

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

702



FROM: Executive Office

SUBMITTAL DATE:
November 30, 2010

SUBJECT: National Pollutant Discharge Elimination System (NPDES) Urban Discharge Runoff Implementation Agreement-Santa Ana Region (Santa Ana Drainage Area)

RECOMMENDED MOTION: That the Board of Supervisors:
Authorize the Chairman to sign the attached Implementation Agreement for the Santa Ana Drainage Area.

BACKGROUND:
The NPDES Municipal Separate Storm Sewer System (MS4) Permit R8-2010-0033, for the Santa Ana River Watershed was adopted on January 29, 2010, by the Santa Ana Regional Water Quality Control Board, Region 8.

(Continued on Page 2)

Michael R. Shetler
Michael R. Shetler, Senior Management Analyst

FORM APPROVED COUNTY COUNSEL
BY: DAVID H.K. HUFF
DATE: 11/10/10
Departmental Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

SOURCE OF FUNDS: NPDES	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Christopher M. Hans*
County Executive Office Signature: Christopher M. Hans

Policy
 Policy
 Consent
 Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: November 30, 2010
xc: EO

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: | **District:** 1-4 | **Agenda Number:**

3.10

ept's Recomm.:
 er Exec. Ofc.:

**SUBMITTAL TO THE BOARD OF SUPERVISORS
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Page 2

SUBJECT: NPDES Urban Discharge Runoff Implementation Agreement-Santa Ana Region (Santa Ana Drainage Area)

Background Continued:

The MS4 permit requires the permittees (Riverside County Flood Control and Water Conservation District, the County of Riverside, and the cities of Beaumont, Calimesa, Canyon Lake, Corona, Eastvale, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Wildomar) to annually review their Implementation Agreement (Agreement) and determine the need for any revisions. It was determined through coordination with staff who participate in the Santa Ana River/Santa Margarita River Technical Advisory Committee (SAR/SMR TAC) and the Management Steering Committee (made up of City Managers and Public Works Directors) to address the following:

1. Inclusion of the cities of Eastvale, Menifee, and Wildomar as signatories to the Agreement;
2. Inclusion of language for the preparation and submittal of a yearly budget to the SAR/SMR TAC ;
3. Increase the annual cost share cap to reflect the cost of developing regional programs proposed by the MS4 permit;
4. Inclusion of language to allow the Agreement to be used as a platform to hire consultants on behalf of a subset of permittees for Total Maximum Daily Load (TMDL) issues as they relate to impaired water bodies within the watershed;
5. Inclusion of language to recognize the recent regulatory swap allowing the cities of Murrieta and Wildomar to be solely regulated by the San Diego Regional Water Quality Control Board and the requirements of the Santa Margarita River MS4 permit (Tentative Order R9-2010-0016), yet allow for the two cities to continue to participate in this agreement for the purposes of complying with the Lake Elsinore/Canyon Lake TMDL requirements.

The Agreement has been approved as to form by County Counsel. A companion document is being prepared by the Riverside County Flood Control and Water Conservation District for approval by their board.

See attached Agreement for additional detail.

AGREEMENT

National Pollutant Discharge Elimination System
Urban Runoff Discharge Permit
Implementation Agreement
Santa Ana Region
(Santa Ana Drainage Area)

This Agreement, entered into as of this _____ day of _____, 2010 by the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (herein called DISTRICT), the COUNTY OF RIVERSIDE (herein called COUNTY), and the CITIES OF BEAUMONT, CALIMESA, CANYON LAKE, CORONA, EASTVALE, HEMET, LAKE ELSINORE, MENIFEE, MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN JACINTO and WILDOMAR, (herein called CITIES), establishes the responsibilities of each party concerning compliance with the National Pollutant Discharge Elimination System (NPDES) Urban Runoff Discharge Permit (NPDES Permit) issued by the California Regional Water Quality Control Board - Santa Ana Region pursuant to Order No. R8-2010-0033. This Agreement effectively terminates the Implementation Agreement adopted on December 16, 2003.

