



January 26, 2024

Mr. Howard Gest  
Burhenn & Gest, LLP  
12401 Wilshire Blvd, Suite 200  
Los Angeles, CA 90025

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Decision and Parameters and Guidelines**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.;  
K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2,  
Adopted December 16, 2009, 10-TC-11*

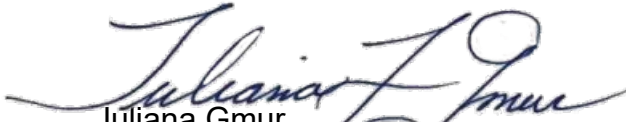
*Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo,  
San Juan Capistrano, the County of Orange, and the Orange County Flood  
Control District, Claimants*

Dear Mr. Gest and Ms. Sidarous:

On January 26, 2024 the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-captioned matter.

Please keep the Decision and Parameters and Guidelines together as one document, as it together constitutes the entire decision of the Commission and the "Decision" portion informs the interpretation of the "Parameters and Guidelines." It is hoped that by providing the entire Decision and Parameters and Guidelines with the claiming instructions that claimants will be better equipped to correctly claim reimbursement, resulting in fewer reductions upon audit and fewer incorrect reduction claims.

Sincerely,



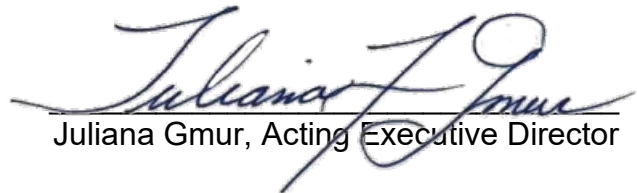
Juliana Gmur  
Acting Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p><b>IN RE PARAMETERS AND GUIDELINES</b></p> <p>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009</p> <p>Period of reimbursement from December 9, 2009, through December 31, 2017</p>	<p>Case No.: 10-TC-11</p> <p><i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted January 26, 2024)</i></p> <p><i>(Served January 26, 2024)</i></p>
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**PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on January 26, 2024

  
Juliana Gmur, Acting Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p><b>IN RE PARAMETERS AND GUIDELINES</b></p> <p>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009</p> <p>Period of reimbursement from December 9, 2009, through December 31, 2017</p>	<p>Case No.: 10-TC-11</p> <p><i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted January 26, 2024)</i></p> <p><i>(Served January 26, 2024)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on January 26, 2024. Howard Gest appeared for the claimants. Chris Hill and Kaily Yap appeared for the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Decision and Parameters and Guidelines by a vote of 5 to 0, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Juan Fernandez, Representative of the State Treasurer, Vice Chairperson	Yes
Jennifer Holman, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes

Member	Vote
Renee Nash, School District Board Member	Absent
David Oppenheim, Representative of the State Controller	Yes

## I. Summary of the Mandate

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R9-2009-0002 issued by the San Diego Regional Water Quality Control Board on December 16, 2009.

On October 27, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from December 16, 2009, through December 31, 2017. The Commission partially approved the Test Claim for the following reimbursable activities only:

1. Develop a monitoring plan to sample a representative percent of the major outfalls within each hydrologic subarea to determine SAL compliance (*one-time* activity as required by section D.2.).
2. Update the map of the entire MS4 and the corresponding drainage areas within each copermitttees' jurisdiction *in GIS format* and submit GIS layers within 365 days of adoption of the permit to the Regional Board (*one-time only*, as required by section F.4.b.)
3. JRMP Effectiveness Assessment and Reporting, and Work Plan to Address High Priority Water Quality Problems (Sections J.1., J.3., and J.4.)
  - a. Establish annual assessment measures for reducing discharges into each downstream 303(d) listed water body and downstream environmentally sensitive areas that conform to the six outcome levels developed by CASQA, and which target water quality outcomes and the results of municipal enforcement activities, and to annually assess those measures. (Section J.1.a.)
  - b. Include the following effectiveness assessment information within each annual report, beginning with the 2011 annual report:
    - A description and results of the annual assessment measures or methods for reducing discharges of stormwater pollutants from the MS4 into each 303(d) listed waterbody. (Section J.3.a.1.)
    - A description and results of the annual assessment measures or methods for managing discharges of pollutants from the MS4 into each downstream environmentally sensitive area. (Section J.3.a.2.)

