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**Commission on
State Mandates**

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Via Efiling through CSM Dropbox

Ms. 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"), submits herewith the following in response to your April 19, 2017 letter to it with regard to the above-referenced test claim, as further clarified by your May 11, 2017 letter authorizing an extension of the response deadline stated therein, as well as by our subsequent telephone conversation concerning the nature of the evidence the Commission would find acceptable to address its requests:

1. Test Claim Form, revised and executed as requested;
2. Amended Narrative Statement;
3. Amended Sworn Declaration of Chris Sommers from the Santa Clara Valley Urban Runoff Pollution Prevention Program, and Exhibits thereto;
4. Sworn Declaration of Kim-Anh Le, Controller-Treasurer Division Manager of the County, and Exhibits thereto.

If you have any questions or need additional information to process the County's Test Claim please contact me at 415-268-6294 or RFalk@mofocom.

Heather Halsey
July 18, 2017
Page Two

Thank you for your continued consideration and attention to this matter.

Respectfully submitted,



Robert L. Falk

Attachments

cc: Elizabeth G. Pianca, Lead Deputy County Counsel, County of Santa Clara
Megan Jennings, Morrison & Foerster LLP
Adam Olivieri, EOA, Inc./SCVURPPP
Service on Mailing List via CSM Efiling System

**COMMISSION ON STATE MANDATES
TEST CLAIM AND TEST CLAIM AMENDMENT FORM**

Authorized by Government Code sections 17553 and 17557(e)

GENERAL INSTRUCTIONS

- Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. "Within 12 months of incurring increased costs" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant. The statute of limitations above may be tolled if a joint request for a legislatively determined mandate is filed with the Legislature pursuant to Government Code section 17574.
- Complete sections 1 through 8, as indicated. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to Government Code section 17553 and Title 2, California Code of Regulations section 1183, the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft staff analysis is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired, (Gov. Code, § 17557(e); Cal. Code Regs., tit. 2, § 1183.)*
- Please submit the test claim filing by either of the following methods:
 1. **E-filing.** The claimant shall electronically file the completed form and any accompanying documents in PDF format to the e-filing system on the Commission's website (<http://www.csm.ca.gov>), consistent with the Commission's regulations (CCR, tit.2, § 1181.2). The claimant is responsible for maintaining the paper documents with original signature(s) for the duration of the test claim process, including any period of appeal. **No additional copies are required when e-filing the request.**
 2. **By hard copy.** Original test claim submissions shall be unbound, double-sided, and without tabs. Mail, or hand-deliver, **one original and seven (7) copies** of your test claim submission to: Commission on State Mandates, 980 9th Street, Suite 300, Sacramento, CA 95814

Within 10 days of receipt of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a mandate.

You may download this form from our website at www.csm.ca.gov.

If you have questions, please contact us:

Website: www.csm.ca.gov

Telephone: (916) 323-3562

E-Mail: csminfo@csm.ca.gov

(continued on page 2)

Test claim filing requirements on statutes or executive orders that are subject of legislatively determined mandate.

A local agency or school district may file on the same statute or executive order as a legislatively determined mandate if one of the following applies:

- A) The Legislature amends the reimbursement methodology and the local agency or school district rejects reimbursement.
- B) The term of the legislatively determined mandate, as defined in 17573(e) has expired.
- C) The term of the legislatively determined mandate, as defined in 17573(e) is amended and the local agency or school district rejects reimbursement under the new term.
- D) The mandate is subject to Article XIII B, section 6(b) and the Legislature does both of the following:
 - i. Fails to appropriate in the Budget Act funds to reimburse local agencies for the full payable amount that has not been previously paid based on the reimbursement methodology enacted by the Legislature.
 - ii. Does not repeal or suspend the mandate pursuant to Section 17581.

A test claim filed pursuant to Government Code section 17574(c) shall be filed within six months of the date an action described in subparagraph (A), (B), (C), or (D) of paragraph (1) occurs.

1. TEST CLAIM TITLE

Municipal Regional Stormwater Permit No.
CAS612008

2. CLAIMANT INFORMATION

County of Santa Clara

Name of Local Agency or School District

Emily Harrison

Claimant Contact

Director of Finance (and ex officio Auditor-Controller)

Title

70 West Hedding Street, 2nd Floor, East Wing

Street Address

San Jose, CA, 95110-1770

City, State, Zip

408-299-5201

Telephone Number

408-287-7629

Fax Number

emily.harrison@fin.sccgov.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Robert L. Falk, Esq.

Claimant Representative Name

Partner

Title

Morrison & Foerster LLP

Organization

425 Market Street

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San Francisco, CA 94105-2482

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rfalk@mofo.com

E-Mail Address

For CSM Use Only

Filing Date:

Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate.

Municipal Regional Stormwater Permit No. CAS612008, issued by the Regional Water Quality Control Board, San Francisco Region as Order No. R2-2009-0074 on October 14, 2009.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages ____ to ____.

6. Declarations: pages ____ to ____.

7. Documentation: pages ____ to ____.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.
- (H) Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program);
- (D) If applicable, describe the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of Section 17574(c).
- (E) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement; and
- (E) statutes, chapters of original legislatively determined mandate and any amendments.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Emily Harrison

Print or Type Name of Authorized Local Agency
or School District Official

Director of Finance (and ex officio Auditor-Controller)

Print or Type Title


Signature of Authorized Local Agency or
School District Official

7/12/17
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

**AMENDED NARRATIVE STATEMENT
IN SUPPORT OF TEST CLAIM 10-TC-03**

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**AMENDED NARRATIVE STATEMENT
IN SUPPORT OF TEST CLAIM 10-TC-03
COUNTY OF SANTA CLARA, CLAIMANT**

I. INTRODUCTION

The County of Santa Clara (“County”) seeks the Commission’s approval of claims to recover costs associated with obligations mandated by a handful of provisions of the Municipal Regional Stormwater Permit issued on October 14, 2009 (“MRP”) by the California Regional Water Quality Control Board (“Regional Water Board”), San Francisco Bay Region.¹ The MRP regulates the discharge of storm water runoff from the municipal separate storm sewer systems (“MS4s”) maintained by a total of 76 cities, counties, and flood control districts within the jurisdiction of six Bay Area regional stormwater programs.

The issues presented by this Test Claim are, by now, familiar to the Commission. Twice before, the Commission found that similar permit provisions constituted unfunded mandates. First, in September 2009, the Commission approved a test claim concerning costs associated with new trash collection obligations imposed in a municipal regional stormwater permit issued by the Los Angeles Regional Water Board.² Second, in March 2010, the Commission approved an additional test claim concerning several new requirements of a municipal regional stormwater permit issued by the San Diego Regional Water Board, including street sweeping, reporting requirements, education and public outreach obligations, and mandatory collaboration with other dischargers in the same watershed.³

The Commission determined that these obligations constituted unfunded mandates because they (1) were state mandates that exceeded the requirements of the federal Clean Water Act and its implementing regulations; (2) created new

¹ A copy of the MRP, NPDES No. CAS612008, issued as Order No. R2-2009-0074 (October 14, 2009), is attached hereto as Exhibit 1.

² In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-182, Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (September 3, 2009) (“Los Angeles Decision”).

³ In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Case No.: 07-TC-09 (March 26, 2010) (“San Diego Decision”). On July 20, 2010, the State Finance Department, the State Water Resources Control Board, and the Regional Water Quality Control Board, San Diego Region filed a petition in the Sacramento Superior Court seeking a writ of mandate ordering the Commission to set aside the San Diego Decision.

programs or otherwise required an increase in the level of stormwater pollution controls delivered by the permittees; and (3) imposed more than \$1,000 in costs that the permittees had insufficient authority to recover through the imposition of fees.

Now, and following the California Supreme Court’s decision in *Department of Finance v. Commission on State Mandates* (County of Los Angeles),⁴ the County asks the Commission to apply the same rationale to several new obligations imposed by the MRP. While the new provisions are not all identical to those considered in the San Diego and Los Angeles Decisions, the principles animating the Commission’s conclusions in those cases are similar and compel the same results here.

Specifically, the MRP creates new programs or higher levels of service with regard to three categories of activities: Monitoring, Trash Load Reduction, and stormwater Diversion Studies. Each of these requirements represents an obligation the County did not have under its prior permit. Each represents the Regional Water Board’s imposition of state law requirements, which are both stricter and more specific than is required under federal law. These new mandates have imposed significant financial burdens on the County that the County has no authority to recover through the imposition of fees.

To be clear, this Test Claim does not question the wisdom of these requirements or challenge the Regional Water Board’s authority to impose them under state law. However, as set forth in more detail below, these new requirements constitute unfunded state mandates for which the permittees participating in the MRP (the “Permittees”) are entitled to reimbursement pursuant to Article XIII B section 6 of the State’s Constitution. This Test Claim identifies the activities that are unfunded mandates and seeks to establish a basis for reimbursement for such activities.

II. LEGAL AND PROCEDURAL BACKGROUND

A. Regional Stormwater Permits

When a Regional Water Board issues a stormwater permit, it is implementing both federal and state law:

⁴ *Department of Finance v. Commission on State Mandates*, 1 Cal. 5th 749 (2016). The County made a supplemental submittal to address this case on December 19, 2016, per the Commission’s request. As the implications of the decision on this Test Claim were addressed there, they are not being addressed again in this Amended Narrative.

Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), “[t]he primary means” for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra*, 503 U.S. at 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)

City of Burbank v. State Water Res. Control Bd. (2005) 35 Cal.4th 613 at 619-621. Section 402(p) of the federal Clean Water Act establishes that an MS4 permit:

- (i) may be issued on a system or jurisdiction-wide basis;
- (ii) shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and
- (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

33 U.S.C. § 1342(p)(3)(B).⁵

California is among the states that are authorized to implement the NPDES permit program. 33 U.S.C. § 1342(b). Permits issued by the Regional Water Board under this authority must impose conditions that are at least as stringent as those required under the federal act. 33 U.S.C. § 1371; Cal. Water Code § 13377.

However, relying on its state law authority or discretion, the Regional Water Board is free to issue permits that impose limits or conditions in excess of

⁵ The relevant provisions of the Clean Water Act are set forth in Appendix A to this Test Claim.

those required under the federal law where necessary to achieve higher water quality standards and objectives established under state law:

In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. Its goal is “to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise “the principal state agencies with primary responsibility for the coordination and control of water quality.”

Whereas the State Board establishes statewide policy for water quality control, the regional boards “formulate and adopt water quality control plans for all areas within [a] region”. The regional boards’ water quality plans, called “basin plans,” must address the beneficial uses to be protected as well as water quality objectives, and they must establish a program of implementation. Basin plans must be consistent with “state policy for water quality control.”

City of Burbank v. State Water Res. Control Bd. (2005) 35 Cal.4th 613 at 619 (internal citations omitted). The California Water Code expressly anticipates that the uses and objectives set forth in basin plans and the need to prevent nuisance will require permits issued by Regional Water Boards to impose more stringent regulatory controls than would otherwise result from federal law:

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

Cal. Water Code § 13377.

B. The MRP and the Prior Permit

The MRP was issued by the Regional Water Board, an executive agency of the State of California. It replaced individual permits issued to Permittees participating in six different areawide stormwater programs: the Alameda Countywide Clean Water Program; the Contra Costa Clean Water Program; the San Mateo Countywide Water Pollution Prevention Program; the Santa Clara Valley Urban Runoff Pollution Prevention Program; the Fairfield-Suisun Urban Runoff Management Program; and the City of Vallejo and the Vallejo Sanitary District, and governs stormwater discharges in some 76 different municipal entities (e.g., cities, counties, and flood control and water conservation districts). (Ex. 1 at 3-4.) The County is among the Permittees participating in the Santa Clara Valley Program (the “Santa Clara Valley Program”).

The permit that formerly governed the Santa Clara Valley Program was Permit No. CAS029718 issued by Order No. 01-024 on April 21, 2001, amended by Order No. 01-119 on October 17, 2001, and Order No. R2-2005-0035 on July 20, 2005 (the “Prior Permit”). (Ex. 1 at 3-4.) A copy of the Prior Permit is attached hereto as Exhibit 2.⁶ For purposes of establishing that the provisions of the MRP constitute new requirements or a higher level of service, those provisions are compared to the Prior Permit.

C. State Mandate Law

Article XIII B section 6 of the California Constitution provides in relevant part:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service

⁶ The amendments to the Prior Permit described above, which relate only to permit provisions not at issue here, are not included in the materials submitted with this test claim. These documents are available at the Regional Water Board’s website, at http://waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2001/R2-2001-119.pdf; and http://waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2005/R2-2005-0035.pdf. Alternatively, the County can provide hard copies to the Commission upon request.

Cal. Const. Art. XIII.B, § 6. The purpose of section 6 “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” (*County of San Diego v. State of California* (1991) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) The section “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno, supra*, at 487; *Redevelopment Agency v. Comm’n on State Mandates* (1997) 55 Cal.App.4th 976, 984-85.) The Legislature implemented section 6 by enacting a comprehensive administrative scheme to establish and pay mandate claims. (Cal. Gov’t Code §§ 17500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 [statute establishes “procedure by which to implement and enforce section 6”].)

Government Code section 17556 identifies seven exceptions to the rule requiring reimbursement for state mandated costs. The exceptions are as follows:

- (a) The claim is submitted by a local agency . . . that requested legislative authority for that local agency . . . to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. . . .
- (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
- (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .
- (d) The local agency . . . has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies or . . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Cal. Gov't Code § 17556.

1. The Test

Taken together, the Constitution, statutes, and case law described above establish a three-prong test to determine whether a claimant is eligible for reimbursement through the state's mandate law: (1) the obligations imposed must represent a new program or higher level of service; (2) the mandate must arise from a law, regulation, or executive order imposed by the state, rather than the federal government; and (3) the costs cannot be recoverable by the local agency through the imposition of a fee. Only where all three are satisfied does a mandated cost fall within the subventure requirement of article XIII B section 6.

a. New Program or Higher Level of Service

In order to trigger the state mandate law, the obligations imposed by the state must represent a "new program" or "higher level of service." Determining whether a municipal stormwater permit imposes a new program or higher level of service is largely a factual question involving the comparison of the terms of the current and former permits. However, the San Diego Decision addresses a very important general principle on this point that is of great interest here:

All stormwater permits are required to "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." 33 U.S.C. § 1342(p)(3)(B)(iii). This means that all permit parameters are implementing the same standard. In the proceedings leading to the San Diego Decision, the Finance Department argued that the new permit did not constitute a "new program" or a "higher level of service" because each incremental increase in best management practices or other permit requirement was necessary to assure continued compliance with the maximum extent practicable (or "MEP" standard). The Commission correctly rejected this argument (San Diego Decision at 49), and should do the same again if it is raised here.

b. State Mandates

“Costs mandated by the state” include “any increased costs which a local agency ... is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Gov’t Code § 17514.) Orders issued by any Regional Water Board pursuant to Division 7 of the California Water Code (commencing at section 13000) come within the definition of “executive order.” *County of Los Angeles v. Comm’n on State Mandates* (2007) 150 Cal.App.4th 898, 920.

Section 17556 of the Government Code exempts costs mandated solely by federal law or regulation, except where the state “statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .” Cal. Gov’t Code § 17556(c). Courts have interpreted this provision to mean that an obligation imposed by the state in the implementation of a federal mandate should still be considered a “state mandate” as long as the state has a say about the manner in which that mandate is passed on to local agencies:

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no “true choice” in the manner of implementation of the federal mandate.

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state.

Hayes v. Comm’n on State Mandates (1992) 11 Cal. App. 4th 1564, 1593 (emphasis added). Thus, where the Regional Water Board chooses to impose specific measures of compliance as a means of implementing the more general requirements of the federal Clean Water Act, those measures are considered state mandates:

In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that

agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

Id. The Commission relied on *Hayes* in both the San Diego and Los Angeles Decisions in determining that the Regional Water Quality Control Boards issuing the stormwater permits at issue “freely chose” to exercise discretion and impose conditions beyond those required by federal law, thereby constituting a state mandate. (San Diego Decision at 37; Los Angeles Decision at 23.)

c. Fee Authority

In the San Diego Decision, the Commission conducted an extensive analysis of the issue of whether the local agencies charged with implementing the municipal regional stormwater permit in that matter had adequate fee authority to recover the costs mandated upon them by the San Diego Regional Water Board. (San Diego Decision at 100-120.) Mandates are exempted from the subventure requirements of article XIII B, section 6 of the California Constitution, enacted by the voters through Proposition 218, where the local agency has “the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Cal. Gov’t Code § 17556(d).

However, Article XIII D of the California Constitution requires that fees incident to property ownership be subjected to a majority vote by affected property owners or by 2/3 registered voter approval. Cal. Const., art. XIII D. As explained by the Commission in the San Diego Decision, the necessity for voter approval (and the attendant possibility of voter rejection) of a fee renders the permittees’ fee authority inadequate to satisfy the exemption of section 17556. (San Diego Decision at 102-103.) Indeed, in the San Diego Decision, the Commission determined that fee authority is inadequate where the imposition of such fees is subject to voter protest that could invalidate them. (San Diego Decision at 115.)

Article XIII D section 6, subdivision (c) provides an exception to Proposition 218’s vote requirements for property-related fees for sewer, water, or refuse collection services (Cal. Const., art. XIII D, § 6, subd. (c)). As explained by the Commission in the San Diego Decision, fees for these services are subject to different requirements:

To impose or increase refuse collection fees, the local agency must provide mailed written notice to each parcel owner on which the fee will be imposed, and conduct a public hearing not less than 45 days after mailing the notice. If written

protests against the proposed fee are presented by a majority of the parcel owners, the local agency may not impose or increase the fee (article XIII D, § 6, subd. (a)(2)).

(San Diego Decision at 115.) In the San Diego Decision, the Commission concluded that this process precludes a finding that the permittees in question had sufficient fee authority within the meaning of section 17556(d):

Under Proposition 218, the local agency has no authority to impose the fee if it is protested by a majority of parcel owners. Additionally, it is possible that a majority of land owners in the local agency may never allow the proposed fee, but the local agency would still be required to comply with the state mandate. This would violate the purpose of article XIII B, section 6, which is to “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”

(San Diego Decision at 115.)

Moreover, the exception for refuse collection applies only to fees that can be carefully calibrated to the costs incurred by the local agency and to the level of services provided to ratepayers:

In addition, revenues are: (1) not to exceed the funds required to provide the service, (2) shall not be used for any other purpose than to provide the property related service, and the amount of the fee on a parcel shall not exceed the proportional cost of the service attributable to the parcel. And the service must be actually used by or immediately available to the property owner.

Article XIII D, § 6, subd. (b).

Regulatory fees can be imposed under the general police powers afforded to local government without the need for a vote (or subject to a majority voter protest mechanism), but only where there is sufficient nexus between the “effect of the regulation and the objectives it was supposed to advance to support the regulatory scheme.” *Tahoe Keys Property Owner’s Assn. v. State Water Res. Control Bd.* (1993) 23 Cal.App.4th 1459. In the *Tahoe Keys* case, the Court of Appeal found sufficient nexus between properties surrounding Lake Tahoe and nutrient loads in

the lake and refused to enjoin a fee to fund efforts to minimize nutrients contributing to eutrophication. *Id.* at 1480.