RECITALS

WHEREAS, in 1987 Congress added Section 402(p) to the Federal Clean Water Act (CWA) (33 U.S.C. §1342(p)); and

WHEREAS, Section 402(p) of the CWA requires certain municipalities, industrial facilities and persons conducting certain construction activities to obtain an NPDES Permit before discharging stormwater into navigable waters; and

WHEREAS, Section 402(p) further requires the Federal Environmental Protection Agency (EPA) to promulgate regulations for NPDES Permit applications; and

WHEREAS, EPA adopted such regulations in November 1990; and

WHEREAS, EPA delegated authority to the California Regional Water Quality Control Board-Santa Ana Region (RWQCB-SAR) to administer the NPDES permitting process within the boundaries of that region; and

WHEREAS, DISTRICT was created to provide for the control of flood and stormwaters within the County of Riverside and is empowered to investigate, examine, measure, analyze, study and inspect matters pertaining to flood and stormwaters; and

WHEREAS, the COUNTY and CITIES have land use authorities and own and operate Municipal Separate Storm Sewer System (MS4) facilities; and

WHEREAS, on August 30, 2000 DISTRICT, COUNTY and CITIES submitted an NPDES Permit Application for an area-wide NPDES Permit; and

WHEREAS, the NPDES Permit Application was submitted in accordance with the previous NPDES Permit (Order No. 96-30, NPDES No. CA 618033) which expired on March 8, 2001; and

WHEREAS, RWQCB-SAR issued a NPDES Permit to DISTRICT, COUNTY and CITIES on October 25, 2002; and

WHEREAS, on April 27, 2007 DISTRICT, COUNTY and CITIES submitted an NPDES Permit Application for an area-wide NPDES Permit; and

WHEREAS, the NPDES Permit Application was submitted in accordance with the previous NPDES Permit (Order No. R8-2002-0011, NPDES No. CA 618033) which expired on October 26, 2007; and

WHEREAS, RWQCB-SAR issued a new NPDES Permit to DISTRICT, COUNTY and CITIES on January 29, 2010; and

WHEREAS, the NPDES Permit governing municipal stormwater discharges meets both the requirements of Section 402(p)(3)(B) of the CWA and all requirements applicable

to an NPDES Permit issued under RWQCB-SARs discretionary authority in accordance with Section 402(a)(1)(B) of the CWA; and

WHEREAS, the NPDES Permit designates DISTRICT as the "Principal Permittee", and COUNTY and CITIES as "Co-Permittees"; and

WHEREAS, cooperation between DISTRICT, COUNTY and CITIES in the administration and implementation of the NPDES Permit is in the best interests of DISTRICT, COUNTY and CITIES; and

WHEREAS, DISTRICT is willing to share the expertise of its staff with COUNTY and CITIES so that they can join in implementing the requirements of the NPDES Permit; and

WHEREAS, the RWQCB-SAR and the RWQCB-San Diego Region are currently contemplating amendments to Order No. R8-2010-0033 and pending Order No. R9-2010-0016 that would effectively allow MURRIETA and WILDOMAR to be wholly regulated under Order No. R9-2010-0016 and MENIFEE to be wholly regulated under Order No. R8-2010-0033; and

WHEREAS, MURRIETA and WILDOMAR would be subject to the LAKE ELSINORE/CANYON LAKE NUTRIENT TMDL, independent of Order No. R8-2010-0033, and therefore may be interested in participating in joint programs developed under this Agreement to address the LAKE ELSINORE/CANYON LAKE NUTRIENT TMDL; and

WHEREAS, DISTRICT, COUNTY and CITIES are to perform certain activities prescribed in the NPDES Permit and related to management of the NPDES Permit compliance program that will benefit all parties.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Incorporation of the NPDES Permit. The NPDES Permit issued to DISTRICT, COUNTY and CITIES by RWQCB-SAR pursuant to Order No. R8-2010-0033 is

attached to this Agreement as EXHIBIT A and is hereby incorporated by reference in its entirety and made a part of this Agreement.

