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May 17, 2017

Via Electronic Mail

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Los Angeles Region Water Permit – County of Ventura
Test Claim No. 11-TC-01

Dear Ms. Halsey:

In response to your letter of March 3, 2017, the County of Ventura and the Ventura County Watershed Protection District (the "claimants") hereby submit the following documents to cure Test Claim No. 11-TC-01:

- Commission on State Mandates Test Claim Forms for both claimants, authorized and signed by Auditor-Controller Jeffrey S. Burgh;
- Section 5 Written Narrative with explanation of test claim timeliness at pages 1-2, as well as detailed costs descriptions at pages 18-19, 22, 29, 32-33, 35, 39, and at Exhibit 1; and
- Section 6 Declarations of Jeff Pratt for the County, Glenn Shephard for the District, and Theresa Dunham for both claimants

As outlined in your letter, please substitute these documents for those included in the original filing on August 26, 2011. Should you have any questions about the foregoing, please do not hesitate to contact me at (916) 446-7979 or tdunham@somachlaw.com.

Sincerely,

Theresa A. Dunham

TAD/je

COMMISSION ON STATE MANDATES
TEST CLAIM AND TEST CLAIM AMENDMENT FORM
Authorized by Government Code sections 17553 and 17557(e)

GENERAL INSTRUCTIONS

- Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. "Within 12 months of incurring increased costs" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant. The statute of limitations above may be tolled if a joint request for a legislatively determined mandate is filed with the Legislature pursuant to Government Code section 17574.
- Complete sections 1 through 8, as indicated. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to Government Code section 17553 and Title 2, California Code of Regulations section 1183, the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft staff analysis is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired, (Gov, Code, § 17557(e); Cal. Code Regs., tit. 2, § 1183.)*
- Please submit the test claim filing by either of the following methods:
    1. **E-filing**. The claimant shall electronically file the completed form and any accompanying documents in PDF format to the e-filing system on the Commission's website (http://www.csm.ca.gov), consistent with the Commission's regulations (CCR, tit.2, § 1181.2). The claimant is responsible for maintaining the paper documents with original signature(s) for the duration of the test claim process, including any period of appeal. ***No additional copies are required when e-filing the request.***
    2. **By hard copy**. Original test claim submissions shall be unbound, double-sided, and without tabs. Mail, or hand-deliver, **one original and seven (7) copies** of your test claim submission to: Commission on State Mandates, 980 9th Street, Suite 300, Sacramento, CA 95814

Within 10 days of receipt of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a mandate.

You may download this form from our website at www.csm.ca.gov.

If you have questions, please contact us:

Website: www.csm.ca.gov
Telephone: (916) 323-3562
E-Mail: csminfo@csm.ca.gov

(continued on page 2)

Test claim filing requirements on statutes or executive orders that are subject of legislatively determined mandate.

A local agency or school district may file on the same statute or executive order as a legislatively determined mandate if one of the following applies:

A) The Legislature amends the reimbursement methodology and the local agency or school district rejects reimbursement.
B) The term of the legislatively determined mandate, as defined in 17573(e) has expired.
C) The term of the legislatively determined mandate, as defined in 17573(e) is amended and the local agency or school district rejects reimbursement under the new term.
D) The mandate is subject to Article XIII B, section 6(b) and the Legislature does both of the following:
    i. Fails to appropriate in the Budget Act funds to reimburse local agencies for the full payable amount that has not been previously paid based on the reimbursement methodology enacted by the Legislature.
    ii. Does not repeal or suspend the mandate pursuant to Section 17581.

A test claim filed pursuant to Government Code section 17574(c) shall be filed within six months of the date an action described in subparagraph (A), (B), (C), or (D) of paragraph (1) occurs.

1. TEST CLAIM TITLE

Ventura County Watershed Protection District & County of Ventura, Order No. R4-2010-0108

2. CLAIMANT INFORMATION

County of Ventura
Name of Local Agency or School District

Jeffrey S. Burgh
Claimant Contact

Auditor-Controller
Title

800 S. Victoria Avenue
Street Address

Ventura, CA 93009-1540
City, State, Zip

(805) 654-3151
Telephone Number

(805) 654-5081
Fax Number

jeff.burgh@ventura.org
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

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

Theresa A. Dunham, Esq.
Claimant Representative Name

Special Counsel to County of Ventura
Title

Somach Simmons & Dunn
Organization

500 Capitol Mall, Suite 1000
Street Address

Sacramento, CA 95814
City, State, Zip

(916) 446-7979
Telephone Number

(916) 446-8199
Fax Number

tdunham@somachlaw.com
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

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

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010, Effective 50 days thereafter (August 27, 2010) pursuant to NPDES Memorandum of Agreement between United States Environmental Protection Agency and California State Water Resources Control Board.

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

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

5. Written Narrative: pages 1 to 48.
6. Declarations: pages 49 to 108.
7. Documentation: pages 109 to 1094.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars ($1,000), and include all of the following elements for each statute or executive order alleged:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following funding sources available for this program:
- (i) Dedicated state funds
- (ii) Dedicated federal funds
- (iii) Other nonlocal agency funds
- (iv) The local agency's general purpose funds
- (v) Fee authority to offset costs

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

(H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

(A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;

(B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;

(C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);

(D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section17574(c).

(E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documention, " support the written narrative with copies of all of the following:

(A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or

(B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and

(C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and

(D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and

(E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

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

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

Jeffrey S. Burgh
Print or Type Name of Authorized Local Agency or School District Official

Auditor-Controller
Print or Type Title

Signature of Authorized Local Agency or School District Official

May 12, 2017
Date

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

COMMISSION ON STATE MANDATES
TEST CLAIM AND TEST CLAIM AMENDMENT FORM
Authorized by Government Code sections 17553 and 17557(e)

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Jeffrey S. Burgh
Claimant Contact

Auditor-Controller
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Theresa A. Dunham, Esq.
Claimant Representative Name

Special Counsel to Ventura County Watershed Protection District
Title

Somach Simmons & Dunn
Organization

500 Capitol Mall, Suite 1000
Street Address

Sacramento, CA 95814
City, State, Zip

(916) 446-7979
Telephone Number

(916) 446-8199
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tdunham@somachlaw.com
E-Mail Address

For CSM Use Only
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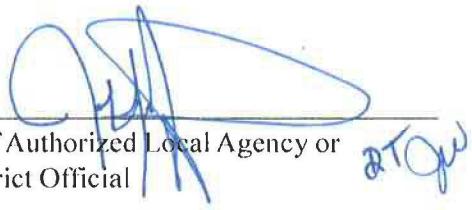
8. CLAIM CERTIFICATION

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

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

Jeffrey S. Burgh
Print or Type Name of Authorized Local Agency or School District Official

Auditor-Controller
Print or Type Title



Signature of Authorized Local Agency or School District Official

May 12, 2017
Date

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

SECTION 5 – WRITTEN NARRATIVE

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I. Introduction

On July 8, 2010, the California Regional Water Quality Control Board Los Angeles Region ("Los Angeles Water Board") adopted a new storm water permit, Order No. R4-2010-0108 (NPDES – "National Pollutant Discharge Elimination System"), NPDES No. CAS004002 (hereinafter the "2010 Permit" or "Permit"), regulating discharges from the municipal separate storm sewer systems ("MS4s") within the Ventura County Watershed Protection District, County of Ventura and the incorporated cities therein (collectively referred to as the "Permittees").[1,2] The 2010 Permit includes requirements that are more stringent and exceed the requirements of federal law, and that were not included in the prior 2000 Ventura County MS4 NPDES Permit, Order No. 00-108, NPDES No. CAS004002 ("2000 Permit"),[3] which was adopted by the Los Angeles Water Board in 2000. (Vol. 1, Tab 2.) Although the 2010 Permit is a renewal of the 2000 Permit, it contains a number of new unfunded state mandates for which the Ventura County Watershed Protection District (the "District") and the County of Ventura (the "County")[4] are entitled to reimbursement under Article XIII B section 6 of the California Constitution. Accordingly, the County of Ventura and the Ventura County Watershed Protection District (collectively "Claimants") jointly file this Test Claim.

Under the NPDES Memorandum of Agreement ("MOA") between the U.S. Environmental Protection Agency ("EPA") and the California State Water Resources

[1] Waste Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges From the Municipal Separate Storm Sewer System Within the Ventura County Watershed Protection District, County of Ventura, and the Incorporated Cities Therein ("Permit"), Volume 1 of section 7.

[2] The Permit in question was first issued on May 7, 2009. However, on March 10, 2010, the State Water Resources Control Board ("State Water Board") sent a letter to the Los Angeles Water Board requesting that the Los Angeles Water Board agree to a voluntary remand of Order No. R4-2009-0057 because of significant new information submitted to the State Water Board after the May 7, 2009 adoption of the Permit, and because of other procedural irregularities. (Vol. 3, Tab 6.) On March 11, 2010, the Los Angeles Water Board issued a letter stating that it intended to reissue the January 28, 2010 version of the Permit as a Tentative Permit, and that the Los Angeles Water Board would hold a hearing and reconsider the Permit in its entirety on July 8, 2010. (Vol. 3, Tab 7.) On May 5, 2010, the Los Angeles Water Board issued a draft Permit, Notice of Public Hearing for Reconsideration of the National Pollutant Discharge Elimination System Permit for the County of Ventura Watershed Protection District, the County of Ventura, and Incorporated Cities Therein. (Vol. 3, Tab 8.) Although the scope of the July 8, 2010 hearing was limited to comments and evidence on certain provisions of the Permit, the Los Angeles Water Board's action was to reconsider, and adopt the Permit in its entirety. (See Permit, Vol. 1, Tab 1 at pp. 2, 125.) Accordingly, the Permit was adopted on July 8, 2010. Under the NPDES Memorandum of Agreement Between the U.S. Environmental Protection Agency ("EPA") and the California State Water Resources Control Board ("MOA"), NPDES Permits shall become effective on the 50th day after the date of adoption, which is on or about August 27, 2010. (MOA, Vol. 3, Tab 5 at p. 22.)

[3] Order No. 00-108, NPDES No. CAS004002, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within Ventura County Flood Control District, County of Ventura, and the Cities of Ventura County ("2000 Permit"), Volume 1 of section 7.

[4] Ventura County is a general law County, and the Ventura County Watershed Protection District is a special district. Both are local agencies as defined by Government Code section 17518.

Control Board, NPDES Permits shall become effective on the 50th day after the date of adoption, which in this instance is on or about August 27, 2010. (MOA, Vol. 3, Tab 5 at p. 22.) At Section II.F. on page 22 of the MOA attached as Exhibit A to the Declaration of Theresa A. Dunham, the section titled "Final Permits" provides that permits become effective 50 days after adoption where the EPA has made no objection to the permit, if (a) there has been significant public comment, or (b) changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments). On May 5, 2010, the Los Angeles Water Board issued a draft Permit, Notice of Written Public Comment Period and Notice of Public Hearing. The EPA made no objection to the draft Permit as proposed by the Los Angeles Water Board on May 5, 2010, or prior to its adoption on July 8, 2010. There was, however, significant written public comment submitted on or before June 7, 2010, which was the closing date for submittal of written public comments (See http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura.shtml).

In all, 21 written comment letters were submitted to the Los Angeles Water Board on or before June 7, 2010, including from diverse interests such as the Natural Resources Defense Council and the Building Industry Association of Southern California. Further, the National Resources Defense Council and the Building Industry Association of Southern California both requested and received Party status in this quasi-judicial proceeding. After the close of the written comment period, and prior to the close of the Public Hearing on July 8, 2010, further revisions were made to the draft Permit that was issued on May 5, 2010. The additional revisions were not the result of requests made by EPA but were due to comments provided by other interested parties (See http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura.shtml).

Accordingly, the Permit adopted by the Los Angeles Water Board on July 8, 2010, was subject to significant written public comment and was revised as compared to the version that was sent to EPA on May 5, 2010. Thus, according to the terms of the binding MOA between EPA and the State Water Resources Control Board, the "effective date" of the Permit was "50 days after adoption." 50 days after the July 8, 2010 adoption date is August 27, 2010. This Test Claim has been timely submitted in that it has been submitted within one year of the effective date of the 2010 Permit.

This section of the Test Claim identifies the activities in the 2010 Permit that are unfunded mandates. The new unfunded mandates are described in more detail below, but generally they are as follows:

1. New public outreach requirements including: distribution of storm water pollution prevention materials to auto parts stores, home improvement stores, and others; development of an ethnic communities strategy; distribution of school district materials to

50 percent of all K-12 students every two years or development of a youth outreach plan; creation and implementation of a behavioral change assessment; conducting pollutant-specific outreach; conducting corporate outreach; and implementing a business assistance program.

2. New requirements to develop an electronic reporting program and an electronic reporting format; and, a new requirement to conduct a Program Effectiveness Assessment.

3. New requirements to conduct or participate in special studies to develop tools to predict and mitigate adverse impacts of hydromodification, and to comply with hydromodification control criteria; new requirements to update and expand the technical guidance manual; and, a requirement to develop an off-site mitigation list of sites/locations and schedule for completion of such projects.

4. New requirements to participate in the Southern California Storm Water Monitoring Coalition ("SMC"); SMC Regional Bioassessment Monitoring Program; and, Southern California Bight Projects.

5. New requirement for elimination of wash water discharges from County facilities for Fire Fighting Vehicles.

6. New requirements for mapping the County storm drain system.

This Test Claim does not challenge the authority of the Los Angeles Water Board to impose these requirements on MS4 discharges. Rather, it sets out new requirements that are unfunded State mandates and entitled to reimbursement under Article XIII B section 6 of the California Constitution because they exceed federal requirements.

II. Program Background

This Test Claim addresses the choice of the Los Angeles Water Board to adopt requirements that are more stringent than those imposed by the federal Clean Water Act ("CWA"). California ("State") has long been a national leader in protecting the quality of waters of the State. The State adopted the Porter-Cologne Water Quality Control Act ("Porter-Cologne") in 1969, three years prior to the adoption of the CWA and eighteen years before federal law expressly regulated MS4 discharges. Congress adopted the CWA as a scaled-back version of Porter-Cologne. As a result, State requirements are generally more stringent than the requirements of the CWA. The Los Angeles Water Board has the authority to impose more stringent requirements on those covered by the federal National Pollutant Discharge Elimination System ("NPDES permits") under both Porter-Cologne and the California Water Code. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619 ("*City of Burbank*"), Vol. 2, Tab 1; Wat. Code, § 13000, Vol. 2, Tab 24.) When a regional water quality control board ("regional board"), like the Los Angeles Water Board here, issues a storm water permit, it is implementing both federal and state law.

> Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma*, *supra*, 503 U.S. at p. 101.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law (Wat. Code, § 13374.). (*City of Burbank*, *supra*, 35 Cal.4th at p. 621, Vol. 2, Tab 1.)

The California Supreme Court has expressly described the reservation of significant components of water quality regulation to the State. The court has stated, "[t]he federal Clean Water Act reserves to the state significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to 'enforce any effluent limitation' that is not '*less stringent*' than the federal standard (33 U.S.C. § 1370, italics added)." (*City of Burbank*, *supra*, 35 Cal.4th at pp. 627-628, Vol. 2, Tab 1.)

The Commission on State Mandates ("Commission") has heard two prior test claim cases pertaining to MS4 discharges. (*In re Test Claim on: Los Angeles Regional Water Quality Control Board Order No. 01-182, Case Nos. 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21* ("Los Angeles Decision") (July 31, 2009); *In re Test Claim on San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Case No. 07-TC-09* ("San Diego Decision") (March 26, 2010).) In addition, numerous MS4 test claim cases have been filed and are waiting to be heard by the Commission.[5] In the San Diego and Los Angeles Decisions, the Commission determined that certain storm water discharge obligations were unfunded State mandates because they were: (a) State mandates that exceeded the requirements of the CWA and its implementing regulations; (b) created new programs or otherwise required an increase in the level of storm water pollution controls delivered by permittees; and, (c) imposed more than $1,000 in costs that permittees had insufficient authority to recover their costs through the imposition of fees. Although the specific provisions are different in this case, the Commission's conclusions are similar and compel the same result here.

III. Federal Law

The 2010 Permit was issued under the authority of the CWA. (33 U.S.C. § 1251 et seq., Vol. 2, Tab 10.) The CWA was enacted in 1972 and amended in 1987 to specifically include a permitting system for all discharges of pollutants from point sources to the waters of the United States. The 1987 Amendments created an NPDES permit requirement for

[5] For a complete list of test claims pertaining to actions of the regional boards, see http://www.csm.ca.gov/regional_water.shtml.

MS4 discharges serving a population of more than 100,000 persons or from systems that the United States Environmental Protection Agency ("EPA") or the State determine contribute to a violation of water quality standards or represent a significant contribution of pollutants to waters of the United States. Title 33 United States Code section 1342(p)(2) requires NPDES permits for the following discharges:

> (C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.
>
> (D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.
>
> (E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the United States.

Under the CWA and title 33 United States Code section 1342(p)(3)(B), MS4 permits state that they:

> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or State determines appropriate for the control of such pollutants.

In 1990, EPA issued regulations to implement Phase I of the NPDES program. (55 Fed. Reg. 47990 (Nov. 16, 1990), Vol. 2, Tab 18.) EPA regulations defined which entities need to apply for permits and provided the information requirements to include in the permit application. The permit application must propose management programs that the permitting authority will consider, including:

> [A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. (40 C.F.R. § 122.26(d)(2)(iv), Vol. 2, Tab 14.)

Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations[6] are not less stringent than those in the CWA. (33 U.S.C. § 1370, Vol. 2, Tab 12.) In *City of Burbank*, the California Supreme Court held that a regional board may issue a permit that exceeds the requirements of the CWA and its accompanying federal regulations.[7] The State Water Board has said that because NPDES permits are adopted as waste discharge requirements, they can more broadly protect "waters of the State" and not be just limited to "waters of the United States." (*In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association*, State Board Order No. WQ 2001-15, Vol. 3, Tab 3 at p. 9, n. 20 ["the inclusion of 'waters of the state' allows the protection of groundwater, which is generally not considered to be 'waters of the United States.' "].) Furthermore, the California Water Code states that the uses and objectives set out in basin plans and the need to prevent nuisance will require the regional boards to adopt requirements that are more stringent than federal law:

> Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill materials permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance. (Wat. Code, § 13377, Vol. 2, Tab 29.)

In 1972, California became the first state authorized to issue NPDES permits through an amendment to Porter-Cologne. As previously stated, Porter-Cologne has a greater reach than the CWA. For example, Porter-Cologne extends the State's authority to non-point sources (e.g., agricultural runoff), discharges to groundwater, and to discharges to land overlying groundwater. (Wat. Code, § 13050, Vol. 2, Tab 25.) Porter-Cologne applies to "waters of the State" which is defined as, "any surface water or groundwater, including saline waters, within the boundaries of the State." (*Id.*, § 13050(e), Vol. 2, Tab 23.)

The 2010 Permit was issued by the Los Angeles Water Board as a "waste discharge requirement" pursuant to the authority of the California Water Code. (Wat. Code, § 13260, 13263, 13374, Vol. 2, Tabs 26-28.) Regional boards have acknowledged that requirements of MS4 permits may exceed those of federal law, based on the stricter authority of Porter-

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[6] "*Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of 'pollutants' which are 'discharged' from 'point sources' into 'waters of the United States,' the waters of the 'contiguous zone,' or the ocean." (40 C.F.R. § 122.2, emphasis added, Vol. 2, Tab 13.)

