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September 18, 2017

VIA DROP BOX

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

Re: *San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001, 15-TC-02, Response to Letter Seeking Clarification and Evidence of First Incurring Costs*

Dear Ms. Halsey:

I am writing this letter on behalf of the County of Orange, the Orange County Flood Control District and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente and San Juan Capistrano ("Joint Test Claimants") to respond to your letter of July 28, 2017 requesting clarification on pleadings and evidence of first incurring costs with respect to the above-referenced test claim ("Joint Test Claim"). I am the designated Claimant Representative for all Joint Test Claimants.

The Joint Test Claimants respectfully object to the need to respond to the July 28, 2017 letter for the reasons set forth below. Notwithstanding that objection and subject to it, the Joint Test Claimants herewith respond by identifying the executive orders as to which the Joint Test Claim refers and providing, through supplemental declarations from each Joint Test Claimant, the date upon which each Claimant first incurred costs with respect to Order No. R9-2015-0001 issued by the San Diego Regional Water Quality Control Board ("SDRWQCB").

A. Executive Orders Pled in Joint Test Claim

The Joint Test Claim was filed on June 30, 2016. Commission staff alleged various deficiencies in that filing by letter dated July 29, 2016. None of the deficiencies

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identified by staff involved any uncertainty regarding which executive orders the Joint Test Claimants were pleading.

Those orders were in fact pled in the Joint Test Claim. Please see page 5-1 of the Section 5 Narrative Statement, which explains the timeline and sequence of executive orders at issue in the Joint Test Claim. Further, in the Commission's September 12, 2016 letter deeming the Joint Test Claim to be complete, nothing in that letter indicated that the Commission was uncertain concerning the identity of the executive orders.

As the Joint Test Claimants have pled, the sequence and content of the executive orders adopted by the SDRWQCB are as follows:

1. On May 8, 2013, the SDRWQCB adopted Order No. R9-2013-0001, a 357-page municipal stormwater permit containing most, but not all, of the substantive requirements at issue in the Joint Test Claim. Order No. R9-2013-0001 did not, however, apply to the Joint Test Claimants at its adoption.

2. On February 11, 2015, the SDRWQCB adopted Order No. R9-2015-0001, making Order No. R9-2013-0001 applicable to the South Orange County copermitees, including the Joint Test Claimants. A true and correct copy of Order No. R9-2015-0001 is filed herewith as Exhibit A to the Declaration of David W. Burhenn.¹ Order No. R9-2015-0001 took effect on April 1, 2015.

3. On November 18, 2015, the SDRWQCB adopted Order No. R9-2015-0100, which incorporated several substantive change to Order No. R9-2013-0001, and which first applied the requirements of that order to permittees in Riverside County. A true and correct copy of Order No. R9-2015-0100 is filed herewith as Exhibit B to the Burhenn Declaration.

This procedural history is further set forth in the Fact Sheet for Order No. R9-2013-0001, as amended by Order No. R9-2015-0001, as amended by Order No. R9-2015-0100, pages F-3 to F-5 (included in Vol. I, Tab 1 of the Section 7 Documentation in support of the Joint Test Claim).

In light of these facts, which are also set forth in the Section 6 Declarations filed in support of the Joint Test Claim (*see* Declarations, ¶ 6), the Joint Test Claimants submit that the existing record reflects the fact that the Joint Test Claimants based their Joint Test Claim test claim on mandates which were first applicable to them as the result of the adoption of Order No. R9-2015-0001, effective on April 1, 2015, save one. The one additional item in the Joint Test Claim, that relating to Provision B.3.c of the permit, was

¹ The Commission may take administrative notice of executive orders of the State pursuant to Evid. Code § 452(c), Govt. Code § 11515 and 2 Cal. Code Reg. § 1187.5(c).

added by Order No. R9-2015-0100, which took effect on January 7, 2016. *See* Burhenn Decl. Exhibit B at 4-5.

To summarize, eleven permit provisions are at issue in the Joint Test Claim (*see* Section 5 Narrative Statement at 5-9 to 5-62):

1. Provisions A.2 and A.4, relating to strict compliance with numeric water quality standards;
2. Provision A.3.b and portions of Attachment E, relating to the incorporation of the Twenty Beaches and Creeks in the San Diego Region Total Maximum Daily Load (“TMDL”) program;²
3. Provisions B (except B.3.c) and F, relating to the requirement to develop and implement a Water Quality Improvement Plan (“WQIP”);
4. Provision B.3.c, relating to the “alternative compliance” provision for WQIPs (first applicable to the Joint Test Claimants under Order No. R9-2015-0100);
5. Provision E.3.c(2), relating to the management of critical sediment yield areas;
6. Provisions E.3.d and F.2.b, relating to the requirement to update a BMP Design Manual;
7. Provision E.5, relating to requirements to develop and implement a residential inspection program;
8. Provision E.5.e, relating to requirements to retrofit existing development and rehabilitate streams within areas of existing development;
9. Provision F.6, relating to requirements to update an enforcement response plan;
10. Provision F.2.a, relating to requirements to update Jurisdictional Urban Runoff Management Plans; and

² While this TMDL first applied to the Joint Test Claimants through adoption of Order No. R9-2015-0001, the SDRWQCB subsequently modified Attachment E of the permit to make it consistent with the TMDL adopted in the Basin Plan Amendment, and incorporated that modification in Order No. R9-2015-0100. *See* Burhenn Decl. Exhibit B at 6.

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11. Provision F.3.a, relating to a requirement for permittees to appear before the SDRWQCB and to make presentations on topics identified by that agency.

With the exception of item 4, which first arose as the result of an amendment to Order No. R9-2013-0001 effectuated by Order No. R9-2015-0100, all of these mandates first were imposed on the Joint Test Claimants pursuant to Order No. R9-2015-0001.

B. Dates of First Incurring Costs

Your July 28, 2017 letter further requests that the Joint Test Claimants provide the Commission with evidence as to the *date* that costs first were incurred with respect to mandates arising under Order No. R9-2015-0001.

As your letter notes, the Joint Test Claimants have already set forth in Declarations submitted under penalty of perjury that they first incurred costs in fiscal year (“FY”) 2014-15 which, for purposes of Govt. Code § 17551(c) and 2 Cal. Code Reg. § 1183.1(c), should be sufficient to establish the Commission’s jurisdiction over the Joint Test Claim. (*See* Section 6 Declarations in support of Joint Test Claim, ¶ 6.) This is so because the Joint Test Claim was filed on June 30, 2016, during the fiscal year (2015-16) “following the fiscal year in which increased costs were first incurred by the test claimant.” 2 Cal. Code Reg. § 1183.1(c).

