

**California Regional Water Quality Control Board
Santa Ana Region**

April 24, 2009

Item: *10

**Subject: Cooperative Agreement for the Newport Bay Watershed and the
Central Watershed Management Area - Third Amendment and Full
Restatement of Cooperative Agreement**

DISCUSSION

On September 30, 1983, the County of Orange, the Cities of Irvine and Newport Beach, The Irvine Company, and the California Department of Fish and Game entered into a Cooperative Agreement to identify programs and projects, and funding mechanisms, to implement the Newport Bay/San Diego Creek Watershed *Comprehensive Stormwater Sediment Control Plan* (Sediment Plan, or Plan). The Sediment Plan was developed through a Clean Water Section 208 planning grant. The Newport Bay Watershed Executive Committee (NBWEC) was formed to oversee implementation of the Plan. Formation of the NBWEC and implementation of the Sediment Plan was undertaken on a voluntary basis.

The Cooperative Agreement was amended in 1999 to add the Regional Board as a non-funding participant. The Regional Board had adopted both sediment and nutrient TMDLs for the Newport Bay watershed in 1998 and the amendment to the Agreement also expanded its scope to include work on nutrient issues and other issues of common concern.

Since the 1999 amendment of the Agreement, a number of additional regulatory initiatives were approved, including TMDLs for toxics substances for Newport Bay and its watershed. Amendment and re-statement of the Agreement is proposed to address these new initiatives and to expand the geographic area addressed by the Agreement to include the Newport Coastal Streams Watershed.

On February 18, 2009, the NBWEC met and voted to approve an amended Cooperative Agreement (COOPERATIVE AGREEMENT FOR THE NEWPORT BAY WATERSHED AND THE CENTRAL WATERSHED MANAGEMENT AREA – THIRD AGREEMENT AND FULL RESTATEMENT OF COOPERATIVE AGREEMENT (Agreement D08-104) (shown in the Attachment to Resolution No. R8-2009-0041). The revisions to the Cooperative Agreement provide a management framework for cooperation on sediment, water quality and water resource issues in the Central Watershed Management Area, an area that encompasses the Newport Bay Watershed and the Newport Coastal Streams Watershed. The proposed changes in the Third Amendment do not make a substantive difference with respect to the commitment of the

parties to implement sediment control measures per the 1983 Sediment Plan. The Cooperative Agreement provides a framework for coordinating actions among different agencies.

The revisions to the Cooperative Agreement include:

- 1) Evaluate and assess the progress and effectiveness of implementing the Sediment Plan and its project implementing agreements;
- 2) Review progress and provide direction on projects to address water quality impairments under current and potential future TMDLs, including sediment, nutrients, fecal indicator bacteria, toxicity, and any emerging pollutants; review opportunities and provide direction for pollutant trading or offset programs;
- 3) Review opportunities and provide direction for grant funding through Integrated Regional Water Management Plans;
- 4) Provide oversight for the Central Watershed Management Area and any updates of the Central Orange County Integrated Regional and Coastal Watershed Management Plan; and,
- 5) Formulate project implementation agreements for any cost-shared projects.

The Cooperative Agreement will become finalized if each individual NBWEC member, including the Regional Board, approves it. The Regional Board is being requested to consider and approve the Third Amendment and Full Restatement of Cooperative Agreement, and submit the signed signature page back to the County of Orange by May 15, 2009.

Being a signatory to the Cooperative Agreement in no way compromises the regulatory authority of the Regional Board, including the ability to enforce any violations of related permits or current or future TMDLs. Nor does the amendment to the agreement negate the responsibility of the parties to fulfill TMDL requirements.

STAFF RECOMMENDATION

Staff recommends the adoption of Resolution No. R8-2009-0041, authorizing the Executive Officer to sign the Cooperative Agreement on behalf of the Regional Board. The Cooperative Agreement is attached to Resolution No. R8- 2009-0041. Further, adoption of Resolution No. R8-2009-0041 would delegate to the Executive Officer all functions under the Cooperative Agreement, including any future amendments to the Cooperative Agreement.