2. Delegation of Responsibilities. The responsibilities of each of the parties shall be as described in the NPDES Permit and reiterated as follows:

a. DISTRICT shall assume the responsibilities and meet the requirements of the NPDES Permit by complying with Section III.A (RESPONSIBILITIES OF THE PRINCIPAL PERMITTEE) and:

(1) Performing or coordinating all the joint sampling data collection and assessment requirements described in the NPDES Permit MONITORING AND REPORTING PROGRAM.

(2) Performing all of the joint reporting requirements described in the NPDES Permit MONITORING AND REPORTING PROGRAM. With respect to such joint reporting requirements, the DISTRICT shall specifically:

(a) Prepare the required narrative for all joint reports; and

(b) Provide COUNTY and CITIES an opportunity to review and comment on any such narrative.

The cost for implementing the requirements of the joint activities shall be jointly funded as shared costs as described in paragraphs 3 and 4 of this Agreement.

b. DISTRICT, at no cost to COUNTY and CITIES, shall assume the responsibilities and meet the requirements of the NPDES Permit by:

- (1) Complying with Section III.A (RESPONSIBILITIES OF THE PRINCIPAL PERMITTEE).
- (2) Complying with Sections IV (LOCAL IMPLEMENTATION PLAN), V (DISCHARGE PROHIBITIONS), VI (EFFLUENT LIMITATIONS, DISCHARGE SPECIFICATIONS AND OTHER TMDL RELATED REQUIREMENTS), VII (RECEIVING WATER LIMITATIONS), VIII (LEGAL AUTHORITY/ENFORCEMENT), IX (ILLICIT CONNECTIONS/ILLEGAL DISCHARGES (IC/ID); LITTER, DEBRIS AND TRASH CONTROL), X (SEWAGE SPILLS, INFILTRATION INTO THE MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES), XII (NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)), XIII (PUBLIC EDUCATION AND OUTREACH), XIV (PERMITTEE FACILITIES AND ACTIVITIES), XV (TRAINING PROGRAM FOR STORMWATER MANAGERS, PLANNERS, INSPECTORS AND MUNICIPAL CONTRACTORS), XVI (NOTIFICATION REQUIREMENTS), XVII (PROGRAM MANAGEMENT ASSESSMENT/DAMP REVIEW), XVIII (FISCAL RESOURCES), XIX (MONITORING AND REPORTING PROGRAM), XX (PROVISIONS), XXI (PERMIT MODIFICATION), XXII (PERMIT EXPIRATION AND

RENEWAL) as they pertain to DISTRICT facilities and operations.

c. COUNTY and CITIES shall, at no cost to DISTRICT, assume the responsibilities and meet the requirements of the NPDES Permit for land area and facilities within their individual jurisdictions by:

- (1) Complying with Section III.B (RESPONSIBILITIES OF THE CO-PERMITTEES).
- (2) Complying with Sections IV (LOCAL IMPLEMENTATION PLAN), V (DISCHARGE PROHIBITIONS), VI (EFFLUENT LIMITATIONS, DISCHARGE SPECIFICATIONS AND OTHER TMDL RELATED REQUIREMENTS), VII (RECEIVING WATER LIMITATIONS), VIII (LEGAL AUTHORITY/ENFORCEMENT), IX (ILLICIT CONNECTIONS/ILLEGAL DISCHARGES (IC/ID); LITTER, DEBRIS AND TRASH CONTROL), X (SEWAGE SPILLS, INFILTRATION INTO THE MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES), XI (CO-PERMITTEE INSPECTION PROGRAMS), XII (NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)), XIII (PUBLIC EDUCATION AND OUTREACH), XIV (PERMITTEE FACILITIES AND ACTIVITIES), XV (TRAINING PROGRAM FOR

STORMWATER MANAGERS, PLANNERS, INSPECTORS AND MUNICIPAL CONTRACTORS), XVI (NOTIFICATION REQUIREMENTS), XVII (PROGRAM MANAGEMENT ASSESSMENT/DAMP REVIEW), XVIII (FISCAL RESOURCES), XIX (MONITORING AND REPORTING PROGRAM), XX (PROVISIONS), XXI (PERMIT MODIFICATION), XXII (PERMIT EXPIRATION AND RENEWAL) as they pertain to COUNTY and CITIES facilities and operations.

