



## Legislation Details (With Text)

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**Title:** RESOLUTION AUTHORIZING AMENDMENT NO. 4 TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN DIEGO REGIONAL STORMWATER COPERMITTEES TO SHARE COSTS AND PROGRAM RESPONSIBILITIES FOR ACTIVITIES REQUIRED UNDER ORDER NO. R9-2013-0001 AS AMENDED BY ORDERS R9-2015-0001 AND R9-2015-0100, THE MUNICIPAL STORMWATER PERMIT; THE DISTRICT'S SHARE NOT TO EXCEED \$111,027. FY 2019 EXPENDITURES ARE BUDGETED; FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

### Sponsors:

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**Attachments:** 1. 6. 2019-0090 Attachment A, 2. 6. 2019-0090 Attachment B, 3. 6. 2019-0090 Attachment C, 4. 6. 2019-0090 Attachment D, 5. 6. 2019-0090 Attachment E, 6. 6. 2019-0090 Draft Resolution

Date	Ver.	Action By	Action	Result
4/9/2019	1	Board of Port Commissioners	adopted	

**DATE:** April 9, 2019

### SUBJECT:

**RESOLUTION AUTHORIZING AMENDMENT NO. 4 TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN DIEGO REGIONAL STORMWATER COPERMITTEES TO SHARE COSTS AND PROGRAM RESPONSIBILITIES FOR ACTIVITIES REQUIRED UNDER ORDER NO. R9-2013-0001 AS AMENDED BY ORDERS R9-2015-0001 AND R9-2015-0100, THE MUNICIPAL STORMWATER PERMIT; THE DISTRICT'S SHARE NOT TO EXCEED \$111,027. FY 2019 EXPENDITURES ARE BUDGETED; FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET**

### EXECUTIVE SUMMARY:

The San Diego County Municipal Stormwater Permit requires regional coordination between 21 municipalities (or Copermittees<sup>1</sup>). Since 2001, the Copermittees have been actively coordinating on a regional scale under various memorandums of understanding that are aligned with the Municipal Stormwater Permit. On December 11, 2007, the Board of Port Commissioners (Board) approved the current MOU between the Copermittees to establish the responsibilities of each Copermittee and include a cost-share formula that identified each Copermittee's share of regional costs for monitoring, education, and other required collaborative efforts. There have been three amendments to the MOU since 2007.

The current Municipal Stormwater Permit<sup>2</sup> was adopted in 2013 by San Diego Regional Water Quality Control Board Order No. R9-2013-0001 and was subsequently amended twice in 2015 (the “2013 Permit”).

The most recent MOU amendment occurred in 2015 and included an updated cost share budget, and an extension of the MOU term through August 31, 2019. Because the MOU is set to expire in 2019, a fourth amendment to the MOU will be necessary to continue the regional programs and cost sharing through the remainder of the 2013 Permit, plus 12 months or August 2024, whichever is longer. The proposed Amendment No. 4 includes an updated regional cost share budget and changes to the structure of the Working Bodies. The overall shared regional budget for the five-year term of the MOU amendment is a not-to-exceed cost of \$32,859,203. The District’s portion of that cost is not to exceed \$111,027, or approximately 0.34% of the overall MOU budget.

Amendment No. 4 is necessary to ensure the District can continue to work collaboratively and collectively with the other Copermittees to maintain compliance with the 2013 Permit. It is possible, but not guaranteed, that the San Diego Regional Water Quality Control Board (Regional Board) will adopt a new Municipal Stormwater Permit to replace the 2013 Permit in fall 2019. It is also expected that the new Municipal Stormwater Permit will continue to require the activities currently being implemented under the MOU. For this reason, the Fourth Amendment to the MOU will continue the regional programs and cost sharing through August 2024 or the life of the 2013 Permit plus 12 months. Any permit renewal, replacement, or modification that increases the obligations of the Copermittees may require an amendment of the MOU.

Staff is requesting the Board’s approval of Amendment No. 4 to the MOU.

### **RECOMMENDATION:**

Adopt a Resolution authorizing Amendment No. 4 to the MOU between the San Diego Regional Stormwater Copermittees to share costs and program responsibilities for activities required under the Municipal Stormwater Permit Order No. R9-2013-0001, as amended by Orders R9-2015-0001 and R9-2015-0100.