**California Regional Water Quality Control Board
Santa Ana Region**

Resolution No. R8-2009-0041

Resolution Authorizing the Signature of the “Cooperative Agreement for the Newport Bay Watershed and the Central Watershed Management Area - Third Amendment to the Cooperative Agreement” (Agreement D08-104) and Delegating Authority to the Executive Officer to Execute all Functions under the Agreement and Consider Further Proposed Amendments to the Agreement

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Water Board) finds that:

1. On September 30, 1983, the County of Orange, the Cities of Irvine and Newport Beach, The Irvine Company, and the California Department of Fish and Game entered into a Cooperative Agreement to implement the Newport Bay/San Diego Creek Watershed *Comprehensive Stormwater Sediment Control Plan* (Sediment Plan, or Plan). The Newport Bay Watershed Executive Committee (Executive Committee) was formed to oversee implementation of the Plan.
2. The Cooperative Agreement was amended in 1985 and 1999 to include additional parties and to broaden the purpose of the Agreement to include cooperative work on nutrient Total Maximum Daily Loads (TMDLs) and other common watershed issues. The 1999 amendment to the Cooperative Agreement included the Regional Water Board as a participant in the Cooperative Agreement and specifies that that the Regional Water Board will participate on the Executive Committee as a full member. The Regional Water Board has no obligation to make any financial contributions, or any financial obligations under the Cooperative Agreement.
3. The Executive Committee includes the County of Orange, the Orange County Flood Control District, the Cities of Irvine, Lake Forest, Newport Beach and Tustin, the California Department of Fish and Game, The Irvine Company, the Irvine Ranch Water District, and the Regional Water Board.
4. On February 18, 2009, the Executive Committee recommended that the “Cooperative Agreement for the Newport Bay Watershed and the Central Watershed Management Area - Third Amendment to the Cooperative Agreement” (Agreement D08-104) be executed by all of the parties to the Cooperative Agreement.
5. The purpose of the third amendment to the Cooperative Agreement is to broaden the scope of water quality issues and regulatory actions, including TMDLs,

6. It is appropriate to delegate to the Executive Officer authority to execute all functions under the Agreement and any further proposed amendments to the Cooperative Agreement.
7. The Regional Water Board Executive Officer's signature to the Cooperative Agreement neither connotes nor denotes a commitment by the Regional Water Board to implement the results and recommendations of studies conducted pursuant to the Cooperative Agreement. Rather, the Executive Officer's signature denotes the Regional Water Board's commitment to meaningful participation in the Cooperative Agreement process. The Regional Water Board does not relinquish any rights or obligations as a result of its participation on the Executive Committee.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Officer is authorized to sign the Cooperative Agreement for the Newport Bay Watershed and the Central Watershed Management Area Third Amendment to the Cooperative Agreement (Agreement D08-104) in the same form as the document attached to this Resolution.
2. The Regional Water Board authorizes the Executive Officer to perform all functions under the Cooperative Agreement and to approve future amendments to the Cooperative Agreement consistent with this Resolution.

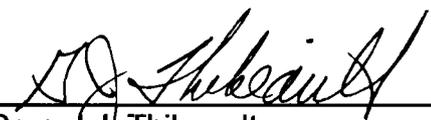
I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 24, 2009.



Gerard J. Thibeault
Executive Officer

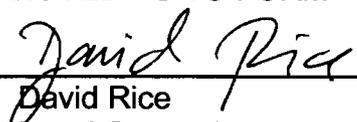
IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "COOPERATIVE AGREEMENT FOR THE NEWPORT BAY WATERSHED AND THE CENTRAL WATERSHED MANAGEMENT AREA THIRD AMENDMENT AND FULL RESTATEMENT OF COOPERATIVE AGREEMENT" as of the day and year first above written.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION

BY 
Gerard J. Thibeault
Executive Officer

DATE May 5, 2009

APPROVED AS TO FORM

By 
David Rice
Legal Counsel

Attachment To Resolution

R8-2009-0041

COOPERATIVE AGREEMENT FOR THE NEWPORT BAY WATERSHED AND THE CENTRAL WATERSHED
MANAGEMENT AREA
THIRD AMENDMENT AND FULL RESTATEMENT OF COOPERATIVE AGREEMENT

THIS THIRD AMENDMENT to the Cooperative Agreement is numbered D08-104 (hereinafter "COOPERATIVE AGREEMENT") and is made and entered into this _____ day of _____, 2009, by and between the County of Orange, the Orange County Flood Control District, the Cities of Irvine, Lake Forest, Newport Beach, Tustin, the California Department of Fish and Game, The Irvine Company, the Regional Water Quality Control Board, Santa Ana Region and the Irvine Ranch Water District. These entities are hereinafter sometimes jointly referred to as the "PARTIES" and individually as "PARTY".

