


REPORT TO CITY COUNCIL

DATE: APRIL 25, 2007

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

SUBJECT: MEMBERSHIP IN THE LOS ANGELES STORM WATER QUALITY PARTNERSHIP

Pursuant to the provision of the federal Clean Water Act, the California Porter Cologne Water Quality Act, and accompanying regulations, the California Regional Water Quality Control Board for Los Angeles ("Regional Board") is responsible for developing a National Pollutant Discharge Elimination System ("NPDES") permit. The NPDES permit dictates the conditions to discharge urban runoff and storm water into the waters of the United States. The City is a co-permittee to any NPDES permit issued to the County of Los Angeles. Most cities have resisted these regulations and have fought them through litigation, generally due to financial infeasibility.

At a November 13, 2006 meeting involving city staff from 12 Los Angeles County cities (Agoura Hills, Artesia, Beverly Hills, Hidden Hills, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Fernando, San Marino, South El Monte, and Westlake Village), a consensus emerged among city staff that the 12 cities (and others who choose to join us) should pursue a different approach with the Regional Board. Broadly speaking, the new strategy would be to develop a multi-pronged campaign to engage the Regional Board, its staff, and political leaders in a dialogue about sensible and effective regulations.

An example of issues that will be facing cities is the proposal by the Regional Board's staff to impose on cities a new array of "numerical effluent limitations" which will specify how much of a particular bacteria, toxic metal, or other pollutant may be discharged from storm drain systems into the various waterways leading to the ocean. These numerical limits, as proposed, may not be technically possible to meet, and will be extremely expensive for the cities to implement.

The U.S. Environmental Protection Agency (EPA) recently approved a San Gabriel River Metals Total Maximum Daily Load ("TMDL") developed by the Regional Board. This TMDL will require cities whose storm drains empty into that waterway to *eliminate all metal discharges* from municipal storm drains within 15 years. The Regional Board estimates that the cost for complying with this one TMDL will be approximately \$1.91 billion over 15 years. This cost will be borne entirely by the 31 cities and agencies operating the storm drain systems.

The penalties for failing to comply with the Regional Board's numerical effluent limitations are severe. Furthermore, in the case of third party enforcement suits, a successful plaintiff is entitled by law to recover its attorney's fees from the defendant city. From a purely financial point of view, it makes sense to spend resources to engage in a collaborative relationship with the Regional Board in order to create sensible regulations that will result in higher quality storm

water while minimizing unnecessary adverse consequences on cities, rather than fighting about implementation feasibility after the fact.

Past disputes between the cities and the Regional Board staff and members over the appropriate level of regulation has stifled the free flow of communication and resulted in costly litigation. As a result of this tension, the Regional Board has developed storm water quality regulations with minimal collaboration with the cities. Twelve (12) cities propose to engage in a cost-sharing partnership (Attachment A) in an effort to change this relationship. The cities participating in this partnership would focus on assisting the Regional Board staff and the Board Members in developing smart, scientifically proven, and cost-effective programs to address the issues of water pollution from storm water runoff.

The overall objective of this partnership would not be to obstruct the Regional Board's permits and regulations, but to facilitate a collaborative working relationship with the Regional Board and the permittees. This effort will entail substantial expense and effort over a relatively long period of time. The cities proposing this partnership envision contracting consultants to facilitate dialogue with the Regional Board and its staff.

Cultivating a productive relationship with the Regional Board will take time. The purpose of this partnership is to establish a continuing and sustained, long-term relationship between the permittees and the Regional Board to reduce storm water pollution through a collaborative effort that takes into account the financial realities facing local government. Over time, it is anticipated that other cities and other local agencies will join in this effort.

The fiscal impact to the City for participating in this effort is estimated to be \$27,500 per year, assuming an initial membership of 12 cities. This cost includes a proposed, but not assessed, "Auxiliary Cost" of \$5,000 for potential additional services. The accompanying Memorandum of Understanding (MOU) lists the specific costs in more detail. As the number of cities in this partnership increases, the City's pro rata costs should decrease. The City may drop out of the partnership upon 60 days notice, but would be responsible for its share of costs for that fiscal year.