### **FISCAL IMPACT:**

Funds for the first year of this expenditure will be budgeted in the FY 2020 Environmental Protection (EP) budget in the Joint Programs/Studies Assistance Expense Account (#660170). Funds required for future fiscal year(s) will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year’s budget.

MOU BUDGET (DISTRICT PORTION) TOTAL	FY 2020	FY2021	FY 2022	FY/2023	FY2024
\$111,027	\$22,570	\$22,060	\$24,433	\$21,592	\$20,372

### **COMPASS STRATEGIC GOALS:**

The stormwater management work proposed with this agenda item supports the District's goal to help protect and improve the environmental conditions of the bay. Through regional coordination efforts, the proposed amendment also allows the District to continue to integrate a comprehensive vision for improving the water quality of the bay among other jurisdictions of the San Diego Bay Watershed.

This agenda item supports the following Strategic Goal(s).

- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

## **DISCUSSION:**

### **Regional Municipal Stormwater Permit**

For nearly two decades, a regional Municipal Stormwater Permit has been in place to regulate the discharge of stormwater and non-stormwater runoff from municipal separate sewer systems (MS4s) to the waters of the United States. The term of each Municipal Stormwater Permit is five years unless it is administratively extended.

The 2013 Permit requires regional coordination between 21 municipalities (or Copermittees<sup>1</sup>). The 2013 Permit was adopted by the Regional Board on May 8, 2013. The 2013 Permit<sup>2</sup> takes a different approach to regulating discharges from MS4s than previous permits. Using a watershed approach, the permit requires that Copermittees within each of the nine watersheds demonstrate improvements to water quality and meet numeric action levels. Annual water monitoring is also required within each watershed so that progress towards water quality goals can be assessed and program modifications can occur, when applicable. In addition, the 2013 Permit includes regional-level reporting and monitoring requirements and the development and maintenance of an internet-based regional clearinghouse to store information and documents that is publicly available.

The Copermittees recognized the need for continued regional consistency and collaboration on particular permit elements in order to successfully implement their stormwater programs. Examples include incorporating standardized approaches, when possible, to address development and redevelopment projects requirements, and implementing elements of Copermittees' education programs at a regional level rather than a jurisdictional or even watershed level.

### **MOU Background**

On December 11, 2007, the Board approved the most recent MOU between the Copermittees to share costs and work cooperatively to comply with the regional requirements of the Municipal Stormwater Permit, Order No. R9-2007-0001. (Attachment A). The MOU also established Working Bodies to conduct specific tasks required by, for, or in furtherance of compliance with the permit. Working Bodies can be either at a regional or watershed level and include committees, sub-committees, sub-working body(s), or any other working group of Copermittees. On June 8, 2010, the Board then approved the First Amendment to the MOU. The purpose of the first amendment was to allow Copermittees to be reimbursed directly for expenditures incurred on behalf of regional program development (Attachment B).

As stated above, the 2013 Permit took a more focused watershed management area (WMA) structure. As such, an amendment to the MOU was necessary to establish watershed-level activity workplans and shared costs in addition to continuing the existing cooperation on regional activity workplans and shared costs. The MOU was therefore amended a second time in May 2014 to incorporate regional and watershed shared costs related to 2013 Permit requirements<sup>4</sup>. The Board approved Amendment No. 2 on May 6, 2014 (Attachment C).

The most recent amendment to the MOU occurred in 2015. The 2015 amendment was required to extend the term of the MOU through August 2019, update cost share budgets, and incorporate several revisions to the regional workgroup structure. One revision was to identify the regional Copermittee “Working Bodies” subject to the Brown Act. The Ralph M. Brown Act (California Government Code section 54950 through 54962), often referred to as “the open meeting law,” guarantees the public’s right to attend and participate in meetings of local legislative bodies. The Board approved Amendment No. 3 on August 11, 2015 (Attachment D).

