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**Commission on
State Mandates**

December 19, 2016

Writer's Direct Contact
+1 (415) 268.6294
RFalk@mofocom

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Heather Halsey
Executive Director
State of California
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, California 95814

Re: Test Claim 10-TC-03 (which has been consolidated with Test Claims 10-TC-01, 10-TC-02, and 10-TC-05)

Dear Ms. Halsey:

Claimant, the County of Santa Clara, California ("County") hereby joins in the supplemental brief being filed by the Alameda and San Mateo Claimants (i.e., City of Brisbane, California (10-TC-01) and City of Alameda, California (10-TC-02)) relative to the Commission on State Mandates' ("Commission's") September 21, 2016 request for additional briefing on the California Supreme Court's decision in *Department of Finance v. Commission on State Mandates (County of Los Angeles)*, as finalized by the California Supreme Court on November 16, 2016.

The County's test claims were specifically identified and tailored based on the Commission's prior decision concerning the Los Angeles test claims that were the subject of the California Supreme Court's decision. Since the Commission's prior reasoning and decision were upheld, the County's test claims should be granted as the subject water quality monitoring, trash control, and PCB/mercury diversion study requirements imposed on the County by the San Francisco Bay Area Regional Water Board likewise reflected an exercise of the State's discretion to require new programs and higher levels of service and were not federally mandated.

In particular, the California Supreme Court's decision specifies that the burden of proof is properly placed on the State rather than local governments "to show the challenged conditions were mandated by federal law." As more fully explained by the Brisbane and Alameda Claimants in their brief, since EPA has not promulgated requirements for imposing

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the type of monitoring, trash control, and PCB/mercury diversion study requirements at issue here and can only point to more general provisions of the U.S. Environmental Protection Agency's municipal stormwater permit application regulations and non-binding guidance documents that allow for substantial leeway by permit writers in any event, the State has not and cannot meet that burden in this case.

To the extent the State continues to claim that the Commission must defer to its interpretation of the federal "maximum extent practicable" standard with respect to the scope of the federal mandate due to its technical expertise concerning local conditions, the California Supreme Court's decision requires that the Regional Board must have found, when imposing the disputed permit conditions, that those conditions were "the only means" by which the maximum extent practicable standard could be implemented. As the Commission's further review of the record will reveal, no such finding was (or could have been made) here relative to these specific and costly State-imposed requirements.

Respectfully submitted,



Robert L. Falk

cc: Elizabeth G. Pianca, Lead Deputy County Counsel, County of Santa Clara
Service on Mailing List via CSM Efiling System

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 20, 2016, I served the:

Claimant Response to Request for Additional Briefing

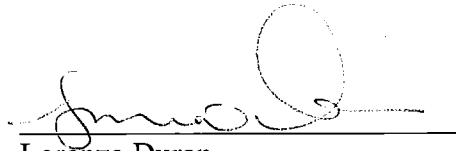
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d,
C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and
C.12.f,*

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 20, 2016 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/2/16

Claim Number: 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Matter: California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and iv, C.8.f, C.8.g, C.10.a.i, ii, iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f

Claimant: Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Marni Ajello, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 327-4439

marnie.ajello@waterboards.ca.gov

Daniel Akagi, *City of Berkeley*

1947 Center Street, 4th Floor, Berkeley, CA 94704

Phone: (510) 981-6394

dakagi@ci.berkeley.ca.us

Nicole Almaguer, *City of Albany*

1000 San Pablo Avenue, Albany, CA 94706

Phone: (510) 528-5754

nalmaguer@albanyca.org

Leticia Alvarez, *City of Belmont*

One Twin Pines Lane, Suite 385, Belmont, CA 94002

Phone: (650) 595-7469

lalvarez@belmont.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Tamarin Austin, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 341-5171
Tamarin.Austin@waterboards.ca.gov

John Bakker, *City of Dublin*
100 Civic Center Plaza, Dublin, CA 94568
Phone: (925) 833-6600
jbakker@meyersnave.com

Harmeet Barkschat, *Mandate Resource Services, LLC*
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Jim Barse, *City of Alameda*
950 West Mall Square, Room 110, Alameda, CA 94501
Phone: (510) 749-5857
jbarse@alamedaca.gov

Robert Bauman, *City of Hayward*
777 B Street, Hayward, CA 94541
Phone: (510) 583-4710
Robert.Bauman@hayward-ca.gov

Lacey Baysinger, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614
Phone: (949) 553-9500
sbeltran@biasc.org

David Benoun, City Attorney, *City of Newark*
37101 Newark Boulevard, Newark, CA 94560
Phone: (510) 578-4427
david.benoun@newark.org

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
cityclerk@cityofstheleena.org

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Randy Breault, *City of Brisbane*
Claimant Representative
50 Park Place, Brisbane, CA 94005
Phone: (415) 508-2131
rbreault@ci.brisbane.ca.us

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, MGT of America

895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, State Controller's Office

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, League of California Cities

1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Joan Cassman, Hanson Bridgett LLP

425 Market Street, 26th Floor, San Francisco, CA 94105
Phone: (415) 995-5021
jcassman@hansonbridgett.com

Annette Chinn, Cost Recovery Systems, Inc.