Nothing in the statute, regulations or test claim form requires test claimants to specify the *date* that costs first were incurred under an executive order. By indicating that the costs were first incurred in FY 2014-15, the Joint Test Claimants submit that they have established a factual basis for the Commission’s jurisdiction. The Joint Test Claimants therefore respectfully object to your determination that a further evidentiary basis for this assertion is required.

Notwithstanding that objection, and subject to it, the Joint Test Claimants submit herewith Supplemental Declarations from each Joint Test Claimant establishing the dates on which they first incurred costs in responding to the mandates set forth in Order No. R9-2015-0001. Those declarations establish that such costs were incurred on or shortly after the effective date of that Order, April 1, 2015. *See* Supplemental Declarations, ¶ 4.

C. Evidentiary Support

The responses to your July 28, 2017 letter are supported by (a) documentary evidence both in the existing record and as supplemented herewith as exhibits to the Burhenn Declaration and (b) testimonial evidence submitted under penalty of perjury (the Supplemental Declarations). Thus, the Joint Test Claimants have met the requirements of 2 Cal. Code Regs. § 1187.5, cited in your letter.

BURHENN & GEST LLP

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Please contact the undersigned if you or your staff have any questions regarding this response.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge.

Date: September 18, 2017



David W. Burhenn
BURHENN & GEST LLP
HOWARD GEST
DAVID W. BURHENN
624 S. Grand Avenue, Suite 2200
Los Angeles, CA 90017
Phone: (213) 629-8788
Email: dburhenn@burhenngest.com

Counsel for Claimants County of Orange and Orange County Flood Control District and on behalf of Claimants Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente and San Juan Capistrano.

SUPPLEMENTAL DECLARATIONS OF JOINT TEST
CLAIMANTS

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE COUNTY OF ORANGE IN
SUPPORT OF TEST CLAIM**

I, Chris Crompton, declare and state as follows:

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

2. I am employed by the County of Orange (hereafter, "County") as Manager, Water Quality Compliance in OC Public Works. I have knowledge of the County's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the County first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the County first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by County staff in organizing a meeting with other permittees concerning Amended Permit requirements which was held on or about April 15, 2015.

Executed this 18th day of September 2017 at Orange, California.

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



Chris Crompton
Manager, Water Quality Compliance
OC Public Works

**SUPPLEMENTAL DECLARATION ON BEHALF OF ORANGE COUNTY FLOOD
CONTROL DISTRICT IN SUPPORT OF TEST CLAIM**

I, Khalid Bazmi, P.E., declare and state as follows:

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

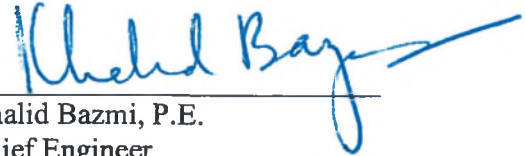
2. I am employed by the County of Orange as an Assistant Director of OC Public Works. I also serve as the Chief Engineer for the Orange County Flood Control District ("District"). I have knowledge of the District's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the District first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the District first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by District staff in organizing a meeting with other permittees concerning Amended Permit requirements which was held on or about April 15, 2015.

Executed this 18th day of September 2017 at Santa Ana, California.

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



Khalid Bazmi, P.E.
Chief Engineer
Orange County Flood Control District
Orange County Public Works

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF ALISO VIEJO IN
SUPPORT OF TEST CLAIM**

I, David Doyle, declare and state as follows:

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

2. I am employed by the City of Aliso Viejo (hereafter, "City") as City Manager. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including participation and email communications by City staff with other permittees concerning Amended Permit requirements and other deliverables where costs were incurred on or about April 23, 2015.

Executed this 18th day of September 2017 at Aliso Viejo, California.

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


David Doyle, City Manager

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF DANA POINT IN
SUPPORT OF TEST CLAIM**

I, Lisa Zawaski, declare and state as follows:

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

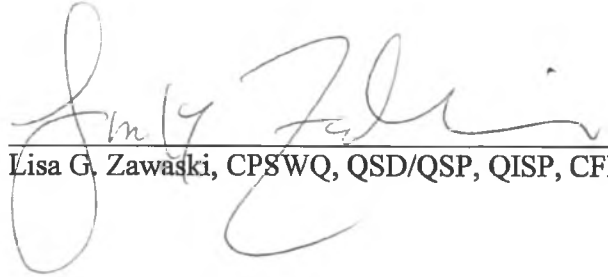
2. I am employed by the City of Dana Point (hereafter, "City") as Senior Water Quality Engineer. I have personal knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by City staff in a meeting with other permittees concerning Amended Permit requirements that was held on or about April 15, 2015.

Executed this 30th day of August 2017 at Dana Point, California.

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

A handwritten signature in cursive script, appearing to read "Lisa G. Zawaski", written in black ink over a horizontal line.

Lisa G. Zawaski, CPSWQ, QSD/QSP, QISP, CFM

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF LAGUNA BEACH
IN SUPPORT OF TEST CLAIM**

I, David Shissler, declare and state as follows:

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

2. I am employed by the City of Laguna Beach (hereafter, "City") as the Director of Water Quality. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by City staff in a meeting with other permittees concerning Amended Permit requirements held on or about April 15, 2015.

Executed this 7th day of September 2017 at Laguna Beach, California.

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



David Shissler, P.E.
Director of Water Quality

**SUPPLEMENTAL DECLARATION OF KENNETH H. ROSENFIED, P.E., ON BEHALF
OF THE CITY OF LAGUNA HILLS IN SUPPORT OF TEST CLAIM**

I, Kenneth H. Rosenfield, declare and state as follows:

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

2. I am employed by the City of Laguna Hills (hereafter, "City") as Director of Public Services/City Engineer. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through review and analysis by City staff of a table of deliverables concerning Amended Permit requirements on or about April 23, 2015.

Executed this 7th day of September 2017 at Laguna Hills, California.

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

A handwritten signature in blue ink, appearing to read "Kenneth H. Rosenfield", written over a horizontal line.