W I T N E S S E T H

WHEREAS, on September 30, 1983, a COOPERATIVE AGREEMENT was entered into by the County of Orange, the Cities of Irvine and Newport Beach, The Irvine Company, and the California Department of Fish and Game to implement the Comprehensive Stormwater Sediment Control Plan (hereinafter "PLAN") in the San Diego Creek-Newport Bay Watershed (hereinafter "NEWPORT BAY WATERSHED") and established the Newport Bay Watershed Executive Committee; and,

WHEREAS, the primary purpose of the PLAN is to reduce sedimentation of Newport Bay; and

WHEREAS, the sediment affecting Newport Bay which originates in natural open space lands as well as lands disturbed by man for agricultural and urban uses; and,

WHEREAS, if sedimentation of Newport Bay is not controlled, the State owned ecological preserve in upper Newport Bay may continue to be degraded and large amounts of sediment may be deposited in lower Newport Bay, thus impairing the valuable small boat, commercial and recreational land uses; and,

1 WHEREAS, the PARTIES have limited resources with which to address the
2 implementation of the PLAN and it is recognized that any effective
3 implementation of the PLAN will depend upon availability of funding sources
4 at the regional, state and federal levels; and,

5 WHEREAS, on September 25, 1985, the COOPERATIVE AGREEMENT was amended
6 to add the City of Tustin as a participant; and,

7 WHEREAS, on April 20, 1999, the COOPERATIVE AGREEMENT, then numbered
8 D99-026, was amended to add the Orange County Flood Control District, the
9 City of Lake Forest, the Regional Water Quality Control Board, Santa Ana
10 Region, and the Irvine Ranch Water District as participants and the purpose
11 of the agreements was expanded to include cooperative work on nutrient
12 impairments and other common watershed issues in the NEWPORT BAY WATERSHED;
13 and,

14 WHEREAS, since the last amendment of the COOPERATIVE AGREEMENT in 1999
15 a number of changes affecting water quality regulation, funding and
16 governance have affected the NEWPORT BAY WATERSHED including:

- 17 1. Total Maximum Daily Loads (hereinafter "TMDL" or "TMDLs") have been
18 approved by the Regional Water Quality Control Board, Santa Ana
19 Region for fecal coliform on April 9, 1999, diazinon and
20 chlorpyrifos on April 4, 2003, and organochlorine pesticides on
21 September 7, 2007, and by the United States Environmental Protection
22 Agency for toxic pollutants on June 14, 2002. Additional TMDLs are
23 in development. The organochlorine pesticides TMDL recognizes that
24 pollutants other than the organochlorine compounds, such as metals,
25 pyrethrins or other emerging pollutants may pose the more real or
26 significant threat to beneficial uses in the watershed and allows
stakeholders to pursue an integrated approach to TMDL implementation
through development and implementation of a work plan that
encompasses all sources of water quality impairment; and,

- 1 2. On December 20, 2004, the Regional Water Quality Control Board,
2 Santa Ana Region approved Order No. R8-2004-0021 regulating
3 groundwater discharges in the NEWPORT BAY WATERSHED, resulting in
4 the formation of the Nitrogen and Selenium Management Program to
5 comprehensively address nitrogen and selenium issues; and,
6 3. On February 1, 2005, the Orange County Board of Supervisors, with
7 input from cities and special districts, recommended the formation
8 of three Watershed Management Areas, including a Central Watershed
9 Management Area, comprised of the NEWPORT BAY WATERSHED and the
10 Newport Coastal Streams Watershed, with the Newport Bay Watershed
11 Executive Committee structure to serve as the model for governance
12 of each Watershed Management Area; and,
13 4. The State of California has established requirements for Integrated
14 Regional Water Management Plans as a basis for significant grant
15 funding under Propositions 50 and 84 resulting in the preparation of
16 the Central Orange County Integrated Regional and Coastal Watershed
17 Management Plan in August 2007; and,

17 WHEREAS, the PARTIES desire to broaden the range of cooperation to
18 incorporate the water quality regulation, funding and governance issues
19 described above and to expand the geographic area to include the Newport
20 Coastal Streams Watershed, consistent with the boundaries of the Central
21 Watershed Management Area (see Exhibit 1); and,

22 WHEREAS, the PARTIES desire to amend and restate the COOPERATIVE
23 AGREEMENT in its entirety; and,

24 WHEREAS, the PARTIES intend to continue to implement the PLAN unchanged
25 under the amended and restated COOPERATIVE AGREEMENT.