Similarly, in *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866, 874, the California Supreme Court upheld a fee imposed on paint manufacturers to fund a program aimed at treating children exposed to lead. The Court held that the fee—which was targeted at “the producers of contaminating products” and was used to mitigate the harm caused by those products—was an appropriate exercise of the police power. *Id.* at 877. In view of these appellate court decisions, this Commission determined in the San Diego Decision that stormwater provisions do not fall within the exceptions provided where the costs and benefits of such provisions do not sufficiently align with the activities or interests of an identifiable group of businesses or property owners to create the nexus required under the *Sinclair Paint* and *Tahoe Keys* cases. (San Diego Decision at 107.)

In the San Diego Decision, the Commission also discussed the impact of a section 16103 of the Water Code, which went into effect in January 2010. The watershed improvement plans envisioned under section 16103 are comprehensive in scope, may be adopted only after extensive public process, and require approval by the Regional Water Board. Cal. Water Code § 16103(b), (d). Moreover, adoption of an improvement plan is voluntary. *Id.* § 16101(a). Thus, section 16103 provides fee authority only to permittees who are voluntarily participating in the development of a watershed improvement plan. (*See* San Diego Decision at 120.) No such plan has provided a source of funding for the costs associated with complying with the new requirements in the MRP.

III. THE UNFUNDED MANDATES AT ISSUE IN THIS TEST CLAIM

The MRP contains 23 separate provisions that establish the prohibitions, limitations, and obligations of the County and other Permittees. This Test Claim pertains to three categories of mandates:

- Provision C.8—Monitoring
- Provision C.10—Trash Load Reduction
- Provision C.11 and C.12—Mercury and PCB Diversion Studies

As set forth in more detail below, each of these provisions imposed a new program or expanded level of service over the Prior Permit. Moreover, these new requirements exceed the mandates of the federal Clean Water Act or its implementing regulations. Finally, compliance with these obligations imposed costs beyond what the County is authorized to recover through the imposition of fees.

A. Monitoring

Provision C.8 of the MRP required Permittees to implement a number of water quality monitoring programs that were not required by the Prior Permit. The ways in which each of these specific monitoring requirements represents a new program or higher level of service—and the costs associated with each—are set forth in section A.1 directly below; *see also* Amended Sworn Declaration of Chris Sommers (“Sommers Decl.”) ¶¶ 14(a)(i) to 14(a)(vii). (For convenience, the principles under which all of these monitoring provisions constitute a state mandate and the reasons that the County has inadequate fee authority to recover the associated costs, are discussed together in sections A.2 and A.3.)

1. Provision C.8 Constitutes a New Program or Higher Level of Service.

Each of the monitoring provisions discussed below represent a new program or higher level of service compared to the requirements in the Prior Permit.

a. Provision C.8.b—Regional Monitoring Program for Water Quality in the San Francisco Bay Estuary.

Provision C.8.b required the County and other Permittees to participate in a cooperative effort among “stakeholder” entities that discharge into the San Francisco Bay Estuary to answer several questions about the conditions in the Estuary, including current, past, and projected future levels of contamination; sources, pathways, loadings, and processes causing or contributing to the contamination; and current and future impacts of contamination. (Ex. 1 at 65.) Permittees were required to participate in this monitoring program by paying their “fair share” of monitoring costs.

(i) Provision C.8.b Imposed a Higher Level of Service.

The Fact Sheet to the MRP characterizes the requirements of Provision C.8.b as a mere continuation of activities required under the Prior Permit. (Ex. 1 at 65 n.20; I-59.) However, the Prior Permit required only submission of a multi-year monitoring plan that includes participation in the San Francisco Estuary Regional Monitoring Program (“RMP”) *or an acceptable alternative* monitoring program. (Ex. 2, Provision C.8.b, at 37.) By contrast, the MRP mandated that the County financially support the RMP and participate in the development of a monitoring program designed to obtain the answers to the specific questions described above. (Ex. 1 at 65 n.20.)

In addition to the financial contribution required by the MRP, these new requirements for the RMP required the Santa Clara Valley Program in which the County participates to devote additional resources to the RMP. Program staff participation increased by roughly 2% per year in order to provide greater coordination between RMP and MRP objectives for this provision. (Sommers Decl. at ¶ 14(a)(i)(i).)

b. Provision C.8.c—Status Monitoring

Provision C.8.c of the MRP imposed substantially increased levels of monitoring relative to the Prior Permit. Specifically, and as set forth below, the MRP required a specific monitoring protocol to analyze dozens of samples for at least eleven different parameters, measuring at least 33 different components. It also established “triggers” requiring further monitoring. (Ex. 1 at 65-71.)

(i) Provision C.8.c Imposed a Higher Level of Service.

This provision of the MRP imposed new, specific and detailed obligations on the County and other Permittees in the Santa Clara Valley Program with respect to creek monitoring. Provision C.8.c of the MRP greatly expanded the number of monitoring sites and parameters, including:

- Algae bioassessment (20 sites/yr)
- Chlorine (23 sites/yr)
- Temperature (8 sites/yr)
- Stream Surveys (9 miles/yr)

Additionally, Provision C.8.c increased the number of creek sites that must be sampled annually for the following parameters (site increases are in parentheses):

- Total Phosphorus (7 sites/year)
- Dissolved Orthophosphate (7 sites/yr)
- Total Nitrogen (7 sites/yr)
- Nitrate (7 sites/yr)
- Ammonia (7 sites/yr)
- Silica (7 sites/yr)
- Chloride (7 sites/yr)
- Dissolved Organic Carbon (DOC) (7 sites/yr)

(Ex. 1 at 65-71, Tbls 8.1 & 8.2, Attachment H). None of these specific requirements were included in the Prior Permit. (Ex. 2 at 18-19.)

c. Provision C.8.d—New Monitoring Studies and Projects

Provision C.8.d of the MRP required the County and other Permittees to undertake three types of projects within their watersheds. (Ex. 1 at 71-73.)

Identifying Stressors and Sources. Provision C.8.d.i provided that, when status monitoring reveals a potential source of stress to the water bodies identified in Table 8.1, the Permittees were required to conduct a site-specific study to identify the stressor or source. (Ex. 1 at 71.) The provision set forth very specific protocols for these studies:

This study should follow guidance for Toxicity Reduction Evaluations (TRE) or Toxicity Identification Evaluations (TIE). A TRE, as adapted for urban stormwater data, allows Permittees to use other sources of information (such as industrial facility stormwater monitoring reports) in attempting to determine the trigger cause, potentially eliminating the need for a TIE. If a TRE does not result in identification of the stressor/source, Permittees shall conduct a TIE.

(*Id.* at 71.) If a source was identified, the MRP required implementation of “one or more controls” and continued monitoring to assess whether those controls are reducing the cause or causes of the trigger stressor or source. (*Id.*) If the County and other Permittees conducted these studies through the Santa Clara Valley Program, they were required to conduct up to five such projects within the five-year permit term. (*Id.* at 71-72.)

Evaluation of BMP Effectiveness. Provision C.8.d.ii. required investigations into the effectiveness of BMPs. (*Id.* at 72.) The County was required to investigate one BMP during the term of the MRP. (*Id.*)

Geomorphic Studies. Finally, Provision C.8.d.iii required all permittees governed by the MRP to select one water body within each county, and complete one of three types of studies:

- (1) Gather geomorphic data to support the efforts of a local watershed partnership to improve creek conditions; or
- (2) Inventory locations for potential retrofit projects in which decentralized, landscape-based stormwater retention units can be installed; or

- (3) Conduct a geomorphic study which will help in development of regional curves which help estimate equilibrium channel conditions for different- sized drainages.

(Ex. 1 at 72-73.)

(i) Provision C.8.d Imposed a Higher Level of Service.

Under the Prior Permit, source identification projects were required to be conducted at a much lower level of effort compared to what is required by the MRP. BMP effectiveness and geomorphic projects were completely new to the County under the MRP. There was nothing comparable to these requirements in the Prior Permit. This entire provision constitutes a “new program or higher level of service” within the meaning of the mandate law.

d. Provision C.8.e.i—Pollutants of Concern Monitoring

Provision C.8.e.i required the County and other Permittees to establish and maintain fixed monitoring stations on specified waterbodies, or approved alternatives for purposes of monitoring pollutants of concern. (Ex. 1 at 73-74.) The monitoring mandated under these provisions was to be directed toward:

- (1) identifying which Bay tributaries (including stormwater conveyances) contribute most to Bay impairment from pollutants of concern;
- (2) quantifying annual loads or concentrations of pollutants of concern from tributaries to the Bay;
- (3) quantifying the decadal-scale loading or concentration trends of pollutants of concern from small tributaries to the Bay; and
- (4) quantifying the projected impacts of management actions (including control measures) on tributaries and identifying where these management actions should be implemented to have the greatest beneficial impact.

(*Id.* at 73.)

Provisions C.8.e.iii, iv, and v define the parameters and frequencies, protocols, and methods required for monitoring pollutants of concern. For example:

Parameters and Frequencies – Permittees shall conduct Pollutants of Concern sampling pursuant to Table 8.4, Categories 1 and 2. In Table 8.4, Category 1 pollutants are those for which the Water Board has active water quality attainment strategies (WQAS), such as TMDL or site-specific objective projects. Category 2 pollutants are those for which WQAS are in development. The lower monitoring frequency for Category 2 pollutants is sufficient to develop preliminary loading estimates for these pollutants.

(Id. at 74.)

Table 8.4 set forth explicit requirements for sampling years, minimum sampling occurrences, and sampling intervals for three categories of pollutants.

(i) Provision C.8.e.i Imposed a New Program.

Provision C.8.e.i imposed a new program. The Prior Permit contained no comparable provision. (Ex. 2 at 18-19.)

e. Provision C.8.e.ii—Long-Term Monitoring

Provision C.8.e.ii required Long-Term monitoring at specified stations. Alternate locations were permissible only after consulting with the Regional Water Board Surface Water Ambient Monitoring Program (“SWAMP”) and approval by the Regional Water Board’s executive officer. *(Id. at 74.)* The County and other Permittees in the Santa Clara Valley Program were made responsible for monitoring at either the Guadalupe River or Coyote Creek. The MRP suggests locations for where such monitoring should occur for either water body. *(Id.)*

Provision C.8.e.ii required “Long-Term monitoring pursuant to Table 8.4, Category 3.” (Ex. 1 at 74.) Table 8.4 describes Category 3 as requiring testing for toxicity of “Bedded Sediment, fine-grained,” to be coordinated with SWAMP’s scheduled collection of Category 3 data at the Long-Term monitoring locations.” *(Id.)*

(i) Provision C.8.e.ii Imposed a New Program.

The Prior Permit made no provision for monitoring designed to detect long-term stormwater trends. (Ex. 1 at 18-19.) This was a new requirement.

f. Provision C.8.e.vi—Sediment Delivery Estimate/Budget

Provision C.8.e.vi required Permittees, by July 1, 2011, to develop “a design for a robust sediment delivery estimate/sediment budget in local tributaries and urban drainages.” The study itself had to be implemented by July 1, 2012.

(i) Provision C.8.e.vi Imposed a New Program.

The Prior Permit contained no requirement to design or implement sediment delivery studies. This was an entirely new program under the MRP.

g. Provision C.8.f—Citizen Monitoring and Participation

Provision C.8.f required permittees to encourage “citizen monitoring,” although it does not define this term. Instead, it directed that

- i. Permittees shall encourage Citizen Monitoring.
- ii. In developing Monitoring Projects and evaluating Status & Trends data, Permittees shall make reasonable efforts to seek out citizen and stakeholder information and comment regarding waterbody function and quality.
- iii. Permittees shall demonstrate annually that they have encouraged citizen and stakeholder observations and reporting of waterbody conditions. Permittees shall report on these outreach efforts in the annual Urban Creeks Monitoring Report.

(Ex. 1 at 76.)

The Fact Sheet provided no additional description or specification of what was required, but says that “Provision C.8.f. is intended to do the following:

Support current and future creek stewardship efforts by providing a framework for citizens and Permittees to share their collective knowledge of creek conditions; and

Encourage Permittees to use and report data collected by creek groups and other third-parties when the data are of acceptable quality.

(Ex 1 at App. I 64-65.)

(i) Provision C.8.f Imposed a New Program.

Provision C.8.f was an entirely new requirement. There was no similar provision in the Prior Permit. (Ex. 2. at 18-19.)

h. Provision C.8.g—Reporting

Provision C.8.g.ii required submission of “an Electronic Status Monitoring Data Report no later than January 15 of each year, reporting on all data collected during the foregoing October 1–September 30 period. Electronic Status Monitoring Data Reports shall be in a format compatible with the SWAMP database. Water Quality Objective exceedences shall be highlighted in the Report. (Ex. 1 at 77.)

Provision C.8.g.iii required submission of

a comprehensive Urban Creeks Monitoring Report no later than March 15 of each year, reporting on all data collected during the foregoing October 1–September 30 period, with the initial report due March 15, 2012, unless the Permittees choose to monitor through a regional collaborative, in which case the due date is March 15, 2013.

(Ex. 1 at 77.) Each Urban Creeks Monitoring Report was required to contain summaries of Status, Long- Term, Monitoring Projects, and Pollutants of Concern Monitoring. (*Id.*) The materials required for this submission were extensive, and included maps, data tables, descriptions of data quality, analyses of the data, identification of any “long-term trends in stormwater or receiving water quality,” and a discussion of the data relative to beneficial uses identified in the basin plan. (*Id.* at 77-78.)

Finally, Provision C.8.g.vi required that electronic reports be made available through a regional data center, and optionally through their web sites. The County and other Permittees were required to notify stakeholders and members of the general public about the availability of electronic and paper monitoring reports through notices distributed through appropriate means, such as an electronic mailing list. (Ex. 1 at 79.)

(i) Provision C.8.g Imposed a Higher Level of Service.

The Prior Permit required the County and other Permittees to prepare a single annual report, which included a description of data collected over the

previous fiscal year, and general interpretation of the results. (Ex. 2 at 16-17.) The format of the report was unspecified. (*Id.*)

The MRP required electronic reporting and required that the data be maintained in a database accessible by the public. (Ex. 1 p. 77.) In addition, the requirement for submission of a separate annual Urban Creeks Monitoring Report was new. This submission prescribed roughly similar report contents, but due to the increased number of data parameters and programs, the total level of reporting effort was required to increase.

i. Provision C.8.h—Monitoring Protocols and Data Quality

Provision C.8.h required that

Where applicable, monitoring data must be SWAMP comparable. Minimum data quality shall be consistent with the latest version of the SWAMP Quality Assurance Project Plan (QAPP) for applicable parameters, including data quality objectives, field and laboratory blanks, field duplicates, laboratory spikes, and clean techniques, using the most recent Standard Operating Procedures. A Regional Monitoring Collaborative may adapt the SWAMP QAPP for use in conducting monitoring in the San Francisco Bay Region, and may use such QAPP if acceptable to the Executive Officer.

(Ex. 1 at 79.)

(i) Provision C.8.h Imposed a Higher Level of Service.

The Prior Permit made no mention of the SWAMP program. By contrast, Provision C.8.h of the MRP required the Santa Clara Valley Program to develop significant updates or additions to existing field standard operating procedures and train field staff to allow for monitoring data to be collected by the Permittees using “SWAMP comparable” methods defined by the State Water Resources Control Board’s Surface Water Ambient Monitoring Program.

Additionally, new data management systems had to be developed and managed at significant costs, as the MRP required data to be reported electronically to the Regional Water Board in “SWAMP comparable” formats. Monitoring data quality assurance procedures (also SWAMP comparable) also had to be developed, documented and adhered to by the Santa Clara Valley Program at all times, which required an additional level of effort (staff time) compared to

previous quality assurance procedures conducted by Santa Clara Valley Program under the Prior Permit.

2. **The New Requirements of Provision C.8 Constitute State Mandates.**

The Fact Sheet prepared by Regional Water Board staff in conjunction with the MRP cited to both federal and state law as providing “broad legal authority” for all of the monitoring requirements imposed therein:

Broad Legal Authority: [Federal Clean Water Act] sections 402(p)(3)(B)(ii-iii); [California Water Code] section 13377; Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)

(Ex. 1 at App I-57.) However, for authority specific to the monitoring requirements in Provision C.8, the Fact Sheet cited only to federal regulations:

Specific Legal Authority: Permittees must conduct a comprehensive monitoring program as required under Federal NPDES regulations 40 CFR 122.48, 40 CFR 122.44(i), 40 CFR 122.26.(d)(1)(iv)(D), and 40 CFR 122.26(d)(2)(ii)-(iv).

(*Id.*)⁷

Section 122.48 of the federal regulations implementing the Clean Water Act requires all NPDES permits to contain certain monitoring provisions, including those establishing “type, intervals, and frequency sufficient to yield data which are representative of the monitored activity” 40 C.F.R. § 122.48. Section 122.44(i) requires certain types of monitoring “to assure compliance with permit limitations.” 40 C.F.R. § 122.44(i). The requirements described under this provision apply largely to parameters governing an individual permittee’s discharge. *Id.*⁸ Similarly, the monitoring requirements specific to stormwater permits under section 122.126 of the federal regulation are largely aimed at identifying sources and characterizing pollution arising from outflows within each MS4’s jurisdiction. 40 C.F.R. §§ 122.26(d)(1)(iv)(D); (2)(ii)-(iv).

Stormwater management programs “*may* impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.” *Id.* § 122.26(d)(2)(iv). However, while cooperative agreements may be required,

⁷ The text of the referenced sections is set forth in Appendix “A” to this Narrative Statement.

⁸ Section 122.44(i)(iii)-(iv) applies to specific types of discharges other than stormwater.

“each copermitee is only responsible for their own systems.” 40 C.F.R. § 122.26(d)(2)(i)(D). Similarly, consistent with the scope of the monitoring provisions discussed above, even where a programmatic approach is taken, federal regulations say that “Copermitees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they operate.” (40 C.F.R. § 122.26(a)(3)(vi).) In the San Diego and Los Angeles Decisions, the Commission correctly read these regulatory provisions to mean that, while the Regional Water Board may impose collaborative approaches to monitor and control pollutants on a watershed basis, such requirements exceed the mandate in federal law or regulations and are state law mandates. (San Diego Decision at 74; Los Angeles Decision at 30-31.)

a. Requirements for Collaborative or Watershed Monitoring.

Virtually all of the provisions discussed above required the County to engage in some degree of collaborative or watershed-wide monitoring programs. As described above, federal regulations require a stormwater permit to contain provisions aimed at characterizing and controlling pollutants in a permittee’s own discharges. Nothing in the plain language of federal statute and regulations requires participation or contributions to the sort of specific collaborative monitoring program mandated by Provision C.8 of the MRP.

Rather, the Regional Water Board freely chose to impose these particular and specific requirements on the County. As the Court of Appeal in *Hayes v. Comm’n on State Mandates* explained only those mandates forced on the state by the federal government may truly be considered “federal” for purposes of Article XIII B section 6 of the State’s Constitution:

In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

Hayes v. Comm’n on State Mandates (1992) 11 Cal. App. 4th 1564, 1593-94.

Just as the Commission correctly determined in the San Diego and Los Angeles Decisions, collaborative watershed-level activities as required under the MRP may be *authorized*, but are *not required* by federal law. Therefore, Regional

Water Board freely chose to include them the MRP permit, rendering these provisions state mandates. (San Diego Decision at 59, 74; Los Angeles Decision at 30-31.)

b. New Requirements for Characterization of MS4 Discharges.