RECOMMENDATION

Staff respectfully recommends joining the partnership and approving the attached MOU.

Attachments: Attachment A (The Los Angeles Storm Water Quality Partnership)
MOU with Exhibit A

Attachment A

The Los Angeles Storm Water Quality Partnership

I. Context

Because we all depend on clean water, it is critical to find a way to work together to ensure Los Angeles' storm water is managed properly. Currently, regulators and the permittees/cities do not sufficiently collaborate on the development of storm water policy and regulations in the Los Angeles basin. This not only frustrates permittees, regulators, and environmental groups, it also does little to improve the quality of Los Angeles' storm water discharges. This dynamic needs to change. The purpose of the Los Angeles Storm Water Quality Partnership is to do just that.

II. Vision

- Relationships- The partnership seeks to improve relationships with the Los Angeles Regional Water Quality Control Board ("Regional Board"). The goal is to engage the Regional Board, its staff, political leaders, and key environmental groups in a dialogue about developing sensible and effective regulations. Although cultivating a productive relationship will take time and resources, this investment is critical to ensure meaningful, yet prudent, regulations.
- Coalition- The goal of the partnership is to expand its membership to include other Los Angeles County cities and agencies that believe in working together to clean up the region's water.
- Campaign- The partnership will work with Los Angeles County and other stakeholders to develop and implement a clean water campaign that will ask the voters of Los Angeles County to help pay for storm water mitigation programs throughout the Los Angeles basin. Without this source of revenue, cities may need to cut vital services such as police, fire, and traffic relief in order to implement even a fraction of what the regulations will require them to do.

III. Approach

To achieve this vision, the partnership will adopt a collaborative approach characterized by:

- Engagement
- Constructive interaction and meaningful discussion
- Proactive ideas
- Shared fact-finding
- Self-determined compliance methods
- Propose meaningful and practical policy implementation
- Identification of early successes

The partnership will conduct the following in the coming months:

- Recruit cities who share our vision and purpose
- Inventory current partnership cities' storm water activities
- Develop a list of "can do" storm water mitigation actions
- Engage the Regional Board, its staff, political leaders, stakeholders, and key environmental groups in a collaborative effort to develop sound policy and regulations
- Build a coalition, including an expanded partnership, to launch a campaign for a ballot measure to fund critical storm water measures

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Memorandum of Understanding

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of the ____ day of _____, 2007, by and between the signatories to this MOU.

Recitals

A. Pursuant to the provisions of the federal Clean Water Act, the California Porter Cologne Water Quality Act, and regulations adopted in conjunction therewith, the California Regional Water Quality Control Board for the Los Angeles Region (“Regional Board”) is responsible for developing a National Pollutant Discharge Elimination System (“NPDES”) permit. The NPDES permit dictates the conditions under which subject agencies may discharge urban runoff and storm water into the waters of the United States. The signatories to this MOU are co-permittees to an NPDES permit issued to the County of Los Angeles as the principal permittee.

B. Each NPDES permit is valid for five years, or until such time thereafter as the Regional Board can develop a new permit.

C. The signatories desire to cooperate in an effort to gather information regarding best storm water management practices and to engage and assist the Regional Board and other involved agencies in developing sound, cost-effective, and practicable conditions for NPDES permits and related regulations, requirements, and programs.

THEREFORE, the parties agree as follows:

1. Term. This MOU shall be valid for one year and shall be automatically renewed each year thereafter, beginning on the first day of each fiscal year. Any signatory may terminate its participation in this MOU upon 60 days written notice to the other signatories prior to the start of the fiscal year.

2. Meetings. Representatives of the signatories shall meet from time to time, but no less than quarterly, to share information regarding current storm water management efforts and to coordinate activities surrounding NPDES permits.

3. Activities. The signatories shall share costs to engage consultants, public affairs agents, and technical advisors for the purposes set forth above in the Recitals.

A. The representatives of the signatories shall develop a tentative cost allocation for the forthcoming fiscal year by January of each year.

