax

that the District would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the District'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 April 27 2017 at Riverside, California.



Stuart McKibbin

DECLARATION OF DAVID GARCIA

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

I, DAVID GARCIA, hereby declare and state as follows:

1. I am an Engineering Project Manager within the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District ("District"). My job responsibilities include serving as the supervisor for the Santa Margarita River watershed with respect to municipal stormwater permitting issues. In that capacity for the District, I have first-hand and personal knowledge of monies spent by the District on behalf of itself and on behalf of permittees to address requirements under California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016 (the "Permit").

2. I have knowledge of sections of the Permit as set forth in the Section 5 Narrative Statement and the Section 6 Declarations of this Test Claim and how they are implemented by the permittees subject to the Permit (the "Permittees"), who are also the claimants under this Test Claim ("Claimants").

3. I have knowledge of financial records showing expenditures by the Claimants and have caused spreadsheets to be created reflecting those expenditures, which have been provided to Claimant representatives.

4. I make this declaration based on 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. If called upon to testify, I could and would competently do so as to the matters set forth herein.

5. The District was designated as Principal Permittee under the Permit, and in that role, coordinated joint responses to the Permit requirements set forth in this Test Claim, which

responses were paid for as shared costs by the Claimants under the Implementation Agreement entered into by and between the Permittees.

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

Executed April 27, 2017 at Riverside, California.

David Garcia

DECLARATION OF STEVEN HORN

COUNTY OF RIVERSIDE

I, Steven Horn, hereby declare and state as follows:

1. I am a Principal Management Analyst and NPDES Stormwater Program Administrator in the Executive Office of the County of Riverside ("County"). In that capacity, I shared responsibility for the compliance of the County with regard to the requirements of California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2010-0016 (the "Permit"), as they applied to the County.

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

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

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit required the County to undertake the following new and/or upgraded activities and which are unique to local government entities and which were not required in the 2004 Permit:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removed from the list of discharges exempted from the prohibition against discharges of non-stormwater to the municipal separate storm sewer system ("MS4") the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. The removal of these three categories of exempted discharges required the creation of new public education and outreach materials, potentially the need for amended ordinances to facilitate the required prohibition, tracking and response to reports of over-irrigation, enforcement and monitoring. It is my understanding and belief that using funds contributed from each Copermittee, including the County, through an Implementation Agreement, the Riverside County Flood Control and Water Conservation District ("District") updated the Coordinated Monitoring Program ("CMP"), including procedures for response, monitoring and analysis relating to such flows and revised the Jurisdictional Runoff Management Plan ("JRMP") template, training programs and community outreach programs to address these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the County's calculated share of such shared costs was $599.28 and that during FY 2011-12, the County's calculated share of that cost was $673.88. I am further informed and believe that the County incurred additional direct costs of approximately $76,776 in FY 2010-11 and $79,332 in FY 2011-12 to address these requirements.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program ("MRP") of the Permit, required Copermittees, including the County, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry

weather non-stormwater action levels ("NALs"). These sections required the Copermittees, including the County, to perform field verification of major outfalls owned by the County, perform any required outfall sampling and analysis within the County's jurisdiction that was not otherwise performed by the District on behalf of the County, conduct and implement any follow-up source identification investigations for NAL exceedances at County outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations / enforcement, and where necessary, update County compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the County, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. I am informed and believe that in FY 2010-11, the County's calculated share of such shared costs was $508.39 and that during FY 2011-12, the County's calculated share of that cost was $1,489.01. I am further informed and believe that the County incurred additional direct costs of approximately $30,000 in FY 2010-11 and $30,000 in FY 2011-12 to address these requirements.

c. Stormwater Action Levels: Section D of the Permit required the County to conduct end-of-pipe assessments to determine stormwater action level ("SAL") compliance metrics at major outfalls during wet weather. Under the Permit, the County was required to

perform field verification of major outfalls owned by the County, perform any required outfall sampling and analysis within the County's jurisdiction that is not otherwise performed by the District on behalf of the County, and where necessary, update the County's compliance programs to address SAL exceedances. I am informed and believe that, using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the County, utilize analysis and source identification results in developing annual updates the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. I am informed and believe that in FY 2010-11, the County's calculated share of such shared costs was $508.39 and that during FY 2011-12, the County's calculated share of that cost was $1,489.01. I am further informed and believe that the County incurred additional direct costs of approximately $10,000 in FY 2010-11 and $10,000 in FY 2011-12 to address these requirements.

d. Priority Development Projects ("PDPs") and Hydromodification Requirements: Section F.1.d of the Permit required Copermittees, including the County, to develop and implement low impact development ("LID") principles and structural features into County-owned PDPs, which beginning on July 1, 2012, included all County-owned projects that resulted in the disturbance of one acre or more of land, as well as new public development projects that created 10,000 square feet or more of impervious surface. The Permit further required the County to review each of its PDPs to implement LID BMPs, including requiring specific types of LID Principles and LID BMPs or to make a finding of technical infeasibility, incorporate formalized consideration of LID BMPs into the plan review process and review its local codes,

policies and ordinances for barriers to LID implementation and take actions to remove such barriers. Additionally, the County was required to develop an LID waiver program for incorporation into the Standard Stormwater Mitigation Plan ("SSMP"), to allow a County-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit required the Copermittees, including the County, to develop and implement a Hydromodification Management Plan ("HMP") to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees, including the County, were required to hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibited Copermittees, including the County, from using non-natural materials, including concrete, riprap or gabions, to reinforce stream channels as mitigation for a PDP. I am informed and believe that, using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District retained a consultant to perform the studies and analysis and a revised Standard Stormwater Mitigation Plan, an HMP with publically available hydromodification modelling software and a BMP Design Manual, developed and provided training for the Copermittees and the development community and revised the JRMP template. I am informed and believe that in FY 2010-11, the County's calculated share of such shared costs was $1,459.76 and that during FY 2011-12, the County's calculated share of that cost was $10,722.87. I am further informed and believe that the County incurred additional direct costs of approximately $21,000 in FY 2010-11 and $579,957 in FY 2011-12 to address these requirements.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit required the County to develop and maintain a watershed-based database to track all projects with a final approved SSMP and structural post-construction BMPs, including those PDPs dating back to July 2005, and to inspect such projects on a routine basis. This program required the County to develop and populate a database of information for each SSMP project built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct inspections. I am informed and believe that, using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District developed a template BMP tracking spreadsheet and updated the JRMP template to reflect these requirements. I am informed and believe that in FY 2010-11, the County's calculated share of such shared costs was $115.33 and that during FY 2011-12, the County's calculated share of that cost was $123.81. I am further informed and believe that the County incurred additional direct costs of approximately $52,930 in FY 2010-11 and $52,930 in FY 2011-12 to address these requirements.