[7] "The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to 'enforce any effluent limitation' that is not '*less stringent*' than the federal standard (33 U.S.C. § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserve authority . . . ." (*City of Burbank, supra*, 35 Cal.4th at pp. 627-628, Vol. 2, Tab 1.)

Cologne. (Permit, Vol. 1, Tab 1 at p. 25 ["The Regional Water Board may use its discretion to impose other provisions beyond MEP, as it determines appropriate for the control of pollutants, including ensuring strict compliance with Water Quality Standards."].) The court in *City of Burbank* further held that components of NPDES permits may exceed federal requirements and that state and regional boards must consider State law. (*City of Burbank, supra*, 35 Cal.4th at p. 618, Vol. 2, Tab 1.) However, State orders are still subject to the California Constitution, including Article XIII B section 6.

IV. State Mandate Law

Article XIII B section 6 of the California Constitution requires the State Legislature to provide a subvention of funds to local agencies any time the Legislature or a State agency requires the local agency to implement a new program, or provide a higher level of service under an existing program. Article XIII B states in relevant part:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service . . . . (Cal. Const., art. XIII B, § 6(a), Vol. 2, Tab 19.)

The purpose of Article XIII B section 6 is "to preclude the tate from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego v. State of California* (1991) 15 Cal.4th 68, 81, Vol. 2, Tab 5.) The section was "designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, Vol. 2, Tab 2.) The Legislature enacted an administrative scheme to implement Article XIII B section 6, at Government Code section 17500 et seq. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333, Vol. 2, Tab 7 [statute establishes "procedure by which to implement and enforce section 6"].)

The Legislature defined the parameters regarding what constitutes a State mandated cost, defining "Costs mandated by the state" to include:

> . . . any increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution. (Gov. Code, § 17514, Vol. 2, Tab 22.)

Orders issued by a regional board pursuant to Porter-Cologne are within the definition of "executive order." (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 920, Vol. 2, Tab 3.) Government Code section 17556 identifies seven exceptions to the rule requiring reimbursement for State mandated costs. The exceptions are as follows:

(a) The claim is submitted by a local agency . . . that requests or previously requested legislative authority for that local agency . . . to implement the program specified in the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.

(d) The local agency . . . has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies or . . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. (Gov. Code, § 17556, Vol. 2, Tab 23.)

None of these exceptions are directly applicable to the mandates challenged as part of this Test Claim. Exceptions (a), (b), (e), (f), and (g) are not relevant to this Test Claim, and exceptions (c) and (d) relating to federal mandates and fee assessments are addressed later in this Written Narrative Statement. Moreover, the program or increased level of service must impose "unique requirements on local governments" that carry out State policy. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 50, Vol. 2, Tab 4.) The requirements

of the mandates in this Test Claim are "unique requirements on local governments" and are not requirements that fall upon both local governments and private parties, to obviate the need for a subvention of State funds under Article XIII B section 6.

When a new program or level of service is in part federally funded, courts have held that the authority to impose a condition does not equate to a direct order or mandate to impose the condition. Where the "state freely choos[es] to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government." (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594 ("*Hayes*"), Vol. 2, Tab 6.) Additionally, when a state agency exercises discretion and chooses which requirements to impose in an executive order, those aspects that were not strictly required in the federal scheme are state mandates. (*Ibid*.) In addition, when a state law or an order mandates a change in an existing program that requires an increase in the actual level or quality of governmental services provided, the increase is a "higher level of service" within the meaning of Article XIII B section 6 of the California Constitution. (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877, Vol. 2, Tab 9.) For example, where an executive order required school districts to take special steps and measures to address segregation by race in local schools, the appellate court called this a "higher level of service" where the order had requirements that exceeded federal law because they mandated that the school district take defined remedial actions that were simply advisory under prior law. (*Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 177 ("*Long Beach*"), Vol. 2, Tab 8.)

Generally, the law of State mandates as dictated by the California Constitution, statutes, and case law, establishes a three-part test for mandates:

(i) Obligations imposed must be a new program or higher level of service;

(ii) The mandate must arise from a law, regulation, or executive order imposed by the State, rather than the federal government; and,

(iii) The costs cannot be recoverable by the local agency through the imposition of a fee.

If paragraphs 1, 2, and 3 are satisfied, then the mandated costs generally fall within the subventure requirement of Article XIII B section 6.

(i) New Program or Higher Level of Service

The determination of whether something is a new program or higher level of service is largely a factual exercise that involves comparing the terms of the former and current permits. This Commission's San Diego Decision addresses an important principle at issue in this Test Claim. All storm water permits are required to "reduce the discharge of pollutants to the

maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (33 U.S.C. § 1342(p)(3)(B)(iii), Vol. 2, Tab 11.) In the proceedings leading to the San Diego Decision, the Finance Department argued that the new permit did not constitute a "new program" or "higher level of service" because each incremental increase in best management practices or other permit requirements was necessary to assure continued compliance with the maximum extent practicable standard (or "MEP" standard). The Finance Department argued that:

> . . . the entire permit is not a new program or higher level of service because additional activities, beyond those required by the 2001 permit, are necessary for the claimants to continue to comply with the federal Clean Water Act and reduce pollutants to the Maximum Extent Practicable. (San Diego Decision, Vol. 3, Tab 2 at pp. 48-49.)

However, the Commission correctly rejected such arguments in that decision, recognizing the logical implications of the standard as articulated by the Finance Department. Specifically, the Commission noted that "[u]nder the standard urged by Finance, anything the state imposes under the permit would not be a new program or higher level of service. The Commission does not read the federal Clean Water Act so broadly." (San Diego Decision, Vol. 3, Tab 2 at p. 49.) Indeed, adhering to the Finance Department's interpretation, would allow the State to justify virtually any mandate on the grounds that it falls within the MEP standard. The Commission rejected such an approach in the San Diego Decision, and should do the same here.

(ii) State Mandates

The Government Code exempts costs mandated solely by federal law or regulation, except where the state "statute or executive order mandates costs that exceed the mandate in that federal law or regulation . . . ." (Gov. Code, § 17556(c), Vol. 2, Tab 23.) The obligation imposed by the state in the implementation of a federal mandate should still be considered a "state mandate" as long as the state has a say in the manner in which the mandate is passed on to local agencies. The California Supreme Court has stated:

> In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government. (*Hayes, supra*, 11 Cal.App.4th at p. 1593, Vol. 2, Tab 6.)

The Commission relied on this in both the San Diego and Los Angeles Decisions with respect to storm water permits where the regional boards "freely chose" to exercise their discretion. (San Diego Decision, Vol. 3, Tab 2 at p. 37; Los Angeles Decision, Vol. 3, Tab 1 at p. 22.) The Commission should rely on the same analysis if such arguments are again raised here.

(iii) Fee Authority

Mandates are exempted from the requirements of Article XIII B section 6 where the local agency "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." (Gov. Code, § 17556(d), Vol. 2, Tab 23.) Article XIII D of the California Constitution requires that fees incident to property ownership be subjected to a majority vote by affected property owners or by two-thirds of registered voter approval. (Cal. Const., art. XIII, § D, subd. 4(d), Vol. 2, Tab 20 (otherwise referred to as Proposition 218).) In the San Diego Decision, this Commission held that the necessity of voter approval (and the possibility of voter rejection) of a fee renders that permittee's fee authority inadequate to satisfy the exemption of Government Code section 17556, subdivision (d). (San Diego Decision, Vol. 3, Tab 2 at pp. 106-107.) However, the Commission also found fees that result from a property owner's voluntary decision to seek a government benefit are not subject to the voter requirements of Proposition 218, and therefore such fees are sufficient within the meaning of Government Code section 17556, subdivision (d). (*Id.* at pp. 107-108.) In other words, for example, when a property owner voluntarily seeks to "develop" his or her property, fees charged by the respective local government to process an associated development application result from a property owner's voluntary decision and therefore are not subject to the voter requirements of Proposition 218. As indicated further below, the District and the County have identified State mandates that may only be funded by the imposition of a tax or fee that would be imposed on property owners subject to the requirements of Proposition 218.

In sum, the 2010 Permit imposes new requirements on the County and the District that exceed the requirements of federal law, were not components of the 2000 Permit, and are unique to local government. Similar requirements have been held by the Commission to be unfunded State mandates for which the Claimants were entitled to reimbursement; the new requirements in the 2010 Permit are similar State mandates in this case. Thus, the County and the District are entitled to reimbursement under Article XIII B section 6 of the California Constitution.

V. State Mandated Activities

On July 8, 2010, the Los Angeles Water Board issued the 2010 Permit to the Permittee. (See generally, Vol. 1, Tab 1.) The 2010 Permit mandates many new programs and activities that are not required by either federal law or the 2000 Permit. Each of the subheadings below contain a provision or provisions of the 2010 Permit and discusses how each mandate meets the requirements for reimbursement under the relevant standards.

Specifically, each provision identified as an unfunded mandate contains: (1) the specific provision of the 2010 Permit that mandates a new program or higher level of service; (2) applicable federal law, if any, and how the requirements contained in the 2010 Permit exceed those federal requirements; (3) the related provisions in the 2000 Permit, if any, and how the requirements in the 2010 Permit are new and different from those previous requirements; (4) a discussion of the specific activities mandated by the 2010 Permit and the actions undertaken by the County or the District to comply with those mandates; and, finally (5) the specific costs associated with each requirement as identified by the declarations and appendices to this Written Narrative Statement. Excerpts of the challenged 2010 Permit provisions have been provided as part of this written narrative in order to help facilitate the Commission's analysis of this Test Claim. However, Claimants' assertions that the requirements of the 2010 Permit represent a State mandate are not necessarily limited to the particular language quoted. Rather, the mandates themselves may encompass all related language within the broader sections identified that constitute the underlying mandates within the 2010 Permit.

A. Public Information/Participation Program

The 2010 Permit increases the public outreach requirement imposed on the Permittees, creating a number of new program requirements. These new obligations include a mandate for the Permittees, and specifically the District as the Principal Permittee. Further, the National Pollutant Discharge Elimination System Implementation Agreement, Ventura Countywide Stormwater Quality Management Program ("Implementation Agreement") between the District and the other Permittees sets forth the District's roles and responsibilities as the as "Principal Permittee," which also requires the District to perform the 2010 Permit public outreach requirements. (Implementation Agreement, Vol. 3, Tab 4 at p. 3-9.) Thus, the Permit and the Implementation Agreement require the District to distribute storm water pollution prevention materials to various entities, develop an ethnic communities strategy, provide materials to 50 percent of all K-12 students every two years and/or develop a youth outreach plan, develop and implement a behavioral change assessment strategy, coordinate and develop a pollutant specific outreach program, conduct corporate outreach, and implement a business assistance program. These activities are not mandated by federal law, were not required as part of the 2000 Permit, and constitute a new program or higher level of service for which the Permittees have and will continue to bear the costs of implementation. The relevant portions of the 2010 Permit require as follows:

Permit Parts 4.C.2(c)(1)(C), 4.C.2(c)(2), 4.C.2(c)(6), and 4.C.2(c)(8):

> *2. Residential Program*
>
> *(c) Outreach and Education*
>
> *(1) Collaboratively, the Permittees shall implement the following activities:*
>
> . . .

(C) Distribute storm water pollution prevention public education materials no later than (365 days after Order adoption date) to:

(i) Automotive parts stores

(ii) Home improvement centers/lumber yards/hardware stores

(iii) Pet shops/feed stores

(2) The Principal Permittee shall develop a strategy to educate ethnic communities through culturally effective methods. Details of this strategy should be incorporated into the PIPP, and implemented, no later than (365 days after Order adoption date).

. . .

(6) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution. Alternatively, a Permittee may submit a plan to the Regional Water Board Executive Officer for consideration no later than (90 days after Order adoption date), to provide outreach in lieu of the school curriculum. Pursuant to Water Code section 13383.6, the Permittees, in lieu of providing educational materials/funding to School Districts in the County, may opt to provide an equivalent amount of funds or fraction thereof to the Environmental Education Account established within the State Treasury.

. . .

(8) The Permittees shall develop and implement a behavioral change assessment strategy no later than (365 days after Order adoption date) in order to determine whether the PIPP is demonstrably effective in changing the behavior of the public. The strategy shall be developed based on current sociological data and studies. (2010 Permit, Vol. 1, Tab 1 at pp. 42-49)

Permit Part 4.C.2(d):

(d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with the Permittees, shall coordinate to develop outreach programs that focus on metals, urban pesticides, bacteria and nutrients as the pollutants of concern no later than (365 days after Order adoption date). Metals may be appropriately addressed through the Industrial/ Commercial Facilities

> *Program (e.g. the distribution of educational materials on appropriate BMPs for metal fabrication and recycling facilities that have been identified as a potential source). Region-wide pollutants may be included in the Principal Permittee's mass media outreach program.* (2010 Permit, Vol. 1, Tab 1 at p. 44.)

Permit Part 4.C.3(a)-(b):

> *3. Business Program*
>
> *(a) Corporate Outreach*
>
> *(1) The Permittees shall work with other regional or statewide agencies and, associations such as the California Storm Water Quality Association (CASQA), to develop and implement a Corporate Outreach program to educate and inform corporate franchise operators and/or local facility managers about storm water regulations and BMPs. Once developed, the program shall target a minimum of four Retail Gasoline Outlets (RGO) franchisers and cover a minimum of 80% of RGO franchisees in the county, four retail automotive parts franchisers, two home improvement center franchisers and six restaurant franchisers. Corporate outreach for all target facilities shall be conducted not less than twice during the term of this Order, with the first outreach contact to begin no later than two years after Order adoption date . . . .*
>
> *(b) Business Assistance Program*
>
> *(1) The Permittees shall implement a Business Assistance Program to provide technical information to small businesses to facilitate their efforts to reduce the discharge of pollutants in storm water. The Program shall include:*
>
> *(A) On-site, telephone or e-mail consultation regarding the responsibilities of businesses to reduce the discharge of pollutants, procedural requirements, and available guidance documents.*
>
> *(B) Distribution of storm water pollution prevention education materials to operators of auto repair shops, car wash facilities (including mobile car detailing), mobile carpet cleaning services, commercial pesticide applicator services and restaurants.* (2010 Permit, Vol. 1, Tab 1 at pp. 44-45.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the 2010 Permit's public outreach requirements. Moreover, no federal statute, regulation, or policy specifically requires large municipal storm water permits to include the type of public outreach requirements present in the 2010 Permit. Federal regulations do provide general public outreach and education requirements for large municipal storm water permits. (40 C.F.R. §§ 122.26(d)(2)(iv)(A)(6), (B)(6), (D)(4), Vol. 2, Tab 14.) However, those regulations do not require anywhere near the level of specificity included by the Los Angeles Water Board in the 2010 Permit. Federal regulations require large municipal storm water permits to include:

> [A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. (40 C.F.R. § 122.26(d)(2)(iv), Vol. 2, Tab 14.)

> [A] program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications, and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities. (40 C.F.R. § 122.26(d)(2)(iv)(A)(6), Vol. 2, Tab 14.)

Further, large municipal storm water permits must include:

> [E]ducational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials. (40 C.F.R. § 122.26(d)(2)(iv)(B)(6), Vol. 2, Tab 14.)

Finally, municipal storm water permits must include "[a]ppropriate educational and training measures for construction site operators." (40 C.F.R. § 122.26(d)(2)(iv)(D)(4), Vol. 2, Tab 14.) Where the State freely chooses to impose costs associated with a new program or higher level of service upon a local agency as the means of implementing a federal program, then the costs represent a reimbursable State mandate. (*Hayes*, *supra*, 11 Cal.App.4th at p. 1593, Vol. 2, Tab 6; *Long Beach*, *supra*, 225 Cal.App.3d at p. 155, Vol. 2, Tab 8.) Federal law does not require storm water NPDES permits to include the highly specific public outreach program that is contained in the 2010 Permit, yet the State has exercised its discretion to impose that program on the Permittees. For that reason, the public

education requirements in the 2010 Permit identified above exceed the requirements of federal law and represent a State mandated program.

2. Requirements From Prior Permit (2000)

The 2000 Permit contained a limited public participation and education program, but nothing nearly as specific as the requirements identified above and mandated as part of the 2010 Permit. The relevant provision of the 2000 Permit related to public participation and education requirements are as follows:

2000 Permit Part 4.A:

> *A. Programs for Residents*
>
> 1. *Co-permittees shall identify staff who will serve as the public reporting contact person(s) for reporting clogged catch basin inlets and illicit discharges/dumping, and general storm water management information within 6 months of permit issuance, and thereafter include this information, updated when necessary, in public information, the government pages of the telephone book, and the annual report as they are developed/published. The designated contact staff will be provided with relevant storm water quality information including current resident program activities, preventative storm water pollution control information and contact information for responding to illicit discharges/illegal dumping.*
> 2. *Co-permittees shall mark storm drain inlets with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping must be posted at designated public access points to creeks, other relevant water bodies, and channels by July 27, 2002.*
> 3. *Each Co-permittee shall conduct educational activities within its jurisdiction and participate in countywide events.*
> 4. *Each Co-permittee shall distribute outreach materials to the general public and school children at appropriate public counters and events. Outreach material shall include information such as proper disposal of litter, green waste, and pet waste, proper vehicle maintenance techniques, proper lawn care, and water conservation practices.*
> 5. *The Discharger shall insure that a minimum of 2.1 million impressions per year are made on the general public about storm water quality via print, local TV access, local radio, or other appropriate media.*
> (2000 Permit, Vol. 1, Tab 2 at p. 14)

As the Commission can plainly see, there is no requirement in the 2000 Permit for the Permittees, and therefore the District, to distribute storm water pollution prevention materials to specific entities, develop an ethnic communities strategy, or provide educational materials to students. There is also no requirement that Permittees, and therefore the District, must implement a behavioral change assessment strategy, a pollutant specific outreach program, or conduct corporate outreach and business assistance programs. Thus, the addition of this requirement in the 2010 Permit constitutes a new program or higher level of service.

3. Mandated Activities

As noted above, the 2010 Permit increases the public outreach and education requirement imposed on the Permittees, including obligating the Permittees to distribute storm water pollution prevention materials to various entities, develop an ethnic communities strategy, provide materials to 50 percent of all K-12 students every two years and/or develop a youth outreach plan, develop and implement a behavioral change assessment strategy, coordinate and develop a pollutant specific outreach program, conduct corporate outreach, and implement a business assistance program. Accordingly, the District, as the Principal Permittee and through the Implementation Agreement, must have implemented or must implement a number of new and costly activities arising from the mandate, including but not necessarily limited to the following:

- The District needed to develop and distribute storm water pollution prevention materials to automotive parts stores, home improvement centers, lumber-yards, hardware stores, pet shops, and feed stores by July 8, 2011.

- The District needed to develop and implement a strategy to educate ethnic communities by July 8, 2011.

- The District must distribute materials for school age children, or develop a Youth Action Plan, to educate school age children throughout the County.

- The District needed to develop and implement a behavioral change assessment strategy by July 8, 2011.

- The District needed to develop pollutant specific outreach programs for metals, urban pesticides, bacteria, and nutrients by July 8, 2011.