Requirements of the MRP, such as those set forth in provision C.8.c and C.8.h, imposed new requirements to measure specific constituents in stormwater. The level of specificity in these provisions went far beyond the very general monitoring requirements established under the federal Clean Water Act or its implementing regulations. 40 C.F.R. §§ 122.44(i); 122.48; 122.26(d)(1)(iv)(D); (2)(ii)-(iii). The federal regulations simply require permittees to develop monitoring plans that are sufficient to demonstrate compliance with permit limits and assess impacts of a permittee’s discharges.

While outfall monitoring requirements are more directed at the type of information anticipated under the federal regulations than the watershed monitoring discussed above, again the requirements of the MRP are far more specific than is required by the Clean Water Act. While the federal regulations require monitoring sufficient to yield data which are representative of the MS4’s own discharges, the means and manner in which these requirements are implemented and specified in the MRP was an exercise of discretion by the Regional Water Board, which freely chose the specific parameters, testing locations, and sampling frequencies as part of the MRP. Under the test articulated in *Hayes*, this choice as indicated in the MRP renders the requirements in Provision C.8.c a state—rather than a federal—mandate. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593-94 (defining as state mandates requirements “where the manner of implementation of the federal program was left to the true discretion of the state.”).

Indeed, with regard to the provisions in Provision C.8.h, which required the County to conform the format and quality assurance methods to those set by SWAMP, the Regional Water Board provides no specific legal authority—state or federal. And, unquestionably, there is no federal statute or regulation that would require compatibility with SWAMP methods, formats, or quality assurance procedures. The Regional Water Board “freely chose” to impose the SWAMP compatibility requirement of its own accord. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

c. Citizen Monitoring Requirements.

The Fact Sheet for the MRP described the legal authority for Provision C.8.f as follows: “CWA section 101(e) and 40 CFR Part 25 broadly require public

participation in all programs established pursuant to the CWA, to foster public awareness of environmental issues and decision-making processes.” (Ex. 1 at App. I-64.)

Section 101(e) of the Clean Water Act says: “Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or and State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.” 33 U.S.C. § 342 1251(e). Part 25 of the Code of Federal Regulations sets the “minimum” standards to encourage public participation. 40 C.F.R. § 25.1. The application of Part 25 appears to be focused on public participation in U.S. EPA or equivalent state-level agency decision-making with regard to water quality regulatory activities such as regulations and the adoption of NPDES permits.

While these provisions could be read to authorize or even encourage the Regional Water Board to impose additional measures to bring the public into other proceedings or other aspects of the permitting process, nothing in the Clean Water Act or its implementing regulations comes close to requiring the measures identified in Provision C.8.f. of the MRP. As with many other requirements in the MRP, the federal regulations may authorize, but do not require, the specific requirements imposed by Provision C.8.f. Thus, as the Commission correctly determined when considering specific public outreach requirements in the San Diego Decision, this provision constitutes a state mandate. (San Diego Decision at 63, citing *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155.)

d. Electronic Reporting.

There is no federal requirement that reports be submitted electronically. Indeed, the Fact Sheet cited only state authority as support for these requirements:

[California Water Code] section 13267 provides authority for the Water Board to require technical water quality reports. Provision C.8.g. requires Permittees to submit electronic and comprehensive reports on their water quality monitoring activities to (1) determine compliance with monitoring requirements; (2) provide information useful in evaluating compliance with all Permit requirements; (3) enhance public awareness of the water quality in local streams and the Bay; and (4) standardize reporting to better facilitate analyses of the data, including for the CWA section 303(d) listing process.

(Ex. 1 at App I-165.) This requirement was freely chosen by the Regional Water Board and was a state mandate.

3. The County Has Incurred Significant Costs as a Result of the Increased Monitoring Requirements Imposed Under Provision C.8 of the MRP.

The County has incurred significant costs as a result of the increased monitoring requirements imposed under Provision C.8 of the MRP. Actual costs incurred by the Santa Clara Valley Program and the County are addressed in Section IV below.

4. The County Has Inadequate Fee Authority to Recover Monitoring Costs.

The County does not have adequate authority to impose a regulatory fee to recoup the costs of implementing the requirements of Provision C.8 of the MRP. No statutory authority exists for imposing fees to recover the costs of water quality monitoring.

There is no sufficient nexus between either the cause of stormwater pollution or the benefits to be derived from the monitoring requirements imposed by and any specific businesses or individuals to allow a targeted fee. Outside of a general finding that municipal stormwater discharges may be contributing to pollution of various receiving waters, there is no finding in the MRP or its Fact Sheet tying stormwater pollutants to specific businesses or individuals. In fact, many of the ongoing monitoring requirements set forth in the MRP are geared toward identifying potential pollutant contributing sources. (Ex. 1 at 71.) This is insufficient to allow the identification of the cause or benefit nexus discussed in the *Sinclair Paint* and *Tahoe Keys* cases described above. The only fee that would suffice would have to be a broad-based property fee, which would trigger Proposition 218's voter approval requirement. For this reason, Provision C.8 does not fall within the exception of section 17556(d) of the Government Code.

Moreover, even if an appropriate group of businesses or individuals could be identified, there is no way that such a fee could be precisely calibrated to assure that it would sufficiently reimburse the County for monitoring costs without exceeding those costs, as is required under Article XIII D, § 6, subd. (b). For all of these reasons, the County cannot recover the state mandated costs of section C.8 through the imposition of a fee.

B. Trash Load Reduction

Provision C.10 of the MRP required the County to develop short- and long-term plans for reducing the amount of trash entering receiving waters from their stormwater systems and to create a baseline against which future reduction achievements could be measured. The County also was required to take immediate steps to identify “trash hot spots” within its jurisdiction and to perform and document cleanup actions in those areas. Finally, the County was required to install full trash capture devices to prevent trash from entering storm drains.

1. Provision C.10 Constitutes a New Program or Higher Level of Service.

a. Provision C.10.a.i—Short Term Trash Load Reduction Plan

Provision C.10.a.i required the County to submit a Short-Term Trash Load Reduction Plan, including an implementation schedule, to the Water Board by February 1, 2012. (Ex. 1 at 84.) The Plan

shall describe control measures and best management practices, including any trash reduction ordinances, that are currently being implemented and the current level of implementation and additional control measures and best management practices that will be implemented, and/or an increased level of implementation designed to attain a 40% trash load reduction from its MS4 by July 1, 2014.

(*Id.*) In addition, the Plan “shall account for required mandatory minimum Full Trash Capture devices called for in Provision C.10.a.iii and Trash Hot Spot Cleanup called for in Provision C.10.b.” (*Id.*)

b. Provision C. 10.a.ii—Baseline Trash Load and Trash Load Reduction Tracking Method

Provision C.10.a.ii required the County to document the amount of trash being discharged from their stormwater systems:

Each Permittee, working collaboratively or individually, shall determine the baseline trash load from its MS4 to establish the basis for trash load reductions and submit the determined load level to the Water Board by February 1, 2012, along with documentation of methodology used to determine the load level.

(Ex. 1 at 84.). The County was also required to develop a mechanism to track the reductions in trash loads achieved through the measures imposed by the MRP:

The submittal shall also include a description of the trash load reduction tracking method that will be used to account for trash load reduction actions and to demonstrate progress and attainment of trash load reduction levels. The submittal shall account for the drainage areas of a Permittee's jurisdiction that are associated with the baseline trash load from its MS4, and the baseline trash load level per unit area by land use type and drainage area characteristics used to derive the total baseline trash load level for each Permittee.

(Id.)

Finally, Provision C.10.a.ii required the County to report its progress on these obligations by February 2011, and disclose whether they are working alone or in conjunction with other Permittees:

Each Permittee shall submit a progress report by February 1, 2011, that indicates whether it is determining its baseline trash load and trash load reduction method individually or collaboratively with other Permittees and a summary of the approach being used. The report shall also include the types and examples of documentation that will be used to propose exclusion areas, and the land use characteristics and estimated area of potentially excluded areas.

(Id.)

c. Provision C.10.a.iii—Minimum Full Trash Capture

Provision 10.a.iii required the installation of a “mandatory minimum number of full trash capture devices by July 1, 2014, to treat runoff from an area equivalent to 30% of Retail/Wholesale Land that drains to MS4s within their jurisdictions (see Table 10.1 in Attachment J).” (Ex. 1 at 85.)

This provision defined “a full trash capture device” as “any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour, storm in the sub-drainage area.” *(Id.)*

d. Provision C.10.b.i—Trash Hot Spot Cleanup and Definition

Provision C.10.b introduced a number of cleanup and reporting activities for the County. The County was required to identify and clean “Trash Hot Spots” within its jurisdiction: “Trash Hot Spots in receiving waters shall be cleaned annually to achieve the multiple benefits of beginning abatement of these impacts as mitigation and to learn more about the sources and patterns of trash loading.” (*Id.* at 85.)

No express definition of Trash Hot Spot was provided. Provision C.10.b.i described them in terms of minimum size: “Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length.” (*Id.* at 86.) Provision C.10.b.ii suggested that they are “high trash-impacted locations on State waters.” (*Id.*)

e. Provision C.10.b.ii—Trash Hot Spot Selection and Cleanup

Provision C.10.b.ii required that the County must designate “at least one Trash Hot Spot per 30,000 population, or one per 100 acres of Retail/Wholesale Commercial Land Area, within their jurisdictions based on Association of Bay Area Governments (ABAG) 2005 data, whichever is greater.” (*Id.*) Provision C.10.b.ii also required the County to select at least one Trash Hot Spot, and to submit information, including “photo documentation (one photo per 50 feet)” and initial assessment results for the proposed hot spots to the Regional Water Board by July 1, 2010. (*Id.*) The minimum number of Trash Hot Spots per Permittee was set forth in Attachment J of the MRP.

f. Provision C.10.b.iii—Trash Hot Spot Assessment

Provision C.10.b.iii required the County to “quantify the volume of material removed from each Trash Hot Spot cleanup, and identify the dominant types of trash (e.g., glass, plastics, paper) removed and their sources to the extent possible” and to provide before-and-after photographic documentation of the cleanup. (*Id.*)

g. Provision C.10.c—Long-Term Trash Load Reduction Plan

Provision C.10.c required each Permittee to create and submit a plan describing trash reduction measures being implemented and for achieving the reduction goals beyond the five-year MRP term:

Each Permittee shall submit a Long-Term Trash Load Reduction Plan, including an implementation schedule, to the Water Board by February 1, 2014. The Plan shall describe control measures and best management practices, including any trash reduction ordinances, that are being implemented and the level of implementation and additional control measures and best management practices that will be implemented, and/or an increased level of implementation designed to attain a 70% trash load reduction from its MS4 by July 1, 2017, and 100% by July 1, 2022.

(Ex. 1 at 86.)

h. Provision C.10.d—Reporting

Provision C.10.d required the County to report annually on its trash load reduction efforts and maintain records documenting these actions and their effects. Provision C.10.d.i required a summary of

trash load reduction actions (control measures and best management practices) including the types of actions and levels of implementation, the total trash loads and dominant types of trash removed by its actions, and the total trash loads and dominant types of trash for each type of action. The latter shall include each Trash Hot Spot selected pursuant to C.10.b. Beginning with the 2012 Report, each Permittee shall also report its percent annual trash load reduction relative to its Baseline Trash Load.

(Ex. 1 at 86-87.) Provision C.10.d.ii required the County to retain records and documentation of trash load reduction efforts “for review,” and required that the preserved records “have the specificity required for the trash load reduction tracking method established pursuant to Provision C.10.a.iii. (*Id.* at 87.)

i. Provision C.10 Was a New Program.

The Prior Permit contained no comparable provisions. Provision C.10 clearly was a new program and each of its provisions required a higher level of service from the County.

2. The Requirements of Provision C.10 Constitute State Mandates.

The Fact Sheet prepared by Regional Water Board staff in connection with the MRP contained the following narrative recitation of federal statutory and regulatory authority specific to the Trash Load Reduction Provisions found in Provision C.10 of the MRP:

Specific Legal Authority: Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B) requires, “shall be based on a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(2) requires, “a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens.”

Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(B)(3) requires, “a description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water.”

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) requires, “a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer.”

(Ex. 1 at 71; Appendix.)

The Fact Sheet also described authority provided under the Regional Water Board’s Basin Plan for the San Francisco Bay:

San Francisco Bay Basin Plan, Chapter 4 – Implementation, Table 4-1 Prohibitions, Prohibition 7, which is consistent with the State Water Board’s Enclosed Bays and Estuaries Policy, Resolution 95-84, *prohibits the discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters* or at any place where they would contact or where they would be

eventually transported to surface waters, including flood plain areas. This prohibition was adopted by the Water Board in the 1975 Basin Plan, primarily to protect recreational uses such as boating.

(Ex. 1 at 71 (emphasis added); Appendix A.)

The Trash Load Reduction measures in C.10 of the MRP represent an exercise of discretion by the Regional Water Board, which chose the means and manner by which this prohibition of the Basin Plan was applied to the co-permittees under the MRP. The requirements of Provision C.10 were therefore removed from and exceed the general provisions of federal law cited in the Fact Sheet. Because the Regional Water Board freely chose to impose the obligations under Provision C.10, this renders its requirements a state, not a federal, mandate. *Hayes v. Comm'n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

3. The County Has Incurred Significant Costs as the Result of the New Trash Load Reduction Requirements Imposed Under Provision C.10 of the MRP.

The County has incurred significant costs as a result of the trash load reduction requirements imposed under Provision C.10 of the MRP. Actual costs incurred by the Santa Clara Valley Program and the County are addressed in Section IV below.

4. The County Has Inadequate Fee Authority to Recover the Costs of Implementing Provision C.10.

For all of the reasons discussed above with regard to the monitoring provisions of the MRP, the County lacked adequate authority to impose a regulatory fee to recoup the costs of complying with the Trash Load Reduction requirements of Provision C.10. No statutory authority exists for imposing fees to recover for such costs.

Public Resources Code section 40059 provides local governments with authority over the collection and handling of solid waste, and allows for the collection of fees related to these activities:

Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature,

location, and extent of providing solid waste handling services.

Cal. Pub. Resources Code § 40059(a).

In the Los Angeles Decision, the Commission concluded that the cost of placing trash receptacles at public transit locations could not be recovered through the imposition of a fee under this provision because such a fee would not be reasonably related to “providing services necessary to activity for which fee is charged.” (Los Angeles Decision at 60.). In that case, the Commission concluded that even if the Los Angeles permittees had proper jurisdiction to impose a fee on transit riders, this group would gain no particular benefit over that provided to the general public. (*Id.*)

Here, the installation of trash capture devices mandated by the MRP is similarly beyond the fee authority of the County. The Commission in the Los Angeles Decision concluded that there were no businesses and private property owners that could be singled out to pay fees for placement of trash receptacles in transit stops. (Los Angeles Decision at 60 (“Because the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks) or transit district property (for bus or metro or subway stations), there are no entities on which the claimants would have authority to impose the fees.”) Similarly, here, there are no businesses or individuals whose activities are sufficiently connected to either the benefits of Provision C.10 or the pollution it seeks to address to justify the imposition of fees.

The same is true for the “Hot-Spot” cleanup activities required under Provision C.10. In the San Diego Decision, the Commission concluded that the opt-out vote required for the imposition of fees in conjunction with the collection and handling of refuse was too contingent to place street sweeping or other refuse collection activities outside the scope of the unfunded mandate provision. (San Diego Decision at 115-17.) The costs of developing the short- and long-term trash load reduction plans and the development of a baseline under the MRP are even more attenuated from the causes of those costs or the benefits to be delivered by the activities.

For the same reasons, no authority exists for the imposition of a regulatory fee under the general police powers enjoyed by local authorities. The only fee that would suffice would have to be a broad-based property fee that would trigger Proposition 218’s voter approval requirement. For this reason, Provision C.10 does not fall within the exception of section 17556(d) of the Government Code.

C. Mercury and PCB Diversion Studies

Provisions C.11.f and C.12.f of the MRP required the County and other Permittees to implement pilot programs to evaluate the reduction in mercury and PCB levels attainable by diverting dry weather and first-flush stormwater flows to sanitary sewers, where they may be treated for these contaminants by Publicly Owned Treatment Works (“POTWs”). (Ex. 1 at 91, 99.) The Permittees were also required to quantify and report the reductions achieved during the pilot program. (*Id.*)

The County and other Permittees were required to implement these requirements by collectively “evaluating drainage characteristics and the feasibility of diverting flows to the sanitary sewer.” (*Id.*) Provision C.11.f.ii says

Permittees should work with local POTWs, on a watershed, county, or regional level to evaluate feasibility and to establish cost sharing agreements. The feasibility evaluation shall include, but not be limited to, costs, benefits, and impacts on the stormwater and wastewater agencies and the receiving waters relevant to the diversion and treatment of the dry weather and first flush flows.

(*Id.* at 91.) Provision C.12.f contained a virtually identical provision. (*Id.* at 99.) The results of the feasibility studies were to be used by Permittees to collectively select five pump stations and five alternates for pilot diversion studies. At least one diversion pilot program had to be implemented in each county within the jurisdiction of the MRP. (*Id.* at 91, 100.) Sections C.11.f.ii and C.12.f.ii further directed that the pilot studies be conducted “in industrially- dominated catchments where elevated PCB concentrations are documented. (*Id.* at 91, 99). The Permittees were then required to report the outcome of the studies. (*Id.*)

1. Provisions C.11.f and C.12.f Constitute New Programs.

The Prior Permit contained no provisions requiring the diversion studies and pilot programs for mercury and PCBs required under the MRP. The studies and pilot projects required under sections C.11.f and C.12.f were new programs.

2. Provisions C.11.f and C.12.f Are State Mandates.

For purposes of establishing legal authority, the Fact Sheet lumped Provision C.11 and C.12 in a group that covers Provisions C.9 through C.14, and asserts that these requirements are generally authorized by sections 402(p)(3)(B)(ii-iii) of the Clean Water Act, section 13377 of the California Water Code, and sections 122.26(d)(2)(i)(B, C, E, and F) and 122.26(d)(2)(iv) of the

federal NPDES regulations. (Ex. 1 at App I-66.) The Fact sheet also identifies the Regional Water Board’s basin plan as a source of authority, and uses permit conditions based on the adoption of a Total Maximum Daily Load as an example of provisions that may be imposed under this authority (“TMDL”). (*Id.*)

The Fact Sheet goes on to state that the mercury control measures in the MRP are intended to “implement the urban runoff requirements stemming from” the TMDL for this pollutant. (*Id.*) It also relates PCB control measures to a TMDL: “The control measures required for PCBs are intended to implement those that are consistent with control measures in the PCBs TMDL implementation plan that has been approved by the Water Board and is pending approval by the State Board, the Office of Administrative Law, and U.S. EPA.” (*Id.* at App I-66-67.)

None of the federal provisions cited in the Fact Sheet requires the specific measures imposed by the MRP. The federal statute requires that NPDES permits be “consistent with” TMDLs, nothing more. 40 C.F.R. § 122.44(d)(1)(vii). It does not require the Regional Water Board to implement those TMDLs through any specific permit limit, let alone the studies and pilot projects entailed in MRP Provisions C.11.f and C.12.f. Rather, the Regional Water Board has “freely chosen” these measures as the method and manner of implementing this general “consistency” requirement of federal law. The exercise of discretion in the MRP indicates that these Provisions were state, not federal, mandates. *Hayes v. Comm’n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

3. The County Has Incurred Significant Costs as the Result of the Diversion Studies Required Under Provisions C.11.f and C.12.f of the MRP.