- A description of the steps that will be taken to improve the copermitees' ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6, and include a time schedule for when improvement will occur. (Section J.3.a.8.)
- c. Develop a work plan to address high priority water quality problems in an iterative manner over the life of the permit. The plan is required to be submitted to the Regional Board within 365 days of the adoption of the test claim permit, and shall be annually updated and included in the annual JRMP report. The work plan shall include the following information (Section J.4):
- The problems and priorities identified during the assessment.
  - A list of priority pollutants and known or suspected sources.
  - A brief description of the strategy employed to reduce, eliminate or mitigate the negative impacts.
  - A description and schedule for new or modified BMPs. The schedule is to include dates for significant milestones.
  - A description of how the selected activities will address an identified high priority problem, including a description of the expected effectiveness and benefits of the new or modified BMPs.
  - A description of how efficacy results will be used to modify priorities and implementation.
  - A review of past activities implemented, progress in meeting water quality standards, and planned program adjustments. (Section J.4.)
4. Annual JRMP Reports (Section F.1.d.7.i.; K.3.a.3.c., and Attachment D., section D-2., of the test claim permit)
- a. Except for the permittee's own municipal priority development projects, notify the Regional Board in the annual report of all other priority development projects choosing to participate in the LID waiver program. The annual report must include the following information: name of the developer of the participating priority development project; site location; reason for LID waiver including technical feasibility analysis; description of BMPs implemented; total amount deposited, if any, into the stormwater mitigation fund; water quality improvement projects proposed to be funded; and timeframe for implementation of water quality improvement projects. (Section F.1.d.7.i.)
- b. Gather and report the following new information in the annual report checklist:
- Construction - Except for the permittee's own municipal construction, gather and report number of active sites, number of inactive sites, and number of violations for all other construction.

- New development - Except for the permittee's own municipal new development, gather and report the number of development plan reviews, number of grading permits issued, and number of projects exempted from interim/final hydromodification requirements for all other new development.
- Post construction development – Except for the permittee's own municipal priority development projects, gather and report the number of priority development projects; and number of SUSMP [standard urban storm water mitigation plans] required post construction BMP violations.
- MS4 maintenance –amount of waste removed, and total miles of MS4 inspected.
- Municipal/commercial/industrial – Except for the permittee's own municipal facilities, gather and report the number of facilities and number of violations. (Section K.3.a.3.c., and Attachment D., section D-2., of the test claim permit.)

5. Annually notice and conduct public meetings to review and update the watershed workplan. (Sections G.6. and K.1.b.4.n.)

Reimbursement for these activities is denied beginning January 1, 2018, because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d) and, thus, there are no costs mandated by the state.

In addition, reimbursement for these mandated activities from any source, including but not limited to, state and federal funds, any service charge, fees, or assessments to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes including Measure M2 funds received from the Orange County Local Transportation Authority, shall be identified and deducted from any claim submitted for reimbursement.

All other sections, activities, and costs pled in the Test Claim were denied.<sup>1</sup>

## **II. Procedural History**

On October 27, 2023, the Commission adopted the Test Claim Decision.<sup>2</sup> On October 31, 2023, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>3</sup> On November 21, 2023, the State Controller (Controller) filed comments on the Draft Expedited Parameters and Guidelines, stating that no changes are

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<sup>1</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, pages 378-381. All citations are to PDF page numbers.

<sup>2</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023.

<sup>3</sup> Exhibit B, Draft Expedited Parameters and Guidelines, issued October 31, 2023.

recommended.<sup>4</sup> Neither the claimants nor the Department of Finance (Finance) filed comments on the Draft Expedited Parameters and Guidelines. Pursuant to section 1183.9(d) of the Commission's regulations,<sup>5</sup> Commission staff did not issue a Draft Proposed Decision and Parameters and Guidelines because no substantive comments were filed on the Draft Expedited Parameters and Guidelines.