705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, Legal Analyst's Office

925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, Coleman Advisory Services

2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Anthony Condotti, Atchison, Barisone, Condotti & Kovacevich

333 Church Street, Santa Cruz, CA 95060
Phone: (831) 423-8383
tcondotti@abc-law.com

Marieta Delfin, State Controller's Office

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Norberto Duenas, City Manager, City of San Jose**Claimant Representative**

200 East Santa Clara Street, 17th Floor, San Jose, CA 95113
Phone: (408) 535-8111
Norberto.duenas@sanjoseca.gov

G. Duerig, Alameda County Flood Control & Water Conservation

100 North Canyons Parkway, Livermore, CA 94551

Phone: (925) 454-5000
jduerig@zone7water.com

Lesley Estes, *City of Oakland*
250 Frank H. Ogawa Plaza, Suite 4314, Oakland, CA 94612-2034
Phone: (510) 238-7431
lcestes@oaklandnet.com

Matt Fabry, *City of Brisbane*
50 Park Place, Brisbane, CA 94005
Phone: N/A
mfabry@ci.brisbane.ca.us

Soren Fajeau, *City of Newark*
37101 Newark Boulevard, Newark, CA 94560
Phone: (510) 578-4286
soren.fajeau@newark.org

Robert Falk, *Morrison & Foerster LLP*
Claimant Representative
425 Market Street, 32nd Floor, San Francisco, CA 94105
Phone: (415) 268-6294
Rfalk@mof.com

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Sylvia Gallegos, *County of Santa Clara*
70 West Hedding Street, 11th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5106
sylvia.gallegos@ceo.sccgov.org

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, *Legislative Representative, California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Leah Goldberg, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1901
leah.goldberg@sanjoseca.gov

Sharon Gosselin, *County of Alameda, Alameda Co Flood Control & Water*
399 Elmhurst Street, Hayward, CA 94544
Phone: (510) 670-6547
sharon@acpwa.org

Darren Greenwood, *City of Livermore*
101 W. Jack London Boulevard, Livermore, CA 94551
Phone: (925) 960-8120
dggreenwood@ci.livermore.ca.us

Gary Grimm, *Law Office of Gary J. Grimm*
2390 Vine Street, Berkeley, CA 94708
Phone: (510) 848-4140
ggrimm@garygrimmlaw.com

Kathy Guarnieri, *City of Fremont*
39550 Liberty Street, Fremont, CA 94537
Phone: (510) 494-4583
kcote@fremont.gov

Gus Guinan, *City of Burlingame*
501 Primrose Road, Burlingame, CA 94010
Phone: (650) 558-7202
gguinan@burlingame.org

Catherine George Hagan, Senior Staff Counsel, *State Water Resources Control Board*
c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@dof.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Julie Harryman, *City of Pleasanton*
123 Main Street, Pleasanton, CA 94566
Phone: (925) 931-5018
jharryman@ci.pleasanton.ca.us

Barbara Hawkins, *City of Alameda*
950 West Mall Square, Room 110, Alameda, CA 94501
Phone: (510) 749-5840
bhawkins@ci.alameda.ca.us

Dorothy Holzem, Legislative Representative, *California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, Executive Director, *State Water Resources Control Board*
P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

David Huynh, Associate Engineer, *Town of Atherton*
Public Works, 91 Ashfield Road, Atherton, CA 94027

Phone: (650) 752-0555
dhuynh@ci.atherton.ca.us

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Maurice Kaufman, *Public Works Director/City Engineer, City of Emeryville*
1333 Park Avenue, Emeryville, CA 94608
Phone: (510) 596-4334
mkaufman@emeryville.org

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Margo Laskowska, *City of San Jose*
Office of the City Attorney, 200 E Santa Clara St, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1969
margo.laskowska@sanjoseca.gov

Michael Lauffer, *Chief Counsel, State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
mlauffer@waterboards.ca.gov