26 NOW THEREFORE: The PARTIES hereto unanimously agree to amend and
27 restate the COOPERATIVE AGREEMENT in its entirety as follows:

1 Section 1. Purpose. This Agreement is entered into for the purpose of
2 providing a management framework for cooperation on sediment, water quality
3 and water resource issues in the Central Watershed Management Area,
4 including:

- 5 a) Providing a forum to evaluate and assess progress toward implementing the
6 PLAN prepared under the Federal 208 Water Quality Planning Program;
- 7 b) Formulating project implementing agreements for the elements of the PLAN
8 and to evaluate and assess the effectiveness of the various elements of
9 the PLAN;
- 10 c) Reviewing progress and providing direction on projects to address water
11 quality impairments, including sediment, nutrients, fecal indicator
12 bacteria, toxicity, and any emerging pollutants;
- 13 d) Reviewing opportunities and providing direction for pollutant trading or
14 offset programs;
- 15 e) Reviewing opportunities and providing direction for grant funding through
16 Integrated Regional Water Management Plans;
- 17 f) Providing oversight for the Central Watershed Management Area and any
18 updates of the Central Orange County Integrated Regional and Coastal
19 Watershed Management Plan; and,
- 20 g) Formulating project implementation agreements for any cost-shared projects
(hereinafter "PROJECT IMPLEMENTATION AGREEMENTS", see Section 5).

21 Section 2. Additional Parties. It is recognized that there are other
22 parties within the watershed that have responsibilities for controlling
23 sediment, improving water quality and water resource management. These
24 parties include the Cities of Costa Mesa, Laguna Hills, Laguna Woods, Orange,
25 and Santa Ana, the California Department of Transportation, the U. S.
26 Department of Defense, the Federal Aviation Administration, utilities, and
owners of large undeveloped parcels of land. The PARTIES hereto agree to
engage with these other parties, as appropriate, on the sediment, water

1 quality and water resource issues described above and one or more of these
2 other parties may be requested to participate in future PROJECT
3 IMPLEMENTATION AGREEMENTS.

4 Section 3. Executive Committee. Each of the PARTIES, except for the
5 Orange County Flood Control District which shall be represented by the
6 County, shall appoint a member and an alternate to an Executive Committee, to
7 be called the Newport Bay Watershed Executive Committee. The members so
8 appointed shall elect a chair and a vice chair to serve a two-year term. The
9 Committee shall meet from time to time upon the request of the chair, but at
10 least every six months. The Executive Committee shall be responsible for
11 reviewing and reporting to the PARTIES as to whether adequate and reasonable
12 progress is being made on sediment, water quality and water resource issues
13 in the Central Watershed Management Area and recommending PROJECT
14 IMPLEMENTATION AGREEMENTS. The Executive Committee may establish standing
15 committees to support it in conducting its work.

16 The goals and desired outcomes of the work of the Executive Committee
17 are to:

- 18 a) Integrate and improve hydrologic functioning of the watershed to optimize
19 flood protection, water conservation and water quality protection;
- 20 b) Protect, enhance, restore and connect habitat in the watershed;
- 21 c) Integrate economic development with watershed restoration efforts;
- 22 d) Facilitate watershed stewardship to support watershed goals;
- 23 e) Build and sustain effective relationships between watershed stakeholders to
24 achieve common goals through positive communication, collaboration,
25 consensus and coordination; and,
- 26 f) Create an effective, efficient, innovative, responsive, and transparent
Executive Committee operation.

1 Section 4. COMPREHENSIVE STORMWATER SEDIMENTATION CONTROL PLAN. The
 2 PLAN consists of the following elements and schedules, updated to reflect
 3 current conditions:

Elements	Schedules
A. Improve agricultural land management practices High erosion areas Remaining areas	Completed Resource Conservation Plans Implementation ongoing
B. Improve construction Land management practices	Completed Grading Ordinance changes and training
C. Install and maintain in-channel basins	Completed construction (Implementation Agreement dated 9-24-84)
D. Install and maintain basins in Upper Newport Bay	Completed construction (Implementation Agreement dated 5-8-84)
E. Channel Stabilization Undeveloped areas: As condition of development Dedicated channels: Inventory of deficiencies Stabilization	Implementation ongoing Completed initial stabilization (additional stabilization ongoing)
F. Foothill basins Incorporation into drainage master plan Construction	Completed construction of 7 basins as part of planned development Concurrent stabilization of downstream channels
G. Monitoring Cooperative agreement Bay monitoring Develop program Implement	Implementation ongoing (Implementation Agreements dated 9-10-85, 9-2-86, 1-9-91, 8-20-96, 4-20-99)

22 The PARTIES hereto agree to use their best efforts to formulate
 23 agreements to implement the PLAN.

24 The Cities of Irvine, Lake Forest, Newport Beach, and Tustin and the
 25 County of Orange have and shall continue to consider adoption of programs
 26 and/or enforcement of ordinances within each agency's jurisdiction sufficient

1 to implement Elements A and B of the PLAN. The intent of these efforts shall
2 be to require use of the most cost effective measures for the management of
3 sediment that is consistent with preservation of upper Newport Bay, as set
4 forth in the PLAN.