Although they did not manifest themselves in the first two years of the MRP, after that, the County incurred significant costs as a result of the new requirements for diversion studies relating to mercury and PCB discharges imposed under Provisions C.11.f and C.12.f of the MRP. Actual costs incurred by the Santa Clara Valley Program and the County are addressed in Section IV below.

4. The County Does Not Have Adequate Authority to Recover the Costs of Complying with C.11.f and C.12.f Through the Imposition of a Fee.

For many of the same reasons discussed above with regard to the MRP’s monitoring and trash requirements, the County does not have adequate authority to impose a regulatory fee to recoup the costs of implementing Provisions C.11.f and

C.12.f of the MRP. No statutory authority exists for imposing fees to recover the costs of such projects.

There is no nexus between either the cause of stormwater pollution or the benefits to be derived from the diversion study requirements and any specific businesses or individuals to allow a targeted fee. This is insufficient to allow the identification of the cause or benefit nexus discussed in the *Sinclair Paint* and *Tahoe Keys* cases. The only fee that would suffice would have been a broad-based property fee that would trigger Proposition 218's voter approval requirement. For this reason, Provisions C.11.f and C.12.f do not fall within the exception of section 17556(d) of the Government Code.

IV. COSTS TO IMPLEMENT MANDATED ACTIVITIES

A. Basis for Cost Figures

The County incurred actual costs relating to the MRP, and the specific requirements that are the subject of its Test Claim, by funding its share of costs incurred by the Santa Clara Valley Program.

Invoices, which reflect the costs and expenses actually incurred for the accomplishment of specified permit-imposed tasks and requirements, were prepared for the Santa Clara Valley Program by EOA, Inc. throughout the term of the MRP. (Sommers Decl. ¶ 7). These invoices were reviewed by a subcommittee of the Permittees, and approved for payment by the Program's fiscal agent with funds previously collected from each of the Permittees, based on their proportional cost-sharing allocation as set under a formula set forth in the Program's constituting Memorandum of Agreement. (Sommers Decl. ¶ 8). Pursuant to this funding formula, **the County of Santa Clara was allocated 5.94% of costs for shared Program responsibilities.** (Sommers Decl. ¶ 10).

The MRP was in effect from January 1, 2010 through December 31, 2015. This permit term overlapped with a six month period of fiscal year ("FY") 2009-10 (i.e., January 2010 through June 2010) and a six month period of FY 2015-16 (i.e., July 2015 through December 2015). (Sommers Decl. ¶ 15(ii) & (iii)). Accordingly, for purposes of identifying increased costs in FY 2009-10 and 2015-16, costs actually incurred during each of these six-month timeframes were compared with a six-month period under the Prior Permit, assumed to be one-half of the overall costs incurred during the corresponding fiscal year. (Sommers Decl. ¶ 15(i)).

For purposes of the discussion below, based on the Commission staff's recent direction, **actual** costs were reviewed by Chris Sommers of EOA, Inc. under penalty of perjury for FY 2009-10 (January through June 2010), as the first

partial fiscal period subject to the MRP requirements (“Year 1”) and for FY 2010-11, the first *full fiscal* year during which the MRP was effective (“Year 2”). (Sommers Decl. ¶¶ 1, 4, 7, 15).

B. New Costs Arising from the MRP—Santa Clara Valley Program Level

The aggregate actual costs for the Santa Clara Valley Program’s implementation of monitoring, trash, and mercury and PCB diversion activities mandated by the MRP totaled **\$7,490,605**.⁹ These are discussed in more detail immediately below and then are followed by a discussion in Section IV.C of prior permit costs incurred by the Santa Clara Valley Program. The portion of the costs discussed immediately below that represent *increased* costs imposed on the Santa Clara Valley Program under the MRP are then addressed, along with their specific allocation to the County, in Sections IV.D and E below.

1. Provision C.8. Actual costs for implementing monitoring activities mandated by MRP Provision C.8 as conducted by the Santa Clara Valley Program were **\$5,979,167** during the term of the MRP, including \$354,404 during Year 1 (six-month period) and \$980,105 during Year 2 (twelve-month period). (Sommers Decl. ¶ 15(c)(ii) & Ex. A).

2. Provision C.10. Actual costs for implementing trash related activities mandated by MRP Provision C.10 as conducted by the Santa Clara Valley Program were **\$1,088,938** during the term of the MRP, including \$40,000 during Year 1 (six-month period) and \$190,000 during Year 2 (twelve-month period). (Sommers Decl. ¶ 15(d)(ii) & Ex. B).

3. Provision C.11.f/C.12.f. Because these provisions did not impose requirements that required any work to be performed until FY 2011-12 (“Year 3”), the MRP Permittees did not incur or pay any actual costs related to Provision C.11.f and C.12.f during Year 1 or Year 2. Actual costs for implementing activities mandated by MRP Provision C.11.f and C.12.f, and conducted by the Santa Clara Valley Program were **\$422,500** during the remaining term of the MRP. (Sommers Decl. ¶ 15(e)(ii) & Ex. C & E).

C. Existing [Prior Permit] Costs Modified by Mandate—Santa Clara Valley Program Level

The aggregate actual costs incurred by the Santa Clara Valley Program for implementation of activities mandated by the Prior Permit which relate to the

⁹ All costs stated herein have been attested to under penalty of perjury in the Sommers Declaration; these have been rounded to the nearest dollar figure.

MRP requirements that are the subject of this Test Claim totaled \$3,370,272, as set forth below. Over the six-year term of the Prior Permit, these costs averaged \$561,712 annually or \$280,856 per six-month period. (Sommers Decl. ¶ 15(c)).

1. **Provision C.8.** Actual costs for monitoring activities conducted by the Santa Clara Valley Program under the Prior Permit were \$3,370,272. (Sommers Decl. ¶ 15(c)(i) & Ex. A).

2. **Provision C.10.** Under the Prior Permit, the Permittees did not incur any costs specifically attributable to the MRP's trash-related requirements. (Sommers Decl. ¶ 15(d)(i)).

3. **Provision C.11.f/C.12.f.** Under the Prior Permit, the Permittees did not incur any costs specifically attributable to the diversion of dry and first flush flows to POTWs requirements. (Sommers Decl. ¶ 15(e)(i)).

D. Actual Increased Costs Incurred by the Santa Clara Valley Program and the County During the Fiscal Year for Which the Claim Was Filed to Implement the Mandate

Based on the information presented above and a review of relevant invoices and financial records, during Year 1 (six-month period), *increased* actual costs to implement the challenged monitoring and trash-related activities conducted by the Santa Clara Valley Program totaled \$113,548. (Sommers Decl. ¶ 16(a)(iii)). Accordingly, and pursuant to the established funding formula, under which the County paid 5.94% of the Santa Clara Valley Program's incurred costs, **the County incurred and paid increased actual costs of \$6,745 during Year 1** (six-month period). (Sommers Decl. ¶ 16(c) & Ex. E-1; Le Decl. ¶¶ 7-9 & Exs. A & B).

E. Actual Increased Costs Incurred by the Santa Clara Valley Program and the County to Implement the Mandate During the Fiscal Year Immediately Following the Fiscal Year for Which the Claim Was Filed

Based on the cost information presented above and a review of relevant invoices and financial records, during Year 2, aggregate *increased* actual costs to implement the challenged monitoring and trash-related activities conducted by the Santa Clara Valley Program totaled \$608,393. (Sommers Decl. ¶ 17(a)(iii)). Accordingly, and pursuant to the established funding formula, under which the County paid 5.94% of the Santa Clara Valley Program's incurred costs, **the County incurred and paid increased actual costs of \$36,139 during Year 2**

(twelve-month period). (Sommers Decl. ¶ 17(c) & Ex. E-2; Le Decl. ¶¶ 7-9 & Exs. A & B).¹⁰

V. STATEWIDE COST ESTIMATE

The MRP relates only to a portion of the State lying within the San Francisco Bay region and to 76 municipalities within that region, but not others. Therefore, the statewide cost estimates provided below relate only to these 76 municipalities that were subject to the MRP. Based on the costs incurred by the Santa Clara Valley Program for the MRP mandates subject to this Test Claim, and using population figures as the basis for scaling, an estimate for all MRP permittees (the “Statewide Estimate”) was derived. (Sommers Decl. ¶ 19 & Ex. G).

Based on the foregoing, the **increased statewide costs resulting from the challenged items in MRP provisions C.8 and C.10 are estimated to be \$1,782,736 during Year 2** (the fiscal year immediately following the fiscal year for which the claim was filed). (Sommers Decl. ¶ 19(b) & Ex. G-1).

Additionally, the **estimated statewide cost increases for the entire time period covered by the MRP (Year 1-Year 7)**, which include expenditures related to MRP provisions C.11.f and C.12.f as incurred in Year 3-Year 7, **are estimated to be \$12,088,210**. (Sommers Decl. ¶ 19(c) & Ex. G).

VI. FUNDING SOURCES

As discussed in more detail above, the County does not have fee authority to offset these costs. While it did not defray any of the MRP implementation costs the County incurred through the Santa Clara Valley Program, the County did ultimately receive \$51,024 in grant funding from federal and State sources for its purchase and installation of trash capture devices in response to MRP Provision C.10.¹¹

¹⁰ As they were not incurred and paid by the County during Year 1 or Year 2, the figures set forth above do not include costs associated with MRP Provisions C.11.f and C.12.f. However, it is important to bear in mind that beginning in Year 3 the Santa Clara Valley Program, and hence, the County, incurred substantial costs associated with those provisions during the remainder of the MRP’s term. Using the 5.94% paid pursuant to the funding formula, the MRP Provision C.11.f and C.12.f increased actual costs incurred by the County through the Santa Clara Valley Program ultimately totaled up to **\$25,097**. (Sommers Decl. ¶ 15(e)(ii) & Exs. C & E; Le Decl. ¶¶ 7-9 & Exs. A & B).

¹¹ See <http://www.sfestuary.org/wp-content/uploads/2014/05/AppendixV.allocation.contracts.pdf>.

VII. PRIOR MANDATE DETERMINATIONS

The County is unaware of any prior mandate determinations relating to the MRP. However, Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21, which resulted in the Los Angeles Decision, and Test Claim No. 07-TC-09, which resulted in the San Diego Decision, challenged waste discharge requirements for municipal regional storm water and urban runoff discharges that involved similar issues.

VIII. CONCLUSION

Through the MRP, the California Regional Water Quality Control Board, San Francisco Bay Region exercised its discretion to impose what were many new state-mandated activities and demand that the County deliver higher levels of services than what was required under the Prior Permit. As detailed above, their development and implementation imposed substantial costs on the County and other MRP co-permittees. The County believes that the costs incurred satisfy all the criteria for reimbursable mandates and respectfully requests that the Commission make such findings as to each of the mandated programs and activities set forth herein.

**AMENDED DECLARATION OF CHRIS SOMMERS
CONCERNING
Documentation of Increased Actual Costs Expended on Behalf of
The County of Santa Clara, the City of San Jose,
and Other Santa Clara Valley, California Co-Permittees
(Offered In Support of Test Claims 10-TC-03 and 10-TC-05)
and
Statewide Cost Increase Estimates Associated with Consolidated Test Claims
10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05**

I, Chris Sommers, declare as follows:

1. I make this amended declaration, under penalty of perjury, based upon my own personal knowledge, and if called upon to testify, I could and would testify competently to the matters set forth herein.
2. I previously made a declaration dated August 19, 2010 that was offered in support of the present consolidated Test Claims (designated 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05). In light of the passage of time and the current availability of actual cost information, as opposed to the estimates made in 2010, this Amended Declaration is intended as an update and a replacement to my prior declaration. **(The information provided in Sections 16, 17, and 19 below and in the Exhibits they reference is specifically intended to address requests made by the Commission on State Mandates (“Commission”) in its Notice of Incomplete Joint Test Claim Filing dated April 19, 2017. In particular, Sections 16(b) and (c), Sections 17(b) and (c), and Section 19(b) present the bottom lines directly responsive to the Commission’s requests.** In contrast, Sections 3 through 14 below are substantially the same as set forth in my prior declaration are included herein just for the sake of completeness.)
3. I received a Bachelor of Science (BS) degree in Environmental Science from Indiana University in 1994 and Master’s of Science (MS) in Natural Resources Management from Humboldt State University in 2000, with a focus on aquatic ecology and indicators of environmental condition of freshwater systems.
4. I am employed by EOA, Inc. as a Managing Scientist. Since 2002, I have served as the watershed monitoring and assessment coordinator for the Santa Clara Valley Urban Runoff Pollution Prevention Program (“**Santa Clara Valley Program**” or “**Program**”).
5. The Santa Clara Valley Program is a consortium made up of the cities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, the County of Santa Clara, and the Santa Clara Valley Water District (collectively, the “**Permittees**”). The Program was created in 1990 through a Memorandum of Agreement (“**MOA**”). Among other things, the MOA calls for adoption of an annual program-wide budget and establishes proportional cost-sharing allocations for each of the Permittees.

6. As part of my position, I am responsible for designing, managing and implementing all aspects (e.g., sampling design, field work, analytical analyses, quality control, data management, interpretation and reporting) of water quality monitoring required by municipal stormwater NPDES permits issued to the Program Permittees by the Regional Water Quality Control Board (San Francisco Bay Region) (“**Regional Water Board**”). Additionally, I assist the Permittees and other Bay Area NPDES Permittees in planning and implementing trash assessments and management strategies to comply with NPDES requirements.

7. In the course of my work, I also help prepare monthly invoices that EOA, Inc. issues to the Program which reflect the costs and expenses actually incurred in the accomplishment of specified permit-imposed tasks and requirements. In preparing this declaration, I conducted a review of these monthly invoices from January 2010 through December 2015 to ascertain the costs and expenses that were actually incurred by the Program, and proportionally funded by each of its Permittees, including the County of Santa Clara and the City of San Jose.

8. These invoices are reviewed by a subcommittee of the Permittees and approved for payment by the Program’s fiscal agent with funds previously collected from each of the Permittees, based on their proportional cost-sharing allocation as set under a formula set forth in the Program’s constituting Memorandum of Agreement (the “**Funding Formula**”).

9. Pursuant to the Funding Formula, the City of San Jose is allocated 30.01% of costs for shared Program responsibilities.

10. Pursuant to the Funding Formula, the County of Santa Clara is allocated 5.94% of costs for shared Program responsibilities.

11. From the period of January 2010 through December 2015, the Permittees were subject to the Municipal Regional Stormwater NPDES Permit, issued by the Regional Water Board, Order No. R2-2009-0074 (NPDES Permit No. CAS612008), adopted on October 14, 2009 and revised by Order No. R2-2011-0083, adopted November 28, 2011 (the “**MRP**”).¹ I have reviewed the MRP and I know and understand its requirements.

12. I have also reviewed and I know and understand the requirements of NPDES Permit No. CAS029718 issued by Regional Water Board Order No. 01-024 on April 21, 2001, amended by Order No 01-119 on October 17, 2001 and Order No. R2-2005-0035 on July 20, 2005 (the “**Prior Permit**”), under which the Santa Clara Valley Program’s member agencies were Permittees.

13. Based on my understanding of the Prior Permit and the MRP, I believe the MRP required the Permittees to perform new activities that were unique to local governmental entities and that were not required by the Prior Permit.

New Activities Required by MRP

¹ The MRP has since been superseded by Order No. R2-2015-0049, adopted November 19, 2015.

14. The MRP's new activities included those associated with the following new or enhanced MRP requirements:

(a) Monitoring. Section C.8 of the MRP requires the Permittees to implement a number of water quality monitoring programs that were not required by the Prior Permit.

(i) Provision C.8.b requires an increased level of participation in the Regional Monitoring Program for water quality in the San Francisco Bay Estuary ("RMP"). In addition to increased direct contributions to the RMP, costs for staff participation are expected to increase by roughly 2% per year in order to provide greater coordination between RMP and MRP objectives for this provision. (MRP at 65).

(ii) Provision C.8.c requires a substantially increased level of monitoring effort relative to the Prior Permit by greatly expanding both the number of sites that must be monitored per year and the number of monitoring parameters. (MRP at 65-71). These parameters and sites include:

- Algae bioassessment (20 sites/yr)
- Chlorine (23 sites/yr)
- Temperature (8 sites/yr)
- Stream Surveys (9 miles/yr)

Additionally, Provision C.8.c increases the number of creek sites that must be sampled annually for the following parameters (site increases are in parentheses):

- Total Phosphorus (7 sites/year)
- Dissolved Orthophosphate (7 sites/yr)
- Total Nitrogen (7 sites/yr)
- Nitrate (7 sites/yr)
- Ammonia (7 sites/yr)
- Silica (7 sites/yr)
- Chloride (7 sites/yr)
- Dissolved Organic Carbon (DOC) (7 sites/yr)

(iii) Provision C.8.d requires three new types of projects that were previously not required under the Prior Permit (Source Identification, BMP Effectiveness, and Geomorphic Projects). These projects will require project design, field work, sampling and laboratory analysis, interpretation and reporting. (MRP at 71-73).

(iv) Provision C.8.e requires substantially increased levels of effort for (1) pollutants of concern monitoring, and (2) long-term monitoring. It also imposes a new requirement to conduct a sediment delivery estimate/budget study. (MRP at 73-75).

(1) *Pollutants of Concern Monitoring*: The MRP, in Provision C.8.e.i, requires the Permittees to undertake the following new monitoring efforts for pollutants of concern, relative to the Prior Permit.

a. Two new stations are required to be monitored by the Santa Clara Valley Program (none were previously required), involving costs for development and maintenance of the stations;

b. Due to numerous pollutants to be sampled, both stations will require additional setup (e.g., purchasing equipment, installation, calibration of equipment) of monitoring equipment prior to beginning to monitor annually at one station in October 2011 and another beginning in October 2012;

c. A minimum of four storms have to be sampled per year at each station. This will require watching and predicting which storms to sample, mobilization of field crews, sample preparation and collection, and transport of samples to laboratory.

d. Numerous pollutants or analytes are required to be monitored (see MRP at 73-75). For completely new analytes, the costs of analysis along with costs associated with specialized protocols or extra field visits for some pollutants significantly increases the annual average cost.

(2) *Long-Term Monitoring.* Provision C.8.e.ii requires long-term monitoring at specific stations, pursuant to specific protocols. (MRP at 74). The Program's monitoring program under the Prior Permit did not require monitoring designed to detect long-term trends. Therefore, existing creek monitoring will need to be redesigned to include trends monitoring as described in C.8.e.ii. This will include an increase in the number of samples collected and analyzed for sediment toxicity and sediment chemistry, including new sediment chemistry parameters.

(3) *Sediment Delivery Estimate/Budget.* Provision C.8.e.vi requires the Permittees, by July 1, 2011, to develop "a design for a robust sediment delivery estimate/sediment budget in local tributaries and urban drainages." (MRP at 76). The study itself must be implemented by July 1, 2012. As the Prior Permit contained no requirement to design or implement sediment delivery studies, this is an entirely new program under the MRP.

(v) Provision C.8.f requires the Permittees to encourage "citizen monitoring," although it does not define this term. (MRP at 76). This is an entirely new requirement. Increases associated with this provision include "reasonable efforts to seek out citizen and stakeholder information and comment regarding waterbody function and quality," and annually demonstrating "that they have encouraged citizen and a stakeholder observations and reporting of waterbody conditions" by reporting on these outreach efforts. There are no specific increases in number of monitoring sites or parameters associated with this provision, but level of coordination (i.e., staff time) required is greater than the existing level.

