

**EXECUTIVE SUMMARY SHEET**  
**CITY OF SAN DIEGO**

DATE ISSUED: October 20, 2010 REPORT NO:

ATTENTION: Natural Resources & Culture Committee

ORIGINATING DEPARTMENT: Storm Water Department, Pollution Prevention Division

SUBJECT: Authorize the Mayor to Enter into a Memorandum of Understanding with the Other 2007 Municipal Storm Water Permit Copermittees for Cost Share to Pursue an Unfunded Mandates Claim

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Kris McFadden, (858) 541-4320, MS 1900

REQUESTED ACTION: The Storm Water Department is requesting Council to adopt a resolution authorizing the Mayor, or designee, to enter into a Memorandum of Understanding (MOU) with the other 2007 Municipal Storm Water Copermittees (NPDES No.: CAS0108758; Order No. R9-2007-0001) for costs to pursue an unfunded mandates claim with the State of California; and, authorize the Chief Financial Officer (CFO) to expend an amount not to exceed \$137,078 for the City allocated portion of the share costs pursuant to the MOU.

STAFF RECOMMENDATION: Adopt the resolution.

EXECUTIVE SUMMARY: In January 2007, the Regional Water Quality Control Board (RWQCB) issued NPDES Order No. 2007-0001 (2007 Municipal Permit) which permits and places conditions on the City and 21 of the other local government agencies located in San Diego County known as Regional Storm Water Copermittees' (Copermittees - To date, neither the Regional Board nor the State Water Resources Control Board has acknowledged that any portion of the Permit constitutes a State mandate that exceeds the scope of the Federal Clean Water Act and its implementing regulations). The City and 18 other Copermittees: The County of San Diego; City of Carlsbad; City of Chula Vista; City of Coronado; City of Del Mar; City of El Cajon; City of Encinitas; City of Escondido; City of National City; City of Oceanside; City of Poway; City of San Marcos; City of Santee; City of Solana Beach; City of Imperial Beach; City of La Mesa; City of Lemon Grove and City of Vista (Co-claimants) believe that portions of the 2007 Municipal Permit do in fact constitute an unfunded mandate by the State of California, and pursuant to Article XIII B §6 of the California Constitution, that a State subvention of funds is required before Copermittees must implement those portions that exceed the Federal requirements.

This Unfunded Mandates MOU allows for the sharing of legal costs of mutual benefit to fulfill necessary administrative and procedural actions associated with the claim, and thereby pursue the matter with regulatory agencies and hearing bodies. These tasks, if undertaken jointly, will present a unified and coordinated front and achieve cost savings where possible. These actions have included or will include the following actions: petition to the State Water Resources Control Board; preparation and presentation of a Test Case before the State Mandates Commission; petition for Writ

of Mandate; appeals; re-hearing and potential settlement with the State Mandates Commission (Mandates Claim).

The work contemplated by this MOU shall be performed by County Counsel for the County of San Diego with assistance from other attorneys from legal firms expert in specific areas of work on the claim, and are collectively identified in the MOU as the "Mandates Claim Co-Counsel". Under this arrangement, all Co-claimants will agree that County Counsel for the County of San Diego shall be identified as lead counsel, and that the County of San Diego shall be the Test Claimant in the Test Case. Work performed by County Counsel as the Mandates Claim Co-Counsel shall be accounted for, and shall represent a credit for the County of San Diego against its share of Mandates Claim costs and expenses.

A budget amounting to \$461,350 has been drafted, and the costs categorized to incorporate the following process steps: (1) Petition to the State Water Resources Control Board; (2) Test Case before the State Mandates Commission; (3) Petition for Writ of Mandate; (4) Appeals; and (5) Re-hearing and possible settlement with the State Mandates Commission. These costs have been apportioned in a manner consistent with the process used for 2007 Storm Water Permit Copermittee Cost Share MOU approved by City council in January 2008 (O-19699). The formula is as follows: 45% based on a jurisdiction's population relative to the regional total of the other Claimants; 45% based on a jurisdiction's relative land area, and a 10% flat fee. As a result, the City and County each pay approximately 30% of the total costs, and the other 17 Co-claimants will share the remaining 40% of the Costs under this MOU.

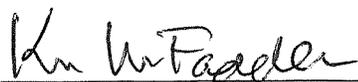
FISCAL CONSIDERATIONS: This MOU identifies a total of \$137,078 for the City's portion of the \$461,350 total shared cost to pursue the Mandates Claim. The source of these funds is the Storm Water Department, Pollution Prevention Division Operating Fund (211400).

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): Not Applicable

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On January 18, 2008, City Council adopted Ordinance Number O-19699 authorizing the Mayor to enter into the 2007 Municipal Storm Water Permit Copermittee Cost Share MOU.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Formal public review was conducted by the RWQCB prior to the adoption of the 2007 Municipal Permit. The 2007 Municipal Storm Water Copermittees MOU was discussed in publicly noticed meetings prior to adoption in January 2008.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders are the nineteen (19) Copermittees who will be sharing the financial and administrative burden of pursuing the Unfunded Mandates Claim.



Kris McFadden  
Storm Water Department Interim Director



David Jarrell  
Deputy Chief of Public Works

# Storm Water Copermitttees Unfunded Mandates Claim MOU

Storm Water Department  
October 20, 2010

Kris McFadden, Interim Director



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# Requested Actions



- **Authorize the Mayor to Enter into MOU to Share Costs to Pursue Claim**
- **Authorize the Expenditure of \$137,078 for the City's Portion of the Shared Costs**



# 2007 Regional Storm Water Permit



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- **Permit requires dischargers to comply by undertaking specific activities**
- **Requirements much more rigorous than the 2001 Storm Water Permit**
- **State authority to issue permit derived from the Federal Clean Water Act (CWA)**



# 2007 Regional Storm Water Permit



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- **Example Additional Requirements**
  - Treatment Control BMP inspections
  - Industrial & Commercial Facility Inspections
  - Hydromodification Plan
  - Increased Water Quality Monitoring
- **Unfunded Mandates originally estimated to be approximately \$8,900,000**



# Copermittees' Claim



- **City and other discharges claim that the storm water permit requirements constitutes Unfunded Mandates**
- **Article XIII B §6 of the California Constitution**
  - State subvention of funds is required before Copermittees must implement those portions that exceed the Federal requirements.



# Copermittees' Claim MOU



- **City and other dischargers to enter a MOU to share legal costs.**
- **Benefits of cost and presentation of a unified front to hearing bodies**
- **Five (shared) process steps in SOW.**
  - Petition to the State Water Resources Control Board
  - Test Case before the State Mandates Commission
  - Petition for Writ of Mandate
  - Appeals preparation
  - Re-hearing and possible settlement with the State Mandates Commission



# MOU Terms



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- **\$461,350 estimated cost per SOW.**
- **Cost apportioned based on previously adopted formula**
- **City portion: \$137,078**
- **County Counsel to act as Lead Counsel**



# Summary



- **Authorize the Mayor to Enter into MOU to Share Costs to Pursue Claim**
- **Authorize the Expenditure of \$137,078 for the City's Portion of the Shared Costs**