- (3) Demonstrating compliance with all NPDES Permit requirements through timely implementation of the approved Drainage Area Management Plan (DAMP) and any approved modifications, revisions, or amendments thereto.
- (4) Providing to DISTRICT (on DISTRICT approved forms) all information needed to satisfy the reporting requirements described in the NPDES Permit MONITORING AND REPORTING PROGRAM. The COUNTY and CITIES shall specifically:
 - (a) Provide information on existing stormwater facilities and/or other data as it pertains to COUNTY or CITIES facilities when requested by DISTRICT.
 - (b) Submit their individual reports to DISTRICT for incorporation into DISTRICT'S narrative no later than November 1 of each year.

3. Budgets. On or before January 15 of each year, the DISTRICT shall prepare and submit a budget for the next fiscal year to the Santa Ana/Santa Margarita Technical Advisory Committee (TAC). The budget shall include anticipated costs and fees for District services or consultant services to prepare manuals, develop programs, implement programs, engage legal counsel on behalf of the Permittees or perform studies relevant to the entire Permit Area. Once consensus has been reached amongst the TAC, the budget will be submitted to the Management Steering Committee.

4. Shared Costs. In the event DISTRICT requires the services of a consultant or consultants to prepare manuals, develop programs or perform studies relevant to the entire Permit Area, the cost of said consultant services will be shared by DISTRICT, COUNTY and CITIES. The shared costs shall be allocated as follows:

<u>Party</u>	<u>Percentage Contribution</u>
DISTRICT	50
COUNTY & CITIES	50

The individual percentage contribution from COUNTY and individual CITIES shall be a function of population within the Permit Area. More specifically, such contribution shall be calculated as the population of COUNTY or individual CITIES, divided by the total population of all the Co-Permittees multiplied by 50, i.e.,:

$$\begin{aligned} \text{Contribution (\%)} &= 50(x_n/x_{tot}) \\ X_n &= \text{population of COUNTY or individual CITIES} \\ X_{tot} &= \text{total population of COUNTY and CITIES in the} \\ &\quad \text{Santa Ana Region} \\ 50 &= \text{total percentage excluding DISTRICT portion} \end{aligned}$$

The population of COUNTY and CITIES will be based on the latest California State Department of Finance population figures issued in May of each year.

The total shared cost of consultant services shall not exceed \$1,000,000.00 annually.

COUNTY and CITIES shall be notified of DISTRICT'S request for proposals from consultants, selection of a consultant, consultant's fee, and contract timetable and payment schedule through the TAC.

COUNTY and CITIES shall pay to DISTRICT their share of the shared costs within 60 calendar days of receipt of an invoice from DISTRICT.

In the event that a subset of the COUNTY or CITIES require the services of a consultant or consultants to prepare manuals, develop programs, implement programs, engage legal counsel, perform studies or any work to satisfy sub-regional permit requirements, the costs of said consultant services shall be shared by the involved parties, in such a manner as approved by the involved parties. The involved parties may utilize this Agreement to hire a consultant. Tasks performed consistent to this paragraph shall not be subject to the total shared cost limit of \$1,000,000 for area-wide programs.

5. Term of the Agreement. The term of this Agreement shall commence on the date the last duly authorized representative of DISTRICT, COUNTY or CITIES executed it. The term of the Agreement shall continue to eighteen (18) months after the date that RWQCB-SAR issues a new NPDES Permit in replacement of the existing NPDES Permit (Order No. R8-2010-0033, NPDES No. CAS 618033) issued on January 29, 2010, unless each of the Co-Permittees either amends this agreement or withdraws in accordance with the terms of this Agreement.