(vi) Provision C.8.g requires specific contents and format for reporting monitoring data. (MRP at 76). Under the Prior Permit, the Santa Clara Valley Program prepared an annual report which included a description of the Permittees' data collected

over the previous fiscal year, and general interpretation of the results. The Program is currently not required to submit data in a specified electronic format or report to the extent required by provision C.8.g. Therefore, beginning in fiscal year 2011-2012, new costs for electronic reporting and higher costs for developing reports for all new and expanded programs will be incurred.

(vii) Provision C.8.h requires the Permittees to develop significant updates or additions to existing field standard operating procedures and train field staff to allow for monitoring data to be collected by the Santa Clara Valley Program using “SWAMP comparable” methods defined by the State Water Resources Control Board’s Surface Water Ambient Monitoring Program. (MRP at 77-78). Additionally, new data management systems must be developed and managed at significant costs, as the MRP requires data to be reported electronically to the Regional Water Board in “SWAMP comparable” formats. Monitoring data quality assurance procedures (also SWAMP comparable) also have to be developed, documented and adhered to by the Program at all times, which requires an additional level of effort (staff time) compared to previous quality assurance procedures conducted by the Program under the Prior Permit.

(b) Trash. Section C.10 of the MRP requires the Permittees to implement a number of trash-related programs that were not required by the Prior Permit.

(i) Provision C.10.a requires several specified actions to reduce trash loads from municipal separate storm sewer systems (MS4), including developing Short-Term Trash Load Reduction Plans designed to attain 40% trash load reductions from MS4s by July 1, 2014 (C.10.a.i, MRP at 84). These plans must describe, among other things, new control measures and best management practices that each Permittee will increase and/or implement to achieve the 40% reduction. Additionally, Permittees are required to determine baseline trash loads from each MS4 and tracking methods to account for trash load reductions (C.10.a.ii, MRP at 84), and installing and maintaining specified numbers of full trash capture devices (C.10.a.iii, MRP at 85). Each of these requirements represent new programs that were not required by the Prior Permit.

(ii) Provision C.10.b requires the Permittees to identify, assess, and clean up specified numbers of trash “hot spots” annually based on population or acreage of retail/wholesale commercial land within each jurisdiction (for population-based permittees). (MRP at 85-86). This is a new requirement not required by the Prior Permit.

(iii) Provision C.10.c requires the Permittees to submit Long-Term Trash Load Reduction Plans and implementation schedules by February 1, 2014. (MRP at 86). This plan will require implementation methods and practices designed to attain a 70% trash load reduction from MS4s by July 1, 2017, and a 100% reduction by July 1, 2022. This is a new program as such plans were not required by the Prior Permit.

(iv) Provision C.10.d requires the Permittees to report annually on trash load reduction efforts and maintain records documenting these actions and their effects. (MRP at 86-87). These reporting requirements are new programs not required by the Prior Permit.

(c) Mercury and PCBs. Sections C.11 and C.12 of the MRP require the Permittees to implement pilot projects to divert dry weather and first flush stormwater flows to publicly owned treatment works (“POTWs”). Collectively, must select five pump stations and five alternates for feasibility studies and pilot diversion studies, must implement flow diversion at five pump stations, and must analyze results, as appropriate, in annual reports. (MRP at 91, 99). The studies and pilot projects are new programs that were not required by the Prior Permit.

MRP Actual Cost Figures – Methodology

15. Basis of Figures Presented. Activities required by the MRP and Prior Permit were implemented either by each Permittee individually, or as a group through the Santa Clara Valley Program. The actual costs incurred by Permittees for new or enhanced activities conducted by the Santa Clara Valley Program are based on my firsthand review of Santa Clara Valley Program budgets for each fiscal year (FY) applicable to the term of the MRP (January 2010 through December 2015) *and* the associated invoices that EOA subsequently issued and approved for payment against these budgets. These costs were associated with consultant services, materials and expenses actually expended via the Santa Clara Valley Program to comply with the applicable MRP provisions. They are set forth in Exhibits A to C, which are included for the sake of completeness and incorporated by reference herein. All such costs have been rounded to the nearest dollar figure.

(i) The MRP permit term overlapped with a six month period of FY 2009-10 (i.e., January 2010 through June 2010) and a six month period of FY 2015-16 (i.e., July 2015 through December 2015). Accordingly, costs actually incurred during each of these six-month timeframes were compared with a six-month period under the Prior Permit, assumed to be one-half of the overall costs incurred during the corresponding fiscal year.

(ii) For purposes of the discussion below, actual costs are presented for FY 2009-10 (January through June 2010), as the first *partial fiscal* period subject to the MRP requirements (“**Year 1**”) and for FY 2010-11, the first *full fiscal* year during which the MRP was effective (“**Year 2**”).

(iii) For completeness and because they were part of the review of invoices that I conducted in order to make this Amended Declaration, I have also included actual costs for FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15, and for July-December of FY 2015-16 (after which the MRP was superseded by a new permit).

(b) Cost Allocations. Pursuant to the Funding Formula, each Permittee was allocated an established percentage of actual costs incurred by and through the Program for shared responsibilities. The cost allocations for each Permittee based on the Funding Formula are identified in each Exhibit to this Amended Declaration. All actual costs are allocated according to the Funding Formula. Each Permittee’s allocated share of the Provision C.8, C.10, C.11.f and C.12.f actual MRP costs listed below is detailed in Exhibit E to this Amended Declaration.

(c) Summary of Provision C.8 Actual Cost Figures Presented:

(i) Prior Permit Costs. Based on my review of relevant records, the Permittees' aggregate cost for monitoring activities conducted by the Santa Clara Valley Program under the Prior Permit averaged \$561,712 annually (\$280,856 per six-month period). The total costs for implementing monitoring activities mandated by the Prior Permit were \$3,370,272.

(ii) MRP Costs. Based on my review of the associated invoices that EOA issued to the Program and which were subsequently paid by the Permittees' fiscal agent, actual costs for implementing monitoring activities mandated by MRP Provision C.8 and conducted by the Santa Clara Valley Program were \$5,979,167 during the term of the MRP, including \$354,404 during Year 1 (six-month period) and \$980,105 during Year 2 (twelve-month period). These actual costs are more fully detailed in Exhibit A to this Amended Declaration, which I prepared based on my firsthand review of relevant records.

(d) Summary of Provision C.10 Actual Cost Figures Presented:

(i) Prior Permit Costs. Under the Prior Permit, the Permittees did not incur any costs specifically attributable to the MRP's trash-related requirements.

(ii) MRP Costs. Based on my review of the associated invoices that EOA issued to the Santa Clara Valley Program and which were subsequently paid by the Permittees' fiscal agent, actual costs for implementing trash related activities mandated by MRP Provision C.10 and conducted by the Santa Clara Valley Program were \$1,088,938 during the term of the MRP, including \$40,000 during Year 1 (six-month period) and \$190,000 during Year 2 (twelve-month period). These actual costs are more fully detailed in Exhibit B to this Amended Declaration, which I prepared based on my firsthand review of relevant records.

(e) Summary of Provision C.11.f/C.12.f Actual Cost Figures Presented:

(i) Prior Permit Costs. Under the Prior Permit, the Permittees did not incur any costs specifically attributable to the Diversion of Dry and First Flush Flows to POTWs requirements.

(ii) MRP Costs. The Permittees' aggregate actual costs for implementing activities mandated by MRP Provision C.11.f and C.12.f, and conducted by the Santa Clara Valley Program were \$422,500 during the term of the MRP. Due to the mandated timelines for implementing such activities, the Permittees did not incur or pay any actual costs related to MRP Provision C.11.f and C.12.f during Year 1 or Year 2. The Permittees began to incur and paid actual costs during FY 2011-12 ("**Year 3**"), for which the actual cost was \$150,000. During FY 2012-2013 ("**Year 4**"), the actual cost was \$95,000, and in FY 2013-14 ("**Year 5**"), the actual cost was \$70,000, as it was again in FY 14-15 ("**Year 6**"). Finally, in the six month period covered during FY-15-16 ("**Year 7**"), the actual cost was \$37,500. These costs are detailed in Exhibit C to this Amended Declaration.

Increased Actual Costs Associated with Challenged MRP Items

16. **Increased Actual Costs – Year 1 (FY 2009-10).**

(a) **Increased Year 1 Actual Costs to Santa Clara Valley Program Permittees.**

(i) Based on the foregoing, the Permittees' average aggregate cost to implement monitoring activities conducted by the Santa Clara Valley Program and mandated by the Prior Permit was \$561,712 annually (\$280,856 per six-month period).

(ii) Based on the foregoing, during Year 1, the Permittees' aggregate costs to implement activities conducted by the Santa Clara Valley Program and mandated by MRP Provisions C.8 and C.10 were \$394,404 (six-month period).

(iii) Based on the foregoing, during Year 1, the Permittees' aggregate increased actual costs to implement monitoring and trash-related activities conducted by the Santa Clara Valley Program and mandated by the MRP were \$113,548 (six-month period). These costs are detailed in Exhibit E-1 to this Amended Declaration (representing a subset of the data in Exhibit E).

(b) **Increased Actual Year 1 Costs to the City of San Jose.** Based on the foregoing and pursuant to the Funding Formula, **during Year 1, the City of San Jose's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8 and C.10 were \$34,076** (six-month period). These costs are detailed in Exhibit E-1 to this Amended Declaration.

(c) **Increased Actual Year 1 Costs to the County of Santa Clara.** Based on the foregoing and pursuant to the Funding Formula, **during Year 1, the County of Santa Clara's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8 and C.10 were \$6,745** (six-month period). These costs are detailed in Exhibit E-1 to this Amended Declaration.

17. **Increased Actual Costs – Year 2 (FY 2010-11).**

(a) **Increased Year 2 Actual Costs to Santa Clara Valley Program Permittees.**

(i) Based on the foregoing, the Permittees' average aggregate cost to implement monitoring activities conducted by the Santa Clara Valley Program and mandated by the Prior Permit was \$561,712 annually.

(ii) Based on the foregoing, during Year 2, the Permittees' aggregate costs to implement activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8 and C.10 were \$1,170,105.

(iii) Based on the foregoing, during Year 2, the Permittees' aggregate increased actual costs to implement monitoring and trash-related activities conducted by the Santa Clara Valley Program and mandated by the MRP were \$608,393. These costs are detailed in Exhibit E-2 to this Declaration.

(b) **Increased Actual Year 2 Costs to the City of San Jose.** Based on the foregoing and pursuant to the Funding Formula, **during Year 2, the City of San Jose's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8 and C.10 were \$182,579.** These costs are detailed in Exhibit E-2 to this Amended Declaration.

(c) **Increased Actual Year 2 Costs to the County of Santa Clara.** Based on the foregoing and pursuant to the Funding Formula, **during Year 2, the County of Santa Clara's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8 and C.10 were \$36,139.** These costs are detailed in Exhibit E-2 to this Amended Declaration.

18. **Increased Actual Costs – Entire MRP Term.**

(a) **Increased Entire MRP Term Actual Costs to Santa Clara Valley Program Permittees.**

(i) Based on the foregoing, the Permittees' average aggregate cost to implement monitoring activities conducted by the Santa Clara Valley Program and mandated by the Prior Permit was \$561,712 annually, or a total of \$3,370,272 during the entire term of the Prior Permit.

(ii) Based on the foregoing, during the entire FY 2009-10 to FY 2015-16 MRP term, the Permittees' aggregate costs to implement activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8, C.10, and C.11.f/C.12.f provisions (which only came into effect in Year 3) were \$7,490,604.

(iii) Based on the foregoing, during the entire FY 2009-10 to FY 2015-16 MRP term, the Permittees' aggregate increased actual costs to implement monitoring, trash-related, and Diversion of Dry and First Flush Flows to POTWs activities conducted by the Santa Clara Valley Program and mandated by the MRP were \$4,120,332. These costs are detailed in Exhibit E to this Amended Declaration.

(b) **Increased Actual Costs to the City of San Jose for Entire MRP Term.** Based on the foregoing and pursuant to the Funding Formula, **during the entire FY 2009-10 to FY 2015-16 MRP term, the City of San Jose's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8, C.10, and C.11.f/C.12.f provisions were \$1,236,512.** These costs are detailed in Exhibit E to this Amended Declaration.

(c) **Increased Actual Costs to the County of Santa Clara for Entire MRP Term.** Based on the foregoing and pursuant to the Funding Formula, **during the entire FY 2009-10 to FY 2015-16 MRP term, the County of Santa Clara's allocated increased actual costs for activities conducted by the Santa Clara Valley Program and mandated by MRP provisions C.8, C.10, and C.11.f/C.12.f provisions were \$244,748.** These costs are detailed in Exhibit E to this Amended Declaration.

19. **Statewide Estimates.**

(a) **Basis for Statewide Estimate.** Estimated increased costs incurred by *all* MRP Permittees (i.e., all local governments in the State that were subject to the MRP) for the implementation of MRP provisions C.8, C.10, and C.11.f/C12.f were developed by me by applying the per capita actual cost increase incurred by Permittees in Santa Clara County. Based on the foregoing increased actual costs by Santa Clara County Permittees, and a population of 1,745,412 for Santa Clara County Permittees, the per capita increased cost for implementing these provisions was \$2.36 over the term of the MRP. The aggregated increased costs for the additional MRP Permittees were then estimated based on the per capita costs for Santa Clara County Permittees and the associated Permittee populations in each MRP County stormwater program, and further estimated on a fiscal year basis, as detailed in Exhibit G.

(b) **Statewide Estimates.** Based on the foregoing, **during Year 2 (the fiscal year immediately following the fiscal year for which the claim was filed), the increased statewide costs resulting from the challenged items in MRP provisions C.8 and C.10 are estimated to be \$1,782,736.** These costs are detailed in Exhibit G-1 to this Amended Declaration (representing a subset of the data in Exhibit G).

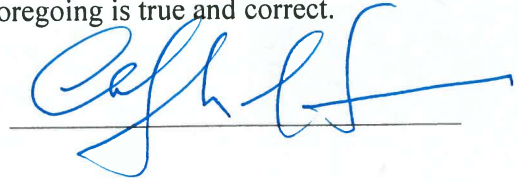
(c) Additionally, the estimated statewide costs for the entire time period covered by the MRP (Year 1-Year 7), which include expenditures related to MRP provisions C.11.f and C.12.f as incurred in **Year 3-Year 7**, are estimated to be **\$12,088,210.** These costs are detailed in Exhibit G to this Amended Declaration.

20. I am not aware of any dedicated state or federal funds, or of any other non-local agency funds, that were available to pay for these increased costs.

[Signature on Following Page]

Executed this 12th day of July, 2017 in Alameda County, California.

I declare under penalty of perjury that the foregoing is true and correct.



Chris Sommers
Managing Scientist, EOA, Inc.

EXHIBITS TO AMENDED DECLARATION OF CHRIS SOMMERS

Exhibit A: Santa Clara Valley Program Costs to Implement Provision C.8 (Monitoring) of the during the term of the MRP (Jan 2010 - Dec 2015)

Exhibit B: Santa Clara Valley Program Costs to Implement Provision C.10 (Trash Load Reduction) of the during the term of the MRP (Jan 2010 - Dec 2015)

Exhibit C: Santa Clara Valley Program Costs to Implement Provision C.11.f & C.12.f (Diversions to POTWs) of the during the term of the MRP (Jan 2010 - Dec 2015)

Exhibit D: [Reserved]

Exhibit E: Actual Cost Increases to Santa Clara Valley Permittees during each Fiscal Year (FY) of the MRP for Implementation of Program-led Tasks Required by the MRP (Jan 2010 - Dec 2015)

Exhibit E-1: Actual Cost Increases to Santa Clara Valley Permittees *(FY 2009-2010)*

Exhibit E-2: Actual Cost Increases to Santa Clara Valley Permittees *(FY 2010-2011)*

Exhibit F: [Reserved]

Exhibit G: Estimated State (MRP)-wide Costs by Fiscal Year (FY) for each County for Implementation of Program-led Tasks Required by the MRP (Jan 2010 – Dec 2015)

Exhibit G-1: Estimated State (MRP)-wide Costs for each County for Implementation of Program-led Tasks Required by the MRP *(FY 2010-2011)*

Exhibit G-2: Estimated State (MRP)-wide Costs for each County for Implementation of Program-led Tasks Required by the MRP *(FY 2011-2012)*

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT A - Santa Clara Valley Program Costs to Implement Provision C.8 (Monitoring) of the during the term of the MRP (Jan 2010 - Dec 2015).

MRP Provision	SCVURPPP Program Costs by Fiscal Year (FY)							Totals
	FY 09-10 (Jan-June 2010)	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 (July - Dec 2015)	
Monitoring (Provision C.8)								
C.8.b - SF Estuary Receiving Water Monitoring								
Average Annual Costs - Prior Permit	\$94,972	\$189,943	\$189,943	\$189,943	\$189,943	\$189,943	\$94,972	\$1,139,658
Annual Costs - MRP	\$94,972	\$204,780	\$204,780	\$204,780	\$210,000	\$214,325	\$110,314	\$1,243,950
Increased Costs	\$0	\$14,837	\$14,837	\$14,837	\$20,057	\$24,382	\$15,342	\$104,292
C.8.c - Status Monitoring/Rotating Watersheds								
Average Annual Costs - Prior Permit	\$123,168	\$246,335	\$246,335	\$246,335	\$246,335	\$246,335	\$123,168	\$1,478,010
Annual Costs - MRP	\$184,433	\$368,865	\$368,865	\$368,865	\$380,050	\$389,551	\$199,645	\$2,260,274
Increased Costs	\$61,265	\$122,530	\$122,530	\$122,530	\$133,715	\$143,216	\$76,478	\$782,264
C.8.d - Monitoring Projects								
Average Annual Costs - Prior Permit	\$11,903	\$23,806	\$23,806	\$23,806	\$23,806	\$23,806	\$11,903	\$142,836
Annual Costs - MRP	\$20,000	\$85,000	\$85,000	\$85,000	\$85,000	\$87,125	\$44,652	\$491,777
Increased Costs	\$8,097	\$61,194	\$61,194	\$61,194	\$61,194	\$63,319	\$32,749	\$348,941
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP	\$0	\$156,460	\$156,460	\$233,040	\$237,920	\$243,868	\$100,000	\$1,127,748
Increased Costs	\$0	\$156,460	\$156,460	\$233,040	\$237,920	\$243,868	\$100,000	\$1,127,748
C.8.f - Citizen Monitoring and Participation								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,250	\$5,253	\$55,503
Increased Costs	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,250	\$5,253	\$55,503
C.8.g - Reporting								
Average Annual Costs - Prior Permit	\$25,992	\$51,984	\$51,984	\$51,984	\$51,984	\$51,984	\$25,992	\$311,904
Annual Costs - MRP	\$30,000	\$105,000	\$60,000	\$60,000	\$80,000	\$60,000	\$30,000	\$425,000
Increased Costs	\$4,008	\$53,016	\$8,016	\$8,016	\$28,016	\$8,016	\$4,008	\$113,096
C.8.h - Monitoring Protocols and Data Quality								
Average Annual Costs - Prior Permit	\$24,822	\$49,644	\$49,644	\$49,644	\$49,644	\$49,644	\$24,822	\$297,864
Annual Costs - MRP	\$25,000	\$50,000	\$50,000	\$50,000	\$65,000	\$66,625	\$68,291	\$374,916
Increased Costs	\$178	\$356	\$356	\$356	\$15,356	\$16,981	\$43,469	\$77,052
Total Costs for Program-led Monitoring Activities - Prior Permit	\$280,856	\$561,712	\$561,712	\$561,712	\$561,712	\$561,712	\$280,856	\$3,370,272
Total Costs for Program-led Monitoring Activities - MRP	\$354,404	\$980,105	\$935,105	\$1,011,685	\$1,067,970	\$1,071,744	\$558,154	\$5,979,167
Total Increased Costs for Monitoring (Provision C.8)	\$73,548	\$418,393	\$373,393	\$449,973	\$506,258	\$510,032	\$277,298	\$2,608,895

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT B - Santa Clara Valley Program Costs to Implement Provision C.10 (Trash Load Reduction) of the during the term of the MRP (Jan 2010 - Dec 2015).