### **III. Positions of the Parties**

#### **A. State Controller**

The Controller filed comments on the Draft Expedited Parameters and Guidelines stating that no changes are recommended.<sup>6</sup>

### **IV. Discussion**

The Parameters and Guidelines contain the following information:

#### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

Only the following copermitees are required to comply with Order No. R9-2009-02 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

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

#### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 30, 2011, establishing eligibility for reimbursement for the 2009-2010 fiscal year. However, the test claim permit has a later effective date

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<sup>4</sup> Exhibit C, Controllers' Comments on the Draft Expedited Parameters and Guidelines, filed November 21, 2023, page 1.

<sup>5</sup> California Code of Regulations, title 2, section 1183.9(d) provides: "If no comments are filed on the draft expedited parameters and guidelines that raise substantive issues regarding any of the elements described in section 1183.7, a draft proposed decision in accordance with section 1183.13(a) of these regulations need not be prepared and the executive director may schedule the proposed decision and parameters and guidelines for adoption at the next regularly scheduled hearing in accordance with section 1183.13(d) of these regulations."

<sup>6</sup> Exhibit C, Controllers' Comments on the Draft Expedited Parameters and Guidelines, filed November 21, 2023, page 1.

and therefore the period of reimbursement for this program begins on the permit's effective date, December 19, 2009.<sup>7</sup> Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d).<sup>8</sup> Therefore, costs incurred are reimbursable on or after December 19, 2009, through December 31, 2017.

### **C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The Commission partially approved the Test Claim, authorizing reimbursement for the following mandated activities from December 19, 2009, through December 31, 2017:

#### **A. One Time Activities**

1. Develop a monitoring plan to sample a representative percent of the major outfalls within each hydrologic subarea to determine SAL compliance (Section D.2.).<sup>9</sup>
2. Update the map of the entire MS4 and the corresponding drainage areas within each copermittees' jurisdiction *in GIS format* and submit GIS layers within 365 days of adoption of the permit to the Regional Board (Section F.4.b).<sup>10</sup>

#### **B. Ongoing Activities**

1. JRMP Effectiveness Assessment and Reporting, and Work Plan to Address High Priority Water Quality Problems (Sections J.1., J.3., and J.4.)<sup>11</sup>
  - a. Establish annual assessment measures for reducing discharges into each downstream 303(d) listed water body and downstream environmentally sensitive areas that conform to the six outcome levels developed by CASQA, and which target water quality outcomes and the results of

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<sup>7</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, pages 59-60.

<sup>8</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 381.

<sup>9</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2141 (Order No. R9-2009-0002, section D.2.)).

<sup>10</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2186 (Order No. R9-2009-0002, section F.4.b.)).

<sup>11</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, pages 378-379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2195-2198 (Order No. R9-2009-0002, sections J.1., J.3., and J.4.)).



municipal enforcement activities, and to annually assess those measures. (Section J.1.a.)

- b. Include the following effectiveness assessment information within each annual report, beginning with the 2011 annual report:
  - A description and results of the annual assessment measures or methods for reducing discharges of stormwater pollutants from the MS4 into each 303(d) listed waterbody. (Section J.3.a.1.)
  - A description and results of the annual assessment measures or methods for managing discharges of pollutants from the MS4 into each downstream environmentally sensitive area. (Section J.3.a.2.)
  - A description of the steps that will be taken to improve the copermittees' ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6, and include a time schedule for when improvement will occur. (Section J.3.a.8.)
2. Develop a work plan to address high priority water quality problems in an iterative manner over the life of the permit. The plan is required to be submitted to the Regional Board within 365 days of the adoption of the test claim permit, and shall be annually updated and included in the annual JRMP report. The work plan shall include the following information (Section J.4.):<sup>12</sup>
  - The problems and priorities identified during the assessment.
  - A list of priority pollutants and known or suspected sources.
  - A brief description of the strategy employed to reduce, eliminate or mitigate the negative impacts.
  - A description and schedule for new or modified BMPs. The schedule is to include dates for significant milestones.
  - A description of how the selected activities will address an identified high priority problem, including a description of the expected effectiveness and benefits of the new or modified BMPs.
  - A description of how efficacy results will be used to modify priorities and implementation.
  - A review of past activities implemented, progress in meeting water quality standards, and planned program adjustments. (Section J.4.)