- The District must work with other regional or statewide agencies and associations, to develop and implement a Corporate Outreach program that is designed to educate and inform corporate franchise operators; and such Corporate Outreach shall be conducted at least twice during the Permit term.

- The District must implement a Business Assistance Program that includes providing technical information to small businesses through on-site, telephone, or email consultations, and includes distributing storm water pollution prevention education materials to various types of small businesses (e.g., auto repair shops, car wash facilities).

This has also forced the District, as the Principal Permittee, to modify or expand a number of its existing activities, thus increasing the cost and effort of these actions. Moreover, these requirements exceed the federal MEP standard by requiring new, specific requirements that are arguably not economically feasible considering current local government budgetary constraints. Because federal law does not specifically mandate any of these specific activities mandated by the 2010 Permit, and such requirements were not contained in the 2000 Permit, the provisions of the 2010 Permit impose a new program or higher level of service and constitute a series of unfunded mandates. The District is entitled to reimbursement for the above described actions.

4. Actual and Reimbursable Costs

To comply with the 2010 Permit requirements to develop and distribute storm water pollution prevention materials to automotive parts stores, home improvement centers, lumber-yards, hardware stores, pet shops, and feed stores (Part 4.C.2(c)(1)(C) at p. 42), the District's costs amounted to $27,996 in fiscal year 2009-2010, $20,402 in fiscal year 2010-2011, and $4,705.75 in fiscal year 2014-2015.

To comply with the 2010 Permit requirements to develop and implement a strategy to educate ethnic communities (Part 4.C.2(c)(2)), the District's costs amounted to $3,262.50 in fiscal year 2014-2015 and $6,375 in fiscal year 2015-2016.

To comply with the 2010 Permit requirements to distribute materials for school age children, or develop a Youth Action Plan, to educate school age children throughout the County (Part 4.C.2(c)(6)), the District's costs amounted to $34,970 in fiscal year 2009-2010, $5,677.92 in fiscal year 2013-2014, $5,070.17 in fiscal year 2014-2015, and $9,497.90 in fiscal year 2015-2016.

To comply with the 2010 Permit requirements to develop and implement a behavioral change assessment strategy (Part 4.C.2(c)(8)), the District's costs amounted to $21,000 in fiscal year 2009-2010, $21,000 in fiscal year 2010-2011, $21,000 in fiscal year 2011-2012, $20,000 in fiscal year 2012-2013, $20,000 in fiscal year 2013-2014, $20,000 in fiscal year 2014-2015, and $20,000 in fiscal year 2015-2016.

To comply with the 2010 Permit requirements to develop pollutant specific outreach programs for metals, urban pesticides, bacteria, and nutrients (Part 4.C.2(d)), the District's costs amounted to $3,620 in fiscal year 2009-2010 and $3,620 in fiscal year 2010-2011.

To comply with the 2010 Permit requirements to develop and implement a Corporate Outreach program that is designed to educate and inform corporate franchise operators (Part 4.C.3(a)(1)), the District's costs amounted to $10,438 in fiscal year 2010-2011.

To comply with the 2010 Permit requirements to implement a Business Assistance Program that includes providing technical information to small businesses through on-site, telephone, or email consultations, and includes distributing storm water pollution prevention education materials to various types of small businesses (e.g., auto repair shops, car wash facilities) (Part 4.C.3(b)(1)), the District's costs amounted to $693.08 in fiscal year 2009-2010 and $9,963.89 in fiscal year 2010-2011.

Summarizing the aforementioned public outreach requirements identified above, the District's total costs, pursuant to its obligations and responsibilities under the Implementation Agreement, amounted to $88,279.08 in fiscal year 2009-2010, $65,423.89 in fiscal year 2010-2011, $21,000 in fiscal year 2011-2012, $20,000 in fiscal year 2012-2013, $25,677.92 in fiscal year 2013-2014, $33,038.42 in fiscal year 2014-2015, and $35,872.90 in fiscal year 2015-2016. The District's costs for fiscal years 2009-2010 through 2015-2016 are set forth in Exhibit 1 to this Written Narrative Statement.

B. Reporting Program and Program Effectiveness Evaluation

The 2010 Permit requires the District, as the Principal Permittee, to develop an electronic reporting program and form for the annual report by July 8, 2011, and to evaluate, assess, and synthesize the results of the monitoring program and the effectiveness of the implementation of best management practices (i.e., conduct a program effectiveness evaluation). The requirement for the development of an electronic reporting program and form for the annual report and the requirement to conduct a program effectiveness evaluation, are not mandated by federal law and were not required as part of the 2000 Permit. Accordingly, the requirements constitute a new program or higher level of service. The relevant portions of the 2010 Permit, specifically Parts 4.I.1 and 3.E.1(e) require as follows:

Permit Part 4.I.1:

> *I. REPORTING PROGRAM*
>
> *1. The Principal Permittee in consultation with the Permittees and Regional Water Board staff shall convene an adhoc working group to develop an Electronic Reporting Program, the basis of which shall be the requirements in this Order. The Committee shall no later than one year after Order adoption date (July 8, 2011) submit the electronic reporting form in each subsequent year.* (2010 Permit, Vol. 1, Tab 1 at p. 87.)

Permit Part 3.E.1(e):

> *(e) Evaluate, assess, and synthesize the results of the monitoring program and the effectiveness of the implementation of BMPs.* (2010 Permit, Vol. 1, Tab 1 at p. 40.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the particular types of annual reporting requirements identified above. However, the federal requirements for annual reporting that do exist include the following:

> The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of issuance of the permit for such system. The report shall include:
>
> (1) The status of implementing the components of the storm water management program that are established as permit conditions;
>
> (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; and
>
> (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part;
>
> (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
>
> (5) Annual expenditures and budget for year following each annual report;
>
> (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;
>
> (7) Identification of water quality improvements or degradation. (40 C.F.R. § 122.42(c), Vol. 2, Tab 15.)

Where the State freely chooses to impose costs associated with a new program or higher level of service upon a local agency as the means of implementing a federal program, the costs then represent a reimbursable State mandate. (*Hayes, supra*, 11 Cal.App.4th at p. 1593, Vol. 2, Tab 6; *Long Beach, supra*, 225 Cal.App.3d at p. 155, Vol. 2, Tab 8.) Federal law does not require the 2010 Permit to include the highly specific electronic reporting program and format, or require Permittees to conduct program effectiveness evaluations. Yet the State has exercised its discretion to impose that program on the Permittees. Thus, the

reporting and program effectiveness requirements in the 2010 Permit identified above, exceed the requirements of federal law and represent a State mandated program.

2. Requirements From Prior Permit (2000)

The 2000 Permit did contain annual storm water reporting and assessment requirements, but did not contain the types of specific requirements outlined above in the 2010 Permit, and certainly did not contain any requirement that Permittees design and implement an electronic reporting format for implementation or conduct a program effectiveness evaluation. The relevant provisions of the 2000 Permit related to annual reporting requirements are as follows:

2000 Permit Part 3.D.1:

> 1. *The Discharger shall submit, by October 1 of each year beginning the Year 2001, an Annual Storm Water Report and Assessment documenting the status of the general program and individual tasks contained in the Ventura County SMP, as well as results of analyses from the monitoring and reporting program CI 7388. The Annual Storm Water Report and Assessment shall cover each fiscal year from July 1 through June 30, and shall include the information necessary to assess the Discharger's compliance status relative to this Order, and the effectiveness of implementation of permit requirements on storm water quality. The Annual Storm Water Report and Assessment shall include any proposed changes to the Ventura County SMP as approved by the Management Committee.*
>
> *The Discharger shall submit, by October 1, 2000, the Annual Report for the period July 1, 1999 through July 27, 2000 documenting the status of the general program up to permit reissuance and the results of analyses from the monitoring and reporting program.* (2000 Permit, Vol. 1, Tab 2 at p. 12.)

Thus, the addition of this requirement in the 2010 Permit constitutes a new program or higher level of service.

3. Mandated Activities

As noted above, the 2010 Permit increases the annual reporting requirements imposed on the District by requiring the District to develop an electronic reporting program and form, and to conduct a program effectiveness assessment. This has forced the District to develop an electronic reporting program, and to conduct a program effectiveness assessment, which are expanded activities as compared to those reporting requirements required as part of the 2000 Permit. Moreover, the development of an electronic reporting program and form, and program effectiveness assessment are unrelated to reducing pollutants to the MEP, using

management practices, control techniques and system, design and engineering methods. Accordingly, these requirements exceed the federal MEP standard. Because federal law does not specifically mandate any of these activities mandated by the 2010 Permit, and such requirements were not contained in the 2000 Permit, these provisions of the 2010 Permit impose a new program or higher level of service and constitute a series of unfunded mandates. The District is entitled to reimbursement for these above described actions. (2010 Permit, Vol. 1, Tab 1 at p. 74

4. Actual and Reimbursable Costs

To comply with the 2010 Permit requirements to develop an electronic reporting program (Part 4.I.1), the District's costs amounted to $11,850 for fiscal year 2009-2010.

To comply with the 2010 Permit requirements to develop an electronic reporting format (Part 4.I.1), the District's costs amounted to $35,675 for fiscal year 2009-2010 and $4,293.75 for fiscal year 2010-2011.

To comply with the 2010 Permit requirements to perform a program effectiveness assessment (Part 3.E.(1)(e)), the District's costs amounted to $10,013.12 in fiscal year 2012-2013 and $6,766.25 in fiscal year 2013-2014.

Summarizing the aforementioned annual reporting requirements identified above, the District's total costs, pursuant to its obligations and responsibilities under the Implementation Agreement, amounted to $47,525 in fiscal year 2009-2010, $4,293.75 in fiscal year 2010-2011, $10,013.12 in fiscal year 2012-2013, and $6,766.25 in fiscal year 2013-2014. The District's costs for fiscal years 2009-2010 through 2014-2015 are set forth in Exhibit 1 to this Written Narrative Statement.

C. Special Studies

The 2010 Permit includes many special studies and unique requirements that are not directly associated with the federally required programs for large MS4 permits. Specifically, the Permit requires the District as the Principal Permittee to conduct or participate in a hydromodification control study ("HCS") to develop tools to predict and mitigate adverse impacts of hydromodification, and to comply with hydromodification criteria. The Permit also requires the Permittees to update the technical guidance manual to include new informational requirements with respect to hydromodification criteria, best management practice performance criteria, and low impact development principles and specifications. Further, the Permit requires the Permittees to identify a list of eligible off-site mitigation projects, and develop a schedule for completing off-site mitigation projects. These identified Permit activities are being conducted by the District, as the Principal Permittee, and through its obligations and responsibilities identified in the Implementation Agreement. These activities are not mandated by federal law, were not required as part of the 2000 Permit, and constitute a new program or higher level of service for which the District has and will

continue to bear the costs of implementation. Theses provisions in Part 4.E of the 2010 Permit, as well as provisions within the Monitoring Program for the 2010 Permit, require the District, as the Principal Permittee, to engage in special studies that were not required by the 2000 Permit. Specifically, theses provisions provide that:

Permit Part 4.E.III.3(a)(1)(D)-(E):

> *(D) The Southern California Storm Water Monitoring Coalition (SMC) is developing a regional methodology to eliminate or mitigate the adverse impacts of hydromodification as a result of urbanization, including hydromodification assessment and management tools.*
>
> *(i) The SMC has identified the following objectives for the Hydromodification Control Study (HCS):*
>
> *(I) Establishment of a stream classification for Southern California streams*
>
> *(II) Development of a deterministic or predictive relationship between changes in watershed impervious cover and stream-bed/stream bank enlargement*
>
> *(III) Development of a numeric model to predict stream-bed/stream bank enlargement and evaluate the effectiveness of mitigation strategies*
>
> *(E) The Permittees shall participate in the SMC HCS to develop:*
>
> *(i) A regional stream classification system*
>
> *(ii) A numerical model to predict the hydrological changes resulting from new development*
>
> *(iii) A numerical model to identify effective mitigation strategies*
>
> *(F) Until the completion of the SMC HCS, Permittees shall implement the Interim Hydromodification Control Criteria, described in subpart 4.E.III.3(a)(3)(A) below, to control the potential adverse impacts of changes in hydrology that may result from new development and redevelopment projects identified in subpart 4.E.II.* (2010 Permit, Vol. 1, Tab 1 at pp. 59-60.)

Attachment F, Section F:

> *The principal Permittee shall conduct or participate in special studies to develop tools to predict and mitigate the adverse impacts of Hydromodification, and to comply with hydromodification control criteria.*
>
> …
>
> *The principal Permittee may satisfy this requirement by participation in the Development of Tools for Hydromodification Assessment and Management*

Project undertaken by the SMC and coordinated by the SCCWRP. .
(2010 Permit, Vol. 1, Tab 1, section F at pp. F-15 and F-16.)

Permit Part 4.E.IV.4:

4. Developer Technical Guidance and Information

(a) The Permittees shall update the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures to include, at a minimum, the following:

(1) Hydromodification Control criteria described in this Order, including numerical criteria.

(2) Expected BMP pollutant removal performance including effluent quality (ASCE/U.S. EPA International BMP Database, CASQA New Development BMP Handbook, technical reports, local data on BMP performance, and the scientific literature appropriate for southern California geography and climate).

(3) Selection of appropriate BMPs for storm water pollutants of concern.

(4) Data on Observed Local Effectiveness and performance of implemented BMPs.

(5) BMP Maintenance and Cost Considerations.

(6) Guiding principles to facilitate integrated water resources planning and management in the selection of BMPs, including water conservation, groundwater recharge, public recreation, multipurpose parks, open space preservation, and redevelopment retrofits.

(7) LID principles and specifications, including the objectives and specifications for integration of LID strategies in the areas of:

(A) Site Assessment.

(B) Site Planning and Layout.

(C) Vegetative Protection, Revegetation, and Maintenance.

(D) Techniques to Minimize Land Disturbance.

(E) Techniques to Implement LID Measures at Various Scales

(F) Integrated Water Resources Management Practices.

(G) LID Design and Flow Modeling Guidance.

(H) Hydrologic Analysis.

(I) LID Credits.

(b) Permittees shall update the Technical Guidance Manual within (120 days after Order adoption date).

(c) The Permittees shall facilitate implementation of LID by providing key industry, regulatory, and other stakeholders with information regarding LID objectives and specifications contained in the LID Technical Guidance Section through a training program. The LID training program will include the following:

(1) LID targeted sessions and materials for builders, design professionals, regulators, resource agencies, and stakeholders

(2) A combination of awareness on national efforts and local experience gained through LID pilot projects and demonstration projects

(3) Materials and data from LID pilot projects and demonstration projects including case studies

(4) Guidance on how to integrate LID requirements into the local regulatory program(s) and requirements

(5) Availability of the LID Technical Guidance regarding integration of LID measures at various project scales

(6) Guidance on the relationship among LID strategies, Source Control BMPs, Treatment Control BMPs, and Hydromodification Control requirements

(d) The Permittees shall submit revisions to the Ventura County Technical Guidance Manual to the Regional Water Board for Executive Officer approval. (2010 Permit, Vol. 1, Tab 1 at pp. 66-67.)

Permit Part 4.E.III.2(c)(3)-(4):

(3) Location of off site mitigation. Offsite mitigation projects must be located in the same sub-watershed (defined as draining to the same hydrologic area in the Basin Plan) as the new development or redevelopment project. A list of eligible public and private offsite mitigation projects available for funding shall be identified by the Permittees and provided to the project applicant. Off site mitigation projects include green streets projects, parking lot retrofits, other site specific LID BMPs, and regional BMPs. Project applicants seeking to utilize these alternative compliance provisions may propose other offsite mitigation projects, which the Permittees may approve if they meet the requirements of this subpart.

(4) Timing and Reporting Requirements for Offsite Mitigation Projects. The Permittee(s) shall develop a schedule for the completion of offsite mitigation projects, including milestone dates to identify fund, design, and construct the projects. Offsite mitigation projects shall be completed as soon as possible, and at the latest, within 4 years of the certificate of occupancy for the first project that contributed funds toward the

> *construction of the offsite mitigation project, unless a longer period is otherwise authorized by the Executive Officer. For public offsite mitigation projects, the permittees must provide in their annual reports a summary of total offsite mitigation funds raised to date and a description (including location, general design concept, volume of water expected to be retained, and total estimated budget) of all pending public offsite mitigation projects. Funding sufficient to address the offsite mitigation volume must be transferred to the permittee (for public offsite mitigation projects) or to an escrow account (for private offsite mitigation projects) within one year of the initiation of construction.* (2010 Permit, Vol. 1, Tab 1 at pp. 58-59.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the permit requirements provided here. At most, 40 Code of Regulations part 122.26(d)(2)(iv)(A)(2) requires:

> (2) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section.

Where the State freely chooses to impose costs associated with a new program or higher level of service upon a local agency as the means of implementing a federal program, then the costs represent a reimbursable State mandate. (*Hayes, supra*, 11 Cal.App.4th at p. 1593, Vol. 2, Tab 6; *Long Beach*, *supra*, 225 Cal.App.3d at p. 155, Vol. 2, Tab 8.) Federal law does not require the 2010 Permit to include provisions requiring Permittees to engage in these types of specific special studies, yet the State has exercised its discretion to impose that program on the Permittees. Thus, the reporting requirements in the 2010 Permit identified above, exceed the requirements of federal law and represent a State mandated program.

2. Requirements From Prior Permit (2000)

The 2000 Permit Monitoring and Reporting Program (2000 Permit, Vol. 1, Tab 2, section T at pp. T-1 to T-11) contained no reference to participation in a hydromodification program, no requirement that the Permittee update the Technical Guidance Manual with Best Management Practice ("BMP") performance criteria, and contained none of the off-site mitigation requirements for identifying mitigation sites and preparing a schedule. Specifically, 2000 Permit Part 3.E stated only that:

> *The Discharger shall submit a Storm Water Monitoring Report on July 15, 2001 and annually on July 15 thereafter. The report shall include:*
>
> *a. Status of implementation of the monitoring program as described in the attached Monitoring and Reporting Program, CI-7388.*
>
> *b. Results of the monitoring program; and*
>
> *c. A general interpretation of the significance of the results, to the extent that data allows.* (2000 Permit, Vol. 1, Tab 2 at p. 13.)

Moreover, 2000 Permit Part 4.C.2 stated only that:

> *The Discharger shall no later than July 27, 2002, prepare a technical manual which shall include:*
>
> *a. specifications for treatment control BMPs and structural BMPs based on the flow-based and volume-based water quality design criteria for the purposes of countywide consistency, and*
>
> *b. criteria for the control of discharge rates and duration.* (2000 Permit, Vol. 1, Tab 2 at p. 16.)

Thus, the addition of these new requirements in the 2010 Permit constitutes a new program or higher level of service.

3. Mandated Activities

As noted above, the 2000 Permit contained no reference to participation in a hydromodification study program, no requirement that the Permittee update the Technical Guidance Manual with BMP performance criteria and other specific information, and none of the requirements for identifying off-site mitigation locations and establishing a schedule for completion of off-site mitigation projects. Similarly, the requirements of federal law do not specifically mandate that Permittees engage in the type of specific hydromodification program prescribed in the 2010 Permit, nor do they require any of the other mandates highlighted above. Thus, the identified subdivisions of Part 4.E of the 2010 Permit and section F of Appendix F impose a new or higher level of service than the previous mandates and constitute an unfunded mandate for which the District is entitled to reimbursement. This new requirement has forced the District to implement a number of new and costly activities arising from the mandate, including but not necessarily limited to as follows:

- The District needed to update the Technical Guidance Manual to comply with the requirements specified in the 2010 Permit. To do so, the District, as the Principal Permittee, hired consultants with specific expertise in this area. The requirements are highly specialized and it took District staff, consultants, and County staff almost a year to develop the information necessary for the update.