Kenneth H. Rosenfield
Director of Public Services/City Engineer
City of Laguna Hills, California

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF
LAGUNA NIGUEL IN SUPPORT OF TEST CLAIM**

I, Ziad Mazboudi declare and state as follows:

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

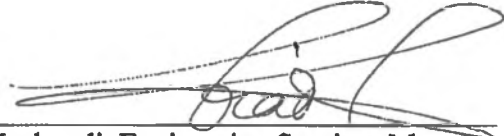
2. I am employed by the City of Laguna Niguel (hereafter, "City") as the Engineering Services Manager. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by City staff in a meeting with other permittees concerning Amended Permit requirements held on or about April 15, 2015.

Executed this 11th day of September, 2017, at Laguna Niguel, California.

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

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

Ziad Mazboudi, Engineering Services Manager

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF LAKE FOREST
IN SUPPORT OF TEST CLAIM**

I, Thomas Wheeler, declare and state as follows:

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

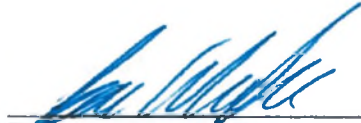
2. I am employed by the City of Lake Forest (hereafter, "City") as Public Works Director/City Engineer. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by City staff in a meeting with other permittees concerning Amended Permit requirements held on or about April 15, 2015.

Executed this 12th day of September 2017 at Lake Forest, California.

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



Thomas Wheeler, P.E.
Director of Public Works/City Engineer

SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF MISSION VIEJO
IN SUPPORT OF TEST CLAIM

I, Richard Schlesinger, declare and state as follows:

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


2. I am employed by the City of Mission Viejo (hereafter, "City") as the City Engineer. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through review and analysis by City staff of a table of deliverables concerning Amended Permit requirements on or about April 23, 2015.

Executed August 31, 2017 at Mission Viejo, California.

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


Richard Schlesinger
City Engineer

**SUPPLEMENTAL DECLARATION OF EHAB MAXIMOUS ON BEHALF OF THE
CITY OF RANCHO SANTA MARGARITA IN SUPPORT OF TEST CLAIM**

I, Ehab Maximous, declare and state as follows:

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

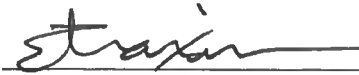
2. I am employed by the City of Rancho Santa Margarita (hereafter, "City") as Public Works Director/City Engineer. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through review and analysis by City staff and consultants retained to assist the City of a table of deliverables concerning Amended Permit requirements on or about April 23, 2015.

Executed this 7th day of September 2017 at Rancho Santa Margarita, California.

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



Ehab Maximous
Public Works Director/City Engineer
City of Rancho Santa Margarita, California

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF SAN CLEMENTE
IN SUPPORT OF TEST CLAIM**

I, Dave Rebensdorf, declare and state as follows:

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

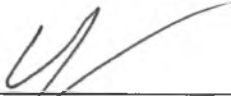
2. I am employed by the City of San Clemente (hereafter, "City") as the Utilities Director. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including through participation by City staff in a meeting with other permittees concerning Amended Permit requirements held on or about April 15, 2015.

Executed this 18th day of September 2017 at San Clemente, California.

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



Dave Rebensdorf
Utilities Director

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SAN JUAN CAPISTRANO, CA 92675
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(949) 493-1053 FAX
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MEMBERS OF THE CITY COUNCIL

SERGIO FARIAS
KERRY K. FERGUSON
BRIAN L. MARYOTT
PAM PATTERSON, ESQ.
DEREK REEVE

**SUPPLEMENTAL DECLARATION ON BEHALF OF THE CITY OF SAN JUAN
CAPISTRANO IN SUPPORT OF TEST CLAIM**

I, Ben Siegel, declare and state as follows:

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

2. I am employed by the City of San Juan Capistrano (hereafter, "City") as City Manager. I have knowledge of the City's programs and activities set forth in this declaration.

3. I am familiar with California Regional Water Quality Control Board, San Diego Region ("RWQCB") Order No. R9-2013-0001 (NPDES No. CAS0109266) issued on May 8, 2013, as amended by Order No. R9-2015-0001 ("Amended Permit") and Order No. R9-2015-0100, as well as the process under which the Amended Permit was first implemented.

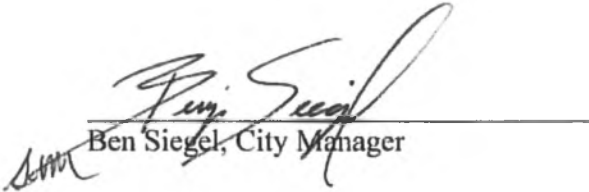
4. I am informed and believe and therefore state that the City first participated in activities concerning the requirements of the Amended Permit shortly after its adoption by the RWQCB on February 11, 2015. I am further informed and believe that the City first began to incur costs under the Amended Permit on or shortly after the effective date of the Amended Permit, which was April 1, 2015, including participation and email communications by City staff with other permittees concerning Amended Permit requirements and other deliverables where

San Juan Capistrano: Preserving the Past to Enhance the Future

costs were incurred on or about April 23, 2015.

Executed this 18th day of September 2017 at San Juan Capistrano, California.

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



Ben Siegel, City Manager

DECLARATION OF DAVID W. BURHENN AND
EXHIBITS A AND B

DECLARATION OF DAVID W. BURHENN

I, David W. Burhenn, declare and state as follows:

1. I am a partner in the firm of Burhenn & Gest LLP, which represents the County of Orange and the Orange County Flood Control District before the Commission on State Mandates in *San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001*, 15-TC-02. As such, I have personal knowledge of the matters set forth in this Declaration and could, if called upon, testify competently thereto.

2. Exhibit A to this Declaration is a true and correct copy of Order No. R9-2015-0001, issued by the California Regional Water Quality Control Board, San Diego Region (“SDRWQCB”) on or about February 11, 2015. On September 15, 2017, I downloaded that order from the website of the SDRWQCB at the following address:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/docs/updates030415/2015-0303_Final_Order_R9-2015-0001.pdf

3. Exhibit B to this Declaration is a true and correct copy of Order No. R9-2015-0100, issued by the SDRWQCB on or about November 18, 2015. On September 15, 2017, I downloaded that order from the website of the SDRWQCB at the following address:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/docs/2015-1118_FinalOrderNo.R9-2015-0100.pdf

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

Executed September 18, 2017 at Los Angeles, California.