f. Construction Site Requirements: Section F.2.d of the Permit required Copermittees, including the County, to implement active/passive sediment treatment ("AST") at County- owned construction sites or portions thereof that were determined to be an "exceptional threat" to water quality. Section F.2.e of the Permit required County inspectors at construction sites to review site monitoring data results, if the site monitored its runoff. These requirements would add costs to require AST to every County-owned construction site determined to pose such a threat to water quality and for enhanced inspection training. I am informed and believe

that the District, using funds contributed from each Copermittee including the County through the Implementation Agreement, conducted training of Copermittee staff and updated the JRMP template with regard to such requirements. I am informed and believe that in FY 2010-11, the County's calculated share of such costs was $70.87 and that during FY 2011-12, the County's calculated share of that cost was $113.07. I am further informed and believe that the County incurred additional direct costs of approximately $720 in FY 2010-11 and $720 in FY 2011-12 to address these requirements.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit required the Copermittees, including the County, to develop and implement, or require implementation of, BMPs for erosion and sediment control on County-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. I am informed and believe that the District, using funds contributed from each Copermittee including the County through the Implementation Agreement, revised the JRMP template and the SSMP to incorporate road maintenance provisions. I am informed and believe that in FY 2010-11, the County's calculated share of such costs was $43.81 and that during FY 2011-12, the County's calculated share of that cost was $86.07. I am further informed and believe that the County incurred additional direct costs of approximately $457,241 in FY 2010-11 and $584,132 in FY 2011-12 to address these requirements.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit required the County, as part of its inspection of commercial/industrial facilities, to review facility monitoring data if the facility monitored its runoff. This provision required inspectors at commercial/industrial sites to spend greater time in the inspection or in analyzing data thereafter. Additionally, inspectors were required to be further trained so as to be able to read and interpret monitoring and sampling analysis data. I am informed and believe that the District, using funds contributed from each Copermittee including the County through the Implementation Agreement, provided training updates and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the County's calculated share of such costs was $43.81 and that during FY 2011-12, the County's calculated share of that cost was $106.44. I am further informed and believe that the County incurred additional direct costs of approximately $11,535 in FY 2010-11 and $11,535 in FY 2011-12 to address these requirements.

i. Retrofitting of Existing Development: Section F.3.d of the Permit required the Copermittees, including the County, to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. I am informed and believe and therefore state that using funds contributed from the Copermittees, including the County, through the Implementation Agreement, the District retained a consultant to perform necessary studies and develop a Retrofit Study, and revised the JRMP template to incorporate these requirements. I

am informed and believe that in FY 2010-11, the County's calculated share of such costs was $67.44 and that during FY 2011-12, the County's calculated share of that cost was $20,085.31. I am further informed and believe that the County incurred additional direct costs of approximately $600 in FY 2010-11 and $600 in FY 2011-12 to address these requirements.

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

participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and, as part of the review and annual update of the Watershed Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed. I am informed and believe that using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District hired a consultant to gather and analyze historic water quality monitoring data, develop draft and submit the Watershed Workplan and revise the JRMP template. I am informed and believe that in FY 2010-11, the County's calculated share of such costs was $450.17 and that during FY 2011-12, the County's calculated share of that cost was $2,212.28. I am further informed and believe that the County incurred additional direct costs of approximately $600 in FY 2010-11 and $600 in FY 2011-12 to address these requirements.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit required, among other items, that the Copermittees, including the County, submit a Jurisdictional Runoff Management Program ("JRMP") report each year, beginning on October 31, 2013. The JRMP requirements included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and

types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the County, were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, the Copermittees, including the County, were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. I am informed and believe that using funds contributed from each Copermittee, including the County, through the Implementation Agreement, the District developed revisions to the JRMP and Annual Report templates to incorporate these requirements. I am informed and believe that in FY 2010-11, the County's calculated share of such costs was $221.39 and that during FY 2011-12, the County's calculated share of that cost was $488.16. I am further informed and believe that the County incurred additional direct costs of approximately $124,000 in FY 2010-11 and $124,000 in FY 2011-12 to address these requirements.

l. Special Studies: The Monitoring and Reporting Program of the Permit required Copermittees, including the County, to conduct special studies, including (1) a sediment County study, (2) a trash and litter study, (3) a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, (4) a MS4 and receiving water maintenance study and (5) an intermittent and ephemeral stream perennial conversion study. I am informed and believe that the District,

using funds contributed by the Copermittees, including the County, conducted the first three studies, performed a work plan for the fourth study and then performed one additional study on LID implementation, in return for not doing the remainder of the fourth study and the fifth study. I am informed and believe that using funds from each Copermittee, including the County, through the Implementation Agreement, the District retained a consultant to develop and perform these studies and to submit them to the Regional Board. I am informed and believe that in Fiscal Year ("FY") 2011-12, the County's calculated share of such costs was $3,249.35 and that during FY 2012-13, the County's calculated share of that cost was $13,556.62 plus direct costs of approximately $3,000 for FY 2010-11 and approximately $3,000 for FY 2011-12.

m. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit required Copermittees, including the County, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges did not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of the Permit required Copermittees, including the County, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the MEP. Section F.6 of the Permit required Copermittees, including the County, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. I am informed and believe and therefore state that these requirements were incorporated into the design and implementation of other programs required

by the Permit and set forth above, including the NALs and SALs requirement, the priority development project and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements, and the water quality workplan requirements. I am informed and believe and therefore state that in total, the County incurred an as yet undetermined share of calculated costs of $3,152.63 in FY 2010-11 and $36,304.05 in FY 2011-12 plus direct costs of $512,865 in FY 2010-11 and $519,629 in FY 2011-12 in response to these requirements.