MRP Provision	SCVURPPP Program Costs by Fiscal Year (FY)							Totals
	FY 09-10 (Jan-June 2010)	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 (July - Dec 2015)	
Trash Load Reduction (Provision C.10)								
C.10.a - Short-Term Trash Load Reduction								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP	\$25,000	\$140,000	\$135,000	\$100,000	\$60,000	\$175,000	\$98,063	\$733,063
Increased Costs	\$25,000	\$140,000	\$135,000	\$100,000	\$60,000	\$175,000	\$98,063	\$733,063
C.10.b - Trash Hot Spot Selection and Cleanup								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP	\$15,000	\$50,000	\$40,000	\$30,000	\$20,000	\$20,000	\$10,250	\$185,250
Increased Costs	\$15,000	\$50,000	\$40,000	\$30,000	\$20,000	\$20,000	\$10,250	\$185,250
C.10.c - Long-Term Trash Reduction Plan								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP	\$0	\$0	\$0	\$30,000	\$65,000	\$50,000	\$25,625	\$170,625
Increased Costs	\$0	\$0	\$0	\$30,000	\$65,000	\$50,000	\$25,625	\$170,625
Total Costs for Program-led Trash Activities - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs for Program-led Trash Activities - MRP	\$40,000	\$190,000	\$175,000	\$160,000	\$145,000	\$245,000	\$133,938	\$1,088,938
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$40,000	\$190,000	\$175,000	\$160,000	\$145,000	\$245,000	\$133,938	\$1,088,938

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT C - Santa Clara Valley Program Costs to Implement Provision C.11f & C.12f (Diversions to POTWs) of the during the term of the MRP (Jan 2010 - Dec 2015).

MRP Provision	SCVURPPP Program Costs by Fiscal Year (FY)							Totals
	FY 09-10 (Jan-June 2010)	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16 (July - Dec 2015)	
Mercury and PCB Control Programs								
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs								
Average Annual Costs - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Costs - MRP			\$150,000	\$95,000	\$70,000	\$70,000	\$37,500	\$422,500
Increased Costs	\$0	\$0	\$150,000	\$95,000	\$70,000	\$70,000	\$37,500	\$422,500
Total Costs for Program-led Diversion to POTW Activities - Prior Permit	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs for Program-led Diversion to POTA Activities - MRP	\$0	\$0	\$150,000	\$95,000	\$70,000	\$70,000	\$37,500	\$422,500
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$0	\$0	\$150,000	\$95,000	\$70,000	\$70,000	\$37,500	\$422,500

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT E - Actual Cost Increases to Santa Clara Valley Permittees during each Fiscal Year (FY) of the MRP for Implementation of Program-led Tasks Required by the MRP (Jan 2010 - Dec 2015).

MRP Provision	SCVURPPP Total Increased Costs	Costs to Permittees during Term of the MRP for Implementation of Program-led Tasks Required by the MRP															
		Campbell	Cupertino	Los Altos	Los Altos Hills	Los Gatos	Milpitas	Monte Sereno	Mountain View	Palo Alto	San Jose	Santa Clara	Saratoga	Sunnyvale	Santa Clara County	SCVWD	Totals
% of Program Costs		1.88%	2.46%	1.59%	0.43%	1.74%	2.75%	0.14%	3.91%	4.06%	30.01%	6.23%	1.59%	7.25%	5.94%	30.02%	
Monitoring (Provision C.8)																	
C.8.b - SF Estuary Receiving Water Monitoring																	
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$14,837	\$279	\$365	\$236	\$64	\$258	\$408	\$21	\$580	\$602	\$4,453	\$924	\$236	\$1,076	\$881	\$4,454	\$14,837
FY 11-12	\$14,837	\$279	\$365	\$236	\$64	\$258	\$408	\$21	\$580	\$602	\$4,453	\$924	\$236	\$1,076	\$881	\$4,454	\$14,837
FY 12-13	\$14,837	\$279	\$365	\$236	\$64	\$258	\$408	\$21	\$580	\$602	\$4,453	\$924	\$236	\$1,076	\$881	\$4,454	\$14,837
FY 13-14	\$20,057	\$377	\$493	\$319	\$86	\$349	\$552	\$28	\$784	\$814	\$6,019	\$1,250	\$319	\$1,454	\$1,191	\$6,021	\$20,057
FY 14-15	\$24,382	\$458	\$600	\$388	\$105	\$424	\$671	\$34	\$953	\$990	\$7,317	\$1,519	\$388	\$1,768	\$1,448	\$7,319	\$24,382
FY 15-16 (July - Dec 2015)	\$15,342	\$288	\$377	\$244	\$66	\$267	\$422	\$21	\$600	\$623	\$4,604	\$956	\$244	\$1,112	\$911	\$4,606	\$15,342
C.8.c - Status Monitoring/Rotating Watersheds																	
FY 09-10 (Jan-June 2010)	\$61,265	\$1,152	\$1,507	\$974	\$263	\$1,066	\$1,685	\$86	\$2,395	\$2,487	\$18,386	\$3,817	\$974	\$4,442	\$3,639	\$18,392	\$61,265
FY 10-11	\$122,530	\$2,304	\$3,014	\$1,948	\$527	\$2,132	\$3,370	\$172	\$4,791	\$4,975	\$36,771	\$7,634	\$1,948	\$8,883	\$7,278	\$36,784	\$122,530
FY 11-12	\$122,530	\$2,304	\$3,014	\$1,948	\$527	\$2,132	\$3,370	\$172	\$4,791	\$4,975	\$36,771	\$7,634	\$1,948	\$8,883	\$7,278	\$36,784	\$122,530
FY 12-13	\$122,530	\$2,304	\$3,014	\$1,948	\$527	\$2,132	\$3,370	\$172	\$4,791	\$4,975	\$36,771	\$7,634	\$1,948	\$8,883	\$7,278	\$36,784	\$122,530
FY 13-14	\$133,715	\$2,514	\$3,289	\$2,126	\$575	\$2,327	\$3,677	\$187	\$5,228	\$5,429	\$40,128	\$8,330	\$2,126	\$9,694	\$7,943	\$40,141	\$133,715
FY 14-15	\$143,216	\$2,692	\$3,523	\$2,277	\$616	\$2,492	\$3,938	\$201	\$5,600	\$5,815	\$42,979	\$8,922	\$2,277	\$10,383	\$8,507	\$42,993	\$143,216
FY 15-16 (July - Dec 2015)	\$76,478	\$1,438	\$1,881	\$1,216	\$329	\$1,331	\$2,103	\$107	\$2,990	\$3,105	\$22,951	\$4,765	\$1,216	\$5,545	\$4,543	\$22,959	\$76,478
C.8.d - Monitoring Projects																	
FY 09-10 (Jan-June 2010)	\$8,097	\$152	\$199	\$129	\$35	\$141	\$223	\$11	\$317	\$329	\$2,430	\$504	\$129	\$587	\$481	\$2,431	\$8,097
FY 10-11	\$61,194	\$1,150	\$1,505	\$973	\$263	\$1,065	\$1,683	\$86	\$2,393	\$2,484	\$18,364	\$3,812	\$973	\$4,437	\$3,635	\$18,370	\$61,194
FY 11-12	\$61,194	\$1,150	\$1,505	\$973	\$263	\$1,065	\$1,683	\$86	\$2,393	\$2,484	\$18,364	\$3,812	\$973	\$4,437	\$3,635	\$18,370	\$61,194
FY 12-13	\$61,194	\$1,150	\$1,505	\$973	\$263	\$1,065	\$1,683	\$86	\$2,393	\$2,484	\$18,364	\$3,812	\$973	\$4,437	\$3,635	\$18,370	\$61,194
FY 13-14	\$61,194	\$1,150	\$1,505	\$973	\$263	\$1,065	\$1,683	\$86	\$2,393	\$2,484	\$18,364	\$3,812	\$973	\$4,437	\$3,635	\$18,370	\$61,194
FY 14-15	\$63,319	\$1,190	\$1,558	\$1,007	\$272	\$1,102	\$1,741	\$89	\$2,476	\$2,571	\$19,002	\$3,945	\$1,007	\$4,591	\$3,761	\$19,008	\$63,319
FY 15-16 (July - Dec 2015)	\$32,749	\$616	\$806	\$521	\$141	\$570	\$901	\$46	\$1,280	\$1,330	\$9,828	\$2,040	\$521	\$2,374	\$1,945	\$9,831	\$32,749
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring																	
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$156,460	\$2,941	\$3,849	\$2,488	\$673	\$2,722	\$4,303	\$219	\$6,118	\$6,352	\$46,954	\$9,747	\$2,488	\$11,343	\$9,294	\$46,969	\$156,460
FY 11-12	\$156,460	\$2,941	\$3,849	\$2,488	\$673	\$2,722	\$4,303	\$219	\$6,118	\$6,352	\$46,954	\$9,747	\$2,488	\$11,343	\$9,294	\$46,969	\$156,460
FY 12-13	\$233,040	\$4,381	\$5,733	\$3,705	\$1,002	\$4,055	\$6,409	\$326	\$9,112	\$9,461	\$69,935	\$14,518	\$3,705	\$16,895	\$13,843	\$69,959	\$233,040
FY 13-14	\$237,920	\$4,473	\$5,853	\$3,783	\$1,023	\$4,140	\$6,543	\$333	\$9,303	\$9,660	\$71,400	\$14,822	\$3,783	\$17,249	\$14,132	\$71,424	\$237,920
FY 14-15	\$243,868	\$4,585	\$5,999	\$3,878	\$1,049	\$4,243	\$6,706	\$341	\$9,535	\$9,901	\$73,185	\$15,193	\$3,878	\$17,680	\$14,486	\$73,209	\$243,868
FY 15-16 (July - Dec 2015)	\$100,000	\$1,880	\$2,460	\$1,590	\$430	\$1,740	\$2,750	\$140	\$3,910	\$4,060	\$30,010	\$6,230	\$1,590	\$7,250	\$5,940	\$30,020	\$100,000
C.8.f - Citizen Monitoring and Participation																	
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$10,000	\$188	\$246	\$159	\$43	\$174	\$275	\$14	\$391	\$406	\$3,001	\$623	\$159	\$725	\$594	\$3,002	\$10,000
FY 11-12	\$10,000	\$188	\$246	\$159	\$43	\$174	\$275	\$14	\$391	\$406	\$3,001	\$623	\$159	\$725	\$594	\$3,002	\$10,000
FY 12-13	\$10,000	\$188	\$246	\$159	\$43	\$174	\$275	\$14	\$391	\$406	\$3,001	\$623	\$159	\$725	\$594	\$3,002	\$10,000
FY 13-14	\$10,000	\$188	\$246	\$159	\$43	\$174	\$275	\$14	\$391	\$406	\$3,001	\$623	\$159	\$725	\$594	\$3,002	\$10,000
FY 14-15	\$10,250	\$193	\$252	\$163	\$44	\$178	\$282	\$14	\$401	\$416	\$3,076	\$639	\$163	\$743	\$609	\$3,077	\$10,250
FY 15-16 (July - Dec 2015)	\$5,253	\$99	\$129	\$84	\$23	\$91	\$144	\$7	\$205	\$213	\$1,576	\$327	\$84	\$381	\$312	\$1,577	\$5,253
C.8.g - Reporting																	
FY 09-10 (Jan-June 2010)	\$4,008	\$75	\$99	\$64	\$17	\$70	\$110	\$6	\$157	\$163	\$1,203	\$250	\$64	\$291	\$238	\$1,203	\$4,008
FY 10-11	\$53,016	\$997	\$1,304	\$843	\$228	\$922	\$1,458	\$74	\$2,073	\$2,152	\$15,910	\$3,303	\$843	\$3,844	\$3,149	\$15,915	\$53,016
FY 11-12	\$8,016	\$151	\$197	\$127	\$34	\$139	\$220	\$11	\$313	\$325	\$2,406	\$499	\$127	\$581	\$476	\$2,406	\$8,016
FY 12-13	\$8,016	\$151	\$197	\$127	\$34	\$139	\$220	\$11	\$313	\$325	\$2,406	\$499	\$127	\$581	\$476	\$2,406	\$8,016
FY 13-14	\$28,016	\$527	\$689	\$445	\$120	\$487	\$770	\$39	\$1,095	\$1,137	\$8,408	\$1,745	\$445	\$2,031	\$1,664	\$8,410	\$28,016
FY 14-15	\$8,016	\$151	\$197	\$127	\$34	\$139	\$220	\$11	\$313	\$325	\$2,406	\$499	\$127	\$581	\$476	\$2,406	\$8,016
FY 15-16 (July - Dec 2015)	\$4,008	\$75	\$99	\$64	\$17	\$70	\$110	\$6	\$157	\$163	\$1,203	\$250	\$64	\$291	\$238	\$1,203	\$4,008
C.8.h - Monitoring Protocols and Data Quality																	
FY 09-10 (Jan-June 2010)	\$178	\$3	\$4	\$3	\$1	\$3	\$5	\$0	\$7	\$7	\$53	\$11	\$3	\$13	\$11	\$53	\$178
FY 10-11	\$356	\$7	\$9	\$6	\$2	\$6	\$10	\$0	\$14	\$14	\$107	\$22	\$6	\$26	\$21	\$107	\$356
FY 11-12	\$356	\$7	\$9	\$6	\$2	\$6	\$10	\$0	\$14	\$14	\$107	\$22	\$6	\$26	\$21	\$107	\$356
FY 12-13	\$356	\$7	\$9	\$6	\$2	\$6	\$10	\$0	\$14	\$14	\$107	\$22	\$6	\$26	\$21	\$107	\$356
FY 13-14	\$15,356	\$299	\$378	\$244	\$66	\$267	\$422	\$21	\$600	\$623	\$4,608	\$957	\$244	\$1,113	\$912	\$4,610	\$15,356
FY 14-15	\$16,981	\$319	\$418	\$270	\$73	\$295	\$467	\$24	\$664	\$689	\$5,096	\$1,058	\$270	\$1,231	\$1,009	\$5,098	\$16,981
FY 15-16 (July - Dec 2015)	\$43,469	\$817	\$1,069	\$691	\$187	\$756	\$1,195	\$61	\$1,700	\$1,765	\$13,045	\$2,708	\$691	\$3,151	\$2,582	\$13,049	\$43,469
Total Increased Costs for Monitoring (Provision C.8)	\$2,608,895	\$49,047	\$64,179	\$41,481	\$11,218	\$45,395	\$71,745	\$3,652	\$102,008	\$105,921	\$782,929	\$162,534	\$41,481	\$189,145	\$154,968	\$783,190	\$2,608,895

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

Trash Load Reduction (Provision C.10)		Campbell	Cupertino	Los Altos	Los Altos Hills	Los Gatos	Milpitas	Monte Sereno	Mountain View	Palo Alto	San Jose	Santa Clara	Saratoga	Sunnyvale	Santa Clara County	SCVWD	Totals
C.10.a - Short-Term Trash Load Reduction																	
FY 09-10(Jan-June 2010)	\$25,000	\$470	\$615	\$398	\$108	\$435	\$688	\$35	\$978	\$1,015	\$7,503	\$1,558	\$398	\$1,813	\$1,485	\$7,505	\$25,000
FY 10-11	\$140,000	\$2,632	\$3,444	\$2,226	\$602	\$2,436	\$3,850	\$196	\$5,474	\$5,684	\$42,014	\$8,722	\$2,228	\$10,150	\$8,316	\$42,028	\$140,000
FY 11-12	\$135,000	\$2,538	\$3,321	\$2,147	\$581	\$2,349	\$3,713	\$189	\$5,279	\$5,481	\$40,514	\$8,411	\$2,147	\$9,788	\$8,019	\$40,527	\$135,000
FY 12-13	\$100,000	\$1,880	\$2,460	\$1,590	\$430	\$1,740	\$2,750	\$140	\$3,910	\$4,060	\$30,010	\$6,230	\$1,590	\$7,250	\$5,940	\$30,020	\$100,000
FY 13-14	\$60,000	\$1,128	\$1,476	\$954	\$258	\$1,044	\$1,650	\$84	\$2,346	\$2,436	\$18,006	\$3,738	\$954	\$4,350	\$3,564	\$18,012	\$60,000
FY 14-15	\$175,000	\$3,290	\$4,305	\$2,783	\$753	\$3,045	\$4,813	\$245	\$6,843	\$7,105	\$52,518	\$10,903	\$2,783	\$12,688	\$10,395	\$52,535	\$175,000
FY 15-16(July - Dec 2015)	\$98,063	\$1,844	\$2,412	\$1,559	\$422	\$1,706	\$2,697	\$137	\$3,834	\$3,981	\$29,429	\$6,109	\$1,559	\$7,110	\$5,825	\$29,438	\$98,063
C.10.b - Trash Hot Spot Selection and Cleanup																	
FY 09-10(Jan-June 2010)	\$15,000	\$282	\$369	\$239	\$65	\$261	\$413	\$21	\$587	\$609	\$4,502	\$935	\$239	\$1,088	\$891	\$4,503	\$15,000
FY 10-11	\$50,000	\$940	\$1,230	\$795	\$215	\$870	\$1,375	\$70	\$1,955	\$2,030	\$15,005	\$3,115	\$795	\$3,625	\$2,970	\$15,010	\$50,000
FY 11-12	\$40,000	\$752	\$984	\$636	\$172	\$696	\$1,100	\$56	\$1,564	\$1,624	\$12,004	\$2,492	\$636	\$2,900	\$2,376	\$12,008	\$40,000
FY 12-13	\$30,000	\$564	\$738	\$477	\$129	\$522	\$825	\$42	\$1,173	\$1,218	\$9,003	\$1,869	\$477	\$2,175	\$1,782	\$9,006	\$30,000
FY 13-14	\$20,000	\$376	\$492	\$318	\$86	\$348	\$550	\$28	\$782	\$812	\$6,002	\$1,246	\$318	\$1,450	\$1,188	\$6,004	\$20,000
FY 14-15	\$20,000	\$376	\$492	\$318	\$86	\$348	\$550	\$28	\$782	\$812	\$6,002	\$1,246	\$318	\$1,450	\$1,188	\$6,004	\$20,000
FY 15-16(July - Dec 2015)	\$10,250	\$193	\$252	\$163	\$44	\$178	\$282	\$14	\$401	\$416	\$3,076	\$639	\$163	\$743	\$609	\$3,077	\$10,250
C.10.c - Long-Term Trash Reduction Plan																	
FY 09-10(Jan-June 2010)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 11-12	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 12-13	\$30,000	\$564	\$738	\$477	\$129	\$522	\$825	\$42	\$1,173	\$1,218	\$9,003	\$1,869	\$477	\$2,175	\$1,782	\$9,006	\$30,000
FY 13-14	\$65,000	\$1,222	\$1,599	\$1,034	\$280	\$1,131	\$1,788	\$91	\$2,542	\$2,639	\$19,507	\$4,050	\$1,034	\$4,713	\$3,861	\$19,513	\$65,000
FY 14-15	\$50,000	\$940	\$1,230	\$795	\$215	\$870	\$1,375	\$70	\$1,955	\$2,030	\$15,005	\$3,115	\$795	\$3,625	\$2,970	\$15,010	\$50,000
FY 15-16(July - Dec 2015)	\$25,625	\$482	\$630	\$407	\$110	\$446	\$705	\$36	\$1,002	\$1,040	\$7,690	\$1,596	\$407	\$1,858	\$1,522	\$7,693	\$25,625
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$1,088,938	\$20,472	\$26,788	\$17,314	\$4,682	\$18,948	\$29,946	\$1,525	\$42,577	\$44,211	\$326,790	\$67,841	\$17,314	\$78,948	\$64,683	\$326,899	\$1,088,938
Mercury and PCB Control Programs																	
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs																	
FY 09-10(Jan-June 2010)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FY 11-12	\$150,000	\$2,820	\$3,690	\$2,385	\$645	\$2,610	\$4,125	\$210	\$5,865	\$6,090	\$45,015	\$9,345	\$2,385	\$10,875	\$8,910	\$45,030	\$150,000
FY 12-13	\$95,000	\$1,786	\$2,337	\$1,511	\$409	\$1,653	\$2,613	\$133	\$3,715	\$3,857	\$28,510	\$5,919	\$1,511	\$6,888	\$5,643	\$28,519	\$95,000
FY 13-14	\$70,000	\$1,316	\$1,722	\$1,113	\$301	\$1,218	\$1,925	\$98	\$2,737	\$2,842	\$21,007	\$4,361	\$1,113	\$5,075	\$4,158	\$21,014	\$70,000
FY 14-15	\$70,000	\$1,316	\$1,722	\$1,113	\$301	\$1,218	\$1,925	\$98	\$2,737	\$2,842	\$21,007	\$4,361	\$1,113	\$5,075	\$4,158	\$21,014	\$70,000
FY 15-16(July - Dec 2015)	\$37,500	\$705	\$923	\$596	\$161	\$653	\$1,031	\$53	\$1,466	\$1,523	\$11,254	\$2,336	\$596	\$2,719	\$2,228	\$11,258	\$37,500
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$422,500	\$7,943	\$10,394	\$6,718	\$1,817	\$7,352	\$11,619	\$592	\$16,520	\$17,154	\$126,792	\$26,322	\$6,718	\$30,631	\$25,097	\$126,835	\$422,500
Grand Total Increased Costs																	
Grand Total Increased Costs	\$4,120,332	\$77,462	\$101,360	\$65,513	\$17,717	\$71,694	\$113,309	\$5,768	\$161,105	\$167,285	\$1,236,512	\$256,697	\$65,513	\$298,724	\$244,748	\$1,236,924	\$4,120,332