David W. Burhenn

EXHIBIT A

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone (619) 516-1990 Fax (619) 516-1994
<http://www.waterboards.ca.gov/sandiego>

ORDER NO. R9-2015-0001

**AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE
WATERSHEDS WITHIN THE SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

ENROLLMENT OF ORANGE COUNTY COPERMITTEES

1. **Enrollment Process.** On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS019266, *National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Order No. R9-2013-0001, Order or Regional MS4 Permit). Provision F.5 of that Order outlines a process to designate (enroll) the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano (collectively Orange County) as Copermittees under Order No. R9-2013-0001, responsible for compliance with the terms and the conditions of the Order. Provision F.5 provides that prior to such enrollment the San Diego Water Board must first review and consider a Report of Waste Discharge (RoWD), submitted by the Orange County Copermittees under their current MS4 NPDES Order No. R9-2009-0002, to determine whether the Copermittees should be enrolled under Order No. R9-2013-0001 and what changes to the Order proposed in the RoWD are appropriate.
2. **Report of Waste Discharge.** By letter dated May 20, 2014, the Orange County Copermittees jointly submitted a RoWD in application for the reissuance of waste discharge requirements, pursuant to the requirements of section K.2.b of Order No. R9-2009-0002, for MS4 discharges draining the San Juan Hydraulic Unit within the San Diego Region. The RoWD discusses the MS4 Permit compliance activities and accomplishments of the Orange County Copermittees over the period June 2009 through June 2013. The RoWD also identifies all of the activities, research, and pilot studies the Copermittees propose to undertake during the next permit term based

upon consideration of the effectiveness of the Orange County Storm Water Program and the need for additional pollutant control initiatives. Development of a watershed-based planning approach is portrayed in the RoWD as the most important next step to take in the development of the storm water programs in Orange County. The RoWD concludes that such a comprehensive approach offers the opportunity to identify the environmental and recreational benefits that can be realized in each watershed and the management strategies that will most effectively ensure their realization. Among several recommendations, the RoWD included a request that permit requirements be amended to provide an initial or time limited exemption from hydromodification control best management practices (BMPs) for conveyance channels that are engineered and regularly maintained with the capacity to convey peak flows generated from the 10-year or greater storm event from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean. The County of Orange also separately requested a second exemption for discharges to "large river" low gradient reaches with a very wide flood plain by letter dated November 22, 2013. The San Diego Water Board has reviewed the RoWD and determined it is complete.

3. **Permit Hydromodification Control Requirement Modifications.** The hydromodification control BMP requirements in Provision E.3.c.(2) of Order No. R9-2013-0001 require modification to address the hydromodification exemption issues identified in the Orange County Copermittees' RoWD application and November 22, 2013 letter. To facilitate the transition of the Orange County Copermittees (and eventually the Riverside County Copermittees) to the Regional MS4 Permit from the current Phase I MS4 NPDES permit (Order No. R9-2009-0002), two temporary exemptions from hydromodification control BMP requirements should be provided. The first temporary exemption would allow relief from hydromodification control BMP requirements for Priority Development Projects discharging directly to an engineered channel conveyance system with a capacity to convey peak flows generate by the 10-year storm event all the way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean. The second temporary exemption would allow relief from hydromodification control BMP requirements for Priority Development Projects discharging directly to large river reaches with drainage areas larger than 100 square miles and a 100-year flow capacity in excess of 20,000 cubic feet per second.
4. **Orange County Copermittees Enrollment.** After consideration of the Orange County RoWD and changes needed to Order No. R9-2013-0001, the San Diego Water Board has determined that the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano should be enrolled as Copermittees under Order No. R9-2013-0001 (Order) and responsible for compliance with the terms and the conditions of the Order. Enrolling the Orange County Copermittees into Order No. R9-2013-0001 (and the eventual enrollment of Riverside County Copermittees upon expiration of their current MS4 permit) will

provide regulatory consistency in the implementation of MS4 permit requirements throughout the San Diego Region, improve communication and coordination among Copermittees within watersheds crossing multiple jurisdictions, and maximize efficiency and economy of resources for the San Diego Water Board achieved through the redirection of staff permitting resources to better advance the storm water program. The enrollment of the Cities of Laguna Hills, Laguna Woods and Lake Forest is subject to a California Water Code (Water Code) section 13228 agreement as set forth in the findings of this Order.

DESIGNATION OF A REGIONAL WATER BOARD

5. **Regional Water Board Designation.** The Cities of Laguna Woods, Laguna Hills and Lake Forest (Cities) are located partially within the jurisdictions of both the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) and the San Diego Water Board. Written requests for designation of a single Regional Water Board to regulate matters pertaining to permitting of Phase I MS4 discharges were submitted to the San Diego Water Board by the City of Laguna Woods by letter dated September 8, 2014, the City of Laguna Hills by letter dated March 12, 2014, and the City of Lake Forest by letters dated January 14, 2013, and April 4, 2014. The Cities of Laguna Hills and Laguna Woods requested designation of the San Diego Water Board, and the City of Lake Forest requested designation of the Santa Ana Water Board. Water Code section 13228 specifies the circumstances that allow, and the process for, designation of a Regional Water Board.
6. **Factual Considerations.** The Santa Ana Water Board and San Diego Water Board establish generally consistent requirements for MS4 discharges to meet the technology-based standard of reducing pollutants in the discharge to the maximum extent practicable (MEP), a related iterative process to ensure MS4 discharges meet receiving water quality standards, and non-storm water discharges to be effectively prohibited from entering the MS4. However due to the unique nature of watersheds and water quality issues in the San Diego Region and Santa Ana Region, MS4 permit requirements between the two Regional Water Boards may also vary to address region specific pollutant discharges and watershed conditions. The Cities of Laguna Woods, Laguna Hills, and Lake Forest report that management and implementation of municipal programs to comply with two different MS4 permits creates a significant administrative and financial burden that is not contributing to greater overall water quality improvements in either region.
7. **Regional Water Board Agreement.** In an effort to address the concerns of the Cities, the San Diego Water Board and the Santa Ana Water Board have entered into an agreement whereby the San Diego Water Board is designated to regulate Phase I MS4 discharges within the jurisdiction of the Cities of Laguna Woods and Laguna Hills and the Santa Ana Water Board is designated to regulate Phase I MS4 discharges within the jurisdiction of the City of Lake Forest. Both the Santa Ana Water Board and the San Diego Water Board Phase I MS4 permits for Orange County Copermittees, including Cities, require amendments to make the