6. I am informed and believe that there are no dedicated state, federal or regional funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. I am informed and believe that certain of the programs set forth above are funded in part by the proceeds of fuel taxes collected in the County and by community services association revenue. I am further informed and believe that such proceeds are not sufficient to fund all programs set forth in this declaration. I am not aware of any other fee or tax that the County would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other available source to pay for these new programs and activities is the County'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 April 24, 2017 at Riverside, California.

Steven Horn

DECLARATION OF BOB MOEHLING

CITY OF MURRIETA

I, Bob Moehling, hereby declare and state as follows:

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

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

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

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit required the City to undertake the following new and/or upgraded activities and which are unique to local government entities and which were not required in the 2004 Permit:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removed from the list of discharges exempted from the prohibition against discharges of non-stormwater to the municipal separate storm sewer system ("MS4") the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. The removal of these three categories of exempted discharges required the creation of new public education and outreach materials, potentially the need for amended ordinances to facilitate the required prohibition, tracking and response to reports of over-irrigation, enforcement and monitoring. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through an Implementation Agreement, the Riverside County Flood Control and Water Conservation District ("District") updated the Coordinated Monitoring Program ("CMP"), including procedures for response, monitoring and analysis relating to such flows and revised the Jurisdictional Runoff Management Plan ("JRMP") template, training programs and community outreach programs to address these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the City's calculated share of such shared costs was $839.98 and that during FY 2011-12, the City's calculated share of that cost was $1,262.12. I am further informed and believe that the City incurred estimated additional direct costs of $6,693.92 in FY 2010-11 and $6,693.92 in FY 2011-12 to address these requirements.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program ("MRP") of the Permit, required Copermittees, including the City, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry

weather non-stormwater action levels ("NALs"). These sections required the Copermittees, including the City, to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City's jurisdiction that was not otherwise performed by the District on behalf of the City, conduct and implement any follow-up source identification investigations for NAL exceedances at City outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations / enforcement, and where necessary, update City compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $712.58 and that during FY 2011-12, the City's calculated share of that cost was $2,788.77. I am further informed and believe that the City incurred estimated additional direct costs of $2008.18 in FY 2010-11 and $2008.18 in FY 2011-12 to address these requirements.

c. Stormwater Action Levels: Section D of the Permit required the City to conduct end-of-pipe assessments to determine stormwater action level ("SAL") compliance metrics at major outfalls during wet weather. Under the Permit, the City was required to perform field verification of major outfalls owned by the City, perform any required outfall sampling and

analysis within the City's jurisdiction that is not otherwise performed by the District on behalf of the City, and where necessary, update the City's compliance programs to address SAL exceedances. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $712.58 and that during FY 2011-12, the City's calculated share of that cost was $2,788.77. I am further informed and believe that the City incurred estimated additional direct costs of $2008.18 in FY 2010-11 and $2008.18 in FY 2011-12 to address these requirements.

d. Priority Development Projects ("PDPs") and Hydromodification Requirements: Section F.1.d of the Permit required Copermittees, including the City, to develop and implement low impact development ("LID") principles and structural features into City-owned PDPs, which beginning on July 1, 2012, included all City-owned projects that resulted in the disturbance of one acre or more of land, as well as new public development projects that created 10,000 square feet or more of impervious surface. The Permit further required the City to review each of its PDPs to implement LID BMPs, including requiring specific types of LID Principles and LID BMPs or to make a finding of technical infeasibility, incorporate formalized consideration of LID BMPs into the plan review process and review its local codes, policies and ordinances for barriers to LID implementation and take actions to remove such barriers. Additionally, the City

was required to develop an LID waiver program for incorporation into the Standard Stormwater Mitigation Plan ("SSMP"), to allow a City-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit required the Copermittees, including the City, to develop and implement a Hydromodification Management Plan ("HMP") to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees, including the City, were required to hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibited Copermittees, including the City, from using non-natural materials, including concrete, riprap or gabions, to reinforce stream channels as mitigation for a PDP. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to perform the studies and analysis and a revised Standard Stormwater Mitigation Plan, an HMP with publically available hydromodification modelling software and a BMP Design Manual, developed and provided training for the Copermittees and the development community and revised the JRMP template. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $2,046.07 and that during FY 2011-12, the City's calculated share of that cost was $20,082.94. I am further informed and believe that the City incurred estimated additional direct costs of $4,016.35 in FY 2010-11 and $4,016.35 in FY 2011-12 to address these requirements.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit required the City to develop and maintain a watershed-based database to track all projects with a final approved SSMP and structural post-construction BMPs, including those PDPs dating back to

July 2005, and to inspect such projects on a routine basis. This program required the City to develop and populate a database of information for each SSMP project built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct inspections. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed a template BMP tracking spreadsheet and updated the JRMP template to reflect these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the City's calculated share of such shared costs was $161.66 and that during FY 2011-12, the City's calculated share of that cost was $231.89. I am further informed and believe that the City incurred estimated additional direct costs of $2,677.57 in FY 2010-11 and $2,677.57 in FY 2011-12 to address these requirements.

f. Construction Site Requirements: Section F.2.d of the Permit required Copermittees, including the City, to implement active/passive sediment treatment ("AST") at City- owned construction sites or portions thereof that were determined to be an "exceptional threat" to water quality. Section F.2.e of the Permit required City inspectors at construction sites to review site monitoring data results, if the site monitored its runoff. These requirements would add costs to require AST to every City-owned construction site determined to pose such a threat to water quality and for enhanced inspection training. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, conducted training of Copermittee staff and updated the JRMP template with regard to such requirements. I am informed and believe that in FY 2010-11, the

City's calculated share of such costs was $99.34 and that during FY 2011-12, the City's calculated share of that cost was $211.77. I am further informed and believe that the City incurred estimated additional direct costs of $1,338.78 in FY 2010-11 and $1,338.78 in FY 2011-12 to address these requirements.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit required the Copermittees, including the City, to develop and implement, or require implementation of, BMPs for erosion and sediment control on City-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, revised the JRMP template and the SSMP to incorporate road maintenance provisions. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $61.40 and that during FY 2011-12, the City's calculated share of that cost was $161.21. I am further informed and believe that the City incurred estimated additional direct costs of $1,338.78 in FY 2010-11 and $1,338.78 in FY 2011-12 to address these requirements.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit required the City, as part of its inspection of commercial/industrial facilities, to review facility monitoring data if the facility monitored its runoff. This provision required inspectors at commercial/industrial sites to spend greater time in the inspection or in analyzing data thereafter.