5 Section 5 PROJECT IMPLEMENTATION AGREEMENTS. Implementation of any
6 cost-shared projects to address sediment, water quality and water resource
7 issues shall be accomplished through PROJECT IMPLEMENTATION AGREEMENTS.
8 PROJECT IMPLEMENTATION AGREEMENTS for the PLAN shall designate a lead agency
9 and shall provide for funding the anticipated construction and maintenance
10 costs. The PARTIES to this COOPERATIVE AGREEMENT as well as other parties in
11 the watershed may be participants in these PROJECT IMPLEMENTATION AGREEMENTS.

12 Section 6. Amendment. This Agreement may be amended only with the
13 unanimous approval of all PARTIES.

14 Section 7. Termination. The term of this COOPERATIVE AGREEMENT shall
15 commence upon the date when all PARTIES have executed this document and shall
16 continue until three or more of the PARTIES have withdrawn as provided in
17 Section 9 below.

18 Section 8. Project Funding. All PARTIES shall use their best efforts
19 to aid the lead agencies designated in PROJECT IMPLEMENTATION AGREEMENTS in
20 advocating for funding, including grants, to fund the cost-shared projects.

21 Section 9. Withdrawal of PARTIES. Any of the PARTIES to this
22 COOPERATIVE AGREEMENT may withdraw by giving written notice of withdrawal to
23 the other PARTIES to this COOPERATIVE AGREEMENT. The balance of the PARTIES
24 shall continue in the performance of the terms and conditions of this
25 COOPERATIVE AGREEMENT unless and until the COOPERATIVE AGREEMENT is
26 terminated as provided in Section 7 above.

1 Section 10. Status of Original Agreement. Upon approval of this
2 AGREEMENT by all PARTIES, the original COOPERATIVE AGREEMENT of September 30,
3 1983, as amended on September 25, 1995 and April 20, 1999, will be superseded
4 by this AGREEMENT.

5 Section 11. AGREEMENT Execution. This AGREEMENT may be executed in
6 counterpart and the signed counterparts shall constitute a single instrument.

7 IN WITNESS WHEREOF, the PARTIES hereto have executed this COOPERATIVE
8 AGREEMENT the day and year first above written.

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CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD, SANTA ANA REGION

Date: May 5, 2009

By: *M. J. Guhaud for*
Chairman

APPROVED AS TO FORM:

David Rze
Attorney for California Regional Water
Quality Control Board, Santa Ana Region

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

COUNTY OF ORANGE/ORANGE COUNTY FLOOD CONTROL DISTRICT

Date: _____.

By: _____.
Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By: _____.
DARLENE J. BLOOM
Clerk of the Board of Supervisors of Orange County, California

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

Date: _____.

By: _____.
Deputy County Counsel

Signature Blocks for Each Party Follow:

CITY OF COSTA MESA

Date: _____, 2009

ATTEST:

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney of Costa Mesa

CITY OF IRVINE

Date: _____, 2009

ATTEST:

By: _____
Mayor

APPROVED AS TO FORM:

City Clerk

City Attorney of Irvine

CITY OF LAKE FOREST

Date: _____, 2009

ATTEST:

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney of Lake Forest

CITY OF NEWPORT BEACH

Date: _____, 2009

ATTEST:

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney of Newport Beach

CITY OF SANTA ANA

By: _____
Mayor

Date: _____, 2009

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Santa Ana

CITY OF TUSTIN

Date: _____, 2009

ATTEST:

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney of Tustin

THE IRVINE COMPANY

Date: _____, 2009

By: _____
President of the Irvine Company

APPROVED AS TO FORM:

Attorney for the Irvine Company

THE IRVINE RANCH WATER DISTRICT

Date: _____, 2009

By: _____
Chairman

APPROVED AS TO FORM:

Attorney for Irvine Ranch Water District

CALIFORNIA DEPARTMENT OF FISH AND GAME

Date: _____, 2009

By: _____
Director

APPROVED AS TO FORM:

Attorney for California Department of
Fish and Game