designations effective. To avoid gaps or duplication in regulation for the Cities, the agreement, dated February 10, 2015, is effective on the later effective date of this Order or the Santa Ana Water Board's reissuance (Tentative Order No. R8-2015-0001). Under the terms of the agreement the City of Lake Forest will be required to retain and continue implementing the prohibition of over-irrigation discharges identified in Title 15, Chapter 15, Section 14.030 of the City Municipal Code for regulating storm water quality throughout its jurisdiction, which was established during the permit term of Order No. R9-2009-0002. The City of Lake Forest will also be required to actively participate in the development and implementation of the Aliso Creek Watershed Management Area Water Quality Improvement Plan required pursuant to the San Diego Water Board's Regional MS4 Permit, Order No. R9-2013-0001. Under the terms of the agreement, any Total Maximum Daily Load (TMDL) and associated MS4 permit requirements issued by the San Diego Water Board or the Santa Ana Water Board which include the Cities of Laguna Woods, Laguna Hills or Lake Forest as a responsible party, will be incorporated into the appropriate MS4 permit by reference. Enforcement of the applicable TMDL would remain with the Regional Water Board which has jurisdiction over the targeted impaired water body. Applicable TMDLs subject to the terms of the agreement include, but are not limited to, the Santa Ana Water Board's San Diego Creek/Newport Bay TMDL and the San Diego Water Board's Indicator Bacteria Project I Beaches and Creeks TMDL.

8. **Periodic Review of Regional Water Board Agreement.** The basis supporting the Cities of Laguna Woods, Laguna Hills, and Lake Forest requests to designate a specific Regional Water Board for regulatory oversight of MS4 discharges may change under future conditions and circumstances. Therefore the San Diego Water Board will periodically review the effectiveness of the agreement during each MS4 permit reissuance. Based on this periodic review the San Diego Water Board may terminate the agreement with the Santa Ana Water Board or otherwise modify the agreement subject to the approval of the Santa Ana Water Board.

WATER QUALITY CONTROL PLANS AND POLICIES

9. **Cause for Modification.** Federal NPDES regulations at 40 CFR 122.62(a)(3) provide that NPDES permits may be modified when the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Standard Permit Provision 1.f of Attachment B to Order No. R9-2013-0001 provides in relevant part that the Order may be modified for cause. Section II.H.4.d. of the Order provides that the Order may be reopened during its term for cause including when the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) is amended by the San Diego Water Board to incorporate a new TMDL, and the amendment is approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and the United State Environmental Protection Agency (USEPA). The amended changes to water quality control plans and policies set forth in the findings below represent changes to standards on which Order No. R9-2013-0001 was based.

- 10. Special Conditions for Areas of Special Biological Significance.** On March 20, 2012, in Resolution No. 2012-0012, the State Water Board adopted a General Exception to the Ocean Plan Areas of Special Biological Significance (ASBS) waste discharge prohibition for storm water and nonpoint source discharges, including Special Protections for Beneficial Uses. On June 19, 2012, in Resolution No. 2012-0031, the State Water Board amended the General Exception to require pollutant load reductions to be achieved over a six year term. The City of San Diego's municipal storm water discharges to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's municipal storm water discharges to the Heisler Park ASBS are subject to the terms and conditions of State Water Board General Exception, as amended.
- 11. Total Maximum Daily Loads (TMDLs).** On June 13 2012 the San Diego Water Board in Resolution No. R9-2012-0033 amended the Basin Plan to incorporate the Los Penasquitos Lagoon Sediment TMDL. This TMDL Basin Plan amendment was approved by the State Water Board on January 21, 2014, by the Office of Administrative Law (OAL) on July 14, 2014, and USEPA on October 30, 2014. The County of San Diego, City of San Diego, City of Del Mar, and the City of Poway are among the responsible parties collectively assigned a single wasteload allocation applicable to MS4 discharges under the terms and conditions of the TMDL.

BEACH WATER QUALITY MONITORING AND ASSESSMENT PROGRAM

- 12. Unified Approach Beach Water Quality Monitoring.** In November 2010, the State Water Board adopted Resolution No. 2010-0053, directing regional water boards to work with dischargers to modify beach water quality monitoring programs required by regional water board-issued permits in order to eliminate redundancies and incorporate beach water quality monitoring required by applicable statutes, where appropriate. Beginning in 2012, the San Diego Water Board reviewed the various beach water quality monitoring programs conducted in south Orange County and convened a stakeholder workgroup to develop a unified regional beach water quality monitoring and assessment program (Unified Program). The Unified Program is outlined in the San Diego Water Board report entitled "*Workgroup Recommendation for a Unified Beach Water Quality Monitoring and Assessment Program in South Orange County*," dated September 2014. The Unified Program is consistent with and will meet or exceed the minimum requirements for beach water quality monitoring and related public notification and reporting established by State law, including the California Ocean Plan. The Unified Program will help protect the health of swimmers, surfers, and others who use south Orange County beach waters for water contact recreational activities.

- 13. Monitoring Framework Consistency.** The Unified Program is consistent with and will help implement “*A Framework for Monitoring and Assessment in the San Diego Region*,” which emphasizes the need for question-driven, beneficial use-oriented monitoring and assessment. The primary purpose of the Unified Program will be to answer the question “Does beach water quality meet standards for the beneficial use of water contact recreation?”
- 14. Unified Program Implementation.** The San Diego Water Board Executive Officer has issued a written directive, pursuant to California Water Code sections 13225, 13267, and 13383, for the South Orange County Wastewater Authority (SOCWA) and the south Orange County Copermittees to implement the Unified Program, in cooperation with the Orange County Health Care Agency (OCHCA). After appropriate opportunity for public input, the Executive Officer may make revisions to the Unified Program, provided that the Unified Program, as revised, continues to be consistent with and meet the requirements of State law, including the California Ocean Plan, for beach water quality monitoring and related public notification and reporting. The Unified Program will supersede the existing routine, ongoing, beach water quality monitoring programs in south Orange County that are conducted in accordance with the existing requirements of the NPDES permits for discharges from SOCWA ocean outfalls and the south Orange County Copermittees’ MS4s. The requirement for the Orange County Copermittees to participate in “regional monitoring” of beach water quality replaces requirements to conduct “core monitoring” of beach water quality, as provided for in Appendix III of the 2012 California Ocean Plan.