Additionally, inspectors were required to be further trained so as to be able to read and interpret monitoring and sampling analysis data. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, provided training updates and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $61.40 and that during FY 2011-12, the City's calculated share of that cost was $199.36. I am further informed and believe that the City incurred estimated additional direct costs of $2,677.57 in FY 2010-11 and $2,677.57 in FY 2011-12 to address these requirements.

i. Retrofitting of Existing Development: Section F.3.d of the Permit required the Copermittees, including the City, to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. I am informed and believe and therefore state that using funds contributed from the Copermittees, including the City, through the Implementation Agreement, the District retained a consultant to perform necessary studies and develop a Retrofit Study, and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $94.53 and that during FY 2011-12, the City's calculated share of that cost was $37,617.93.

j. Watershed Water Quality Workplan ("Watershed Workplan"): Section G of the Permit required the Copermittees, including the City, to develop and annually update a Watershed Workplan. This required the Copermittees, including the City, to: characterize

watershed receiving water quality, including analyzing monitoring data collected under the Permit and from other public and private organizations; identify and prioritize water quality problems by constituent and by location, giving consideration to total maximum daily load programs, waters listed as impaired pursuant to Clean Water Act section 303(d), and other pertinent conditions; identify likely sources causing the highest water quality problems within the watershed, including from monitoring conducted under the Permit and additional focused water quality monitoring to identify specific sources; develop a watershed BMP implementation strategy, including a schedule to implement BMPs to abate specific receiving water quality problems; develop a strategy to monitor improvements in receiving water quality stemming from implementation of BMPs described in the Watershed Workplan, including required monitoring in the receiving water; establish a schedule for development and implementation of the watershed strategy outlined in the Watershed Workplan, including the holding of annual watershed workplan review meetings open to the public; implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the RWQCB; cooperate among Copermittees to develop and implement the Watershed Workplan, including the requirement to pursue interagency agreements with non-Copermittee MS4 operators; implement a public participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and, as part of the review and annual update of the Watershed Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District hired a consultant to gather and analyze historic water quality monitoring data, develop draft and submit the Watershed Workplan and revise the JRMP template. I am informed

and believe that in FY 2010-11, the City's calculated share of such costs was $630.98 and that during FY 2011-12, the City's calculated share of that cost was $4,143.40.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit required, among other items, that the Copermittees, including the City, submit a Jurisdictional Runoff Management Program ("JRMP") report each year, beginning on October 31, 2013. The JRMP requirements included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the City, were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, the Copermittees, including the City, were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from

hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed revisions to the JRMP and Annual Report templates to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $310.31 and that during FY 2011-12, the City's calculated share of that cost was $914.27. I am further informed and believe that the City incurred estimated additional direct costs of $2,677.57 in FY 2010-11 and $2,677.57 in FY 2011-12 to address these requirements.

l. Special Studies: The Monitoring and Reporting Program of the Permit required Copermittees, including the City, to conduct special studies, including (1) a sediment toxicity study, (2) a trash and litter study, (3) a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, (4) a MS4 and receiving water maintenance study and (5) an intermittent and ephemeral stream perennial conversion study. I am informed and believe that the District, using funds contributed by the Copermittees, including the City, conducted the first three studies, performed a work plan for the fourth study and then performed one additional study on LID implementation, in return for not doing the remainder of the fourth study and the fifth study. I am informed and believe that using funds from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop and perform these studies and to submit them to the Regional Board. I am informed and believe that in Fiscal Year ("FY") 2011-12, the City's calculated share of such costs was $6,085.74 and that during FY 2012-13, the City's calculated share of that cost was $26,032.50.

m. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit

required Copermittees, including the City, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges did not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of the Permit required Copermittees, including the City, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the MEP. Section F.6 of the Permit required Copermittees, including the City, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. I am informed and believe and therefore state that these requirements were incorporated into the design and implementation of other programs required by the Permit and set forth above, including the NALs and SALs requirement, the priority development project and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements, and the water quality workplan requirements. I am informed and believe and therefore state that in total, the City incurred a yet to be determined share of calculated costs of $4,418.08 in FY 2010-11 and $67,994.14 in FY 2011-12 plus estimated direct costs of $10,710.27 in FY 20-10-11 and $10,710.27 in FY 2011-12 in response to these requirements.

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

152, which funds, in part, the obligations of the City under the Permit. The City also can collect some inspection fees during the new development process, but not for existing development. I am informed and believe that neither of these funding sources is sufficient to cover the cost of the programs and activities set forth in this Declaration. I am not aware of any other fee or tax that the City would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the City's general fund.

I declare under penalty of perjury that foregoing is true and correct. Executed April 27, 2017 at Murrieta, California.

Bob Moehling

DECLARATION OF PATRICK A. THOMAS

CITY OF TEMECULA

I, Patrick A. Thomas, hereby declare and state as follows:

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

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

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

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit required the City to undertake the following new and/or upgraded activities and which are unique to local government entities and which were not required in the 2004 Permit:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removed from the list of discharges exempted from the prohibition against discharges of non-stormwater to the municipal separate storm sewer system ("MS4") the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. The removal of these three categories of exempted discharges required the creation of new public education and outreach materials, potentially the need for amended ordinances to facilitate the required prohibition, tracking and response to reports of over-irrigation, enforcement and monitoring. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through an Implementation Agreement, the Riverside County Flood Control and Water Conservation District ("District") updated the Coordinated Monitoring Program ("CMP"), including procedures for response, monitoring and analysis relating to such flows and revised the Jurisdictional Runoff Management Plan ("JRMP") template, training programs and community outreach programs to address these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the City's calculated share of such shared costs was $968.58 and that during FY 2011-12, the City's calculated share of that cost was $1,390.84. I am further informed and believe that the City incurred additional estimated direct costs of $10,696.67 in FY 2010-11 and $1,230.90 in FY 2011-12 to address these requirements.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program ("MRP") of the Permit, required Copermittees, including the City, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry

weather non-stormwater action levels ("NALs"). These sections required the Copermittees, including the City, to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City's jurisdiction that was not otherwise performed by the District on behalf of the City, conduct and implement any follow-up source identification investigations for NAL exceedances at City outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations / enforcement, and where necessary, update City compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $821.67 and that during FY 2011-12, the City's calculated share of that cost was $3,073.20. I am further informed and believe that the City incurred additional estimated direct costs of $9,073.20 in FY 2010-11 and $2,719.17 in FY 2011-12 to address these requirements.