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT E-1 - Actual Cost Increases to Santa Clara Valley Permittees for Implementation of Program-led Tasks Required by the MRP (FY 2009-2010)

MRP Provision	SCVURPPP Total Increased Costs	Costs to Permittees for Implementation of Program-led Tasks Required by the MRP	
		San Jose	Santa Clara County
<i>% of Program Costs</i>		<i>30.01%</i>	<i>5.94%</i>
Monitoring (Provision C.8)			
C.8.b - SF Estuary Receiving Water Monitoring			
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0
C.8.c - Status Monitoring/Rotating Watersheds			
FY 09-10 (Jan-June 2010)	\$61,265	\$18,386	\$3,639
C.8.d - Monitoring Projects			
FY 09-10 (Jan-June 2010)	\$8,097	\$2,430	\$481
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring			
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0
C.8.f - Citizen Monitoring and Participation			
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0
C.8.g - Reporting			
FY 09-10 (Jan-June 2010)	\$4,008	\$1,203	\$238
C.8.h - Monitoring Protocols and Data Quality			
FY 09-10 (Jan-June 2010)	\$178	\$53	\$11
Total Increased Costs for Monitoring (Provision C.8)	\$73,548	\$22,072	\$4,369
Trash Load Reduction (Provision C.10)		San Jose	Santa Clara County
C.10.a - Short-Term Trash Load Reduction			
FY 09-10 (Jan-June 2010)	\$25,000	\$7,503	\$1,485
C.10.b - Trash Hot Spot Selection and Cleanup			
FY 09-10 (Jan-June 2010)	\$15,000	\$4,502	\$891
C.10.c - Long-Term Trash Reduction Plan			
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$40,000	\$12,004	\$2,376
Mercury and PCB Control Programs		San Jose	Santa Clara County
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs			
FY 09-10 (Jan-June 2010)	\$0	\$0	\$0
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$0	\$0	\$0
		San Jose	Santa Clara County
Grand Total Increased Costs - FY 2009-2010	\$113,548	\$34,076	\$6,745

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT E-2 - Actual Cost Increases to Santa Clara Valley Permittees for Implementation of Program-led Tasks Required by the MRP (FY 2010-2011)

MRP Provision	SCVURPPP Total Increased Costs	Costs to Permittees for Implementation of Program-led Tasks Required by the MRP	
		San Jose	Santa Clara County
<i>% of Program Costs</i>		<i>30.01%</i>	<i>5.94%</i>
Monitoring (Provision C.8)			
C.8.b - SF Estuary Receiving Water Monitoring			
FY 10-11	\$14,837	\$4,453	\$881
C.8.c - Status Monitoring/Rotating Watersheds			
FY 10-11	\$122,530	\$36,771	\$7,278
C.8.d - Monitoring Projects			
FY 10-11	\$61,194	\$18,364	\$3,635
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring			
FY 10-11	\$156,460	\$46,954	\$9,294
C.8.f - Citizen Monitoring and Participation			
FY 10-11	\$10,000	\$3,001	\$594
C.8.g - Reporting			
FY 10-11	\$53,016	\$15,910	\$3,149
C.8.h - Monitoring Protocols and Data Quality			
FY 10-11	\$356	\$107	\$21
Total Increased Costs for Monitoring (Provision C.8)	\$418,393	\$125,560	\$24,853
Trash Load Reduction (Provision C.10)		San Jose	Santa Clara County
C.10.a - Short-Term Trash Load Reduction			
FY 10-11	\$140,000	\$42,014	\$8,316
C.10.b - Trash Hot Spot Selection and Cleanup			
FY 10-11	\$50,000	\$15,005	\$2,970
C.10.c - Long-Term Trash Reduction Plan			
FY 10-11	\$0	\$0	\$0
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$190,000	\$57,019	\$11,286
Mercury and PCB Control Programs		San Jose	Santa Clara County
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs			
FY 10-11	\$0	\$0	\$0
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$0	\$0	\$0
		San Jose	Santa Clara County
Grand Total Increased Costs - FY 2010-2011	\$608,393	\$182,579	\$36,139

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT G - Estimated State (MRP)-wide Costs by Fiscal Year (FY) for each County for Implementation of Program-led Tasks Required by the MRP (Jan 2010 - Dec 2015).

MRP Provision	SCVURPPP Total Increased Costs	Total Increased Costs per Capita (Based on SCVURPPP Total Increased Costs and Population)	Costs to Permittees during Term of the MRP for Implementation of Program-led Tasks Required by the MRP (by County)					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
			1,534,551	846,660	739,469	1,745,412	254,589	
<i>Populations</i>								
Monitoring (Provision C.8)								
C.8.b - SF Estuary Receiving Water Monitoring								
FY 09-10(Jan-June 2010)	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$14,837	\$0.01	\$13,045	\$7,197	\$6,286	\$14,837	\$2,164	\$43,529
FY 11-12	\$14,837	\$0.01	\$13,045	\$7,197	\$6,286	\$14,837	\$2,164	\$43,529
FY 12-13	\$14,837	\$0.01	\$13,045	\$7,197	\$6,286	\$14,837	\$2,164	\$43,529
FY 13-14	\$20,057	\$0.01	\$17,634	\$9,729	\$8,497	\$20,057	\$2,926	\$58,843
FY 14-15	\$24,382	\$0.01	\$21,436	\$11,827	\$10,330	\$24,382	\$3,556	\$71,532
FY 15-16(July - Dec 2015)	\$15,342	\$0.01	\$13,489	\$7,442	\$6,500	\$15,342	\$2,238	\$45,010
C.8.c - Status Monitoring/Rotating Watersheds								
FY 09-10(Jan-June 2010)	\$61,265	\$0.04	\$53,864	\$29,718	\$25,956	\$61,265	\$8,936	\$179,739
FY 10-11	\$122,530	\$0.07	\$107,727	\$59,437	\$51,912	\$122,530	\$17,872	\$359,478
FY 11-12	\$122,530	\$0.07	\$107,727	\$59,437	\$51,912	\$122,530	\$17,872	\$359,478
FY 12-13	\$122,530	\$0.07	\$107,727	\$59,437	\$51,912	\$122,530	\$17,872	\$359,478
FY 13-14	\$133,715	\$0.08	\$117,561	\$64,862	\$56,650	\$133,715	\$19,504	\$392,292
FY 14-15	\$143,216	\$0.08	\$125,914	\$69,471	\$60,676	\$143,216	\$20,890	\$420,166
FY 15-16(July - Dec 2015)	\$76,478	\$0.04	\$67,238	\$37,098	\$32,401	\$76,478	\$11,155	\$224,369
C.8.d - Monitoring Projects								
FY 09-10(Jan-June 2010)	\$8,097	\$0.00	\$7,119	\$3,928	\$3,430	\$8,097	\$1,181	\$23,755
FY 10-11	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
FY 11-12	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
FY 12-13	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
FY 13-14	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
FY 14-15	\$63,319	\$0.04	\$55,670	\$30,715	\$26,826	\$63,319	\$9,236	\$185,765
FY 15-16(July - Dec 2015)	\$32,749	\$0.02	\$28,792	\$15,886	\$13,874	\$32,749	\$4,777	\$96,078
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring								
FY 09-10(Jan-June 2010)	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$156,460	\$0.09	\$137,558	\$75,895	\$66,287	\$156,460	\$22,822	\$459,022
FY 11-12	\$156,460	\$0.09	\$137,558	\$75,895	\$66,287	\$156,460	\$22,822	\$459,022
FY 12-13	\$233,040	\$0.13	\$204,887	\$113,042	\$98,731	\$233,040	\$33,992	\$683,692
FY 13-14	\$237,920	\$0.14	\$209,177	\$115,410	\$100,798	\$237,920	\$34,703	\$698,009
FY 14-15	\$243,868	\$0.14	\$214,407	\$118,295	\$103,318	\$243,868	\$35,571	\$715,459
FY 15-16(July - Dec 2015)	\$100,000	\$0.06	\$87,919	\$48,508	\$42,366	\$100,000	\$14,586	\$293,380
C.8.f - Citizen Monitoring and Participation								
FY 09-10(Jan-June 2010)	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
FY 11-12	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
FY 12-13	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
FY 13-14	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
FY 14-15	\$10,250	\$0.01	\$9,012	\$4,972	\$4,343	\$10,250	\$1,495	\$30,071
FY 15-16(July - Dec 2015)	\$5,253	\$0.00	\$4,619	\$2,548	\$2,226	\$5,253	\$766	\$15,412
C.8.g - Reporting								
FY 09-10(Jan-June 2010)	\$4,008	\$0.00	\$3,524	\$1,944	\$1,698	\$4,008	\$585	\$11,759
FY 10-11	\$53,016	\$0.03	\$46,611	\$25,717	\$22,461	\$53,016	\$7,733	\$155,538
FY 11-12	\$8,016	\$0.00	\$7,048	\$3,888	\$3,396	\$8,016	\$1,169	\$23,517
FY 12-13	\$8,016	\$0.00	\$7,048	\$3,888	\$3,396	\$8,016	\$1,169	\$23,517
FY 13-14	\$28,016	\$0.02	\$24,631	\$13,590	\$11,869	\$28,016	\$4,086	\$82,193
FY 14-15	\$8,016	\$0.00	\$7,048	\$3,888	\$3,396	\$8,016	\$1,169	\$23,517
FY 15-16(July - Dec 2015)	\$4,008	\$0.00	\$3,524	\$1,944	\$1,698	\$4,008	\$585	\$11,759
C.8.h - Monitoring Protocols and Data Quality								
FY 09-10(Jan-June 2010)	\$178	\$0.00	\$156	\$86	\$75	\$178	\$26	\$522
FY 10-11	\$356	\$0.00	\$313	\$173	\$151	\$356	\$52	\$1,044
FY 11-12	\$356	\$0.00	\$313	\$173	\$151	\$356	\$52	\$1,044
FY 12-13	\$356	\$0.00	\$313	\$173	\$151	\$356	\$52	\$1,044
FY 13-14	\$15,356	\$0.01	\$13,501	\$7,449	\$6,506	\$15,356	\$2,240	\$45,051
FY 14-15	\$16,981	\$0.01	\$14,930	\$8,237	\$7,194	\$16,981	\$2,477	\$49,819

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

MRP Provision	SCVURPPP Total Increased Costs	Total Increased Costs per Capita (Based on SCVURPPP Total Increased Costs and Population)	Costs to Permittees during Term of the MRP for Implementation of Program-led Tasks Required by the MRP (by County)					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
			1,534,551	846,660	739,469	1,745,412	254,589	
Populations								
FY 15-16(July - Dec 2015)	\$43,469	\$0.02	\$38,217	\$21,086	\$18,416	\$43,469	\$6,340	\$127,528
Total Increased Costs for Monitoring (Provision C.8)	\$2,608,895		\$2,293,718	\$1,265,516	\$1,105,296	\$2,608,895	\$380,538	\$7,653,963
Trash Load Reduction (Provision C.10)			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	Totals
C.10.a - Short-Term Trash Load Reduction								
FY 09-10(Jan-June 2010)	\$25,000	\$0.01	\$21,980	\$12,127	\$10,592	\$25,000	\$3,647	\$73,345
FY 10-11	\$140,000	\$0.08	\$123,087	\$67,911	\$59,313	\$140,000	\$20,421	\$410,731
FY 11-12	\$135,000	\$0.08	\$118,691	\$65,485	\$57,195	\$135,000	\$19,691	\$396,062
FY 12-13	\$100,000	\$0.06	\$87,919	\$48,508	\$42,366	\$100,000	\$14,586	\$293,380
FY 13-14	\$60,000	\$0.03	\$52,751	\$29,105	\$25,420	\$60,000	\$8,752	\$176,028
FY 14-15	\$175,000	\$0.10	\$153,858	\$84,889	\$74,141	\$175,000	\$25,526	\$513,414
FY 15-16(July - Dec 2015)	\$98,063	\$0.06	\$86,216	\$47,568	\$41,546	\$98,063	\$14,304	\$287,695
C.10.b - Trash Hot Spot Selection and Cleanup								
FY 09-10(Jan-June 2010)	\$15,000	\$0.01	\$13,188	\$7,276	\$6,355	\$15,000	\$2,188	\$44,007
FY 10-11	\$50,000	\$0.03	\$43,960	\$24,254	\$21,183	\$50,000	\$7,293	\$146,690
FY 11-12	\$40,000	\$0.02	\$35,168	\$19,403	\$16,947	\$40,000	\$5,834	\$117,352
FY 12-13	\$30,000	\$0.02	\$26,376	\$14,552	\$12,710	\$30,000	\$4,376	\$88,014
FY 13-14	\$20,000	\$0.01	\$17,584	\$9,702	\$8,473	\$20,000	\$2,917	\$58,676
FY 14-15	\$20,000	\$0.01	\$17,584	\$9,702	\$8,473	\$20,000	\$2,917	\$58,676
FY 15-16(July - Dec 2015)	\$10,250	\$0.01	\$9,012	\$4,972	\$4,343	\$10,250	\$1,495	\$30,071
C.10.c - Long-Term Trash Reduction Plan								
FY 09-10(Jan-June 2010)	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 11-12	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 12-13	\$30,000	\$0.02	\$26,376	\$14,552	\$12,710	\$30,000	\$4,376	\$88,014
FY 13-14	\$65,000	\$0.04	\$57,147	\$31,530	\$27,538	\$65,000	\$9,481	\$190,697
FY 14-15	\$50,000	\$0.03	\$43,960	\$24,254	\$21,183	\$50,000	\$7,293	\$146,690
FY 15-16(July - Dec 2015)	\$25,625	\$0.01	\$22,529	\$12,430	\$10,856	\$25,625	\$3,738	\$75,178
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$1,088,938		\$957,384	\$528,219	\$461,344	\$1,088,938	\$158,834	\$3,194,719
Mercury and PCB Control Programs			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	Totals
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs								
FY 09-10(Jan-June 2010)	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 10-11	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
FY 11-12	\$150,000	\$0.09	\$131,879	\$72,762	\$63,550	\$150,000	\$21,879	\$440,069
FY 12-13	\$95,000	\$0.05	\$83,523	\$46,082	\$40,248	\$95,000	\$13,857	\$278,711
FY 13-14	\$70,000	\$0.04	\$61,543	\$33,955	\$29,657	\$70,000	\$10,210	\$205,366
FY 14-15	\$70,000	\$0.04	\$61,543	\$33,955	\$29,657	\$70,000	\$10,210	\$205,366
FY 15-16(July - Dec 2015)	\$37,500	\$0.02	\$32,970	\$18,190	\$15,887	\$37,500	\$5,470	\$110,017
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$422,500		\$371,458	\$204,945	\$178,998	\$422,500	\$61,627	\$1,239,528
Grand Total Increased Costs			\$3,622,560	\$1,998,680	\$1,745,638	\$4,120,332	\$600,999	\$12,088,210

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT G-1 - Estimated State (MRP)-wide Costs by Fiscal Year (FY) for each County for Implementation of Program-led Tasks Required by the MRP (FY 2010-2011)

MRP Provision	SCVURPPP Total Increased Costs	Total Increased Costs per Capita (Based on SCVURPPP Total Increased Costs and Population)	Costs to Permittees during Term of the MRP for Implementation of Program-led Tasks Required by the MRP (by County)					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
<i>Populations</i>			1,534,551	846,660	739,469	1,745,412	254,589	
Monitoring (Provision C.8)								
C.8.b - SF Estuary Receiving Water Monitoring								
FY 10-11	\$14,837	\$0.01	\$13,045	\$7,197	\$6,286	\$14,837		\$41,365
C.8.c - Status Monitoring/Rotating Watersheds								
FY 10-11	\$122,530	\$0.07	\$107,727	\$59,437	\$51,912	\$122,530	\$17,872	\$359,478
C.8.d - Monitoring Projects								
FY 10-11	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring								
FY 10-11	\$156,460	\$0.09	\$137,558	\$75,895	\$66,287	\$156,460	\$22,822	\$459,022
C.8.f - Citizen Monitoring and Participation								
FY 10-11	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
C.8.g - Reporting								
FY 10-11	\$53,016	\$0.03	\$46,611	\$25,717	\$22,461	\$53,016	\$7,733	\$155,538
C.8.h - Monitoring Protocols and Data Quality								
FY 10-11	\$356	\$0.00	\$313	\$173	\$151	\$356	\$52	\$1,044
Total Increased Costs for Monitoring (Provision C.8)	\$418,393		\$367,847	\$202,953	\$177,258	\$418,393	\$58,863	\$1,225,315
Trash Load Reduction (Provision C.10)								
C.10.a - Short-Term Trash Load Reduction								
FY 10-11	\$140,000	\$0.08	\$123,087	\$67,911	\$59,313	\$140,000	\$20,421	\$410,731
C.10.b - Trash Hot Spot Selection and Cleanup								
FY 10-11	\$50,000	\$0.03	\$43,960	\$24,254	\$21,183	\$50,000	\$7,293	\$146,690
C.10.c - Long-Term Trash Reduction Plan								
FY 10-11	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$190,000		\$167,046	\$92,165	\$80,496	\$190,000	\$27,714	\$557,421
Mercury and PCB Control Programs								
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs								
FY 10-11	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$0		\$0	\$0	\$0	\$0	\$0	\$0
Grand Total Increased Costs			\$534,894	\$295,118	\$257,754	\$608,393	\$86,577	\$1,782,736