Kim-Anh Le, *Division Manager, County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5251
kim-anh.le@fin.sccgov.org

Keith Lichten, *Division Chief, San Francisco Bay Regional Water Quality Control B*
Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2380
klichten@waterboards.ca.gov

Selina Louie, *Water Resource Control Engineer, San Francisco Bay Regional Water Quality*

Control B

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2383
SLouie@waterboards.ca.gov

Debra Margolis, *City of Fremont*

3300 Capitol Avenue, Building A, Fremont, CA 94538
Phone: (510) 284-4030
dmargolis@fremont.gov

Abbas Masjedi, *City of Pleasanton*

3333 Busch Road, Pleasanton, CA 94566
Phone: (925) 931-5508
amasjedi@ci.pleasanton.ca.us

Shawn Mason, *City of San Mateo*

330 W. 20th Avenue, San Mateo, CA 94403
Phone: (650) 522-7020
smason@cityofsanmateo.org

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Jeff Moneda, Director, *City of Foster City*

Public Works, 610 Foster City Boulevard, Foster City, CA 94404
Phone: (650) 286-3270
jmoneda@fostercity.org

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Justin Murphy, Public Works Director, *City of Menlo Park*

701 Laurel Street, Menlo Park, CA 94025
Phone: (650) 330-6752
jicmurphy@menlopark.org

Paul Nagengast, *Town of Woodside*

2955 Woodside Road, Woodside, CA 94062
Phone: (650) 851-6790
PNagengast@woodsidesidetown.org

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Gregory Newmark, *Meyers,Nave,Riback,Silver & Wilson*
Claimant Representative

555 12th Street, Suite 1500, Oakland, CA 94607
Phone: (510) 808-2000
gnewmark@meyersnave.com

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3313
Adriana.nunez@waterboards.ca.gov

Celso Ortiz, *City of Oakland*
One Frank Ogawa Plaza, 6th Floor, Oakland, CA 94612
Phone: (510) 238-6236
cortiz@oaklandcityattorney.org

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Roger Peters, *Best Best & Krieger,LLP*
2001 N. Main Street., Suite 390, Walnut Creek, CA 94597
Phone: (925) 977-3300
roger.peters@bbklaw.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*
70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5920
elizabeth.pianca@cco.sccgov.org

Richard Pio Roda, City Attorney, *City of San Leandro*
835 East 14th Street, San Leandro, CA 94577
Phone: (510) 577-6098
rpioroda@meyersnave.com

James Porter, *County of San Mateo*
555 County Center, 5th Floor, Redwood City, CA 94063
Phone: (650) 559-1421
jporter@co.sanmateo.ca.us

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Cecilia Quick, *City of Pacifica*
170 Santa Maria Ave, Pacifica, CA 94044

Phone: (650) 738-7408
quickc@ci.pacifica.ca.us

Veronica Ramirez, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7200
vramirez@redwoodcity.org

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Benjamin Reyes, *City of Union City*
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: (510) 471-3232
breyes@meyersnave.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Michael Roush, *Emergency Services-Marina Services-Public Works*
50 Park Place, Brisbane, CA 94005
Phone: (415) 508-2136
mroush@ci.brisbane.ca.us

James Scanlin, Environmental Compliance Specialist, *County of Alameda*
Public Works, 399 Elmhurst Street, Hayward, CA 94544
Phone: (510) 670-6548
jims@acpwa.org

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Patrick Sweetland, *City of Daly City*
153 Lake Merced Boulevard, Daly City, CA 94015
Phone: (650) 991-8201
psweetland@dalycity.org

Jimmy Tan, Director, *City of San Bruno*
Public Services, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7065
jtan@sanbruno.ca.gov

Charles Taylor, *City of Menlo Park*
701 Laurel Street, Menlo Park, CA 94025-3483
Phone: (650) 858-6740
CWTaylor@MenloPark.org

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Jay Walter, Director, *City of San Carlos*
Public Works, 600 Elm Street, San Carlos, CA 94070
Phone: (650) 802-4203
jwalter@cityofsancarlos.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Paul Willis, Director, *Town of Hillsborough*
Public Works, 1600 Floribunda Avenue, Hillsborough, CA 94010
Phone: (650) 375-7444
pwillis@hillsborough.net

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112

Phone: (408) 299-5200
tj.yang-wurm@fin.sccgov.org

Howard Young, *Town of Portola Valley*
765 Portola Road, Portola Valley, CA 94028
Phone: (650) 851-1700
hyoung@portolavalley.net