c. Stormwater Action Levels: Section D of the Permit required the City to conduct end-of-pipe assessments to determine stormwater action level ("SAL") compliance metrics at major outfalls during wet weather. Under the Permit, the City was required to perform field verification of major outfalls owned by the City, perform any required outfall sampling and

analysis within the City's jurisdiction that is not otherwise performed by the District on behalf of the City, and where necessary, update the City's compliance programs to address SAL exceedances. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $821.67 and that during FY 2011-12, the City's calculated share of that cost was $3,073.20. I am further informed and believe that the City incurred additional estimated direct costs of $9,073.20 in FY 2010-11 and $2,719.17 in FY 2011-12 to address these requirements.

d. Priority Development Projects ("PDPs") and Hydromodification Requirements: Section F.1.d of the Permit required Copermittees, including the City, to develop and implement low impact development ("LID") principles and structural features into City-owned PDPs, which beginning on July 1, 2012, included all City-owned projects that resulted in the disturbance of one acre or more of land, as well as new public development projects that created 10,000 square feet or more of impervious surface. The Permit further required the City to review each of its PDPs to implement LID BMPs, including requiring specific types of LID Principles and LID BMPs or to make a finding of technical infeasibility, incorporate formalized consideration of LID BMPs into the plan review process and review its local codes, policies and ordinances for barriers to LID implementation and take actions to remove such barriers. Additionally, the City

was required to develop an LID waiver program for incorporation into the Standard Stormwater Mitigation Plan ("SSMP"), to allow a City-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit required the Copermittees, including the City, to develop and implement a Hydromodification Management Plan ("HMP") to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees, including the City, were required to hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibited Copermittees, including the City, from using non-natural materials, including concrete, riprap or gabions, to reinforce stream channels as mitigation for a PDP. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to perform the studies and analysis and a revised Standard Stormwater Mitigation Plan, an HMP with publically available hydromodification modelling software and a BMP Design Manual, developed and provided training for the Copermittees and the development community and revised the JRMP template. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $2,359.31 and that during FY 2011-12, the City's calculated share of that cost was $22,131.22. I am further informed and believe that the City incurred additional estimated direct costs of $26,048.51 in FY 2010-11 and $19,589.96 in FY 2011-12 to address these requirements.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit required the City to develop and maintain a watershed-based database to track all projects with a final approved SSMP and structural post-construction BMPs, including those PDPs dating back to

July 2005, and to inspect such projects on a routine basis. This program required the City to develop and populate a database of information for each SSMP project built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct inspections. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed a template BMP tracking spreadsheet and updated the JRMP template to reflect these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $186.41 and that during FY 2011-12, the City's calculated share of that cost was $255.54. I am further informed and believe that the City incurred additional estimated direct costs of $2,057.61 in FY 2010-11 and $223.80 in FY 2011-12 to address these requirements.

f. Construction Site Requirements: Section F.2.d of the Permit required Copermittees, including the City, to implement active/passive sediment treatment ("AST") at City- owned construction sites or portions thereof that were determined to be an "exceptional threat" to water quality. Section F.2.e of the Permit required City inspectors at construction sites to review site monitoring data results, if the site monitored its runoff. These requirements would add costs to require AST to every City-owned construction site determined to pose such a threat to water quality and for enhanced inspection training. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, conducted training of Copermittee staff and updated the JRMP template with regard to such requirements. I am informed and believe that in FY 2010-11, the

City's calculated share of such costs was $114.55 and that during FY 2011-12, the City's calculated share of that cost was $233.37. I am further informed and believe that the City incurred additional estimated direct costs of $1,262.92 in FY 2010-11 and $208.88 in FY 2011-12 to address these requirements.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit required the Copermittees, including the City, to develop and implement, or require implementation of, BMPs for erosion and sediment control on City-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, revised the JRMP template and the SSMP to incorporate road maintenance provisions. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $70.80 and that during FY 2011-12, the City's calculated share of that cost was $177.65. I am further informed and believe that the City incurred additional estimated direct costs of $780.73 in FY 2010-11 and $156.66 in FY 2011-12 to address these requirements.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit required the City, as part of its inspection of commercial/industrial facilities, to review facility monitoring data if the facility monitored its runoff. This provision required inspectors at commercial/industrial sites to spend greater time in the inspection or in analyzing data thereafter.

Additionally, inspectors were required to be further trained so as to be able to read and interpret monitoring and sampling analysis data. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, provided training updates and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $70.80 and that during FY 2011-12, the City's calculated share of that cost was $219.69. I am further informed and believe that the City incurred additional estimated direct costs of $780.73 in FY 2010-11 and $193.96 in FY 2011-12 to address these requirements.

i. Retrofitting of Existing Development: Section F.3.d of the Permit required the Copermittees, including the City, to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. I am informed and believe and therefore state that using funds contributed from the Copermittees, including the City, through the Implementation Agreement, the District retained a consultant to perform necessary studies and develop a Retrofit Study, and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 010-11, the City's calculated share of such costs was $109.00 and that during FY 2011-12, the City's calculated share of that cost was $41,454.62. I am further informed and believe that the City incurred additional estimated direct costs of $1,203.92 in FY 2010-11 and $36,688.28 in FY 2011-12 to address these requirements.