- To participate in the SMC HCS, the District, as the Principal Permittee, will need to pay its fair share of the costs.

- The District will need to spend staff time and resources to develop local information for the regional study and coordinate with other participants.

- To meet the mandates associated with the off-site mitigation requirements in Parts 4.E.III(c)(3) and 4.E.III(c)(4) of the Permit (i.e., identify potential mitigation locations and establish a schedule), the District, as the Principal Permittee and through its obligations and responsibilities under the Implementation Agreement, will need to develop a complete off-site mitigation program. Activities associated with developing such a program include mapping and surveying locations that are suitable for off-site mitigation that are appropriate, and developing a schedule for completion.

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the special study requirements identified above. Federal law requires that permits for municipal discharges require controls "to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (33 U.S.C. § 1342(p)(3)(B)(iii), Vol. 2, Tab 11.) Although not defined in federal law, the Permit defines MEP to mean the following:

> *The technology-based permit requirement established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water must meet. Technology-based requirements, including MEP, establish a level of pollutant control that is derived from available technology or other controls. MEP requires municipal dischargers to perform at maximum level that is practicable. Compliance with MEP may be achieved by emphasizing pollution prevention and source control BMPs in combination with structural and treatment methods where appropriate. The MEP approach is an ever evolving and advancing concept, which considers technical and economic feasibility.* (2010 Permit Part 6, Vol. 1, Tab 1 at p. 108.)

As clearly indicated, the requirements of MEP are specifically related to using "technology" to control pollutants, using pollution prevention and source control techniques. The activities identified here (updating the Technical Guidance Manual in the manner specified, participating in or conducting a regional HCS study and developing on offsite mitigation program) are unrelated to using pollution prevention and source control techniques to control pollutants to the MEP. Because federal law does not specifically mandate any of these specific activities mandated by the 2010 Permit, and such requirements were not contained in the 2000 Permit, these provisions of the 2010 Permit impose a new program or higher level of

service and constitute a series of unfunded mandates. The District is entitled to reimbursement for the above described actions.

4. Actual and Reimbursable Costs

To comply with the 2010 Permit requirements relating to hydromodification (Part 4.E.III.3(a)(1)(D)-(E), Attachment F, Section F, page F-15), the District's costs amounted to $123,180.85 for fiscal year 2012-2013, $52,947.43 for fiscal year 2013-2014, and $6,533.25 for fiscal year 2014-2015.

To comply with the 2010 Permit requirements relating to the Technical Guidance Manual / BMP performance criteria (Part 4.E.IV.4), the District's costs amounted to $104,844.26 for fiscal year 2009-2010, $101,919.81 for fiscal year 2010-2011, and $7,350.20 for fiscal year 2011-2012.

To comply with the 2010 Permit requirements relating to off-site mitigation program structure (Part 4.E.III.2(c)), the District's costs amounted to $5,242.88 for fiscal year 2009-2010, $17,460.50 for fiscal year 2010-2011, and $93,607.64 for fiscal year 2011-2012.

To comply with the 2010 Permit requirements relating to off-site mitigation sites/locations (Part 4.E.III.2(c)), the District's costs amounted to $12,966 for fiscal year 2010-2011 and $69,030.07 for fiscal year 2011-2012.

Summarizing the aforementioned special studies requirements identified above, the District's total costs, pursuant to its obligations and responsibilities under the Implementation Agreement, amounted to $110,087.14 in fiscal year 2009-2010, $132,346.31 in fiscal year 2010-2011, and $169,987.91 in fiscal year 2011-2012. The District's costs for fiscal years 2009-2010 through 2014-2015 are set forth in Exhibit 1 to this Written Narrative Statement.

D. Watershed Initiative Participation

The 2010 Permit requires the District, as the Principal Permittee, to participate in regional monitoring coalition groups, participate in regional bioassessments, and participate in a regional monitoring survey. The 2000 Permit did not require the District to participate in these activities. Previously, the District could voluntarily participate, contingent on available resources. Required participation is not mandated by federal law, was not required as part of the 2000 Permit, and constitutes a new program or higher level of service for which the Permittees have and will continue to bear the costs of implementation. The relevant provisions of Part 4.B of the 2010 Permit mandate as follows:

1. *The Principal Permittee shall participate in water quality meetings for watershed management and planning, including but not limited to the following:*

   (a) Southern California Stormwater Monitoring Coalition (SMC)

(b) Other watershed planning groups as appropriate

2. The Principal Permittee shall participate in the following regional water quality programs, and projects for watershed management and planning:

(a) SMC Regional Monitoring Programs

(1) Southern California Regional Bioassessment

(A) Level of effort per watershed

(i) Probabilistic sites per watershed

(I) Ventura River – six

(II) Santa Clara River – three

(III) Calleguas Creek – six

(ii) Integrator sites per watershed

(I) Ventura River – one

(II) Santa Clara river – one

(III) Calleguas Creek – one

(iii) Fixed bioassessment sites

(I) The permittees shall perform bioassessment at one fixed urban site in each major watershed. Site selection shall be determined by the results of the first year SMC results, as approved by the Executive Officer.

(b) Southern California Bight Projects

(1) Regional Monitoring Survey – 2008, and successive years
(2010 Permit, Vol. 1, Tab 1 at pp. 41-42.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the 2010 Permit's requirements associated with participation in regional monitoring coalitions, regional bioassessment, and regional monitoring surveys. Moreover, no federal statute, regulation, or policy requires municipal storm water permits to include participation in regional monitoring efforts as a Permit requirement. Federal regulations implementing the CWA require all NPDES permits to contain certain monitoring provisions, including those establishing "type, intervals and frequency sufficient to yield data which are representative of the monitored activity . . . ." (40 C.F.R. § 122.48, Vol. 2, Tab 17.) In addition, the regulations require certain types of monitoring "to assure compliance with permit limitations." (*Id.* § 122.44(i), Vol. 2, Tab 17.) These requirements apply primarily to parameters for an individual Permittee's discharge. (*Id.* § 122.44(i), Vol. 2, Tab 16.) Monitoring requirements specific to storm water permits under section 122.26 of the federal regulation are largely aimed at identifying sources and characterizing pollution arising from outflows within each MS4's jurisdiction. (*Id.*

§§ 122.26(d)(1)(iv)(B), (2)(iii), Vol. 2, Tab 14.) Storm water management programs "may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls." (*Id.* § 122.26(d)(2)(iv), Vol. 2, Tab 14.) While cooperative agreements may be required, "each copermittee is only responsible for their own systems." (*Id.* § 122.26(d)(2)(i)(D), Vol. 2, Tab 14.) Even where a programmatic approach is taken, federal regulations state that, "Copermittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they operate." (*Id.* § 122.26(a)(3)(vi), Vol. 2, Tab 14.)

In the San Diego and Los Angeles Decisions, the Commission correctly read these regulatory provisions to mean that, while a regional board may impose collaborative approaches to monitor and control pollutants on a watershed basis, such requirements exceed the mandate in federal law or regulations. (San Diego Decision, Vol. 3, Tab 2 p. 74; Los Angeles Decision, Vol. 3, Tab 1 pp. 30-31.) Specifically, the Commission found that:

> The federal regulations *authorize* but *do not require* with specificity regarding whether collaboration occurs on a jurisdictional, watershed or other basis…the permit requires specific action, i.e., required acts that go beyond the requirements of federal law. In adopting these permit provisions, the state has *freely chosen* to impose these requirements. (San Diego Decision, Vol. 3, Tab 2 p. 74, emphasis added.)

Similarly, here, the federal regulations may "authorize" the Los Angeles Regional Board to insert monitoring requirements into the 2010 Permit but do not require that the type of regional monitoring efforts mandated in the 2010 Permit be imposed.

2. Requirements From Prior Permit (2000)

The 2000 Permit was silent on the SMC participation requirement and contained no such mandate. As to the regional bioassessment and the Southern California Bight Projects Regional Monitoring Survey, these too were not specifically required, though monitoring and reporting generally were covered by the 2000 Permit in Part 3.E (2000 Permit, Vol. 1, Tab 2 at p. 13), which required only that:

> *E. Storm Water Monitoring Report.*
>
> *1. The Discharger shall submit a Storm Water Monitoring Report on July 15, 2001 and annually on July 15 thereafter. The report shall include:*
>
> *a. Status of implementation of the monitoring program as described in the attached Monitoring and Reporting Program, CI-7388.*
>
> *b. Results of the monitoring program; and*
>
> *c. A general interpretation of the significance of the results, to the extent that data allows.*

Thus, the addition of these new requirements in the 2010 Permit constitutes a new program or higher level of service.

3. Mandated Activities

As noted above, the 2000 Permit contained no mandate to participate in the SMC or other regional groups, and no requirement that the District, as Principal Permittee, participate in a regional bioassessment or in the Southern California Bight Regional Monitoring Survey. Similarly, the requirements of federal law do not specifically mandate that Permittees must engage in regional activities where the geographic scope of the monitoring program expands beyond the Permittees' jurisdictional boundaries. Thus, the identified subdivisions of Part 4.B of the 2010 Permit impose a new or higher level of service than the previous mandate and constitute an unfunded mandate for which the District is entitled to reimbursement. These requirements have forced the District to spend staff and resources to attend meetings outside of its jurisdictional boundaries, coordinate activities with other non-Ventura County MS4 Permittees, and financially support studies being conducted by a non-profit organization. Mandated participation in regional programs outside of the Permittees' jurisdictional area exceeds the MEP standard contained in federal law. The Permit defines MEP as follows:

> *The technology-based permit requirement established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water must meet. Technology-based requirements, including MEP, establish a level of pollutant control that is derived from available technology or other controls. MEP requires municipal dischargers to perform at maximum level that is practicable. Compliance with MEP may be achieved by emphasizing pollution prevention and source control BMPs in combination with structural and treatment methods where appropriate. The MEP approach is an ever evolving and advancing concept, which considers technical and economic feasibility.* (2010 Permit, Vol. 1, Tab 1 at p. 108.)

Clearly, mandated participation in region-wide (i.e., Southern California) coalitions, bioassessments, and monitoring surveys is unrelated to performance of pollution prevention and source control best management practices. Accordingly, mandated participation in these activities exceeds MEP and federal law. Because federal law does not mandate any of these specific activities, and because such requirements were not contained in the 2000 Permit, these provisions of the 2010 Permit impose a new program or higher level of service and constitute a series of unfunded mandates. The District is entitled to reimbursement for these above described actions.

4. Actual and Reimbursable Costs

To comply with the 2010 Permit requirements relating to SMC participation (Part 4.B.1), the District's costs amounted to $9,412 in fiscal year 2009-2010, $14,706 in fiscal year 2010-2011, $15,882 in fiscal year 2011-2012, $9,375 in fiscal year 2012-2013, $9,375 in

fiscal year 2013-2014, $35,267.86 in fiscal year 2014-2015, and $36,409 in fiscal year 2015-2016.

To comply with the 2010 Permit requirements relating to regional bioassessment (Part 4.B.2.(a)(1)), the District's costs amounted to $67,093.11 in fiscal year 2009-2010, $86,290 in fiscal year 2010-2011, $85,683.16 in fiscal year 2011-2012, $67,395 in fiscal year 2012-2013, $55,118 in fiscal year 2013-2014, $70,122.04 in fiscal year 2014-2015, and $36,409 in fiscal year 2015-2016.

To comply with the 2010 Permit requirements relating to S.CA Bight – regional monitoring survey, the District's costs amounted to $200 in fiscal year 2015-2016.

Summarizing the aforementioned watershed initiative requirements identified above, the District's total costs, pursuant to its obligations and responsibilities under the Implementation Agreement, amounted to $76,505.11 in fiscal year 2009-2010, $100,996 in fiscal year 2010-2011, $101,565.16 in fiscal year 2011-2012, $76,770.02 in fiscal year 2012-2013, $64,493 in fiscal year 2013-2014, $105,189.90 in fiscal year 2014-2015, and $36,609 in fiscal year 2015-2016. The District's costs for fiscal years 2009-2010 through 2015-2016 are set forth in Exhibit 1 to this Written Narrative Statement.

E. Vehicle and Equipment Wash Areas

The provisions of Part 4.G.I.3(a) of the 2010 Permit require each Permittee to eliminate discharges of wash waters from vehicle and equipment washing through one of four specified methods. These provisions apply to all public agency vehicle and equipment wash areas with no exemptions for fire fighting vehicles. The specific methods identified as applied to fire fighting vehicles are not mandated by federal law, were not required as part of the 2000 Permit, and constitute a new program or higher level of service for which the County must bear the costs of implementation. Specifically, these provisions provide that:

Permit Part 4.G.I.3(a):

> *(a) Each Permittee shall eliminate discharges of wash waters from vehicle and equipment washing no later than (365 days after Order adoption date) by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:*
>
> *(1) Self-contain, and haul off for disposal*
>
> *(2) Equip with a clarifier*
>
> *(3) Equip with an alternative pre-treatment device; or*
>
> *(4) Plumb to the sanitary sewer* (2010 Permit, Vol. 1, Tab 1 at p. 79.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, identify any specific federal regulations as authority for the 2010 Permit's elimination of wash water discharge requirements in the manner specified in the 2010 Permit for fire fighting vehicles.

2. Requirements From Prior Permit (2000)

The 2000 Permit required Permittees to ensure that all corporate yards had vehicle and equipment wash areas that were self-contained, or covered, or equipped with a clarifier, or other pretreatment facility, and were properly connected to a sanitary sewer. However, the 2000 Permit specifically exempted fire fighting vehicles. (2000 Permit, Vol. 1, Tab 2 at p. 20.)

Permit Part 4.E.4:

> *4. Co-permittees shall require that all vehicle/equipment wash areas must be self-contained, or covered, or equipped with a clarifier, or other pretreatment facility, and properly connected to a sanitary sewer. This provision does not apply to fire fighting vehicles.* (2000 Permit, Vol. 1, Tab 2 at p. 20.)

3. Mandated Activities

As noted above, the 2010 Permit creates a new requirement with respect to fire fighting vehicles. Where as previously, fire fighting vehicles were exempt, the 2010 Permit provides no continued exemption. Accordingly, the County, as a Permittee, is now required to retrofit 30 fire stations to comply with this new Permit requirement.

Federal law does not mandate that wash waters from public agency vehicle and equipment areas must be eliminated through one of the methods specified in the 2010 Permit, and specifically, such a requirement has never previously been imposed on fire fighting vehicles. MEP is defined in the Permit as:

> *The technology-based permit requirement established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water must meet. Technology-based requirements, including MEP, establish a level of pollutant control that is derived from available technology or other controls. MEP requires municipal dischargers to perform at maximum level that is practicable. Compliance with MEP may be achieved by emphasizing pollution prevention and source control BMPs in combination with structural and treatment methods where appropriate. The MEP approach is an ever evolving and advancing concept, which considers technical and economic feasibility.* (2010 Permit Part 6, Vol. 1, Tab 1 at p. 108.)

MEP clearly incorporates technical and economic feasibility. While technically feasible, the retrofitting of 30 fire stations is not economically feasible, and therefore the requirement as applied to fire fighting vehicles goes beyond MEP. Accordingly, the vehicle wash area provisions that now apply to fire fighting vehicles constitutes a new program or higher level of service and are therefore unfunded mandates. The County is entitled to reimbursement for this required action.

4. Actual and Reimbursable Costs

To comply with the 2010 Permit's Vehicle and Equipment Wash Area requirements for fire fighting vehicles (Part 4.G.I.3(a)), the County's costs amounted to $315,392.57 in fiscal year 2009-2010, $108,904.75 in fiscal year 2011-2012, $437,438.42 in fiscal year 2012-2013, $312,759.76 in fiscal year 2013-2014, and $6,113 in fiscal year 2015-2016. The County's costs to comply with the mandated activities are set forth in Exhibit 1 to this Written Narrative Statement.

F. Illicit Connections and Illicit Discharges Elimination Program

The 2010 Permit has mandated additional activities as part of the Illicit Connections and Illicit Discharges Elimination Program that represents a costly mandate to Permittees, and specifically, the County. The Illicit Connections and Illicit Discharges Elimination Program requires the Permittees, including the County, to screen for illicit connections by preparing a map that shows the location and length of all underground pipes 18 inches and greater in diameter, and all channels within the Permittees' permitted area. This activity is not mandated by federal law and was not required as part of the 2000 Permit, and constitutes a new program or higher level of service for which the Permittees must bear the costs of implementation. The relevant portions of the 2010 Permit, specifically Part 4.H.I.3, require as follows:

Permit Part 4.H.I.3(a):

> *(1) Each Permittee shall submit to the Principal Permittee:*
>
> *(A) A map at a scale and in a format specified by the Principal Permittee showing the location and length of underground pipes 18 inches and greater in diameter, and channels within their permitted area and operated by the Permittee in accordance with the following schedule:*
>
> *(i) All channeled portions of the storm drain system no later than 90 days after Order adoption date (insert date).*
>
> *(ii) All portions of the storm drain system consisting of storm drain pipes 36 inches in diameter or greater, no later than May 7, 2012.*

> *(iii) All portions of the storm drain system consisting of storm drain pipes 18 inches in diameter or greater, no later than May 7, 2014.* (2010 Permit, Vol. 1, Tab 1 at p. 86.)

1. Requirements of Federal Law

Neither the 2010 Permit, nor any of its supporting documents, specifically identify any federal regulations as authority for the 2010 Permit's storm drain mapping requirement. With respect to federal requirements associated with illicit discharges, the federal regulations require as follows:

> (B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:
>
> (1) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by he municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);
>
> (2) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;
>
> (3) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residential chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(4) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges of water quality impacts associated with discharges from municipal separate storm sewers;

(6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(7) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary. (40 C.F.R. § 122.26(d)(2)(iv)(B), Vol. 2, Tab 14.)

With respect to mapping requirements, the federal regulations require as follows:

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(1) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(2) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(3) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(4) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(5) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(6) The identification of publicly owned parks, recreational areas, and other open lands. (40 C.F.R. § 122.26(d)(1)(iii)(B), Vol. 2, Tab 14.)

2. Requirements From Prior Permit (2000)

The 2000 Permit contains some limited requirements to meet the federal requirements for illicit discharges, which are as follows:

2000 Permit, Part 4.F:

1. *Co-permittees shall investigate the cause, determine the nature and estimated amount of reported illicit discharge/dumping incidents, and refer documented non-storm water discharges/connections or dumping to an appropriate agency for investigation, containment and cleanup. Appropriate action including issuance of an enforcement order that will result in cessation of the illicit discharge, and/or elimination of the illicit connection, shall take place within six months after the Co-permittee gains knowledge of the discharge/connection.*
2. *Each Co-permittee shall train its employees in targeted positions, as defined by the Ventura County SMP, on how to identify and report illicit discharges by January 27, 2001, and annually thereafter.*
3. *Automotive, food facility, construction and Co-permittee facility site inspection visits shall include distribution of educational material that describes illicit discharges and provides a contact number for reporting illicit discharges.*
4. *New information developed for Phase I industrial facility educational material shall include information describing illicit discharges. The information shall include: types of discharges prohibited, how to prevent illicit discharges, what to do in the event of an illicit discharge, and the array of enforcement actions the facility may be subject to, including penalties that can be assessed.* (2000 Permit, Vol. 1, Tab 2 at pp. 21-22.)