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<sup>12</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2198 (Order No. R9-2009-0002, section J.4.)).

3. Annual JRMP Reports (Section F.1.d.7.i.; K.3.a.3.c., and Attachment D., section D-2., of the test claim permit)<sup>13</sup>
  - a. Except for the permittee's own municipal priority development projects, notify the Regional Board in the annual report of all other priority development projects choosing to participate in the LID waiver program. The annual report must include the following information: name of the developer of the participating priority development project; site location; reason for LID waiver including technical feasibility analysis; description of BMPs implemented; total amount deposited, if any, into the stormwater mitigation fund; water quality improvement projects proposed to be funded; and timeframe for implementation of water quality improvement projects. (Section F.1.d.7.i.)
  - b. Gather and report the following new information in the annual report checklist:
    - Construction - Except for the permittee's own municipal construction, gather and report number of active sites, number of inactive sites, and number of violations for all other construction.
    - New development - Except for the permittee's own municipal new development, gather and report the number of development plan reviews, number of grading permits issued, and number of projects exempted from interim/final hydromodification requirements for all other new development.
    - Post construction development – Except for the permittee's own municipal priority development projects, gather and report the number of priority development projects; and number of SUSMP [standard urban storm water mitigation plans] required post construction BMP violations.
    - MS4 maintenance –amount of waste removed, and total miles of MS4 inspected.
    - Municipal/commercial/industrial – Except for the permittee's own municipal facilities, gather and report the number of facilities and number of violations. (Section K.3.a.3.c., and Attachment D., section D-2., of the test claim permit.)

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<sup>13</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2155, 2202, 2235 (Order No. R9-2009-0002, section F.1.d.7.i., section K.3.a.3.c., and Attachment D., section D-2.)).

4. Annually notice and conduct public meetings to review and update the watershed workplan. (Sections G.6. and K.1.b.4.n.)<sup>14</sup>

**D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

**E. Offsetting Revenues and Reimbursements (Section VII. of the Parameters and Guidelines)**

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant's proceeds of taxes) required to be identified and deducted from the costs claimed, including Measure M2 funds received from the Orange County Local Transportation Authority, which shall be identified and deducted from any claim submitted for reimbursement.

Section VII. also notes that the City of San Clemente adopted a stormwater fee to cover the costs of the activities required by the permit, effective February 7, 2014, through June 30, 2020, and thus, the City of San Clemente has no costs mandated by the state pursuant to Government Code section 17556(d) beginning February 7, 2014.<sup>15</sup>

**F. Remaining Sections of the Parameters and Guidelines**

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**V. Conclusion**

Based on the foregoing analysis, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

**PARAMETERS AND GUIDELINES<sup>16</sup>**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.;  
K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2,  
Adopted December 16, 2009*

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<sup>14</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2190, 2200 (Order No. R9-2009-0002, sections G.6. and K.1.b.4.n.)).

<sup>15</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 331.

<sup>16</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

Period of reimbursement from December 16, 2009, through December 31, 2017

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## I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address state-mandated activities arising from NPDES Order No. R9-2009-0002 issued by the San Diego Regional Water Quality Control Board on December 16, 2009.

On October 27, 2023, the Commission on State Mandates (Commission) adopted its Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 from December 16, 2009, through December 31, 2017. The Commission partially approved the Test Claim for the following reimbursable activities only:

1. Develop a monitoring plan to sample a representative percent of the major outfalls within each hydrologic subarea to determine SAL compliance (*one-time* activity as required by section D.2.).<sup>17</sup>
2. Update the map of the entire MS4 and the corresponding drainage areas within each copermitttees' jurisdiction *in GIS format* and submit GIS layers within 365 days of adoption of the permit to the Regional Board (*one-time only*, as required by section F.4.b.).<sup>18</sup>
3. JRMP Effectiveness Assessment and Reporting, and Work Plan to Address High Priority Water Quality Problems (Sections J.1., J.3., and J.4.)<sup>19</sup>
  - a. Establish annual assessment measures for reducing discharges into each downstream 303(d) listed water body and downstream environmentally sensitive areas that conform to the six outcome levels developed by CASQA, and which target water quality outcomes and the results of municipal enforcement activities, and to annually assess those measures. (Section J.1.a.)