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

contributed from each Copermittee, including the City, through the Implementation Agreement, the District hired a consultant to gather and analyze historic water quality monitoring data, develop draft and submit the Watershed Workplan and revise the JRMP template. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $727.58 and that during FY 2011-12, the City's calculated share of that cost was $4,565.99. I am further informed and believe that the City incurred additional estimated direct costs of $8,033.45 in FY 2010-11 and $4,043.32 in FY 2011-12 to address these requirements.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit required, among other items, that the Copermittees, including the City, submit a Jurisdictional Runoff Management Program ("JRMP") report each year, beginning on October 31, 2013. The JRMP requirements included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the City, were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit

existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally, the Copermittees, including the City, were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed revisions to the JRMP and Annual Report templates to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $357.81 and that during FY 2011-12, the City's calculated share of that cost was $1,007.52. I am further informed and believe that the City incurred additional estimated direct costs of $3,947.41 in FY 2010-11 and $895.20 in FY 2011-12 to address these requirements.

l. Special Studies: The Monitoring and Reporting Program of the Permit required Copermittees, including the City, to conduct special studies, including (1) a sediment toxicity study, (2) a trash and litter study, (3) a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, (4) a MS4 and receiving water maintenance study and (5) an intermittent and ephemeral stream perennial conversion study. I am informed and believe that the District, using funds contributed by the Copermittees, including the City, conducted the first three studies, performed a work plan for the fourth study and then performed one additional study on LID implementation, in return for not doing the remainder of the fourth study and the fifth study. I am informed and believe that using funds from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop and perform these

studies and to submit them to the Regional Board. I am informed and believe that in FY 2011-12, the City's calculated share of such costs was $6,706.43 and that during FY 2012-13, the City's calculated share of that cost was $27,806.58.

m. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit required Copermittees, including the City, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges did not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of the Permit required Copermittees, including the City, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the MEP. Section F.6 of the Permit required Copermittees, including the City, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. I am informed and believe and therefore state that these requirements were incorporated into the design and implementation of other programs required by the Permit and set forth above, including the NALs and SALs requirement, the priority development project and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements, and the water quality workplan requirements. I am informed and believe and therefore state that in total, the City incurred a yet to be determined share of calculated costs of $4,986.38 in FY 2010-11 and $70,362.94 in FY 2011-12 plus estimated direct

costs of $5,485.02 in FY 2010-11 and $5,938.16 in FY 2011-12 in response to these requirements.

6. I am informed and believe that there are no dedicated state, regional or federal funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. The City can collect some inspection fees during the development process. I am informed and believe that such fees are not sufficient to cover the cost of the programs and activities set forth in this Declaration. I am not aware of any other fee or tax that the City would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the City's general fund.

I declare under penalty of perjury that foregoing is true and correct. Executed April 25, 2017 at Temecula, California.

Patrick A. Thomas

DECLARATION OF DANIEL A. YORK

CITY OF WILDOMAR

I, DANIEL A. YORK, hereby declare and state as follows:

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

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

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

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

5. Based on my understanding of the Permit and the requirements of the 2004 Permit, I believe that the Permit required the City to undertake the following new and/or upgraded activities and which are unique to local government entities and which were not required in the 2004 Permit:

a. Removal of Categories of Irrigation Runoff From Exempted Non-Stormwater Discharges: Section B.2 of the Permit removed from the list of discharges exempted from the prohibition against discharges of non-stormwater to the municipal separate storm sewer system ("MS4") the following categories of discharges: landscape irrigation, irrigation water, and lawn watering discharges. The removal of these three categories of exempted discharges required the creation of new public education and outreach materials, potentially the need for amended ordinances to facilitate the required prohibition, tracking and response to reports of over-irrigation, enforcement and monitoring. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through an Implementation Agreement, the Riverside County Flood Control and Water Conservation District ("District") updated the Coordinated Monitoring Program ("CMP"), including procedures for response, monitoring and analysis relating to such flows and revised the Jurisdictional Runoff Management Plan ("JRMP") template, training programs and community outreach programs to address these requirements. I am informed and believe that in Fiscal Year ("FY") 2010-11, the City's calculated share of such shared costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $340.02. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

b. Non-Stormwater Dry Weather Action Levels: Sections C and F.4.d and e, as well as Section II.C of the Monitoring and Reporting Program ("MRP") of the Permit, required Copermittees, including the City, to perform water quality sampling at a representative percentage of major outfalls and identified stations in each hydrologic subarea, implement new followup investigations and source tracking activities triggered by each exceedance of dry weather non-stormwater action levels ("NALs"). These sections required the Copermittees,

including the City, to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City's jurisdiction that was not otherwise performed by the District on behalf of the City, conduct and implement any follow-up source identification investigations for NAL exceedances at City outfalls, conduct enforcement actions as appropriate to the source, prepare reports on the status and outcome of NAL exceedances, and investigations / enforcement, and where necessary, update City compliance programs as necessary to address NAL exceedances. It is my understanding and belief that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, develop a follow-up response program and procedures, conduct initial required NAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates to the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address NAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $751.30. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

c. Stormwater Action Levels: Section D of the Permit required the City to conduct end-of-pipe assessments to determine stormwater action level ("SAL") compliance metrics at major outfalls during wet weather. Under the Permit, the City was required to perform field verification of major outfalls owned by the City, perform any required outfall sampling and analysis within the City's jurisdiction that is not otherwise performed by the District on behalf of

the City, and where necessary, update the City's compliance programs to address SAL exceedances. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop a sampling and analysis plan, finalize the sampling and analysis plan, conduct ongoing SAL sampling and analysis on behalf of each Copermittee, including the City, utilize analysis and source identification results in developing annual updates the Watershed Workplan and Monitoring Reports, and where necessary, coordinate development of model updates to compliance programs to address SAL exceedances. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $751.30. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

d. Priority Development Projects ("PDPs") and Hydromodification Requirements: Section F.1.d of the Permit required Copermittees, including the City, to develop and implement low impact development ("LID") principles and structural features into City-owned PDPs, which beginning on July 1, 2012, included all City-owned projects that resulted in the disturbance of one acre or more of land, as well as new public development projects that created 10,000 square feet or more of impervious surface. The Permit further required the City to review each of its PDPs to implement LID BMPs, including requiring specific types of LID Principles and LID BMPs or to make a finding of technical infeasibility, incorporate formalized consideration of LID BMPs into the plan review process and review its local codes, policies and ordinances for barriers to LID implementation and take actions to remove such barriers. Additionally, the City was required to develop an LID waiver program for incorporation into the Standard Stormwater

