

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: September 20, 2010

Reviewed by: BP

**SUBJECT:** Authorization to file a test claim to the California Commission on State Mandates for costs associated with the City's Municipal Regional Stormwater permit.

**REPORT BY:** Nicole Almaguer, Environmental Specialist

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**STAFF RECOMMENDATION**

That the City Council authorize staff to:

1. Prepare a test claim to the California Commission on State Mandates for particular costs associated with the City's Municipal Regional Stormwater permit.
2. Work in coordination with the other agencies within the Alameda Countywide Clean Water Program regarding the test claim filing and review process.
3. Execute an engagement letter and authorization to Meyers Nave to serve as the lead legal counsel to file the test claims on behalf of the agencies within the Alameda Countywide Clean Water Program.

**BACKGROUND**

Alameda County, its 14 cities and two special districts, created a Joint Powers Agreement in October 1991 called the Alameda Countywide Clean Water Program (ACCWP) to comply with mandated NPDES (National Pollutant Discharge Elimination System) permit requirements issued by the San Francisco Regional Water Quality Control Board (SFRWQCB).

The most recent NPDES permit (MRP/Municipal Regional Permit) was adopted by the SFRWQCB on October 14, 2009. The MRP covers stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. The MRP imposes several new and costly mandates on the permittees.

ACCWP legal counsel was asked to conduct analysis to determine whether the permittees to the MRP may be eligible to recover costs associated with implementing new requirements imposed by the MRP under the State's "unfunded mandates" law. Legal counsel concluded that certain MRP requirements give rise to unfunded mandate claims

that have a high probability of success. Based on these findings, the ACCWP determined that it is beneficial to pursue filing of a joint test claim.

Additionally, per ACCWP legal counsel, the Commission has already twice determined that some provisions in regional stormwater permits qualify as unfunded mandates. In September 2009 the Commission approved test claims based on trash provisions in a regional stormwater permit issued by the Los Angeles Regional Water Quality Control Board. In March 2010, the Commission issued a decision approving test claims arising from several provisions in the regional stormwater permit issued by the San Diego Regional Water Quality Control Board. Both decisions are currently being challenged in Superior Court.

## **DISCUSSION**

Two particular items within the MRP are proposed for inclusion in the City's test claim: 1) new water quality monitoring requirements and 2) new trash load reduction requirements. Both items are considered new mandates, and have significant implementation costs. ACCWP program staff developed cost estimates for implementing both the trash load reduction and water quality monitoring measures, which for the City, equates to approximately \$144,237 in new program costs for FY 2010/11.

Per ACCWP legal counsel, the "test claim" process includes the following:

- Test claim submitted to the Commission
- Commission reviews the test claim, requests additional information from the claimant to further document costs, etc.
- Commission allows parties in opposition to the test claim (California Department of Finance and/or the State Water Resources Control Board) to submit materials in opposition. Claimant will have an opportunity to rebut the arguments.
- Commission holds a hearing. If the Commission approves the test claim, the claimant will be required to submit "parameters and guidelines" describing the activities and costs that are eligible for reimbursement for review by the Commission.
- Commission staff prepares an estimate of the statewide cost for adoption by the Commission. Claimants are instructed on how to file for reimbursement. If State funds are not available to reimburse claimants, injunctive relief suspending the unfunded mandates may then be available from a court.

Meyers Nave, the legal counsel that typically represents a number of the individual jurisdictions within the ACCWP, has agreed to serve as the lead in filing the test claim with the Commission. The filing must be executed by October 14, 2010.

## **SUSTAINABILITY IMPACT**

N/A.

## **FINANCIAL IMPACT**

Costs associated with filing the test claim will be paid through ACCWP program funds. Additional funds will be necessary to continue the test claim process should the claim be accepted for review by the Commission. At this point, it has not been determined how the continued pursuit of the test claim would be funded. Additional discussions are intended to be held by the ACCWP to identify opportunities to collaborate on funding.