ADMINISTRATIVE FINDINGS

- 15. Effect of this Order.** This Order amends Order No. R9-2013-0001 to:
- a. Enroll the County of Orange, the Orange County Flood Control District and the south Orange County Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano as Copermittees responsible for compliance with the terms and conditions of Order No. R9-2013-0001, as amended by this Order;
 - b. Designate the San Diego Water Board to regulate all Phase I MS4 discharges within the jurisdiction of the Cities of Laguna Woods and Laguna Hills and the Santa Ana Water Board to regulate all Phase I MS4 discharges within the jurisdiction of the City of Lake Forest, subject to the terms of the agreement between San Diego Water Board and the Santa Ana Water Board described in Finding 7 of this Order;

- c. Establish interim exceptions to land development requirements for those Priority Development Projects that discharge to engineered channels and large river reaches described in Finding 3 of this Order;
 - d. Incorporate the amended requirements of the State Water Board's General Exception to require that pollutant reductions be achieved within 6 years for storm water and nonpoint source discharges to ASBS;
 - e. Incorporate applicable requirements of the Los Peñasquitos Lagoon Sediment TMDL; *and*
 - f. Require the Orange County Copermittees to implement the "*Workgroup Recommendation for a Unified Beach Water Quality Monitoring and Assessment Program in South Orange County*," dated September 2014, made effective in the Monitoring and Reporting Program/Order issued pursuant to California Water Code sections 13225, 13267, and 13383 and subject to future revisions by the Executive Officer after appropriate public input.
16. **Effect of this Order.** Order No. R9-2013-0001 is not being reopened for any other purpose than the revisions contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all of the previous findings and directives of Order No. R9-2013-0001 shall remain in full force and effect.
17. **Future Consideration of Alternative Compliance Option.** San Diego, Orange County, and Riverside County Copermittees have asserted that the prohibitions and receiving water limitations in Provision A.1.a, A.1.c, and A.2 of Order No. R9-2013-0001 may result in many years of noncompliance because years of technical efforts may ultimately be required to achieve compliance with the receiving water limitations, especially for wet weather discharges. To address this issue, the San Diego Water Board plans to consider the incorporation of a well-defined, transparent, and finite alternative path to compliance in Order No. R9-2013-0001, as amended by Order No. R9-2015-0001, during the MS4 NPDES permit reissuance proceedings for the Riverside County Copermittees scheduled for fiscal year 2015-16. This alternative compliance option would allow the Copermittees that are willing to pursue significant receiving water quality improvements beyond the iterative process to be deemed in compliance with the receiving water limitations. An alternative compliance option of this type was previously considered by the San Diego Water Board during the adoption proceedings for Order No. R9-2013-0001.
18. **California Environmental Quality Act.** This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act [Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.] in accordance with California Water Code section 13389.
19. **Public Notice.** In accordance with State and federal laws and regulations, the San Diego Water Board has notified San Diego County, Orange County and Riverside


County Copermittees, and all known interested agencies and persons of its intent to adopt this Order and has provided them with an opportunity to submit their written comments and recommendations.

20. **Public Hearing.** The San Diego Water Board held a public hearing on February 11, 2015 and heard and considered all comments pertaining to the adoption of this Order.
21. **Notification.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED,

1. This Order amends the Regional MS4 Permit, Order No. R9-2013-0001 and the Fact Sheet (Attachment F of the Order) as described in the revised versions of Order No. R9-2013-0001 and Fact Sheet included as Attachments 1 and 2 to this Order. Added text to Order No. R9-2013-0001 and the Fact Sheet is displayed in blue-underline text and deleted text is displayed as ~~red-strikeout~~ text.
2. The amended version of Order No. 2013-0001 and Fact Sheet included as Attachments 1 and 2 to this Order shall become effective on April 1, 2015.
3. Amended Order No. R9-2013-0001 shall supersede Order No. R9-2009-0002 for the Orange County Copermittees except for enforcement purposes.
4. San Diego Water Board staff is directed to prepare and post a conformed copy of Order No. R9-2013-0001 and the Fact Sheet incorporating the revisions made by this Order.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on February 11, 2015.



David W. Gibson
Executive Officer

EXHIBIT B

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone (619) 516-1990 Fax (619) 516-1994
<http://www.waterboards.ca.gov/sandiego>

ORDER NO. R9-2015-0100

**AN ORDER AMENDING ORDER NO. R9-2013-0001, NPDES NO. CAS010266,
AS AMENDED BY ORDER NO. R9-2015-0001
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE
WATERSHEDS WITHIN THE SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

ENROLLMENT OF RIVERSIDE COUNTY COPERMITTEES

- 1. Enrollment Process.** On May 8, 2013, the San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS019266, *National Pollutant Discharge Elimination System Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region* (Order No. R9-2013-0001, or Regional MS4 Permit). Provision F.5 of that Order (as amended by Order No. R9-2015-0001) outlines a process to designate (enroll) the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees under Order No. R9-2013-0001, responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Provision F.5 provides that prior to such enrollment, the San Diego Water Board must first review and consider a Report of Waste Discharge (ROWD) submitted by the Riverside County Copermittees under their current MS4 Permit, Order No. R9-2010-0016, to determine whether the Copermittees should be enrolled under Order No. R9-2013-0001, and what changes to Order No. R9-2013-0001 proposed in the ROWD are appropriate.
- 2. Report of Waste Discharge.** By letter dated May 8, 2015, the Riverside County Copermittees jointly submitted a ROWD in application for the reissuance of waste discharge requirements, pursuant to the requirements of section K.2.c of Order No. R9-2010-0016. The San Diego Water Board reviewed the ROWD and determined it is complete.