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<sup>17</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2141 (Order No. R9-2009-0002, section D.2.)).

<sup>18</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2186 (Order No. R9-2009-0002, section F.4.b.)).

<sup>19</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, pages 378-379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2195-2198 (Order No. R9-2009-0002, sections J.1., J.3., and J.4.)).

- b. Include the following effectiveness assessment information within each annual report, beginning with the 2011 annual report:
- A description and results of the annual assessment measures or methods for reducing discharges of stormwater pollutants from the MS4 into each 303(d) listed waterbody. (Section J.3.a.1.)
  - A description and results of the annual assessment measures or methods for managing discharges of pollutants from the MS4 into each downstream environmentally sensitive area. (Section J.3.a.2.)
  - A description of the steps that will be taken to improve the copermitttees' ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6, and include a time schedule for when improvement will occur. (Section J.3.a.8.)
- c. Develop a work plan to address high priority water quality problems in an iterative manner over the life of the permit. The plan is required to be submitted to the Regional Board within 365 days of the adoption of the test claim permit, and shall be annually updated and included in the annual JRMP report. The work plan shall include the following information (Section J.4.):<sup>20</sup>
- The problems and priorities identified during the assessment.
  - A list of priority pollutants and known or suspected sources.
  - A brief description of the strategy employed to reduce, eliminate or mitigate the negative impacts.
  - A description and schedule for new or modified BMPs. The schedule is to include dates for significant milestones.
  - A description of how the selected activities will address an identified high priority problem, including a description of the expected effectiveness and benefits of the new or modified BMPs.
  - A description of how efficacy results will be used to modify priorities and implementation.
  - A review of past activities implemented, progress in meeting water quality standards, and planned program adjustments. (Section J.4.)

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<sup>20</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2198 (Order No. R9-2009-0002, section J.4.)).

4. Annual JRMP Reports (Section F.1.d.7.i.; K.3.a.3.c., and Attachment D., section D-2., of the test claim permit)<sup>21</sup>
  - a. Except for the permittee's own municipal priority development projects, notify the Regional Board in the annual report of all other priority development projects choosing to participate in the LID waiver program. The annual report must include the following information: name of the developer of the participating priority development project; site location; reason for LID waiver including technical feasibility analysis; description of BMPs implemented; total amount deposited, if any, into the stormwater mitigation fund; water quality improvement projects proposed to be funded; and timeframe for implementation of water quality improvement projects. (Section F.1.d.7.i.)
  - b. Gather and report the following new information in the annual report checklist:
    - Construction - Except for the permittee's own municipal construction, gather and report number of active sites, number of inactive sites, and number of violations for all other construction.
    - New development - Except for the permittee's own municipal new development, gather and report the number of development plan reviews, number of grading permits issued, and number of projects exempted from interim/final hydromodification requirements for all other new development.
    - Post construction development – Except for the permittee's own municipal priority development projects, gather and report the number of priority development projects; and number of SUSMP [standard urban storm water mitigation plans] required post construction BMP violations.
    - MS4 maintenance –amount of waste removed, and total miles of MS4 inspected.
    - Municipal/commercial/industrial – Except for the permittee's own municipal facilities, gather and report the number of facilities and number of violations. (Section K.3.a.3.c., and Attachment D., section D-2., of the test claim permit.)

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<sup>21</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2155, 2202, 2235 (Order No. R9-2009-0002, section F.1.d.7.i., section K.3.a.3.c., and Attachment D., section D-2.)).