However, the 2000 Permit does not require mapping of the storm drain system as part of this program. Thus the addition of this new requirement in the 2010 Permit constitutes a new program or higher level of service.

3. Mandated Activities

As noted above, the 2010 Permit requires the County to conduct mapping of the storm drain system within the County's unincorporated areas. This requirement is not mandated by federal law and was not contained in the 2000 Permit. This has forced the County to prepare extensive maps to meet this mandate. Further, the requirement to prepare the storm drain system map exceeds the federal MEP standard because it is not a technology-based pollutant control technique or best management practice that is designed to reduce discharges of pollutants. Because federal law does not specifically mandate this requirement as contained in the 2010 Permit, and the requirement was not contained in the 2000 Permit, this provision of the 2010 Permit imposes a new program or higher level of service and constitutes an unfunded mandate. The County is entitled to reimbursement for the above described action.

4. Actual and Reimbursable Costs

To comply with the 2010 Permit's storm drain mapping requirements (Part 4.H.I.3(a)), the County's costs amounted to $32,610.17 in fiscal year 2009-2010 and $23,442.09 in fiscal year 2010-2011. The County's costs to comply with these mandated activities are set forth in Exhibit 1 to this Written Narrative Statement.

VI. Statewide Cost Estimate

The 2010 Permit only relates to areas under the control or jurisdiction of the County, the District, and the other Permittees. Therefore, the cost estimate provided for implementation of the MS4 Permit only relates to these identified areas. Accordingly, no statewide cost estimate is available or required.

VII. Funding Sources

Under the Implementation Agreement, the District receives funding from the other Co-Permittees to help finance the District's obligations and responsibilities as the Principal Permittee and for the activities specified in the Implementation Agreement. The Co-Permittees may fund their portion of the District's Principal Permittee costs either by deducting their share from the proceeds of the Benefit Assessment Program or by payment to the District. The District's Benefit Assessment Program was authorized by the Ventura County Watershed Protection Act ("Act"), as amended by Chapter 438, Statutes of 1987, and Chapter 365, Statutes of 1988. The purposes for which the Benefit Assessments are levied fall within those activities that are subject to the requirements of Proposition 218. Accordingly, any increase in the Benefit Assessment to pay for increased costs mandated by the 2010 Permit must be approved by the voters and property owners, pursuant to the requirements of Proposition 218. The level of funding available to the District through the Benefit Assessment Program is currently less than what is necessary to fund the newly mandated requirements.

The County's total program costs of $1.7 million annually for its Permittee obligations are funded strictly through the County's General Fund, except for $58,000 which comes from the Benefit Assessment Program.

The District and County are not aware of any dedicated State funds, dedicated federal funds, other nonlocal agency funds, or local agency general purpose funds that are or will be available to fund their respective new activities. In addition, the District and County do not have fee authority to offset these costs.

VIII. Prior Mandate Determinations

The vital portions of previous Commission decisions are cited in relevant portions of the narrative section of this Test Claim. However, as required, Claimants have assembled a

list of the previous test claim decisions that are relevant to this Test Claim. They are as follows:

- *In re Test Claim on: Los Angeles Regional Water Quality Control Board Order No. 01-192, Case Nos. 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21* ("Los Angeles Decision") and can be found in Volume 3, Tab 1;

- *In re Test Claim on San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Case No. 07-TC-09* ("San Diego Decision") and can be found in Volume 3, Tab 2.

IX. Declaration of Costs

Actual and/or estimated costs resulting from the alleged mandates exceed $1,000, as set forth in Exhibit 1 to this Written Narrative Statement.

X. Conclusion

The 2010 Permit imposes many new mandated activities and programs on the District and the County. As detailed above, the costs to develop and implement these programs and activities as required are substantial. The District and County believe that the costs incurred and to be incurred satisfy all the criteria for reimbursable mandates and respectfully requests that the Commission make such findings as to each of the mandated programs and activities set forth herein.

EXHIBIT 1

SB 90 AGENCY CERTIFICATION

AGENCY: Ventura County Watershed Protection District, Fund 1720

MANDATE NAME(S) AND PROGRAM NUMBER(S) and COSTS INCURRED IN FISCAL YEARS 2010, 2011, 2012, 2013, 2014, 2015, and 2016:

Element Eligible for Reimbursement	FY 10 Cost Incurred	FY11 Cost Incurred	FY12 Cost Incurred	FY13 Cost Incurred	FY14 Cost Incurred	FY15 Cost Incurred	FY16 Cost Incurred	Citation: NPDES Permit No. CAS004002 Order No. 10-108
Public Outreach								
Distribute SW Pollution Prevention materials to Auto Parts Stores, Home Improvement, etc.	27,996.00	20,402.00	-	-	-	4,705.75	-	4. C. 2 (c) (1) (C) pg 42
Ethnic communities strategy	-	-	-	-	-	3,262.50	6,375.00	4. C. 2 (c) (2)
School District materials to 50% of all K-12 every two years/ Youth Outreach Plan	34,970.00	-	-	-	5,677.92	5,070.17	9,497.90	4. C. 2 (c) (6)
Behavioral Change Assessment	21,000.00	21,000.00	21,000.00	20,000.00	20,000.00	20,000.00	20,000.00	4. C. 2 (c) (8)
Pollutant- Specific Outreach	3,620.00	3,620.00	-	-	-	-	-	4. C. 2 (d)
Corporate Outreach	-	10,438.00	-	-	-	-	-	4. C. 3 (a) (1)
Business Assistance Program	693.08	9,963.89	-	-	-	-	-	4. C. 3 (b) (1)
Annual Reporting								
Development	11,850.00							4. I . 1
Electronic reporting format	35,675.00	4,293.75						4. I . 1
Program Effectiveness Assessment				10,013.12	6,766.25			3. E. (1) (e)
Special Studies								
Hydromodification (through SCCWRP and SMC)				123,180.85	52,947.43	6,533.25		Attachment F section F Page F-15 and E. III 3

								(E) page 60
Technical Guidance Manual Update/BMP Performance Criteria	104,844.26	101,919 81	7,350.20					4.E.IV.4
Off-Site Mitigation Program Structure	5,242.88	17,460.50	93,607.64					4. E. III.2(c)(3)-(4)
Off-Site Mitigation List of Sites/Locations		12,966.00	69,030.07					4. E. III.2(c)(3)-(4)
Watershed Initiative Participation/Regional Representation								
SMC Participation	9,412.00	14,706.00	15,882.00	9,375.00	9,375.00	35,267 86		4. B. 1.
Regional Bioassessment	67,093.11	86,290.00	85,683.16	67,395.02	55.118.00	70,122.04	36,409.00	4. B. 2. (a) (1)
S.CA Bight – Regional Monitoring Survey							200.00	4. B. 2. (b) (1)

SB 90 AGENCY CERTIFICATION

AGENCY: County of Ventura, Fund 1475 Unincorporated Stormwater

MANDATE NAME(S) AND PROGRAM NUMBER(S):

Element Eligible for Reimbursement	FY 10 Cost Incurred	FY11 Cost Incurred	FY12 Cost Incurred	FY13 Cost Incurred	FY14 Cost Incurred	FY15 Cost Incurred	FY16 Cost Incurred	Citation: NPDES Permit No. CAS004002 Order No. 10-108
Map at a scale and in a format specified by the Principal Permittee showing the location and length of underground pipes 18 inches and greater in diameter	$32,610.17	$23,442.09	-	-	-	-	-	Part 4.H.I.3(a)

SB 90 AGENCY CERTIFICATION

AGENCY: County of Ventura

MANDATE NAME(S) AND PROGRAM NUMBER(S):

Element Eligible for Reimbursement	FY11 Cost Incurred	FY12 Cost Incurred	FY13 Cost Incurred	FY14 Cost Incurred	FY15 Cost Incurred	FY16 Cost Incurred	Citation: NPDES Permit No. CAS004002 Order No. 10-108
Eliminate discharges of wash waters from vehicle and equipment washing	$315,392.57	$108,904.75	$437,438.42	$312,759.76	$0.00	$6,113.00	Part 4.G.I.3(a)

COSTS INCURRED IN FISCAL YEARS 2011, 2012, 2013, 2014 and 2016

DECLARATION OF JEFF PRATT

COUNTY OF VENTURA

I, JEFF PRATT, hereby declare and state as follows:

1. I am the Director of Public Works for the County of Ventura (the "County"). In that capacity, I have direct oversight of the County's implementation of requirements contained in Order No. R4-2010-0108, Waste Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges From the Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein ("Permit"), as adopted by the California Regional Water Quality Control Board for the Los Angeles Region.

2. Before becoming the Director of Public Works for the County, I was the Director of the Ventura County Watershed Protection District (the "District").

3. The County is a Co-Permittee.

4. I have reviewed sections of the Permit as set forth herein and am familiar with those provisions. I am also familiar with the pertinent sections of Order No. 00-108 ("2000 Permit"), which was issued by the Los Angeles Regional Water Quality Control Board in 2000.

5. I have an understanding of the County's sources of funding for programs and activities required to comply with the Permit.

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

7. Based on my understanding of the Permit, and the requirements of the 2000 Permit, I believe that the Permit requires the County to undertake the following new and/or

upgraded activities not required by the 2000 Permit and which are unique to local government entities:

a. Enhancement of Illicit Connections Elimination Program: Part 4.H.I.3 of the Permit requires the Permittees to develop a map showing the location and length of underground pipes 18 inches and greater in diameter, and channels within their permitted area. To comply with this requirement, the County must develop a map of all of the County's storm drain system for the unincorporated areas of the County. The County's costs to comply with Part 4.H.I.3(a) amounted to $32,610.17 in fiscal year 2009-2010 and $23,442.09 in fiscal year 2010-2011.

b. Vehicle and Equipment Wash Areas: Part 4.G.I.3 of the Permit requires each Permittee to eliminate discharges of wash water from vehicle and equipment washing by implementing one of the specified measures. To comply with this Permit provision, the County must retrofit 30 fire stations throughout the County. The County's costs to comply with Part 4.F.I.3(a) amounted to $315,392.57 in fiscal year 2009-2010, $108,904.75 in fiscal year 2011-2012, $437,438.42 in fiscal year 2012-2013, $312,759.76 in fiscal year 2013-2014, and $6,113 in fiscal year 2015-2016.

8. I am informed and believe that there are no dedicated state, federal, or regional funds that are or will be available to pay for any of the new and/or upgraded programs set forth in this declaration. I am not aware of any fee or tax which the County would have the discretion to impose under California law to recover any portion of these new activities. I am further informed and believe that the only available source of funding to pay for these new activities will be the County's General Fund.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of May 2017 at Ventura, California.

Jeff Pratt

DECLARATION OF GLENN SHEPHARD

VENTURA COUNTY WATERSHED PROTECTION DISTRICT

I, GLENN SHEPHARD, hereby declare and state as follows:

1. I am the Director of the Ventura County Watershed Protection District (the "District"). In that capacity, I have direct oversight of the District's implementation of requirements contained in Order No. R4-2010-0108, Waste Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges From the Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein ("Permit"), as adopted by the California Regional Water Quality Control Board for the Los Angeles Region.

2. The District is designated in the Permit as the Principal Permittee for implementation of the Permit, as well as a Co-Permittee.

3. I have reviewed sections of the Permit as set forth herein and am familiar with those provisions. I am also familiar with the pertinent sections of Order No. 00-108 ("2000 Permit"), which was issued by the Los Angeles Regional Water Quality Control Board in 2000.

4. I have an understanding of the District's sources of funding for programs and activities required to comply with the Permit.

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

6. Based on my understanding of the Permit, and the requirements of the 2000 Permit, I believe that the Permit requires the District to undertake the following new and/or upgraded activities not required by the 2000 Permit and which are unique to local government entities:

a. Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2), 4.C.2(c)(6), 4.C.2(c)(8), 4.C.2(d), 4.C.3(a), and 4.C.3(b)(1), among other Parts of the Permit, require the District, as Principal Permittee, to distribute storm water pollution prevention materials to various types of businesses, develop and implement an ethnic communities strategy, provide materials to 50 percent of all K-12 students every two years and/or develop an alternative youth action plan, develop and implement a behavioral change assessment strategy, coordinate and develop a pollutant specific outreach program, develop and implement a corporate outreach program, and implement a business assistance program. These activities are being conducted by the District as Principal Permittee. The costs of these activities are funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs to develop and distribute storm water pollution prevention materials to automotive parts stores, home improvement centers, lumber-yards, hardware stores, pet shops, and feed stores (Part 4.C.2(c)(1)(C) at p. 42) amounted to $27,996 in fiscal year 2009-2010, $20,402 in fiscal year 2010-2011, and $4,705.75 in fiscal year 2014-2015. The District's costs to develop and implement a strategy to educate ethnic communities (Part 4.C.2(c)(2)) amounted to $3,262.50 in fiscal year 2014-2015 and $6,375 in fiscal year 2015-2016. The District's costs to distribute materials for school age children, or develop a Youth Action Plan, to educate school age children throughout the County (Part 4.C.2(c)(6)) amounted to $34,970 in fiscal year 2009-2010, $5,677.92 in fiscal year 2013-2014, $5,070.17 in fiscal year 2014-2015, and $9,497.90 in fiscal year 2015-2016. The District's costs to develop and implement a behavioral change assessment strategy (Part 4.C.2(c)(8)) amounted to $21,000 in fiscal year 2009-2010, $21,000 in fiscal year 2010-2011, $21,000 in fiscal year 2011-2012, $20,000 in fiscal year 2012-2013, $20,000 in fiscal year 2013-2014, $20,000 in fiscal year 2014-2015, and $20,000 in fiscal year 2015-2016. The District's costs to develop pollutant specific outreach programs for metals, urban pesticides, bacteria, and nutrients (Part 4.C.2(d)) amounted to $3,620 in fiscal year 2009-2010 and $3,620 in fiscal year 2010-2011. The District's costs to develop and implement a Corporate Outreach program that is designed to educate and inform

corporate franchise operators (Part 4.C.3(a)(1)) amounted to $10,438 in fiscal year 2010-2011. The District's costs to implement a Business Assistance Program that includes providing technical information to small businesses through on-site, telephone, or email consultations, and includes distributing storm water pollution prevention education materials to various types of small businesses (e.g., auto repair shops, car wash facilities) (Part 4.C.3(b)(1)) amounted to $693.08 in fiscal year 2009-2010 and $9,963.89 in fiscal year 2010-2011.

b. Reporting Requirements: Parts 3.E(1)(e) and 4.I.1 of the Permit require the District, as Principal Permittee, to develop an electronic reporting program and form, and to conduct a program effectiveness evaluation. The costs of these activities are funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs to develop an electronic reporting program (Part 4.I.1) amounted to $11,850 for fiscal year 2009-2010. The District's costs to develop an electronic reporting format (Part 4.I.1) amounted to $35,675 for fiscal year 2009-2010 and $4,293.75 for fiscal year 2010-2011. The District's costs to perform a program effectiveness assessment (Part 3.E.(1)(e)) amounted to $10,013.12 in fiscal year 2012-2013 and $6,766.25 in fiscal year 2013-2014.

c. Hydromodification Control Study: Parts 4.E.III(a)(1)(D)-(E) and Monitoring Program – No. CI 7388 for Order No. R4-2010-0108, Appendix F, section F of the Permit require the Permittees, and the District, as Principal Permittee, to conduct or participate in special studies to develop tools to predict and mitigate adverse impacts of hydromodification, and to comply with hydromodification control criteria. The District's costs relating to hydromodification (Part 4.E.III.3(a)(1)(D)-(E), Attachment F, Section F, page F-15) amounted to $123,180.85 for fiscal year 2012-2013, $52,947.43 for fiscal year 2013-2014, and $6,533.25 for fiscal year 2014-2015.

d. Technical Guidance Manual for Storm Water Quality Control Measures: Part 4.E.IV.4 of the Permit requires the Permittees to update the Ventura County

Technical Guidance Manual for Storm Water Quality Control Measures ("Technical Guidance Manual") to include a number of new informational requirements, including but not limited to, hydromodification criteria, expected best management practice performance criteria, and low impact development principles and specifications. The development of the Technical Guidance Manual was conducted by the District as Principal Permittee. The cost of this activity is funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs relating to the Technical Guidance Manual / BMP performance criteria (Part 4.E.IV.4) amounted to $104,844.26 for fiscal year 2009-2010, $101,919.81 for fiscal year 2010-2011, and $7,350.20 for fiscal year 2011-2012.

e. Off-Site Mitigation Projects: Parts 4.E.III.2(c)(3) and 4.E.III.2(c)(4) of the Permit require the Permittees to develop a list of eligible public and private offsite mitigation projects available for funding, and to develop a schedule for completion of the offsite mitigation projects. The development of the list of eligible public and private and offsite mitigation projects, as well as the development of the schedule for completion is being conducted by the District as the Principal Permittee. The cost of this activity is funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs relating to off-site mitigation program structure (Part 4.E.III.2(c)) amounted to $5,242.88 for fiscal year 2009-2010, $17,460.50 for fiscal year 2010-2011, and $93,607.64 for fiscal year 2011-2012. The District's costs relating to off-site mitigation sites/locations (Part 4.E.III.2(c)) amounted to $12,966 for fiscal year 2010-2011 and $69,030.07 for fiscal year 2011-2012.

f. Participation in the Southern California Stormwater Monitoring Coalition: Part 4.B.1 of the Permit requires the District, as Principal Permittee, to participate in water quality meetings for watershed management and planning, including participation in the Southern California Stormwater Monitoring Coalition. The cost of this activity is

funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs to participate in the Southern California Stormwater Monitoring Coalition (Part 4.B.1) amounted to $9,412 in fiscal year 2009-2010, $14,706 in fiscal year 2010-2011, $15,882 in fiscal year 2011-2012, $9,375 in fiscal year 2012-2013, $9,375 in fiscal year 2013-2014, and $35,267.86 in fiscal year 2014-2015.

g. Southern California Regional Bioassessment: Part 4.B.2(a)(1) of the Permit requires the District, as Principal Permittee, to participate in water quality monitoring programs with the Southern California Stormwater Monitoring Coalition, including participation in the Southern California Regional Bioassessment. The cost of this activity is funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's regional bioassessment costs (Part 4.B.2.(a)(1)) amounted to $67,093.11 in fiscal year 2009-2010, $86,290 in fiscal year 2010-2011, $85,683.16 in fiscal year 2011-2012, $67,395 in fiscal year 2012-2013, $55,118 in fiscal year 2013-2014, $70,122.04 in fiscal year 2014-2015, and $36,409 in fiscal year 2015-2016.

h. Southern California Bight Projects: Part 4.B.2(b)(1) of the Permit requires the District, as Principal Permittee, to participate in water quality monitoring programs with the Southern California Stormwater Monitoring Coalition, including participation in the Southern California Bight Projects. The cost of this activity is funded in part through funding provided by the District pursuant to its obligations under the Implementation Agreement (included in section 7 of the Test Claim), as well as through funding provided to the District from the Permittees under the Implementation Agreement. The District's costs to participate in the Southern California Bight Projects amounted to $200 in fiscal year 2015-2016.