3. **Riverside County Copermittees Enrollment.** After consideration of the Riverside County Copermittees' ROWD and changes needed to Order No. R9-2013-0001, the San Diego Water Board determined that the County of Riverside, the Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District should be enrolled as Copermittees under Order No. R9-2013-0001 and be responsible for compliance with the terms and the conditions of the Regional MS4 Permit. Enrolling the Riverside County Copermittees into Order No. R9-2013-0001 will provide regulatory consistency in the implementation of MS4 permit requirements throughout the San Diego Region, improve communication and coordination among Copermittees within watersheds crossing multiple jurisdictions, and maximize efficiency and economy of resources for the San Diego Water Board achieved through the redirection of staff permitting resources to better advance the storm water program. Enrollment of the Cities of Murrieta and Wildomar is subject to a California Water Code section 13228 agreement as set forth in the findings of this Order.

DESIGNATION OF A REGIONAL WATER BOARD

4. **Regional Water Board Designation.** The Cities of Menifee, Murrieta, and Wildomar are located partially within the jurisdictions of both the California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board) and the San Diego Water Board. California Water Code section 13228 provides a way to streamline the regulation of entities whose jurisdictions straddle the border of two or more Regional Water Boards.

As allowed by California Water Code section 13228, during the proceedings for Order No. R9-2010-0016, the Fourth Term Riverside County MS4 Permit, written requests for designation of a single Regional Water Board to regulate matters pertaining to Phase I MS4 discharges were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by letter dated July 20, 2010, the City of Wildomar by letter dated July 21, 2010, and the City of Menifee by letter dated July 22, 2010. The Cities of Murrieta and Wildomar requested designation of the San Diego Water Board, and the City of Menifee requested designation of the Santa Ana Water Board.

As authorized by California Water Code section 13228 and pursuant to written agreements dated September 28, 2010 between the San Diego Water Board and the Santa Ana Water Board, the San Diego Water Board is designated under Order No. R9-2010-0016 to regulate Phase I MS4s within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Water Board's geographic jurisdiction. The Santa Ana Water Board is designated under Order No. R8-2010-0033 to regulate the Phase I MS4s within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Water Board's geographic jurisdiction. Written requests to continue these Regional Water Board designations were submitted to the San Diego Water Board and Santa Ana Water Board by the City of Murrieta by

letter dated June 22, 2015, the City of Wildomar by letter dated June 23, 2015, and the City of Menifee by letter dated June 25, 2015.

5. **Factual Considerations.** The Santa Ana Water Board and San Diego Water Board establish generally consistent requirements for MS4 discharges to meet the technology-based standard of reducing pollutants in the discharge to the maximum extent practicable (MEP), a related iterative process to ensure MS4 discharges meet receiving water quality standards, and for non-storm water discharges to be effectively prohibited from entering the MS4. However due to the unique nature of watersheds and water quality issues in the San Diego Region and Santa Ana Region, MS4 permit requirements between the two Regional Water Boards may also vary to address region specific pollutant discharges and watershed conditions. The Cities of Menifee, Murrieta, and Wildomar report that management and implementation of municipal programs to comply with two different MS4 permits creates a significant administrative and financial burden that is not contributing to greater overall water quality improvements in either region.
6. **Regional Water Board Agreement.** The San Diego Water Board and the Santa Ana Water Board entered into an agreement dated October 26, 2015 to:
 - a. Continue designation of the San Diego Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the Cities of Murrieta and Wildomar, including those areas of each City located within the Santa Ana Region upon the effective date of Order R9-2015-0100, *and*
 - b. Continue designation of the San Ana Water Board to regulate Phase I MS4 discharges within the entire jurisdictional area of the City of Menifee, including those areas of the City located within the San Diego Region, under Order No. R8-2010-0033 (NPDES No. CAS618030) as it may be amended or reissued upon the effective date of Order No. R9-2015-0100.
7. **Periodic Review of Regional Water Board Agreement.** The basis supporting the Cities of Menifee, Murrieta, and Wildomar requests to designate a specific Regional Water Board for regulatory oversight of MS4 discharges may change under future conditions and circumstances. Therefore the San Diego Water Board and Santa Ana Water Board will periodically review the effectiveness of the agreement during each MS4 permit reissuance. Based on this periodic review the San Diego Water Board may terminate the agreement with the Santa Ana Water Board or otherwise modify the agreement subject to the approval of the Santa Ana Water Board.

AMENDMENTS TO ORDER NO. R9-2013-0001

8. **Effect of this Order.** Order No. R9-2013-0001 is not being reopened for any other purpose than the amendments contained herein. Except as contradicted or superseded by the findings and directives set forth in this Order, all of the previous findings and directives of Order No. R9-2013-0001 (as amended by Order No. R9-2015-0001) shall remain in full force and effect.

9. **Enroll Riverside County Copermittees.** This Order amends Order No. R9-2013-0001 to incorporate the County of Riverside, the Riverside County Cities of Murrieta, Temecula, and Wildomar, and the Riverside County Flood Control and Water Conservation District as Copermittees responsible for compliance with the terms and the conditions of Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 and this Order.
10. **Alternative Compliance Pathway for Prohibitions and Limitations.** The San Diego County, Orange County, and Riverside County Copermittees have asserted that the prohibitions and limitations under Provision A of Order No. R9-2013-0001 may result in many years of noncompliance because years of technical efforts may ultimately be required to achieve compliance with the prohibitions and limitations, especially for wet weather discharges.

The San Diego Water Board considered the incorporation of an alternative pathway to compliance during the adoption proceedings for Order No. R9-2013-0001 in May 2013, but chose not to include it at that time. During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees and as reflected in Order No. R9-2015-0001, the San Diego Water Board committed to considering the incorporation of a well-defined, transparent, and finite alternative pathway to compliance in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermittees.

On June 16, 2015, the State Water Resources Control Board (State Water Board) adopted Order WQ 2015-0075, *In the Matter of Review of Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4*, which directs all Regional Water Boards to consider a watershed-based planning and implementation approach to compliance with receiving water limitations when issuing Phase I MS4 permits going forward. Consistent with the principles set forth in Order WQ 2015-0075, this Order amends Order No. R9-2013-0001 to incorporate an alternative compliance pathway that allows a Copermittee to utilize the watershed-based Water Quality Improvement Plan to be deemed in compliance with the requirements of Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b which are included in the prohibitions and limitations under Provision A of the Regional MS4 Permit.

This Order amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Antidegradation Policy, to provide an expanded analysis consistent with the principles set forth in State Water Board Order WQ 2015-0075, demonstrating why the incorporation of an alternative compliance pathway for prohibitions and limitations in Order No. R9-2013-0001 complies with federal and state antidegradation policies. This Order also amends the Fact Sheet of Order No. R9-2013-0001, Attachment F, section VII.E, Anti-Backsliding Requirements, with an expanded analysis consistent with State Water Board Order WQ 2015-0075 demonstrating that the anti-backsliding requirements of the Clean Water Act and the

federal regulations do not foreclose the incorporation of an alternative compliance pathway into Order No. R9-2013-0001.