5. Annually notice and conduct public meetings to review and update the watershed workplan. (Sections G.6. and K.1.b.4.n.)<sup>22</sup>

Reimbursement for these activities is denied beginning January 1, 2018, because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d) and, thus, there are no costs mandated by the state.

In addition, reimbursement for these mandated activities from any source, including but not limited to, state and federal funds, any service charge, fees, or assessments to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes including Measure M2 funds received from the Orange County Local Transportation Authority, shall be identified and deducted from any claim submitted for reimbursement.

All other sections, activities, and costs pled in the Test Claim were denied.

## **II. ELIGIBLE CLAIMANTS**

The following permittees are required to comply with Order No. R9-2009-0002 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

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

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 30, 2011, establishing eligibility for reimbursement for the 2009-2010 fiscal year. However, the test claim permit has a later effective date and therefore the period of reimbursement for this program begins on the permit's effective date, December 19, 2009. Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, costs incurred are reimbursable on or after December 19, 2009, through December 31, 2017.

Reimbursement for state-mandated costs may be claimed as follows:

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<sup>22</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2190, 2200 (Order No. R9-2009-0002, sections G.6. and K.1.b.4.n.)).

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.



For each eligible claimant that incurs increased costs, the following activities are reimbursable:

### **C. One Time Activities**

1. Develop a monitoring plan to sample a representative percent of the major outfalls within each hydrologic subarea to determine SAL compliance (Section D.2.).<sup>23</sup>
2. Update the map of the entire MS4 and the corresponding drainage areas within each copermittees' jurisdiction *in GIS format* and submit GIS layers within 365 days of adoption of the permit to the Regional Board (Section F.4.b).<sup>24</sup>

### **D. Ongoing Activities**

1. JRMP Effectiveness Assessment and Reporting, and Work Plan to Address High Priority Water Quality Problems (Sections J.1., J.3., and J.4.)<sup>25</sup>
  - a. Establish annual assessment measures for reducing discharges into each downstream 303(d) listed water body and downstream environmentally sensitive areas that conform to the six outcome levels developed by CASQA, and which target water quality outcomes and the results of municipal enforcement activities, and to annually assess those measures. (Section J.1.a.)
  - b. Include the following effectiveness assessment information within each annual report, beginning with the 2011 annual report:
    - A description and results of the annual assessment measures or methods for reducing discharges of stormwater pollutants from the MS4 into each 303(d) listed waterbody. (Section J.3.a.1.)
    - A description and results of the annual assessment measures or methods for managing discharges of pollutants from the MS4 into each downstream environmentally sensitive area. (Section J.3.a.2.)

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<sup>23</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2141 (Order No. R9-2009-0002, section D.2.)).

<sup>24</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 378 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2186 (Order No. R9-2009-0002, section F.4.b.)).

<sup>25</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, pages 378-379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2195-2198 (Order No. R9-2009-0002, sections J.1., J.3., and J.4.)).

- A description of the steps that will be taken to improve the copermitees' ability to assess program effectiveness using measurable targeted outcomes, assessment measures, assessment methods, and outcome levels 1-6, and include a time schedule for when improvement will occur. (Section J.3.a.8.)
2. Develop a work plan to address high priority water quality problems in an iterative manner over the life of the permit. The plan is required to be submitted to the Regional Board within 365 days of the adoption of the test claim permit, and shall be annually updated and included in the annual JRMP report. The work plan shall include the following information (Section J.4.):<sup>26</sup>
    - The problems and priorities identified during the assessment.
    - A list of priority pollutants and known or suspected sources.
    - A brief description of the strategy employed to reduce, eliminate or mitigate the negative impacts.
    - A description and schedule for new or modified BMPs. The schedule is to include dates for significant milestones.
    - A description of how the selected activities will address an identified high priority problem, including a description of the expected effectiveness and benefits of the new or modified BMPs.
    - A description of how efficacy results will be used to modify priorities and implementation.
    - A review of past activities implemented, progress in meeting water quality standards, and planned program adjustments. (Section J.4.)
  3. Annual JRMP Reports (Section F.1.d.7.i.; K.3.a.3.c., and Attachment D., section D-2., of the test claim permit)<sup>27</sup>
    - a. Except for the permittee's own municipal priority development projects, notify the Regional Board in the annual report of all other priority development projects choosing to participate in the LID waiver program. The annual report must include the following information: name of the developer of the participating priority development project; site location;

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<sup>26</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 379 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, page 2198 (Order No. R9-2009-0002, section J.4.)).