7. I am informed and believe that there are no dedicated state, federal, or regional funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this declaration. I am not aware of any fee or tax that the District would have the discretion to impose under California law to recover any portion of the costs of the programs and activities set forth in this declaration. I further am informed and believe that the only available source for the District to pay for these new programs and activities is the District's general operating fund, and from the general funds of the Permittees, which are then provided to the District through the Implementation Agreement (included in section 7 of the Test Claim).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of May 2017 at Ventura, California.

Glenn Shephard

DECLARATION OF THERESA A. DUNHAM

I, THERESA A. DUNHAM, hereby declare and state as follows:

1. I am the Special Counsel to the County of Ventura (the "County") and the Ventura County Watershed Protection District (the "District"). I am the claimant representative for both the County and the District for purposes of their test claims filed with the Commission on State Mandates. I also represented the County and District before the California Regional Water Quality Control Board Los Angeles Region ("Los Angeles Water Board") in its quasi-judicial proceeding for adoption of the storm water permit that is the subject of these test claims, Order No. R4-2010-0108, National Pollutant Discharge Elimination System ("NPDES") No. CAS004002 (the "Permit"), which regulates discharges from the municipal separate storm sewer systems ("MS4s") within the Ventura County Watershed Protection District, County of Ventura and the incorporated cities therein (the "Permittees").

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

3. Attached hereto as Exhibit A is a true and correct copy of the "NPDES Memorandum of Agreement between the U.S. Environmental Protection Agency and the California State Water Resources Control Board" ("MOA"). At Section II.F. on page 22, titled "Final Permits," the MOA provides that permits become effective 50 days after adoption where EPA has made no objection to the permit, if (a) there has been significant public comment, or (b) changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate U.S. Environmental Protection Agency ("EPA") comments).

4. On May 5, 2010, the Los Angeles Water Board issued a draft Permit, Notice of Written Public Comment Period and Notice of Public Hearing. The EPA made no objection to the draft Permit as proposed by the Los Angeles Water Board on May 5, 2010, or prior to its adoption on July 8, 2010. There was, however, significant written public comment submitted on or before June 7, 2010, which was the closing date for submittal of written public comments (See

http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura.shtml). In all, 21 written comment letters were submitted to the Los Angeles Water Board on or before June 7, 2010, including from diverse interests such as the Natural Resources Defense Council and the Building Industry Association of Southern California. Further, the Natural Resources Defense Council and the Building Industry Association of Southern California both requested and received Party status in this quasi-judicial proceeding.

5. After the close of the written public comment period, and prior to the close of the Public Hearing on July 8, 2010, further revisions were made to the draft Permit that was issued on May 5, 2010. The additional revisions were not the result of requests made by EPA but were due to comments provided by other interested parties (See http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura.shtml).

6. Based on this information and belief, the Permit adopted by the Los Angeles Water Board on July 8, 2010 was subject to significant written public comment and was revised as compared to the version that was sent to EPA on May 5, 2010. Thus, according to the terms of the binding MOA between EPA and the State Water Resources Control Board, the "effective date" of the Permit was "50 days after adoption." 50 days after the July 8, 2010 adoption date is August 27, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of May 2017 at Sacramento, California.

Theresa A. Dunham

EXHIBIT A

NPDES MEMORANDUM OF AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

I. PREFACE

A. Introduction

The State Water Resources Control Board (State Board) is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The State Board has been authorized by the U.S. Environmental Protection Agency (EPA), pursuant to Section 402 of the Clean Water Act (CWA), to administer the National Pollutant Discharge Elimination System (NPDES) program in California since 1973.

The Chairman of the State Board and the Regional Administrator of EPA, Region 9 hereby affirm that the State Board and the Regional Boards have primary authority for the issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for federal facilities; and implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under Sections 301(h) or 301(m), and permits to dischargers for which EPA has assumed direct responsibility pursuant to 40 CFR 123.44. The State may apply separate requirements to these facilities under its own authority.

This Memorandum of Agreement (MOA) redefines the working relationship between the State and EPA pursuant to the Federal regulatory amendments that have been promulgated since 1973, and supersedes:

1. THE MEMORANDUM OF UNDERSTANDING REGARDING PERMIT AND ENFORCEMENT PROGRAMS BETWEEN THE STATE WATER RESOURCES CONTROL BOARD AND THE REGIONAL ADMINISTRATOR, REGION IX, ENVIRONMENTAL PROTECTION AGENCY, signed March 26, 1973; and

2. The STATE/EPA COMPLIANCE AND ENFORCEMENT AGREEMENT, dated October 31, 1986. The State's standard operating procedures for the NPDES and pretreatment programs are described in the State's Administrative Procedures Manual (APM).

The State shall implement the provision of this MOA through the APM. The State's annual workplan, which is prepared pursuant to Section 106 of the CWA, will establish priorities, activities and outputs for the implementation of specific components of the NPDES and pretreatment programs. The basic requirements of this MOA shall override any other State/EPA agreements as required by 40 CFR 123.24(c). EPA shall implement the provisions of this MOA through written EPA policy guidance and the annual State/EPA 106 agreement.

B. Definitions

The following definitions are provided to clarify the provisions of this MOA.

1. "The APM" means the State's Administrative Procedures Manual. The APM describes standard operating requirements, procedures, and guidance for internal management of the State Board and Regional Boards in the administration of the NPDES and pretreatment programs. The APM is kept current through periodic updates.

2. "Comments" means recommendations made by EPA or another party, either orally or in writing, about a draft permit.

3. "Compliance monitoring" means the review of monitoring reports, progress reports, and other reports furnished by members of the regulated community. It also means the various types of inspection activities conducted at the facilities of the regulated community.

4. "CWA" means the Clean Water Act [33 USC 1251 et. seq.].

5. "Days" mean calendar days unless specified otherwise.

6. "Prenotice draft permit" is the document reviewed by EPA, other agencies, and the applicant prior to public review.

7. "Draft permit" is the document reviewed by EPA and the public.

8. "Enforcement" means all activities that may be undertaken by the Regional Boards, the State Board, or EPA to achieve compliance with NPDES and pretreatment program requirements.

9. "EPA" means the U.S. Environmental Protection Agency (EPA) Region 9, unless otherwise stated.

10. "Formal enforcement action" means an action, order or referral to achieve compliance with NPDES and pretreatment program requirements that: (a) specifies a deadline for compliance; (b) is independently enforceable without having to prove the original violation; and (c) subjects the defendant to adverse legal consequences for failure to obey the order (see footnote #6, p.19, National Guidance for Oversight of NPDES Programs, FFY 1986, dated January 20, 1985). Time Schedule Orders, Administrative Civil Liability Orders, Cease and Desist Orders, Cleanup and Abatement Orders, and referrals to the Attorney General meet these criteria. Effective January 1, 1988, the State and Regional Boards will have authority to impose administrative civil liability, consistent with the requirements of 40 CFR 123.27(a)(3)(i), for all NPDES and pretreatment program violations.

11. "Issuance" means the issuance, reissuance, or modification of NPDES permits through the adoption of an order by a Regional Board or the State Board.

12. "Objections" means EPA objections to applications, prenotice draft permits, draft permits, or proposed permits that are based on federal law or regulation, which are filed as "objections", and which must be resolved before a NPDES permit can be issued, or reissued or modified thereto. "Objection" and "formal objection" mean the same thing.

13. "Proposed permit" means a permit adopted by the State after the close of the public comment period which may then be sent to EPA for review before final issuance by the State. The State's common terminology of "adopted permit" is equivalent to the term "proposed permit" as used at 40 CFR 122.2.

14. Quality Assurance" means all activities undertaken by the State or EPA to determine the accuracy of the sampling data reported on Discharge Monitoring Reports (DMRs), inspection reports, and other reports.

15. "State" means the staff and members of the Regional Boards and the State Board collectively.

16. "106 Workplan" means the annual agreement that is negotiated between the State and EPA.

C. Roles and Responsibilities

1. EPA Responsibilities

EPA is responsible for:

a. Providing financial, technical, and other forms of assistance to the State;

b. Providing the State Board with copies of all proposed, revised, promulgated, remanded, withdrawn, and suspended federal regulations and guidelines;

c. Advising the State Board of new case law pertaining to the NPDES and pretreatment programs;

d. Providing the State Board with draft and final national policy and guidance documents;

e. Monitoring the NPDES and pretreatment programs in California to assure that the program is administered in conformance with federal legislation, regulations, and policy;

f. Intervening as necessary in specific situations (such as development of draft permits, or permit violations) to maintain program consistency throughout all states and over time;

g. Administering the program directly to the following classes of facilities:

(1) Dischargers granted variances under Sections 301(h) or 301(m) of the CWA; and

(2) Dischargers which EPA has assumed direct responsibility for pursuant to 40 CFR 123.44, and

2. State Board Responsibilities

The State Board is responsible for supporting and overseeing the Regional Board's management of the NPDES and pretreatment programs in California. This responsibility includes:

a. Evaluating Regional Board performance in the areas of permit content, procedure, compliance, monitoring and surveillance, quality assurance of sample analyses, and program enforcement;

b. Acting on its own motion as necessary to assure that the program is administered in conformance with Federal and State legislation, regulations, policy, this MOA, and the State annual 106 Workplan;

c. Providing technical assistance to the Regional Boards;

d. Developing and implementing regulations, policies, and guidelines as needed to maintain consistency between State and federal policy and program operations, and to maintain consistency of program implementation throughout all nine regions and over time;

e. Reviewing decisions of the Regional Boards upon petition from aggrieved persons or upon its own motion;

f. Assisting the Regional Boards in the implementation of federal program revisions through the development of policies and procedures; and

g. Performing any of the functions and responsibilities ascribed to the Regional Boards.

h. California Pretreatment Program responsibilities as listed in Section III.B. of this MOA.

3. Regional Board Responsibilities

The following responsibilities for managing the NPDES and pretreatment programs in California have been assigned to the Regional Boards. These responsibilities include:

a. Regulating all discharges subject to the NPDES and pretreatment programs, except those reserved to EPA, in conformance with Federal and State law, regulations, and policy;

b. Maintaining technical expertise, administrative procedures and management control, such that implementation of the NPDES and pretreatment programs consistently conforms to State laws, regulations, and policies;

c. Implementing federal program revisions;

d. Providing technical assistance to the regulated community to encourage voluntary compliance with program requirements;

e. Assuring that no one realizes an economic advantage from noncompliance;

f. Maintaining an adequate public file at the appropriate Regional Board Office for each permittee. Such files must, at a minimum, include copies of: permit application, issued permit, public notice and fact sheet, discharge monitoring reports, all inspection reports, all enforcement actions, and other pertinent information and correspondence;

g. Comprehensively evaluating and assessing compliance with schedules, effluent limitations, and other conditions in permits;

h. Taking timely and appropriate enforcement actions in accordance with the CWA, applicable Federal regulations, and State Law; and

i. California Pretreatment Program responsibilities as listed in Section III. B of this MOA.

D. Program Coordination

In order to reinforce the State Board's program policy and overview roles, EPA will normally arrange its meetings with Regional Board staff through appropriate staff of the State Board. In all cases, the State Board will be notified of any EPA meetings with Regional Boards.

E. Conflict Resolution

Disputes shall be resolved in accordance with the Agreement on a Conflict Resolution Process Between Regional Administrator, EPA, Region 9 and Chairman, State Water Resources Control Board.

II. PERMIT REVIEW, ISSUANCE, AND OBJECTIONS

A. General

The State Board and Regional Boards have primary authority for the issuance of NPDES permits. EPA may comment upon or object to the issuance of a permit or the terms or conditions therein. Neither the State Board nor the Regional Boards shall adopt or issue a NPDES permit until all objections made by EPA have been resolved pursuant to 40 CFR 123.44 and this MOA. The following procedures describe EPA permit review, comment, and objection options that may delay the permit process. These options present the longest periods allowed by 40 CFR 123.44. However, the process should normally require far less time.

The State Board, Regional Boards, and EPA agree to coordinate permit review through frequent telephone contact. Most differences over permit content should be resolved through telephone liaison. Therefore, permit review by the State and EPA should not delay issuing NPDES permits. However, if this review process causes significant delays, the Chief, Division of Water Quality (DWQ) of the State Board (or his or her designee), and the Director, Water Management Division (WMD) of EPA (or his or her designee) agree to review the circumstances of the delays. The State Board and EPA shall determine the reasons for the delays and take corrective action.

To the extent possible, all expiring NPDES permits shall be reissued on or before their expiration. If timely reissuance is not possible, the State Board will notify the Regional Administrator of the reasons for the delay. In no event will permits continued administratively beyond their expiration date be modified or revised.

In the case of the development of a general permit, the Regional Board will collect sufficient data to develop effluent limitations and prepare and draft the general permit. The Regional Board will issue and administer NPDES general permits in accordance with the California Water Code, Division 7 and federal regulations 40 CFR 122.28.

1. EPA Waiver of Review

   a. EPA waives the right to routinely review, object to, or comment upon State-issued permits under Section 402 of the CWA for all categories of discharges except those identified under II.A.2. below.

   b. Notwithstanding this waiver, the State Board and the Regional Boards shall furnish EPA with copies of any file material within 30 days of an EPA request for the material.

   c. The Regional Administrator of EPA, Region 9 may terminate this waiver at any time, in whole or in part, by sending the State Board a written notice of termination.

   d. The State shall supply EPA with copies of final permits.

2. Permits Subject to Review

   a. The Regional Boards shall send EPA copies of applications, prenotice draft permits, draft permits, adopted (proposed) permits, and associated Fact Sheets and Statements of Basis for the following categories of discharges.

      (1) Discharges from a "major" facility as defined by the current major discharger list;

(2) Discharges to territorial seas;

(3) Discharges from facilities within any of the industrial categories described under 40 CFR Part 122, Appendix A;

(4) Discharges which may affect the water quality of another state;

(5) Discharges to be regulated by a General Permit (excludes applications since they are not part of the General Permit process);

(6) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons;

(7) Discharges from any other source which exceeds a daily average discharge of 0.5 million gallons; and

(8) Other categories of discharges EPA may designate which may have an environmental impact or public visibility. The Regional Boards or the State Board will consult with EPA regarding other significant discharges.

B. Applications

The provisions for EPA review of applications do not apply to General Permits, because applications are not part of the General Permit Process.

1. Initial Applications

a. The Regional Boards shall forward a complete copy of each NPDES application to EPA and the State Board within 15 days of its receipt.

b. EPA shall have 30 days* from receipt of the application to comment upon or object to its completeness.

(1) EPA shall initially express its comments and objections to the Regional Board through staff telephone liaison.

(2) EPA shall send a copy of comments or objections to an application to the Regional Board, the State Board, and the applicant.

(3) If EPA fails to send written comments or objections to an application within 30 days of receipt, EPA waives its right to comment or object.

c. An EPA objection to an application shall specify in writing:

(1) The nature of the objection;

(2) The sections of the CWA or the NPDES regulations that support the objection; and

(3) The information required to eliminate the objection.

2. State Agreement with EPA Objections and Revised Applications

a. If the State agrees with EPA's objections, the Regional Board shall forward a complete copy of the revised application to EPA within 10 days of its arrival at the Regional Board offices.

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*COMPUTATION OF TIME: Pursuant to 40 CFR 124.20(d), three(3) days shall be allowed for transit of documents by mail. Therefore, the State must allow at least 36 days, from the postmark date on the application for receipt of an EPA response. If the State Board or a Regional Board delivers a document to EPA within less than three days, the number of days saved by such delivery may be subtracted from the 36 days. All of the timeframes mentioned in this MOA are in calendar days.

b. Another 30-day review period shall begin upon EPA's receipt of the revised application; and

c. This application review process shall be repeated until the application complies with all NPDES regulations.

d. When EPA has no objections pursuant to 40 CFR 123.44, the Regional Board may complete development of a prenotice draft NPDES permit.

e. If an objection is filed, EPA shall advise the State Board and the Regional Board in writing when the application is complete.

f. The Regional Board will be responsible for notifying the applicant.

3. State Disagreement with EPA Objections and Draft Permits

If the Regional Board or the State Board disagrees with EPA's assertion that an application is incomplete, they may issue a prenotice draft permit, provided that:

a. The Regional Board or the State Board states in a transmittal letter that the prenotice draft permit has been issued an EPA objection to the application;

b. EPA may add comments upon or objections to the prenotice draft permit including a reiteration of its objection to the application;

c. Objections to an application will be subject to the same procedures as an EPA objection to the prenotice draft permit, as described below except that the State shall not issue a public notice for a draft permit for which there is an unresolved EPA objection.

C. Prenctice Draft Permits

1. EPA Review of Individual Prenotice Draft Permits

a. It is the intent of the Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES permit, to issue aprenotice draft NPDES permit. A copy of

associated Statement of Basis or Fact Sheet shall be sent to EPA. As a matter of urgency the Regional Board or the State Board may decide not to issue a prenotice draft NPDES permit.

b. EPA shall have 30 days from its receipt to send comments upon, or an initial objection to, the prenotice draft permit to the Regional Board and State Board.

(1) If EPA mails an initial objection pursuant to 40 CFR 23.44 within 30 days from its receipt of a prenotice draft permit, EPA shall have 90 days from its receipt of the prenotice draft permit to mail a formal objection.

(2) If EPA requests additional information on a prenotice raft permit, a new 30-day review shall begin upon EPA's receipt of the additional information.

(3) If EPA mails an initial objection pursuant to 40 CFR 123.44 within 30 days from its receipt of additional information, EPA shall have 90 days from its receipt of the additional information to mail a formal objection.

c. If a prenotice draft permit is not issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4, shall apply to the draft permit.

2. EPA Review of Prenotice Draft General Permits

a. The Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES General Permit, shall mail a copy of each prenotice draft Generalmit and Fact Permit Sheet, except for those for stormwater point sources, to:

(1) Director
Office of Water Enforcement and
Permits (EN 335)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460; and

(2) EPA, Region 9.

b. EPA, Region 9, and the Director of the Office of Water Enforcement and Permits, EPA Headquarters, shall have 90 days from their receipt of the prenotice draft General Permit to send comments upon or objections to the State Board and Regional Board.

c. If a prenotice draft general permit is issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4 shall apply to the draft general permit.

3. EPA Comments

a. The Regional Boards and State Board shall treat any comments made by EPA upon a prenotice draft individual permit or upon a prenotice draft General Permit as they would comments from any authoritative source.

b. The Regional Boards or the State Board shall prepare a written response to each significant comment made by EPA that they do not accommodate by revising the draft permit.

4. EPA Objections

The discussion below describes the procedures the Regional Boards and State Board may pursue if EPA issues an objection to a prenotice draft permit. NPDES regulations restrict the resolution of an EPA objection to three alternatives, or a combination thereof: (a) the Regional Board or the State Board changes the permit, (b) EPA withdraws the objection, or (c) EPA acquires exclusive NPDES jurisdiction over the discharge.

a. Timing of EPA Objections

(1) If the Regional Board or the State Board receives an initial objection from EPA within 36 days of the postmark on the prenotice draft permit sent to EPA, the Regional Board or the State Board shall delay issuance of the public notice until one of the following events occur:

(a) The Regional Board has received EPA's formal objection;

(b) EPA withdraws the initial objection; or

(c) Ninety-six (96) days have passed from the postmark on the prenotice draft (See Section II.C.2 for timing of EPA objections to prenotice general permits).