- 11. Update to Non-Storm Water Discharges.** Since Order No. R9-2013-0001 was adopted, the State Water Board adopted Order 2014-0194-DWQ (*Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water System Discharges to Waters of the United States*) and the San Diego Water Board adopted Order No. R9-2015-0013 (*General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region*). These orders are NPDES permits regulating non-storm water discharges that may be discharged to the Copermittees' MS4s. This Order amends Order No. R9-2013-0001 to incorporate State Water Board Order 2014-0194-DWQ and San Diego Water Board Order No. R9-2015-0013 into the requirements for addressing non-storm water discharges.
- 12. Priority Development Project Definition Consistency.** The Fact Sheet of the Regional MS4 Permit as modified by Order No. R9-2015-0001, describes on Page F-98 the San Diego Water Board's intent that the Priority Development Project categories in Provision E.3.b.(1) be consistent with the categories in the Riverside County MS4 Permit (Order No. R9-2010-0016) and the Orange County MS4 Permit (Order No. R9-2009-0002). The San Diego Water Board's intention reflected in the Fact Sheet was not explicitly incorporated in some of the Priority Development Project categories described in Provision E.3.b.(1) and this Order amends the provision with clarifying language to better describe these categories consistent with the Fact Sheet. The Order also has been amended to include the requirements for updating the BMP Design Manual as a result of the corrections to the Priority Development Project categories in Provision E.3.b.(1).
- 13. Definition of Prior Lawful Approval.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees, the land development community asserted that the lack of a definition for the term "prior lawful approval" in the Regional MS4 Permit had created significant uncertainty for the San Diego County Copermittees, the land development community, and the general public about when the development planning requirements are applicable. The San Diego Water Board committed to considering the incorporation of additional guidance for prior lawful approval in Order No. R9-2013-0001 during the MS4 permit reissuance proceedings for the Riverside County Copermittees. This Order amends Order No. R9-2013-0001 to incorporate additional clarification describing when the structural BMP performance requirements are applicable to Priority Development Projects.
- 14. Los Peñasquitos Lagoon Sediment TMDL.** During the proceedings for Order No. R9-2015-0001, amending Order No. R9-2013-0001 to extend coverage of the Regional MS4 Permit to the Orange County Copermittees, the San Diego County Copermittees responsible for implementing the TMDLs for Sediment in Los Peñasquitos Lagoon requested several minor revisions to make the TMDL requirements consistent with the Basin Plan amendment adopted by the San Diego

Water Board. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Los Peñasquitos Lagoon Sediment TMDL to make the requirements consistent with the adopted Basin Plan amendment.

15. Compliance Dates for TMDLs Beaches and Creeks Indicator Bacteria TMDLs.

A review of the interim and final compliance dates for the Revised TMDLs for Indicator Bacteria, Project I – Beaches and Creeks (Beaches and Creeks Indicator Bacteria TMDLs) in the San Diego Region in Attachment E to the Order revealed an inconsistency with the adopted Basin Plan amendment. This Order amends Attachment E to Order No. R9-2013-0001 to incorporate minor revisions to the Beaches and Creeks Indicator Bacteria TMDLs to make the requirements consistent with the adopted Basin Plan amendment.

16. Removal of Application for Early Coverage Provisions. Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 included several provisions that allowed the Riverside County Copermittees to apply for early coverage under the Regional MS4 Permit prior to the expiration of Order No. R9-2010-0016. These provisions are no longer necessary once the Riverside County Copermittees are covered by the requirements of the Regional MS4 Permit with the adoption of this Order. This Order amends Order No. R9-2013-0001 to remove provisions related to applying for early coverage under the Regional MS4 Permit.

ADMINISTRATIVE FINDINGS

- 17. California Environmental Quality Act.** This action is exempt from the requirement of preparation of environmental documents under the California Environmental Quality Act [Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.] in accordance with California Water Code section 13389.
- 18. Public Notice.** In accordance with State and federal laws and regulations, the San Diego Water Board has notified San Diego County, Orange County and Riverside County Copermittees, and all known interested agencies and persons of its intent to adopt this Order and has provided them with an opportunity to submit their written comments.
- 19. Public Hearing.** The San Diego Water Board held a public hearing on November 18, 2015 and heard and considered all comments pertaining to the adoption of this Order.
- 20. Notification.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the adoption date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED,

1. This Order amends Order No. R9-2013-0001 and Fact Sheet as amended by Order No. R9-2015-0001 (Regional MS4 Permit and Fact Sheet). The revisions to the Regional MS4 Permit and Fact Sheet are shown Attachments 1 and 2 to this Order. Added text to the Regional MS4 Permit and Fact Sheet is displayed in blue-underline text and deleted text is displayed as red-strikeout text.
2. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall become effective on January 7, 2016.
3. The amended Regional MS4 Permit and Fact Sheet included as Attachments 1 and 2 to this Order shall supersede Order No. R9-2010-0016 for the Riverside County Copermitees except for enforcement purposes.
4. San Diego Water Board staff is directed to prepare and post a conformed copy of the Regional MS4 Permit and Fact Sheet, as amended by this Order, incorporating the revisions made by this Order.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on November 18, 2015.



David W. Gibson
Executive Officer

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 September 18, 2017, I served the:

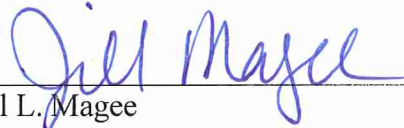
- **Claimants' Response to the Request for Clarification of Pleading and Evidence of the Date of First Incurring Costs filed September 18, 2017**

*San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001,
15-TC-02*

County of Orange, Orange County Flood Control District, and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano, 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 September 18, 2017 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/11/17

Claim Number: 15-TC-02

Matter: San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001

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City of Dana Point
City of Laguna Beach
City of Laguna Hills
City of Laguna Niguel
City of Lake Forest
City of Mission Viejo
City of Rancho Santa Margarita
City of San Clemente
City of San Juan Capistrano
County of Orange
Orange County Flood Control District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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