<sup>27</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2155, 2202, 2235 (Order No. R9-2009-0002, section F.1.d.7.i., section K.3.a.3.c., and Attachment D., section D-2.)).

reason for LID waiver including technical feasibility analysis; description of BMPs implemented; total amount deposited, if any, into the stormwater mitigation fund; water quality improvement projects proposed to be funded; and timeframe for implementation of water quality improvement projects. (Section F.1.d.7.i.)

- b. Gather and report the following new information in the annual report checklist:
  - Construction - Except for the permittee's own municipal construction, gather and report number of active sites, number of inactive sites, and number of violations for all other construction.
  - New development - Except for the permittee's own municipal new development, gather and report the number of development plan reviews, number of grading permits issued, and number of projects exempted from interim/final hydromodification requirements for all other new development.
  - Post construction development – Except for the permittee's own municipal priority development projects, gather and report the number of priority development projects; and number of SUSMP [standard urban storm water mitigation plans] required post construction BMP violations.
  - MS4 maintenance –amount of waste removed, and total miles of MS4 inspected.
  - Municipal/commercial/industrial – Except for the permittee's own municipal facilities, gather and report the number of facilities and number of violations. (Section K.3.a.3.c., and Attachment D., section D-2., of the test claim permit.)
4. Annually notice and conduct public meetings to review and update the watershed workplan. (Sections G.6. and K.1.b.4.n.)<sup>28</sup>

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

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<sup>28</sup> Exhibit A, Test Claim Decision, adopted October 27, 2023, page 380 (citing to Exhibit C, Water Boards' Comments on the Test Claim, filed October 21, 2016, pages 2190, 2200 (Order No. R9-2009-0002, sections G.6. and K.1.b.4.n.)).

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

**B. Indirect Cost Rates**

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using 10 percent of direct labor, excluding fringe

benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>29</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than

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<sup>29</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes including Measure M2 funds received from the Orange County Local Transportation Authority, shall be identified and deducted from any claim submitted for reimbursement.<sup>30</sup>

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming

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<sup>30</sup> The City of San Clemente adopted a stormwater fee to cover the costs of the activities required by the permit, effective February 7, 2014, through June 30, 2020, and thus, the City of San Clemente has no costs mandated by the state pursuant to Government Code section 17556(d) beginning February 7, 2014. (Exhibit A, Test Claim Decision, adopted October 27, 2023, page 341, citing to Exhibit K (12), City of San Clemente Municipal Code, title 13, chapter 13.34, sections 13.34.010-13.34.030, page 3.)

instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

## 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 January 26, 2024, I served the:

- **Current Mailing List dated January 19, 2024**
- **Decision and Parameters and Guidelines adopted January 26, 2024**

*California Regional Water Quality Control Board, San Diego Region,  
Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.;  
K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2,  
Adopted December 16, 2009, 10-TC-11*

Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo,  
San Juan Capistrano, the County of Orange, and the Orange County Flood  
Control District, 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 January 26, 2024 at Sacramento, California.



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Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/19/24

**Claim Number:** 10-TC-11

**Matter:** California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections B.2.; C.; D.; F.1.d.; F.1.d.7.i.; F.1.f.; F.1.h.; F.3.a.4.c.; F.3.d.; F.4.b.; F.4.d.; F.4.e.; G.6.; I.; J.; K.1.b.4.n.; and, Only as They Relate to the Reporting Checklist, Section K.3.a. and Attachment D, Adopted December 16, 2009

**Claimants:** City of Dana Point  
 City of Laguna Hills  
 City of Laguna Niguel  
 City of Lake Forest  
 City of Mission Viejo  
 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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