Mitigation Plan ("SSMP"), to allow a City-owned PDP to substitute LID BMPs with implementation of alternatives such as treatment control BMPs and either an on-site or off-site mitigation project or other mitigation. Section F.1.h of the Permit required the Copermittees, including the City, to develop and implement a Hydromodification Management Plan ("HMP") to manage increases in runoff discharge rates and durations from all PDPs. To comply with part F.1.h, the Copermittees, including the City, were required to hold and/or attend collaborative meetings and public hearings, perform studies and develop an HMP, train staff and educate the public and adapt the local SSMP. In addition, Section F.1.h(2) prohibited Copermittees, including the City, from using non-natural materials, including concrete, riprap or gabions, to reinforce stream channels as mitigation for a PDP. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to perform the studies and analysis and a revised Standard Stormwater Mitigation Plan, an HMP with publically available hydromodification modelling software and a BMP Design Manual, developed and provided training for the Copermittees and the development community and revised the JRMP template. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $5,410.40. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

e. BMP Maintenance Tracking Requirements: Section F.1.f of the Permit required the City to develop and maintain a watershed-based database to track all projects with a final approved SSMP and structural post-construction BMPs, including those PDPs dating back to July 2005, and to inspect such projects on a routine basis. This program required the City to

develop and populate a database of information for each SSMP project built since 2005, including information on BMP types, locations, parties responsible for maintenance, date of construction, dates and findings of maintenance verifications and corrective actions; to contact property owners for permission to inspect on-site BMPs; to develop and implement a program to conduct inspections and/or BMP verifications on all SSMP projects; and, to conduct inspections. I am informed and believe that, using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed a template BMP tracking spreadsheet and updated the JRMP template to reflect these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such shared costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $62.47. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

f. Construction Site Requirements: Section F.2.d of the Permit required Copermittees, including the City, to implement active/passive sediment treatment ("AST") at City- owned construction sites or portions thereof that were determined to be an "exceptional threat" to water quality. Section F.2.e of the Permit required City inspectors at construction sites to review site monitoring data results, if the site monitored its runoff. These requirements would add costs to require AST to every City-owned construction site determined to pose such a threat to water quality and for enhanced inspection training. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, conducted training of Copermittee staff and updated the JRMP template with regard to such requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated

share of that cost was $57.05. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

g. Maintenance of Unpaved Roads: Section F.3.a.10 of the Permit required the Copermittees, including the City, to develop and implement, or require implementation of, BMPs for erosion and sediment control on City-maintained unpaved roads, as well to develop and implement BMPs to minimize impacts on streams and wetlands during unpaved road maintenance activities, to maintain unpaved roads adjacent to streams and riparian habitat to reduce erosion and sediment transport, to regrade unpaved roads to be sloped outward, or adopt alternative equally effective BMPs to minimize erosion and sedimentation and to examine the feasibility of replacing existing culverts or design new culverts or bridge crossings to reduce erosion and maintain natural stream geomorphology. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, revised the JRMP template and the SSMP to incorporate road maintenance provisions. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $43.43. I am further informed and believe that the City incurred estimated additional direct costs of $6,000.00 in FY 2010-11 and $10,000.00 in FY 2011-12 to address these requirements.

h. Commercial/Industrial Inspection Requirement: Section F.3.b.4 of the Permit required the City, as part of its inspection of commercial/industrial facilities, to review facility monitoring data if the facility monitored its runoff. This provision required inspectors at commercial/industrial sites to spend greater time in the inspection or in analyzing data thereafter. Additionally, inspectors were required to be further trained so as to be able to read and interpret

monitoring and sampling analysis data. I am informed and believe that the District, using funds contributed from each Copermittee including the City through the Implementation Agreement, provided training updates and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $53.71. I am further informed and believe that the City incurred estimated additional direct costs of $217.53 in FY 2010-11 and $167.64 in FY 2011-12 to address these requirements.

i. Retrofitting of Existing Development: Section F.3.d of the Permit required the Copermittees, including the City, to develop and implement a retrofitting program for existing development, including requiring the identification and inventorying of existing development as candidates for retrofitting; the evaluation and ranking of the inventoried developments to prioritize retrofitting; consideration of the results of the evaluation in prioritizing workplans for the following year; tracking and inspecting completed retrofit BMPs; and implementing a program to encourage retrofit of private properties. I am informed and believe and therefore state that using funds contributed from the Copermittees, including the City, through the Implementation Agreement, the District retained a consultant to perform necessary studies and develop a Retrofit Study, and revised the JRMP template to incorporate these requirements. I am informed and believe that in FY 010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $10,134.37. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

j. Watershed Water Quality Workplan ("Watershed Workplan"): Section G of the Permit required the Copermittees, including the City, to develop and annually update a

Watershed Workplan. This required the Copermittees, including the City, to: characterize watershed receiving water quality, including analyzing monitoring data collected under the Permit and from other public and private organizations; identify and prioritize water quality problems by constituent and by location, giving consideration to total maximum daily load programs, waters listed as impaired pursuant to Clean Water Act section 303(d), and other pertinent conditions; identify likely sources causing the highest water quality problems within the watershed, including from monitoring conducted under the Permit and additional focused water quality monitoring to identify specific sources; develop a watershed BMP implementation strategy, including a schedule to implement BMPs to abate specific receiving water quality problems; develop a strategy to monitor improvements in receiving water quality stemming from implementation of BMPs described in the Watershed Workplan, including required monitoring in the receiving water; establish a schedule for development and implementation of the watershed strategy outlined in the Watershed Workplan, including the holding of annual watershed workplan review meetings open to the public; implement the Watershed Workplan within 90 days of submittal unless otherwise directed by the RWQCB; cooperate among Copermittees to develop and implement the Watershed Workplan, including the requirement to pursue interagency agreements with non-Copermittee MS4 operators; implement a public participation mechanism within each watershed, including opportunity for public review and comment on the draft Watershed Workplan prior to its submission to the RWQCB; and, as part of the review and annual update of the Watershed Workplan, hold an Annual Watershed Review meeting open to the public and adequately noticed. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District hired a consultant to gather and analyze historic water quality monitoring data,

develop draft and submit the Watershed Workplan and revise the JRMP template. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $1,116.24. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