(2) Whenever EPA files an initial objection to a prenotice draft permit, EPA shall expedite its effort to file the formal objection, in order to avoid undue delay of the permit's final issuance.

(3) EPA may not make an initial objection to the prenotice draft permit once its 30-day review period has lapsed.

(4) EPA may not make a formal objection to the prenotice draft permit, if it failed to make an initial objection within the 30-day period.

(5) EPA may not make a formal objection to the Preenotice draft permit once the 90-day objection period has lapsed.

(6) EPA may not modify the objection, after the 90-day formal objection period, to require more change to the prenotice draft permit than was required under the original objection.

(7) EPA may revise the objection within its allotted 90-day objection period to require additional changes to the prenotice draft permit than were required under its original objection. Such a change to an objection by EPA shall cause the State's allotted 90 day response period to restart upon the State's eceipt of the revised objection.

(8) If the Regional Board receives an EPA formal objection within the 96 days specified above, the State Board or the Regional Board may exercise one of the options described under II.C.4.c. and II.C.4.d. below.

b. Content of EPA Objections

(1) For initial objections that must be filed within 30 days, EPA may simply identify:

(a) The name of the facility and its NPDES umber; and

(b) The general nature of the objection.

(2) For formal objections that must be filed within 90 days, EPA shall specify:

(a) The reasons for the objections;

(b) The section of the CWA, the regulations or the guidelines which support the objection; and

(c) The changes to the permit that are required as a condition to elimination of the objection.

(3) Every EPA objection shall be based upon one or more of the grounds for objection described under 40 CFR 123.44(c). EPA shall:

(a) Cite each of the grounds which applies to the objection; and

(b) Explain how each citation applies to a deficiency of the prenotice draft permit.

(4) Correspondence from EPA which objects to a prenotice draft permit, but which fails to meet the substantive criteria of this part (II.C.4.b) does not constitute an objection and may be treated by the State as comments.

c. State Board Options

(1) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the State Board may mediate the disagreement to a resolution that is satisfactory to EPA and to the Regional Board.

(2) If the disagreement proves intractable, the State Board may:

(a) Revise and resubmit the prenotice draft permit in accordance with the required by the EPA objection (The State Board would then be obliged to continue the issuance process and adopt the permit if the Regional Board declines todo so);

(b) Request a public hearing pursuant to 40 CFR 123.44(e); or

(c) Hold a public hearing on the EPA objection.

d. Regional Board Options

(1) If the Regional Board changes the prenotice draft permit to eliminate the basis of the EPA formal objection within 90 days of the Regional Board's receipt of that objection, the permit will remain within the

Regional Board's jurisdiction (see 40 CFR 123.44(h)). The Regional Board may then continue on to the public notice of the permit.

(2) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the Regional Board may:

(a) Request that EPA conduct a public hearing, pursuant to 40 CFR 123.44(e); or

(b) Hold a public hearing on the EPA objection.

e. The State Board or a Regional Board Holds a Public Hearing

(1) If either the State Board or a Regional Board decide to hold a public hearing on an EPA objection, that Board shall:

(a) Prepare a written rebuttal describing the legal and environmental reasons why each each provision of the prenotice draft permit should not be changed to accomodate the objection.

(b) Issue a public notice in accordance with 40 CFR 124.10 and 40 CFR 124.57(a) to open the public comment period and announce the public hearing;

(c) Make available for public review:

- o The permit application;
- o The draft permit;
- o The Fact Sheet or Statement of Basis;
- o All comments received upon the draft permit;

- o The EPA objections; and
- o The Regional Board's rebuttal;

(d) Conduct the hearing in accordance with 40 CFR 124.11 and 124.12; and

(e) Decide whether to accommodate the EPA objection.

(2) A representative of EPA shall attend the hearing to explain EPA's objection.

f. State Board and Regional Board Failure to Respond within 90 days (see 40 CFR 123.44(h))

EPA shall acquire exclusive NPDES authority over the discharge pursuant to 40 CFR 123.44(h)(3), if within 90 days of their receipt of an EPA formal objection:

(1) Neither the State Board nor the Regional Board changes the permit to eliminate the basis of the EPA objection;

(2) Neither the State Board nor the Regional Board requests EPA to hold a public hearing pursuant to 40 CFR 123.44(e); and

(3) EPA does not withdraw the objection.

This applies whether or not the State Board or a Regional Board holds a public hearing on the EPA objection.

g. EPA Public Hearing of an EPA Objection

(1) If the State Board or a Regional Board requests a public hearing pursuant to 40 CFR 123.44(e) within the 90-day response period, EPA shall hold a public hearing in accordance with the procedures of 40 CFR Part 124.

(a) If the State Board or Regional Board withdraws its request for

a public hearing before EPA has issued the public notice, EPA shall cancelthe hearing unless third party interest otherwise warrants a hearing pursuant to 40 CFR 123.44(e).

(b) If the State Board or Regional Board withdraws its request for a public hearing after EPA has issued the public notice of the hearing, and EPA determines that there is not sufficient third party interest pursuant to 40 CFR 123.44(e), the State Board or Regional Board shall publish a public notice and send a cancellation to everyone on the EPA mailing list.

(2) Within 30 days after the EPA public hearing, EPA shall:

(a) Reaffirm, withdraw, or modify the original objection; and

(b) Send notice of its action to:

- o The State Board;
- o The Regional Board;
- o The applicant; and
- o Each party who submitted comments at the hearing.

(3) If EPA does not withdraw the objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.

(4) If EPA modifies the objection to require less change to the prenotice draft permit than was required under the original objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.

(5) EPA may not modify the objection to require more change to the prenotice draft permit than was required by the original objection.

(6) If the State Board or Regional Board fails to send a revised draft permit to EPA within 30 days of its receipt of the EPA notification, EPA acquires exclusive NPDES authority over the discharge pursuant to 40 CFR 123.44(h)(3).

h. Resolved Objections

(1) Whenever EPA has filed a formal objection to a prenotice draft permit and the State Board or Regional Board has changed the permit to eliminate the basis of the objection, or EPA has withdrawn the objection, EPA shall send notice to:

(a) The State Board;

(b) The Regional Board;

(c) The applicant; and

(d) Every other party who has submitted comments upon the EPA objection.

(2) EPA shall send the notice within 30 days of its receipt of the revised State permit, or upon its withdrawal of the objection.

D. Public Notice

1. If the State Board or Regional Board does not receive an EPA initial objection within 36 days of the postmark on the individual prenotice draft permit or within 96 days of the postmark of the prenotice draft general permit, the State Board or Regional Board may proceed with the public notice process.

2. The State Board or Regional Board shall issue the public notice and conduct all public

participation activities for NPDES permits in accordance with the provisions of 40 CFR Part 124 applicable to State Programs.

(a) The Regional Boards and State Board shall make electronic or stenographic recordings of each of the EIR public hearings, pursuant to 23 California Administrative Code Section 847.4(a).

(b) The Regional Board or the State Board shall make a copy of all comments, including tapes or transcripts of oral comments presented at Board Hearings, and the Board's written responses to the comments, available to EPA and the public upon request, pursuant to 40 CFR 124.17(a) and (c).

3. All EPA comments upon and objections to a prenotice draft permit, draft permit or both, and all correspondence, public comments and other documents associated with any EPA objections shall become part of the administrative record/permit file and shall be available for public review.

E. Draft Permits

1. The State Board and Regional Boards shall send a copy of each draft permit and its Statement of Basis or Fact Sheet to EPA as part of the public notice process. A copy of each draft general permit, and accompanying fact sheet except those for stormwater point sources, shall be sent to EPA and:

Director
Office of Water Enforcement
and Permits (EN 335)
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

2. EPA may not object to a draft permit which it had an opportunity to review as a prenotice draft permit, except to the extent that it includes changes to the prenotice draft permit, or the bases of the objection were not reasonably ascertainable during the prior review period (e.g., because of new facts, new science, or new law).

3. If EPA issues an objection to a draft permit, the procedures described under II.C.4. shall apply.

F. Final Permits

1. Final Permits Become Effective Upon Adoption

NPDES permits other than general permits, adopted by the State Board or Regional Boards shall become effective upon the adoption date only when:

a. EPA has made no objections to the permit;

b. There has been no significant public comment;

c. There have been no changes made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments); and

d. The State Board or Regional Board does not specify a different effective date at the time of adoption.

2. Permit Becomes Effective 50 Days after Adoption

NPDES permits, other than general permits, adopted by the State Board or Regional Board shall become effective on the 50th day after the date of adoption, if EPA has made no objection to the permit; if:

a. There has been significant public comment; or

b. Changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments).

3. Permit Becomes Effective 100 days after Adoption

General permits adopted by the State Board or the Regional Boards shall become effective on the 100th day after the date of adoption, if EPA has made no objection to the permit, if:

a. There has been significant public comment; or

b. Changes have been made to the latest version of thet draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments).

4. EPA Review of Adopted Permits

a. Transmittal of Adopted Permits to EPA

The Regional Boards shall send copies of the following documents to EPA and the State Board, upon adoption of each NPDES permit identified under II.A.2:

(1) Each significant comment made upon the draft permit, including a transcript or tape of all comments made at public hearings;

(2) The response to each significant comment made upon the draft permit;

(3) Recommendations of any other affected states, including any written comments prepared by this State te explaining the reasons for rejecting any other states' written recommendations.

(4) The Executive Officer (or State Board Executive Director) summary sheet;

(5) The Fact Sheet or Statement of Basis, if it has been changed; and

(6) The final permit.

For general permits, except those for stormwater point sources, the State Board also shall send copies of these documents to:

Director
Office of Water Enforcement
and Permits (EN 335)
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

b. EPA Review Period

EPA shall have 30 days from its receipt of these materials to review and comment upon or object to an NPDES permit which becomes effective 50 days after the date of adoption under II.F.2.

EPA shall have 90 days from its receipt of these materials to review and comment upon or object to a general permit which becomes effective 100 days after the date of adoption under II.F.2.

c. EPA Comments upon Adopted Permits

If EPA comments upon an adopted permit pursuant to II.F.3.b. above, the State Board or Regional Board must either change the permit to accommodate the comments, or respond to the comments as follows:

(1) If, the State Board or Regional Board changes the permit, the permit will have to be readopted unless the only changes fall within the definition of minor modifications under 40 CFR 122.63, in which case the permit may take effect as originally scheduled (at least 50 days after the date of adoption); or

(2) If the State Board or Regional Board responds to the EPA comment instead of changing the permit, the permit may take effect as originally scheduled (at least 50 days after the date of adoption).

d. EPA Objection to Adopted Permits

If EPA mails an initial objection to an adopted permit within 30 days of its receipt pursuant to II.F.3.b., the full objection process will have begun, as described under II.C.4. and the permit effective date shall be stayed until the basis of the EPA objection has been eliminated.

e. Restrictions upon EPA Comments and Objections

(1) EPA shall use this review period to make objections which pertain only:

(a) To changes made to the draft permit;

(b) To comments made upon the permit;

(c) To new information that was not reasonably ascertainable during the initial review period; or

(d) To objections made by EPA to the draft permit.

(2) EPA shall not use this review period to file comments or objections which it neglected to file during the prenotice comment period or during the public notice comment period.

G. Permit Modification

1. When a Regional Board or State Board decides to modify an NPDES permit, a prenotice draft permit shall be given public notice and issued in accordance with NPDES regulations.

2. Whenever a Regional Board or State Board decides to modify an NPDES permit, the Regional Board or State Board shall follow the EPA review procedures for prenotice draft permits described under II.C. through II.F.

3. Minor permit modifications (not the same as modifications to minor permits) as described under 40 CFR 122.63 may be accomplished by letter, and are not subject to public review prior to their issuance under NPDES. However, they are subject to notice and review provisions under State law The following protocol shall apply to "minor permit modifications":

a. The Regional Boards or State Board, as appropriate, shall send a copy of each

minor permit modification to EPA and the State Board.

b. If EPA or the State Board notice that a minor modification has been issued (by either a Regional Board or the State Board) which does not conform to the criteria of 40 CFR 122.63, the State Board shall notify the permittee and the Regional Board that the minor modification was improper. The State should initiate promptly any proceedings necessary to void or rescind the modification. The Regional Board or State Board may then initiate a formal permit modification that is subject to public review as specified by NPDES regulations.

4. No NPDES permit shall be modified to extend beyond the maximum term allowed by NPDES regulations. If a Regional Board or State Board decides to extend a permit expiration date to a date more than five years from the date of issuance of the permit, the Board shall revoke and reissue the permit in accordance with NPDES regulations.

H. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to Part II.A.1. above, are affected in any manner by administrative or court action, the Regional Board or State Board shall immediately transmit a copy of the permit, with changes identified, to EPA and shall allow 30 days for EPA to make written objections to the changed permit pursuant to Section 402(d)(2) of the CWA.

I. Variance Requests

1. State Variance Authority

a. The State may approve applications for the following variances, subject to EPA objections under Section C.4 above:

(1) Compliance extension based on delay of a publicly owned treatment works (POTW), under Section 301(j) of the CWA;

(2) Compliance extension based upon the use of innovative technology, under Section 301(k) of the CWA; and

(3) Variances from thermal pollution requirements, under Section 316(a) of the CWA.

b. Unless the State denies the variance application, the State shall adopt approved modifications as either formal modifications to active permits or as provisions of reissued permits.

2. State/EPA Shared Variance Authority

a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:

(1) Variances based upon the presence of fundamentally different factors (FDF), under Section 301(n) of the CWA;

(2) Variances based upon the economic capabilities of the applicant, under Section 301(c) of the CWA;

(3) Variances based upon water quality factors, under Section 301(g) of the CWA; and

(4) Variances based on economic and social costs or upon the economic capabilities of the applicant for achieving EPA promulgated water quality related effluent limitations, under Section 302(b)(2) of the CWA.

b. Unless the State denies the variance application at the outset, the State will subsequently issue an NPDES permit based upon EPA's final decision.

3. Certification and Concurrence in EPA Variance Decisions under Sections 301(h) and 301(m)

a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:

(1) Variances based upon the quality of coastal marine waters under Section 301(h) of the CWA (these are addressed by a separate agreement.); and

(2) Variances based upon the energy and environmental costs of meeting requirements for wood processing waste discharged to the marine waters of Humboldt Bay, under Section 301(m) of the CWA.

b. If EPA decides to prepare a draft permit on the application for a variance, the State will issue or deny waste discharge requirements under its own authority as part of the concurrence process.

(1) The State's decision on issuance of waste discharge requirements shall constitute the State's decision on concurrence in the variance. Any amendment or rescission of the waste discharge requirements, and any State Board order finding that a Regional Board's action in issuing the waste discharge requirements was inappropriate or improper, shall constitute a modification of the State's concurrence if the amendment, rescission, or State Board order is issued before EPA issues a final permit authorizing the variance.

(2) Waste discharge requirements issued by the State shall require compliance with any condition EPA imposes in the final permit. Any authorization made by the waste discharge requirements to discharge under a variance will be contingent upon issuance of a permit by EPA authorizing the variance.

(3) EPA will not issue a final permit until the State issues waste discharge requirements. If the waste discharge requirements are issued by a Regional Board, EPA will not issue a final permit until at least 31 days after the Regional Board's decision.

While any timely petition is still pending before the State Board, EPA will not issue a final permit until after 10 months have passed without State Board action on the petition. After 10 months have passed without State Board action on the petition EPA may issue a 301(h) permit provided that the permit includes a reopener clause allowing EPA to revise the permit consistent with the State Board's order on the petition for review. If the State Board initiates action on the petition within 10 months, by notifying the parties involved that the petition is complete, EPA will not issue a 301 (h) permit until after the state Board has issued an order on the petition for review.

(4) A permit issued by EPA shall incorporate any condition of the State's concurrence, including any provisions of the waste discharge requirements issued to the discharge, unless EPA substitutes a more stringent requirement.

III. PRETREATMENT PROGRAM

A. General

This Section defines the State Board, the Regional Boards, and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to Sections 307 and 402(b) of the CWA, and as described in Section VI of the "NPDES Program Description, January 1988".

B. Roles and Responsibilities

EPA will oversee California Pretreatment Program operations consistent with the requirements of 40 CFR Part 403, this Section of the MOA, and Section VI of the "NPDES Program Description, January 1988".

Consistent with State and federal law, and the State Clean Water Strategy, the State will administer the California Pretreatment Program.

The State Board will have primary responsibility for:

1. Developing, implementing, and overseeing the California Pretreatment Program;

2. Providing technical and legal assistance to the Regional Boards, publicly owned treatment works (POTWs), and industrial users;

3. Developing and maintaining a data management system;

4. Providing information to EPA or other organizations as required and/or requested; and

5. Reviewing and ruling on petitions for review of Regional Board decisions.

The Regional Boards, with the assistance and oversight of the State Board, will have primary responsibility for:

1. Enforcing the National pretreatment standards: prohibited discharges, established in 40 CFR 403.5;

2. Enforcing the National categorical pretreatment standards established by the EPA in accordance with Section 307 (b) and (c) of the CWA, and promulgated in 40 CFR Subchapter N, Effluent Guidelines and Standards;

3. Review, approval, or denial of POTW Pretreatment Programs in accordance with the procedures discussed in 40 CFR 403.8, 403.9, and 403.11;

4. Requiring a Pretreatment Program as an enforceable condition in NPDES permits or waste discharge requirements issued to POTWs as required in 40 CFR 403.8, and as provided in Section 402(b)(8) of the CWA;

5. Requiring POTWs to develop and enforce local limits as set forth in 40 CFR 403.5(c);

6. Review and, as appropriate, approval of POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with 40 CFR

403.7, 403.9, and 403.11, and enforcing related conditions in the POTW's NPDES permit or waste discharge requirements;

7. Overseeing POTW Pretreatment Programs to ensure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES permit or waste discharge requirements;

8. Performing inspection, surveillance, and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit;

9. Providing the State Board and EPA, upon request, copies of all notices received from POTWs that relate to a new or changed introduction of pollutants to the POTW; and

10. Applying and enforcing all other pretreatment regulations as required by 40 CFR Part 403.

C. POTW Pretreatment Program and Removal Credits Approval

Each Regional Board shall review and approve POTW applications for POTW pretreatment program authority and POTW applications to revise discharge limits for industrial users who are, or may in the future be, subject to categorical pretreatment standards. It shall submit its findings together with the application and supporting information to the State Board and EPA for review. No POTW Pretreatment Program or request for revised discharge limits shall be approved by the Regional Boards if the State Board or EPA objects in writing to the approval of such submission in accordance with 40 CFR 403.11(d).

Note: No removal credits can be approved until EPA promulgates sludge regulations under Section 405 of the Clean Water Act.

D. Requests for Categorical Determination

Each Regional Board shall review requests for determinations of whether an industrial user does or does not fall within a particular industrial category or subcategory. The Regional Boards will make a written determination for each request

stating the reasons for the determinations. The Regional Board shall then forward its findings, together with a copy of the request and any necessary supporting information, to the State Board and EPA for concurrence. If the State Board or EPA does not modify the Regional Board's decision within 60 days after receipt thereof, the Regional Board finding is final. A copy of the final determination shall be sent to the requestor, the State Board, and EPA Region 9.