#### **Amendment No. 4 to MOU**

The proposed Amendment No. 4 (Attachment E) revises the MOU to continue the regional and watershed level collaborative and coordinated initiatives through the remainder of the current (active) Municipal Stormwater Permit and through the five-year term of the anticipated Municipal Stormwater Permit that will replace the 2013 Permit, once adopted. Amendment No. 4 revises the MOU in three ways:

1. Extends the MOU term: The current MOU is set to expire on August 31, 2019. Amendment No. 4 will extend the MOU term through August 2024 or the life of the 2013 Permit plus 12 months, whichever is longer. This timeframe is anticipated to cover the existing 2013 Permit and the anticipated term of the new Municipal Stormwater Permit which might be adopted in Fall 2019. The MOU also provides that any permit renewal, replacement, or amendment that increases obligations may require an amendment to the MOU.
2. Working Body structure: Changes to the MOU provide more flexibility on the creation of Working Bodies and clarification on when a Working Body(s) may be designated as legislative and are therefore subject to the Brown Act.
3. Updates the budget for the new MOU term: Table 1 in Section II.B.3.a of Amendment No. 4 includes the overall budget for the five-year MOU term. The table includes a breakdown of costs by fiscal year and provides an overall cumulative “not to exceed” limit. The District’s share of the budget includes costs from Budget Category 1, *Regional Programs* (\$4,507,660) and from category 2.e, *San Diego Bay WMA* (\$3,931,000). The regional and watershed workplans and budgets were derived by Copermittee Working Bodies as identified in the MOU. Based on the Default Formula<sup>3</sup>, the District’s share of the cumulative limit, including the overall costs of the Regional General Programs and the San Diego Bay WMA, is \$111,027, or approximately 0.34% of the overall MOU budget. The estimated cost to the District for upcoming fiscal year (FY 2020) is \$22,570, which has been included in the proposed FY 2020 EP budget that will be taken to the Board for consideration in June 2019.

Staff is recommending that the Board adopt a Resolution authorizing Amendment No. 4 to the MOU between the San Diego Regional Stormwater Copermittees to share costs and program

responsibilities for activities required under the current 2013 Permit for a five-year term ending August 2024 or ending with the life of the 2013 Permit plus 12 months, whoever is longer.

### **General Counsel's Comments:**

The General Counsel's Office reviewed this agenda and approved the proposed Amendment No. 4 to the MOU as to form and legality.

### **Environmental Review:**

The proposed Board action to authorize a fourth amendment to the MOU between the San Diego Regional Stormwater Co-Permittees to share costs and program responsibilities for activities required under order No. R9-2013-0001, as amended by order No. R9-2015-0001, the Municipal Stormwater Permit, does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the Board's action or direction that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The project complies with Section 87 of the Port Act, which allows for the establishment and maintenance of tidal and submerged lands for open space, ecological preservation, and habitat restoration. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed project is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase of the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction or action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

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Attachment(s):

Attachment A: San Diego Regional Stormwater Co-permittees MOU  
Attachment B: First Amendment to the MOU  
Attachment C: Second Amendment to the MOU  
Attachment D: Third Amendment to the MOU  
Attachment E: Proposed Fourth Amendment to the MOU

<sup>1</sup> The San Diego Regional Copermittees include: County of San Diego, Port of San Diego, San Diego Regional Airport Authority, and Cities of Imperial Beach, La Mesa, Lemon Grove, National City, Coronado, Chula Vista, El Cajon, San Diego, Del Mar, Carlsbad, Escondido, Vista, Solana Beach, Encinitas, Oceanside, Poway, Santee, and San Marcos.

<sup>2</sup> California Regional Water Quality Control Board San Diego Regional Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the San Diego Region  
[http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/stormwater/docs/updates030415/2015-0001](http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/docs/updates030415/2015-0001)

<sup>3</sup> The cost share structure divided the total regional costs among the Copermittees by allocating percentages of costs based on Copermittee population (45%), estimated urbanized land area (45%), and equally dividing the remaining portion (10%) of the cost. This cost share structure is referred to in the MOU as the "Default Formula."

<sup>4</sup> Activities that may be cost-shared by the Copermittees include collaborative urban runoff management activities which are (1) mandated by or necessary to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other directives required of Copermittees as dischargers of urban runoff (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other urban runoff management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.