6. Additional Parties. Any City which incorporates after the date of issuance of the NPDES Permit and/or after the date of execution of this Agreement may file a written request with DISTRICT asking to be added as a party. Upon receipt of such a request, DISTRICT shall solicit the approval or denial of each Co-Permittee. If a majority of the Co-Permittees, each having one, co-equal vote, approves the addition of the City, DISTRICT, on behalf of the Co-Permittees, will ask RWQCB-SAR to add the City to the NPDES Permit as an

additional Co-Permittee. Once the City is made an additional Co-Permittee to the NPDES Permit, this Agreement shall be amended to reflect the addition, and the City shall, thereafter, comply with all provisions of the NPDES Permit and this Agreement. Upon execution of the amended Agreement, the City shall be responsible for the shared costs discussed in Section 4 of this Agreement for the current and any subsequent budget year.

7. Withdrawal from the Agreement. Any party may withdraw from this Agreement 60 calendar days after giving written notice to DISTRICT and RWQCB-SAR. The withdrawing party shall agree in such notice to file for a separate NPDES Permit and to comply with all of the requirements established by RWQCB-SAR. In addition, withdrawal shall constitute forfeiture of all of the withdrawing party's share of the costs paid described in Section 4 of this Agreement for that fiscal year. The withdrawing party shall be responsible for all lawfully assessed penalties as a consequence of withdrawal. The cost allocations to the remaining parties will be recalculated in the following budget year.

8. Non-compliance with Permit Requirements. Any party found in non-compliance with the conditions of the NPDES Permit within its jurisdictional boundaries shall be solely liable for any lawfully assessed penalties. This Agreement is not intended to and does not create any joint and several liability of the parties for such penalties. Common or joint penalties shall be calculated and allocated between the parties according to the formula outlined in Section 4 of this Agreement.

9. Amendments to the Agreement. This Agreement may be amended by consent of the parties which represent a majority of the percentage contribution as described in Section 4 of this Agreement. Each party's vote shall be calculated according to the percentage contribution of each party as described in Section 4 of this Agreement. No amendment to this Agreement shall be effective unless it is in writing and signed by the duly authorized

representatives of the majority of the parties.

10. Authorized Signatories. The General Manager-Chief Engineer of DISTRICT, the Chief Executive Officer of COUNTY and the City Managers of CITIES (or their designees) shall be authorized to execute all documents and take all other procedural steps necessary to file for and obtain an NPDES Permit(s) or amendments thereto.

11. Notices. All notices shall be deemed duly given when delivered by hand; or three (3) days after deposit in the U.S. Mail, postage prepaid.

12. Governing Law. This Agreement will be governed and construed in accordance with laws of the State of California. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired hereby.

13. Consent to Waiver and Breach. No term or provision hereof shall be deemed waived and no breach excused, unless the waiver or breach is consented to in writing, and signed by the party or parties affected. Consent by any party to a waiver or breach by any other party shall not constitute consent to any different or subsequent waiver or breach.

14. Applicability of Prior Agreements. This Agreement and the exhibits attached hereto constitute the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

15. Execution in Counterparts. This Agreement may be executed and delivered in any number of counterparts or copies ("counterpart") by the parties hereto. When each party has signed and delivered at least one counterpart to the other parties hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

NOV 30 2010

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By Steve Thomas
WARREN D. WILLIAMS
General Manager-Chief Engineer

By Marion Ashley
MARION ASHLEY, Chairman
Riverside County Flood Control and
Water Conservation District
Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By David H.K. Huff
DAVID H.K. HUFF
Deputy County Counsel

By Kecia Harper-Ihem
Deputy

(SEAL)

Agreement – National Pollutant Discharge Elimination System
Urban Runoff Discharge Permit Implementation Agreement –
Santa Ana Region

AM:cw
P8/134125

COUNTY OF RIVERSIDE

By Marion Ashley
MARION ASHLEY, Chairman
Riverside County Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By David H.K. Huff
DAVID H.K. HUFF
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By Kecia Harper-Ihem
Deputy

(SEAL)