B. Anticipated costs for the fiscal year shall be paid by the signatories at the start of each fiscal year, each paying an equal share. Notwithstanding this provision, a signatory may elect to make quarterly payments by providing written notice to the other signatories. Payments shall not exceed the total amount set forth in Exhibit A unless additional payment is approved as provided in this MOU.

C. The signatories may elect to increase the amounts set forth in Exhibit A if the increase is approved by a two-thirds majority of the representatives of the signatories.

D. Notwithstanding Section 1 of this MOU, if a signatory disagrees with a decision by the other signatories to increase the costs as set forth in paragraph C, the signatory may terminate its participation in this MOU within 30 days after the signatories agree to increase the costs. The signatory shall remain responsible for its prorated share of the costs for that year minus any increased costs.

4. Administration. The signatories will coordinate their efforts in the following manner:

A. Once each year, or more often if needed, the representatives of the signatories shall designate one of the signatories to serve as the administrator. This designation shall require two-thirds approval of the representatives of the signatories. The administrator, or its designated representative, shall collect, be the depository of, and have custody of, all funds. The administrator shall be accountable for all funds and for reporting all receipts and disbursements to the signatories. The signatories shall hold the administrator and any designated representative harmless from all claims and liability arising from the reasonable performance of its duties in accordance with generally accepted governmental procedures and accounting practices.

B. The signatories shall select three Administrative Representatives to coordinate the activities of public affairs agents, technical advisors, and consultants shared by the signatories. Each Administrative Representative will serve a one-year term. The initial Administrative Representatives shall be Katie Lichtig, Scott Ochoa, and Ray Taylor. Each Administrative Representative shall be elected by a majority vote of the representatives of the signatories, with each signatory having one vote. Administrative Representatives may be replaced by a two-thirds vote of the representatives of the signatories following 30 days advance written notice of the proposed action to all of the signatories.

5. Additional Parties. Any local agency that joins this cost sharing effort after the beginning of the fiscal year shall pay a prorated amount of the costs for that year. As additional local agencies join the cost sharing arrangement, and the amount owed by each individual agency is therefore reduced, monies shall be reimbursed to previous signatories on a pro rata basis.

6. Concurrent Participation. As a condition of participating in this effort, the signatories agree not to participate in other regional storm water organizations.

7. Ratification. The approval of this MOU by nine local agencies shall be sufficient for the establishment of this MOU as between those local agencies.

8. Termination. In the event of dissolution, the administrator shall proportionally distribute all outstanding balances among the signatories.

9. No Separate Entity. This MOU establishes a framework for local agency cooperation on storm water issues. Nothing in this MOU shall be construed to create an entity separate from the local agencies that join in this cooperative effort. The agencies that join together in this effort may be referred to collectively as the Los Angeles Storm Water Quality Partnership.

WHEREFORE, the City of Agoura Hills hereby enters into this Memorandum of Understanding as of April 25, 2007.

CITY OF AGOURA HILLS,
a municipal corporation

By: _____
Dan Kuperberg, Mayor

ATTEST:

By: _____
Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____
Craig Steele, City Attorney

By: _____
Greg Ramirez, City Manager

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Exhibit A Cost Structure

The following table represents the total costs to be shared by the local agencies who sign this Memorandum of Understanding. Each signatory agrees to pay its share of these costs each year, which share shall not exceed $1/n$, where n equals the total number of signatories. Modifications to this table may only be made in the manner set forth in this MOU.

Policy/Technical Consultant:	\$12,500/month
Public Affairs Agents:	\$10,000/month
Auxiliary Costs:*	up to \$5,000/month
Total:**	\$27,500/month

* The Auxiliary Costs will not be paid by the signatories unless approved by a two-thirds majority of the representatives of the signatories. The purpose of the Auxiliary Costs, if invoked, will be to contract additional technical experts or augment specific programs already in existence.

** This total includes the unassessed Auxiliary Costs. Unless invoked, each signatory's proportion of the total monthly amount of costs will be $\$27,500 \times 1/n$. Absent modifications to this cost sharing agreement, the total monthly cost to each signatory shall not exceed $\$27,500 \times 1/9$, or \$3,056.