k. JRMP Annual Report Requirements: Section K.3.c (plus Table 5 in the Permit and Attachment D) of the Permit required, among other items, that the Copermittees, including the City, submit a Jurisdictional Runoff Management Program ("JRMP") report each year, beginning on October 31, 2013. The JRMP requirements included the following: detailed tracking of various elements on a per-facility basis, including descriptions of BMPs required at PDPs; the name and location of all PDPs granted a waiver from implementing LID BMPs; the total number and date of inspections conducted at each construction site; descriptions of high-level enforcement actions; a summary and assessment of BMP retrofits implemented at flood control structures; a summary of inspection findings and follow-up activities for each municipal facility and area inspected, as well as the number and date; BMP violations and enforcement actions for each facility; tracking of inspections of commercial/industrial facilities by facility or mobile business, including number and date of inspections; BMP violations, number, date and types of enforcement actions; and, a description of each high-level enforcement action. Additionally, Copermittees, including the City, were required to describe efforts to manage runoff and stormwater pollution in common interest areas and mobile home parks, describe efforts to retrofit existing developments and efforts to encourage private landowners to retrofit existing development, provide a detailed list of all implemented retrofit projects, any proposed retrofit or regional mitigation projects and timelines for future implementations. Additionally,

the Copermittees, including the City, were required to submit a checklist that required, among other things, the listing of active and inactive construction sites, the number of development plan reviews and grading permits issued, as well as number of projects exempted from hydromodification requirements, the number of PDPs, the amount of waste removed from MS4 maintenance and the total miles of MS4 inspected. I am informed and believe that using funds contributed from each Copermittee, including the City, through the Implementation Agreement, the District developed revisions to the JRMP and Annual Report templates to incorporate these requirements. I am informed and believe that in FY 2010-11, the City's calculated share of such costs was $0 and that during FY 2011-12, the City's calculated share of that cost was $246.31. I am further informed and believe that the City incurred estimated additional direct costs of $16.59 in FY 2010-11 and $33.68 in FY 2011-12 to address these requirements.

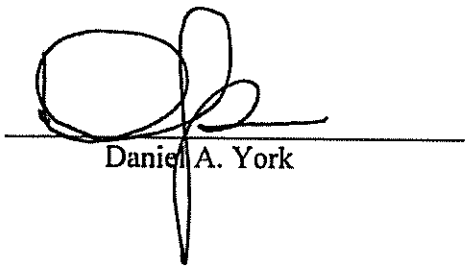
l. Special Studies: The Monitoring and Reporting Program of the Permit required Copermittees, including the City, to conduct special studies, including (1) a sediment toxicity study, (2) a trash and litter study, (3) a study of agricultural, federal and tribal discharges into the Copermittees' MS4s, (4) a MS4 and receiving water maintenance study and (5) an intermittent and ephemeral stream perennial conversion study. I am informed and believe that the District, using funds contributed by the Copermittees, including the City, conducted the first three studies, performed a work plan for the fourth study and then performed one additional study on LID implementation, in return for not doing the remainder of the fourth study and the fifth study. I am informed and believe that using funds from each Copermittee, including the City, through the Implementation Agreement, the District retained a consultant to develop and perform these studies and to submit them to the Regional Board. I am informed and believe that in FY 2011-

12, the City's calculated share of such costs was $1,639.51 and that during FY 2012-13, the City's calculated share of that cost was $6,994.48.

m. Requirements for Permit Programs to Ensure No Violations of Water Quality Standards and Other Standards: Sections F.1, F.1.d, F.2, F.3.a, F.3.b and F.3.c of the Permit required Copermittees, including the City, to implement programs to ensure that development project discharges, PDP discharges, construction site discharges, municipal discharges, commercial/industrial discharges and residential discharges did not cause or contribute to a violation of water quality standards and prevent illicit discharges into the MS4. Section F.3.d. of the Permit required Copermittees, including the City, to develop and implement a retrofitting program to, among other things, prevent discharges from the MS4 from causing or contributing to a violation of water quality standards and to reduce the discharge of stormwater pollutants to the MEP. Section F.6 of the Permit required Copermittees, including the City, to implement education programs to measurably change the behavior of target communities and thereby reduce pollutants in stormwater discharges and eliminate prohibited non-storm water discharges to MS4s and the environment. I am informed and believe and therefore state that these requirements were incorporated into the design and implementation of other programs required by the Permit and set forth above, including the NALs and SALs requirement, the priority development project and HMP requirements, the AST requirements at construction sites, the unpaved road BMP and design requirements, the monitoring of construction sites, the existing development retrofit requirements, and the water quality workplan requirements. I am informed and believe and therefore state that in total, the City incurred a yet to be determined share of calculated costs of $18,317.80 in FY 2011-12 plus estimated additional direct costs of $6,317.07 in FY 2010-11 and $10,369.72 in FY 2011-12 in response to these requirements.

6. I am informed and believe that there are no dedicated state or federal funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. The City has access to funding obtained through County Service Area 152 ("CSA 152") and Lighting and Landscape Maintenance District 89-1C (LLMD 89-1C), which funds, in part, the obligations of the City under the Permit. The City also can collect some fees during the development and business registration process. I am informed and believe that these funding sources are not sufficient to cover the cost of the programs and activities set forth in this Declaration. I am not aware of any other fee or tax that the City would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the City's general fund.

I declare under penalty of perjury that foregoing is true and correct. Executed April 26, 2017 at Wildomar, California.



Daniel A. York

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 May 8, 2017, I served the:

- **Notice of Complete Joint Test Claim Filing, Removal From Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date issued May 8, 2017**
- **Claimants' Response to the Notice of Incomplete Joint Test Claim Filing filed April 28, 2017**
- **Joint Test Claim filed by County of Riverside, et al., on November 10, 2011 revised on April 28, 2017**

  California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, 11-TC-03
  County of Riverside, Riverside County Flood Control and Water Conservation District, Cities of Murrieta, Temecula, and Wildomar, Co-Claimants

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 8, 2017 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/2/17

Claim Number: 11-TC-03

Matter: California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

Claimants: City of Murrieta
City of Temecula
City of Wildomar
County of Riverside
Riverside County Flood Control and Water Conservation 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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