E. Variances From Categorical Standards For Fundamentally Different Factors

Each Regional Board shall make an initial finding on all requests from industrial users for fundamentally different factors variances from the applicable categorical pretreatment standard. If the Regional Board determines that the variance request should be denied, the Regional Board will so notify the applicant and provide reasons for its determination in writing. Where the Regional Board's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the State Board. If the State Board concurs with the Regional Board's finding, it will submit it to EPA for a final determination. The Regional Board may deny but not approve and implement the fundamentally different factor(s) variance request until written approval has been received from EPA.

If EPA finds that fundamentally different factors do exist, a variance reflecting this determination shall be granted. If EPA determines that fundamentally different factors do not exist, the variance request shall be denied and the Regional Board shall so notify the applicant and provide EPA's reasons for the denial in writing.

F. Net/Gross Adjustments to Categorical Standards

If the Regional Board receives a request for a net/gross adjustment of applicable categorical pretreatment standards in accordance with 40 CFR 403.15, the Regional Board shall forward the application to EPA for a determination. A copy of the application will be provided to the State Board. Once this determination has been made, EPA shall

notify the applicant, the applicant's POTW, the Regional Board, and State Board and provide reasons for the determination and any additional monitoring requirements the EPA deems necessary, in writing.

G. Miscellaneous

The State Board, with the assistance of the Regional Boards, will submit to the EPA a list of POTWs which are required to develop their own pretreatment program or are under investigation by a Regional Board for the possible need for a local pretreatment program. The State will document its reasons for all deletions from this list. Before deleting any POTW with a design flow greater than five-million gallons per day (mgd), the State will obtain an industrial survey from the POTW and determine: (1) that the POTW is not experiencing pass through or interference problems; and (2) that there are no industrial users of the POTW that are subject either to categorical pretreatment standards or specific limits developed pursuant to 40 CFR 403.5(c). The State will document all such determinations and provide copies to EPA. For deletions of POTWs with flows less than 5 mgd, the State will first determine (with appropriate documentation) that the POTW is not experiencing treatment process upsets, violations of POTW effluent limitations, or contamination of municipal sludge due to industrial users. The State will also maintain documentation on the total design flow and the nature and amount of industrial wastes received by the POTW.

The State Board and EPA will communicate, through the Section 106 Workplan process, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The Section 106 Workplan will contain, at a minimum, the following: (1) a list of NPDES permits or waste discharge requirements to be issued by the Regional Boards to POTWs subject to pretreatment requirements; and (2) the number of POTWs to be audited or inspected on a quarterly basis.

H. Other Provisions

Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or

prohibitions established under the CWA or Federal regulations. Nothing in this MOA shall be construed to limit the authority of the EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the CWA (33 U.S.C. Section 1251 et seq).

IV. COMPLIANCE MONITORING AND ENFORCEMENT

This Section constitutes the State/EPA Enforcement Agreement. The State Board and EPA will review this section of the MOA each year.

A. Enforcement Management Systems (EMS)

The State Board will maintain compliance monitoring and enforcement procedures in the APM which are consistent with the seven principles of the EPA Enforcement Management System Guide (listed below), and this MOA. The APM shall constitute the State Enforcement Management System for the NPDES program, and shall describe criteria for:

1. Maintaining a source inventory (of information about discharges subject to NPDES permits) that is complete and accurate;

2. Processing and assessing the flow of information available on a systematic and timely basis;

3. Completing a preenforcement screening (of compliance-related information coming into the inventory) by reviewing the information as soon as possible after it is received;

4. Performing a more formal enforcement evaluation (of the same information) where appropriate;

5. Instituting formal enforcement action and follow-up wherever necessary;

6. Initiating field investigations based upon a systematic plan; and

7. Using internal management controls to provide adequate enforcement information to all levels of the organization.

These compliance and enforcement-related provisions of the APM shall constitute the framework (within which the circumstances of

noncompliance are reviewed) for making NPDES enforcement decisions, and evaluation of those decisions by others.

B. Inspections

1. State Inspections

a. The Regional Boards shall conduct compliance inspections to determine the status of compliance with permit requirements, including sampling and non-sampling inspections.

b. The State Board will maintain up-to-date procedures in the APM for conducting compliance inspections, which conform to NPDES regulations.

c. The State is responsible for inspecting annually all major dischargers. To enable this goal to be accomplished EPA may assist the State by inspecting some dischargers. The 106 workplan will specify the number of sampling inspections and the number of reconnaissance inspections to be conducted by the State each year.

2. EPA Inspections

a. EPA retains the authority to perform compliance inspections of any permittee at any time.

b. For those inspections scheduled more than 15 days in advance, EPA will notify the appropriate Regional Board and the State Board within 15 days in advance. For inspections scheduled less than 15 days in advance, EPA will provide as much advance notice as possible.

c. EPA will send copies of inspection reports to the Regional Board and State Board within 30 days of the inspection if there are no effluent samples to be analyzed. EPA will usually send copies of inspection results to the State within 60 days of the inspection if there are effluent samples to be analyzed.

3. Inspection Assistance

a. EPA and the State Board will provide technical assistance to the Regional Boards in their inspection programs whenever staff are available. This assistance may be requestedat any time by the Regional Boards.

b. If neither EPA nor the State Board are able to provide such assistance when it is requested, the State Board shall schedule the assistance at the earliest possible date, and so notify the Regional Board and EPA.

C. Discharger Reports

1. Review of Reports

The Regional Boards shall require each NPDES permittee to send copies of its Discharge Monitoring Reports (DMRs) to EPA and the Regional Boards for review.

a. Whenever a Regional Board cannot complete the review of DMRs and other compliance reports within 30 days of their arrival, the Regional Board shall follow the "exception procedures" in the APM.

b. For auditing and reporting purposes Regional Boards (or the State Board if it should undertake DMR review) shall track and document the date of receipt, the date of review, and the review results (i.e., compliance status) of each DMR and compliance report.

2. Quality Assurance Reviews

EPA routinely conducts technical studies of the accuracy of the reported effluent data from NPDES permittees. EPA send check samples to selected permittees for analysis as part of these studies. The permittees are required to return the results to EPA.

a. Delinquent Permittees

(1) EPA will send the State Board a list of permittees who declined to return

the analytical results of the check samples.

(2) The State Board shall transmit the list to the Regional Boards and assure that they require the permittee to participate in all subsequent studies.

(3) The State Board or Regional Board shall take other appropriate enforcement action against NPDES permittees that have failed to return the anlytical results of the sample.

b. Unacceptable Quality of Analysis

(1) EPA will send the State Board and Regional Boards a list of permittees who failed the analysis study.

(2) The Regional Boards will determine whether the causes of failure are due to clerical errors in report preparation or procedural errors in sample analysis.

(a) If the problem is due to clerical errors, the Regional Board will clarify the reporting procedures.

(b) If the problem is due to analytical errors,the Regional Board will assure that the problems are corrected immediately or that the permittee begins using another laboratory.

(c) If the permittee is using in-house laboratory facility, the Regional Board staff shall take action to assure compliance with NPDES requirements.

c. EPA Technical Assistance

Within the constraints of available staff time, EPA will provide technical assistance and guidance concerning acceptable analytical procedures.

D. Public Complaints

1. Telephone Complaints

a. Telephone complaints received by EPA or the State Board pertaining to a discharge to water of the United States will be referred to the appropriate Regional Board.

b. The Regional Boards shall maintain written documentation of each telephone complaint and its disposition.

2. Written Complaints

a. Written complaints pertaining toa discharge to waters of the United States may be responded to by telephone or by letter. All telephone responses shall be documented by memo.

b. Copies of each response prepared by EPA or the State Board shall be sent to the appropriate Regional Board.

c. The Regional Boards shall retain documentation of each written complaint and its disposition.

3. Complaint Resolution

a. The Regional Boards will investigate complaints and inform the complainant of the investigation results.

b. The Regional Boards shall place a copy of each NPDES-related complaint and a memo of recorddescribing the investigation results thereof into the permit file or compliance file of the appropriate facility.

E. State Enforcement

1. Basis of EPA/State Relationship

a. The Regional Boards pursue enforcement of NPDES permit requirements, and of all other provisions of the NPDES program under State authority.

b. The State Board shall assure that enforcement of the NPDES program is exercised aggressively, fairly, and consistently by all nine Regional Boards. The staff of the State Board will review enforcement practices and inform the Regional Board is not taking appropriate enforcement actions.

(1) The State Board will assure that Federal facilities are treated the same as other NPDES facilities within the constraints of Section 313 of the Clean Water Act.

(2) The State Board will keep a record of all penalties assessed and all penalties collected in NPDES enforcement cases.

c. EPA shall monitor the State's performance, and may take enforcement action under Section 309 of the CWA, whenever the State does not take timely and appropriate enforcement action.

d. EPA shall coordinate its enforcement actions with the State Board and with the appropriate Regional Board as described below.

e. The State Board and EPA will meet periodically to discuss the status of pending and adopted enforcement actions as well as other issues of concern.

2. State Notice to EPA of Enforcement Actions

The State shall send copies of proposed and final enforcement actions, settlements, and amendments thereto, against NPDES facilities to EPA within five working days after the date of signature.

F. EPA Enforcement

1. EPA Initiation of Enforcement Action

EPA will initiate enforcement action:

a. At the request of the State;

b. If the State response to the violation is not consistent with the APM and EPA policy or is otherwise determined by EPA not to be timely and appropriate; or

c. If there is an overriding federal interest.

2. EPA Deferral of Enforcement Action

EPA shall defer formal enforcement action whenever the State initiates an enforcement action determined by EPA to be timely and appropriate for the violation, except when there is an overriding federal interest.

G. Enforcement Procedures

If circumstnaces require EPA to pursue formal enforcement, EPA, and the State shall observe the following procedures:

1. Enforcement Based on the Quarterly Noncompliance Report

a. EPA shall notify the State Board and the appropriate Regional Boards by letter, of the facilities (the name and NPDES number) for which for which EPA policy requires formal enforcement action.

b. The State Board shall respond to EPA by letter within 30 days of its receipt of the EPA notice.

c. The response shall include:

(1) The name and NPDES number of:

(a) Each facility which has returned to compliance;

(b) Each facility for which the Regional Boards have scheduled formal enforcement actions;

(c) Each facility for which a Regional Board or the State Board has taken a formal enforcement action, if the

enforcement action was not shown on the QNCR as part of the response to the violation; and

(d) Each facility against which the State Board will pursue formal enforcement.

(2) Identification of the type of each formal enforcement action;

(3) A description of how each Regional Board plans to address the violations which have not been corrected by the facilities, and for which they are not pursuing formal enforcement; and

(4) A description of the enforcement action State Board staff will recommend to take against any facility.

e. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.

2. Enforcement Based on Information Other than the Quarterly Noncompliance Report

a. EPA shall notify the State Board and the appropriate Regional Board of each violation against which EPA intends to pursue formal enforcement. This notice shall include:

(1) The name and NPDES number of the facility;

(2) An identification of the violations which warrant formal enforcement;

(3) The reasons why EPA believes formal enforcement is necessary; and

(4) The reasons why past or pending State responses are insufficient.

b. Within ten working days of the notification by EPA, and after

consultation with the appropriate Regional Boards, the State Board will respond to the EPA notice. The State Board's response will include:

(1) A discussion of the circumstances of the identified violations;

(2) A description of the substance and timing of any past, pending, or planned responses to the violations by the Regional Board or the State Board; including identification of the office and staff responsible for the action;

(3) The amounts of any penalties sought or collected; and

(4) Whether or not the State Board believes the responses are appropriate and why.

c. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.

d. Normal enforcement action until ten working days from the date of the EPA notice have passed.

3. Overriding Federal Interest:

a. For the purposes of this MOA, an overriding federal interest exists when:

(1) EPA enforcement can reasonably be expected to expedite the discharger's return to full compliance;

(2) EPA enforcement can reasonably be expected to increase program credibility; or

(3) The violation has significant implications for the success of the NPDES program beyond the borders of California;

b. EPA shall notify the State Board and the appropriate Regional Board when there is an overriding federal interest;

c. Within ten working days of the EPA notice, the State Board will inform EPA of any coordination between the federal action and a State action that the State believes to be appropriate;

d. EPA shall either:

(1) Contact the Regional Board and the State Board to work out the details of coordinating the State and federal enforcement actions. Usually, such coordination will entail the exchange of draft enforcement actions for review. Comments can usually be exchanged by telephone, or in a staff meeting at the Regional Board depending upon the complexity of the enforcement action; or

(2) Inform the State Board that such coordination is infeasible;

e. EPA shall not proceed with its enforcement action until ten working days after the date of the EPA notice; and

f. In any instance of overriding federal interest and upon request by the State, EPA shall send the State Board and the appropriate Regional Board a brief, written explanation of the reasons for overriding federal interest or the reasons for infeasibility of enforcement coordination.

4. Recovery of Additional Penalties

Nothing in this MOA shall be construed to limit EPA's authority to take direct enforcement action for the recovery of additional penalties, whenever the penalties recovered by the State are less than those prescribed by the EPA penalty policy.

5. EPA Enforcement Without Notice to the State

Not withstanding the provisions above for prior notification to the State of federal enforcement actions, nothing in this MOA limits EPA's authority to take enforcement action without any prior notice to the State. If EPA does take such an action, it shall send copies of its correspondence with the affected facility to the State Board and the appropriate Regional Board.

V. STATE REPORTING

A. The State will submit the following to EPA:

Item	Description	Frequency of Submission
1	A copy of all permit applications except those for which EPA has waived review	Within 5 days of receipt
2	Copies of all draft NPDES permits and permit modifications including fact sheets except those for which EPA has waived review	When placed on public notice
3	Copies of all public notices	As issued
4	A copy of all issued, draft NPDES permits and permit modifications	As issued
5	A copy of settlements and decisions in permit appeals	As issued

Item	Description	Frequency of Submission
6	A list of major facilities of the scheduled for compliance inspections	With submission annual program
7	Proposed revisions to the scheduled compliance inspections	As needed

8	A list of compliance inspections performed during the previous quarter	Quarterly
9	Copies of all compliance inspection reports and data and transmittal letters to major permittees	Within 30 days of inspection
10	Copies of all compliance inspection reports and data transmittal letters to all other permittees	As requested
11	For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA guidance	Quarterly, as specified in 40 CFR 123.45(c)
12	For minor dischargers, an annual noncompliance report as specified in 40 CFR 123.45(b)	Within 60 days of the end of the calendar as specified in 40 CFR 123.45(c)
13	Copies of all enforcement actions against NPDES violators (including letters, notices of violation, administrative orders, initial determinations, and referrals to the Attorney General)	As issued

Item	Description	Frequency of Submission
14	Copies of correspondence required to carry out the pretreatment program	As issued or received
15	Copies of Discharge Monitoring Report (DMR) and non-	Within 10 days of receipt

compliance notification from major permittees

B. Major Discharger List

The State annually shall submit to EPA an updated "major dischargers" list. The list shall include those dischargers mutually defined by the State Board and EPA as major dischargers plus any additional dischargers that in the opinion of the State or EPA, have a high potential for violation of water quality standards. The major discharger list for Federal facilities shall be jointly determined by EPA and the State. The schedule for submittal of the major discharger list shall be included in the 106 workplan.

C. Emergency Notification

1. The Regional Board shall telephone, or otherwise contact, EPA and the State Board immediately if it discovers a NPDES permit violation or threatening violation:

   a. That has significantly damaged or is likely to significantly damage the environment or the public health; or

   b. That has or is likely to cause significant public alarm.

2. The Regional Board will describe the circumstances and magnitude of the violation

VI. CONFIDENTIALITY OF INFORMATION

A. All information obtained or used by the State in the administration of the NPDES program shall be available to EPA upon request without restriction, and information in EPA's files which the State needs to implement its program shall be made available to the State upon request without restriction.

B. Whenever either party furnishes information to the other that has been claimed as confidential, the party furnishing the information will also furnish the confidentiality claim and the results of any legal review of the claim.

C. The party receiving the confidential information will treat it in accordance with the provisions of 40 CFR Part 2.

D. The State and EPA will deny all claims of confidentiality for effluent data, permit applications, permits, and the name and address of any permittee.

VII. PROGRAM REVIEW

A. To fulfill its responsibility for assuring the NPDES program requirements are met, EPA shall:

1. Review the information submitted by the State;

2. Meet with State officials from time to time todiscuss and observe the data handling, permit processing, and enforcement procedures, including both manual and automated processes;

3. Examine the files and documents of the State regarding selected facilities to determine: (a) whether permits are processed and issued consistent with federal requirements; (b) whether the State is able to discover permit violations when they occur; (c) whether State reviews are timely; and (d) whether State selection of enforcement actions is appropriate and effective. EPA shall notify the State in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems.

   EPA need not reveal to the State in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;

4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;

5. When appropriate, hold public hearings on the State's NPDES program; and

6. Review the State's public participation policies, practices and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, or form which has been approved by EPA, and prior to the adoption of any statute, regulations, or form, the State shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see 40 CFR 123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).

C. If an amendment, recision, or repeal of any statute, regulations, or form described in paragraph (B) above shall occur for any reason, including action by the State legislature or a court, the State shall within ten days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

D. Prior to the approval of any test method as an alternative to those specified as required for NPDES permitting, the State shall obtain the approval of the Regional Administrator.

/III. TERM OF THE MOA

A. This MOA shall become effective upon the date of signature of the Regional Administrator and of the Chair of the State Water Resources Control Board after State Board approval. If it is signed by the two parties on different days, the latter date shall be the effective date.

B. This MOA shall be reviewed by EPA and the State, and revised as appropriate within five (5) years of its effective date.

C. Either EPA or the State may initiate action to change this MOA at any time.

1. No change to this MOA shall become effective without the concurrence of both agencies.

2. The STATE REPORTING (V) portion may be changed by the written consent of the Chief, Division of Water Quality, SWRCB, and the Director, Water Management Division, EPA, Region 9. The Director of Permits Division (EN-336) must consent to all substantial changes.

3. All other changes to this MOA must be approved by the State Board and approved by the Regional Administrator, with the prior concurrence of the Director of the Office of Water Enforcement and Permits (EN-335)and the Associate General Counsel for Water for all substantial changes. The Director of the Office of Water Enforcement and Permits and Associate General Counsel for Water shall also determine whether changes should be deemed substantial.

4. All changes to this MOA determined by EPA to be substantial shall be subject to public notice and comment in accordance with the requirements of 40 CFR 123.62 before being approved.

D. Either party may terminate this MOA upon notice to other party pursuant to 40 CFR 123.64.

E. In witness thereof, the parties execute this agreement.

W. Don Maughan
Chairman,
State Water Resources
Control Board

Dated: JUN -8 1989

John Wise
for Regional Administrator
Environmental Protection
Agency, Region 9

Dated: 22 SEP 1989

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 26, 2017, I served the:

- **Notice of Complete Joint Test Claim Filing, Removal From Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date issued May 26, 2017**
- **Claimants' Response to the Notice of Incomplete Joint Test Claim Filing filed May 17, 2017**
- **Joint Test Claim filed by County of Ventura, et al., on August 26, 2011 revised on May 17, 2017**

  California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, 11-TC-01.
  County of Ventura and Ventura County Watershed Protection District, Co-Claimants

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 26, 2017 at Sacramento, California.

Jill Magee

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

Mailing List

Last Updated: 5/26/17

Claim Number: 11-TC-01

Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

Claimants: County of Ventura
Ventura County Watershed Protection 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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