EXHIBITS TO AMENDED DECLARATION OF CHIRS SOMMERS

EXHIBIT G-2 - Estimated State (MRP)-wide Costs by Fiscal Year (FY) for each County for Implementation of Program-led Tasks Required by the MRP (FY 2011-2012)

MRP Provision	SCVURPPP Total Increased Costs	Total Increased Costs per Capita (Based on SCVURPPP Total Increased Costs and Population)	Costs to Permittees during Term of the MRP for Implementation of Program-led Tasks Required by the MRP (by County)					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
Populations			1,534,551	846,660	739,469	1,745,412	254,589	
Monitoring (Provision C.8)								
C.8.b - SF Estuary Receiving Water Monitoring								
FY 11-12	\$14,837	\$0.01	\$13,045	\$7,197	\$6,286	\$14,837	\$2,164	\$43,529
C.8.c - Status Monitoring/Rotating Watersheds								
FY 11-12	\$122,530	\$0.07	\$107,727	\$59,437	\$51,912	\$122,530	\$17,872	\$359,478
C.8.d - Monitoring Projects								
FY 11-12	\$61,194	\$0.04	\$53,801	\$29,684	\$25,926	\$61,194	\$8,926	\$179,531
C.8.e - Pollutants of Concern and Long-Term Trends Monitoring								
FY 11-12	\$156,460	\$0.09	\$137,558	\$75,895	\$66,287	\$156,460	\$22,822	\$459,022
C.8.f - Citizen Monitoring and Participation								
FY 11-12	\$10,000	\$0.01	\$8,792	\$4,851	\$4,237	\$10,000	\$1,459	\$29,338
C.8.g - Reporting								
FY 11-12	\$8,016	\$0.00	\$7,048	\$3,888	\$3,396	\$8,016	\$1,169	\$23,517
C.8.h - Monitoring Protocols and Data Quality								
FY 11-12	\$356	\$0.00	\$313	\$173	\$151	\$356	\$52	\$1,044
Total Increased Costs for Monitoring (Provision C.8)	\$373,393		\$328,284	\$181,125	\$158,193	\$373,393	\$54,464	\$1,095,459
Trash Load Reduction (Provision C.10)								
C.10.a - Short-Term Trash Load Reduction								
FY 11-12	\$135,000	\$0.08	\$118,691	\$65,485	\$57,195	\$135,000	\$19,691	\$396,062
C.10.b - Trash Hot Spot Selection and Cleanup								
FY 11-12	\$40,000	\$0.02	\$35,168	\$19,403	\$16,947	\$40,000	\$5,834	\$117,352
C.10.c - Long-Term Trash Reduction Plan								
FY 11-12	\$0	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0
Total Increased Costs for Trash Load Reduction (Provision C.10)	\$175,000		\$153,858	\$84,889	\$74,141	\$175,000	\$25,526	\$513,414
Mercury and PCB Control Programs								
C.11.f & C.12.f - Diversion of Dry and First Flush Flows to POTWs								
FY 11-12	\$150,000	\$0.09	\$131,879	\$72,762	\$63,550	\$150,000	\$21,879	\$440,069
Total Increased Costs for Diversions to POTWs (Provision C.11f/12f)	\$150,000		\$131,879	\$72,762	\$63,550	\$150,000	\$21,879	\$440,069
Grand Total Increased Costs			\$614,021	\$338,775	\$295,884	\$698,393	\$101,869	\$2,048,942

DECLARATION OF KIM-ANH LE
ON BEHALF OF THE COUNTY OF SANTA CLARA, CALIFORNIA
IN SUPPORT OF RE-FILING OF TEST CLAIM 10-TC-03

I, Kim-Anh Le, declare as follows:

1. I make this declaration under penalty of perjury and based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I am employed by the County of Santa Clara, California (the “County”) as its Controller-Treasurer Division Manager.

3. I have held my current position for approximately five years. My duties include cost and state mandate costs oversight duties.

4. As part of my duties, I oversee record-keeping for invoices received by the County for services related to any mandate. Such invoices include those received for implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program (“Santa Clara Valley Program”), which are due and payable to the City of Sunnyvale, California acting in its capacity as the Santa Clara Valley Program’s fiscal agent.

5. On information and belief, I understand the Santa Clara Valley Program to be a consortium of public agencies in Santa Clara County that discharge stormwater to the San Francisco Bay and that the County has since its inception and continues to be a member of that consortium. On information and belief, I further understand that a designated “Management Committee” is the main decision-making body for the Santa Clara Valley Program and its responsibilities include approving work plans and budgets for activities undertaken on the Santa Clara Valley Program’s behalf by EOA, Inc., and that, once so approved, EOA, Inc. may issue invoices on behalf of the Santa Valley Program for the funding necessary to support the work it is directed by the Management Committee to undertake pursuant to the work plans and budgets.

6. On information and belief, I understand that the County was a permittee under the Municipal Regional Stormwater NPDES Permit, issued by the California Regional Water Quality Control Board (“**Regional Water Board**”), San Francisco Bay Region, Order No. R2-2009-0074 (NPDES Permit No. CAS612008) (the “**MRP**”). On information and belief, I also understand that the County was subject to the requirements of NPDES Permit No. CAS029718 issued by Regional Water Board Order No. 01-024 on April 21, 2001, amended by Order No 01-119 on October 17, 2001 and Order No. R2-2005-0035 on July 20, 2005 (the “**Prior Permit**”).

7. I have reviewed the amended declaration of Chris Sommers of EOA, Inc. prepared in support of the County’s and the City of San Jose, California’s Test Claims 10-TC-03 and 10-TC-05 (“**Amended Sommers Declaration**”), including its referenced exhibits. As part of this review, I reviewed the allocation formula Mr. Sommers utilized in allocating the commonly incurred costs of the Santa Clara Valley Program to its individual co-permittee members (the “**Funding Formula**”), including to the County.

8. On information and belief, I understand the Funding Formula described in the Amended Sommers Declaration to be the same funding formula that has governed and continues to govern the overall financing of the Santa Clara Program by the government agency members that comprise it, including the County. Based on my review, I believe that the Amended Sommers Declaration fully and accurately represents the share of Santa Clara Valley Program costs that were actually allocated to and incurred by the County, and used to implement the mandated activities that are the subject of test claim 10-TC-03.

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9. I have reviewed the County's accounting records concerning its prior payments to the Santa Clara Valley Program to fund the work EOA, Inc. has undertaken on its members' behalves, including the County's behalf, to implement the requirements of the MRP. These records include invoices issued from the Santa Clara Program to the County for Fiscal Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, and 2015-16 which are appended hereto as Exhibit A and incorporated by reference herein. Based on my review of such invoices and related payment records as summarized on the spreadsheet appended hereto as Exhibit B, the County previously paid in full the assessments issued to it by the Santa Clara Program for Fiscal Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, and 2015-16, including such portions of those assessments as Mr. Sommers allocated to the mandates challenged in test claims asserted by the County in 10-TC-03.

10. I have no knowledge of any non-local agency funds that were available to the County to pay for the increased costs that are the subject of the test claims in 10-TC-03.

11. I have no knowledge of any authority the County had or has to assess a fee to offset these increased costs that is not contingent upon the outcome of a vote or subject to written protest by property owners.

12. To my knowledge, the only available source to pay these costs has been the County's general purpose funds.

Executed this 14th day of July, 2017, at Santa Clara County, California.

I declare under penalty of perjury that the foregoing is true and correct.



Kim-Anh Le

Controller-Treasurer Division Manager

County of Santa Clara

EXHIBIT A

Supporting Invoices



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale, Finance Department
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2009	2009.10.14

Bill To

Attention: Clara Spaulding
Santa Clara Co. Development Services Offi
70 W. Hedding St.
East Wing, 7th Floor
San Jose, CA 95110

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount																																																			
1	FY2009/2010 Assessment: County of Santa Clara	211,867.00	211,867.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>67,056</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>87,743</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>56,712</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>15,337</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>62,062</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>98,087</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>4,993</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>139,461</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>144,811</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,070,392</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>222,211</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>56,712</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>258,592</td> </tr> <tr> <td>County of Santa Clara</td> <td>5.94%</td> <td>211,867</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,070,749</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>3,566,785</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	67,056	Cupertino	2.46%	87,743	Los Altos	1.59%	56,712	Los Altos Hills	0.43%	15,337	Los Gatos	1.74%	62,062	Milpitas	2.75%	98,087	Monte Sereno	0.14%	4,993	Mountain View	3.91%	139,461	Palo Alto	4.06%	144,811	San Jose	30.01%	1,070,392	Santa Clara	6.23%	222,211	Saratoga	1.59%	56,712	Sunnyvale	7.25%	258,592	County of Santa Clara	5.94%	211,867	SCVWD	30.02%	1,070,749	TOTAL	100.00%	3,566,785		
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Doc # 1901928513
5320100/1184/100063.

OK to pay
[Signature]
7/10/09

Vendor # 500 2068



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale, Finance Department
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2010	2010.11.14

Bill To

Attention: Clara Spaulding
Santa Clara Co. Development Services Offi
70 W. Hedding St.
East Wing, 7th Floor
San Jose, CA 95110

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount																																																			
1	Program Assessment for FY2010/2011: 5.94% of budget	222,809.00	222,809.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>70,519</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>92,275</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>59,641</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>16,129</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>65,267</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>103,152</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>5,251</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>146,664</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>152,290</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,125,674</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>233,687</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>59,641</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>271,947</td> </tr> <tr> <td>County of Santa Clara</td> <td>5.94%</td> <td>222,809</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,126,049</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>3,750,995</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	70,519	Cupertino	2.46%	92,275	Los Altos	1.59%	59,641	Los Altos Hills	0.43%	16,129	Los Gatos	1.74%	65,267	Milpitas	2.75%	103,152	Monte Sereno	0.14%	5,251	Mountain View	3.91%	146,664	Palo Alto	4.06%	152,290	San Jose	30.01%	1,125,674	Santa Clara	6.23%	233,687	Saratoga	1.59%	59,641	Sunnyvale	7.25%	271,947	County of Santa Clara	5.94%	222,809	SCVWD	30.02%	1,126,049	TOTAL	100.00%	3,750,995		
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TOTAL	100.00%	3,750,995																																																				

*Ok to pay
D. Kusler
7/9/2010*

Please make check payable to SCVURPPP, and mail to the City of Sunnyvale, Department of Finance

Total	\$222,809.00
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PO# 190228664



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale, Finance Department
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2011	2011.12.12

Bill To

Attention: Clara Spaulding
Santa Clara Co. Development Services Offi
70 W. Hedding St.
East Wing, 7th Floor
San Jose, CA 95110

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount																																																			
	FY2011/12 Program Assessment (5.94% of total budget)	234,743.00	234,743.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>74,296</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>97,217</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>62,835</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>16,993</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>68,763</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>108,677</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>5,533</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>154,520</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>160,448</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,185,968</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>246,204</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>62,835</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>286,513</td> </tr> <tr> <td>County of Santa Clara</td> <td>5.94%</td> <td>234,743</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,186,363</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>3,951,908</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	74,296	Cupertino	2.46%	97,217	Los Altos	1.59%	62,835	Los Altos Hills	0.43%	16,993	Los Gatos	1.74%	68,763	Milpitas	2.75%	108,677	Monte Sereno	0.14%	5,533	Mountain View	3.91%	154,520	Palo Alto	4.06%	160,448	San Jose	30.01%	1,185,968	Santa Clara	6.23%	246,204	Saratoga	1.59%	62,835	Sunnyvale	7.25%	286,513	County of Santa Clara	5.94%	234,743	SCVWD	30.02%	1,186,363	TOTAL	100.00%	3,951,908		
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MO# 1902639775

OKay to Pay
DW



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale, Finance Department
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2012	2012.13.14

Bill To

Attention: Clara Spaulding
Santa Clara County
Development Services Office
70 W. Hedding St.
East Wing, 7th Floor
San Jose, CA 95110

RECEIVED
PLANNING OFFICE
12 JUN 20 PM 4:29

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount																																																			
	FY12/13 Program Assessment	245,659.00	245,659.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>77,751</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>101,737</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>65,757</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>17,783</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>71,961</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>113,731</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>5,790</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>161,705</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>167,908</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,241,113</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>257,652</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>65,757</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>299,836</td> </tr> <tr> <td>County of Santa Clara</td> <td>5.94%</td> <td>245,659</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,241,527</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>4,135,666</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	77,751	Cupertino	2.46%	101,737	Los Altos	1.59%	65,757	Los Altos Hills	0.43%	17,783	Los Gatos	1.74%	71,961	Milpitas	2.75%	113,731	Monte Sereno	0.14%	5,790	Mountain View	3.91%	161,705	Palo Alto	4.06%	167,908	San Jose	30.01%	1,241,113	Santa Clara	6.23%	257,652	Saratoga	1.59%	65,757	Sunnyvale	7.25%	299,836	County of Santa Clara	5.94%	245,659	SCVWD	30.02%	1,241,527	TOTAL	100.00%	4,135,666		
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TOTAL	100.00%	4,135,666																																																				
		Total	\$245,659.00																																																			

DOC# 1902947957

OK To Pay
DW



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale
Finance/Utilities/SCVURPPP
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2013	2013.14.14

Bill To

Attention: Clara Spaulding
Santa Clara County
Development Services Office
70 W. Hedding St.
East Wing, 7th Floor
San Jose, CA 95110

RECEIVED
 JUN 10 PM 1:46
 COUNTY OF SANTA CLARA

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount																																																			
	FY 13/14 Program Assessment	253,313.00	253,313.00																																																			
	Additional Assessment for TAC Gardensoft Funds	15,000.00	15,000.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>80,173</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>104,907</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>67,806</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>18,337</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>74,203</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>117,275</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>5,970</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>166,743</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>173,140</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,279,786</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>265,680</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>67,806</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>309,178</td> </tr> <tr> <td>County of Santa Clara</td> <td>5.94%</td> <td>268,313*</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,280,212</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>4,279,531*</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	80,173	Cupertino	2.46%	104,907	Los Altos	1.59%	67,806	Los Altos Hills	0.43%	18,337	Los Gatos	1.74%	74,203	Milpitas	2.75%	117,275	Monte Sereno	0.14%	5,970	Mountain View	3.91%	166,743	Palo Alto	4.06%	173,140	San Jose	30.01%	1,279,786	Santa Clara	6.23%	265,680	Saratoga	1.59%	67,806	Sunnyvale	7.25%	309,178	County of Santa Clara	5.94%	268,313*	SCVWD	30.02%	1,280,212	TOTAL	100.00%	4,279,531*		
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Palo Alto	4.06%	173,140																																																				
San Jose	30.01%	1,279,786																																																				
Santa Clara	6.23%	265,680																																																				
Saratoga	1.59%	67,806																																																				
Sunnyvale	7.25%	309,178																																																				
County of Santa Clara	5.94%	268,313*																																																				
SCVWD	30.02%	1,280,212																																																				
TOTAL	100.00%	4,279,531*																																																				
	*Including additional Assessment for TAC Gardensoft Funds \$15,000																																																					
		Total	\$268,313.00																																																			

Doc # 190320513

OK to pay
 Danell K



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale
Finance/Utilities/SCVURPPP
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2014	2014.15.14

DOC# 1903038377

Bill To

Attention: Greg Van Wassenhove
Santa Clara County
Clean Water Program
1553 Berger Drive
Building 1
San Jose, CA 95112

*OK MR.
8/19/14*

P.O. No.	Terms
	Due on receipt

Quantity	Description	Rate	Amount
	FY14/15 Program Assessment	253,281.00	253,281.00
	FY13/14 Eco-Gardener Share	15,000.00	15,000.00
	FY14/15 Eco-Gardener Share	5,000.00	5,000.00
	Co-Permittee Percent Assessment		
	Campbell 1.88%	80,163	
	Cupertino 2.46%	104,894	
	Los Altos 1.59%	67,797	
	Los Altos Hills 0.43%	18,335	
	Los Gatos 1.74%	74,193	
	Milpitas 2.75%	117,260	
	Monte Sereno 0.14%	5,970	
	Mountain View 3.91%	166,722	
	Palo Alto 4.06%	173,118	
	San Jose 30.01%	1,279,622	
	Santa Clara 6.23%	265,646	
	Saratoga 1.59%	67,797	
	Sunnyvale 7.25%	309,139	
	County of Santa Clara* 5.94%	253,281	
	SCVWD 30.02%	1,280,048	
	TOTAL 100.00%	4,263,985	
	* Total County Assessment including second installment of \$15,000 Eco-Gardener plus FY14-15 of \$5,000 is \$273,281		
		Total	\$273,281.00



Santa Clara Valley
Urban Runoff
Pollution Prevention Program

c/o City of Sunnyvale
Finance/Utilities/SCVURPPP
P.O. Box 3707
Sunnyvale, CA 940883707

Invoice

Date	Invoice #
7/1/2015	2015.16.14

Bill To

Attention: Michael Rhoades
Santa Clara County
Clean Water Program
1553 Berger Drive
Building 1
San Jose, CA 95112

		P.O. No.	Terms																																																			
			Due on receipt																																																			
Quantity	Description	Rate	Amount																																																			
	FY 15/16 Program Assessment	264,170.00	264,170.00																																																			
	FY 15/16 Eco-Gardener Share	10,000.00	10,000.00																																																			
	<table border="0"> <tr> <td>Co-Permittee</td> <td>Percent</td> <td>Assessment</td> </tr> <tr> <td>Campbell</td> <td>1.88%</td> <td>83,609</td> </tr> <tr> <td>Cupertino</td> <td>2.46%</td> <td>109,404</td> </tr> <tr> <td>Los Altos</td> <td>1.59%</td> <td>70,712</td> </tr> <tr> <td>Los Altos Hills</td> <td>0.43%</td> <td>19,123</td> </tr> <tr> <td>Los Gatos</td> <td>1.74%</td> <td>77,383</td> </tr> <tr> <td>Milpitas</td> <td>2.75%</td> <td>122,301</td> </tr> <tr> <td>Monte Sereno</td> <td>0.14%</td> <td>6,226</td> </tr> <tr> <td>Mountain View</td> <td>3.91%</td> <td>173,890</td> </tr> <tr> <td>Palo Alto</td> <td>4.06%</td> <td>180,561</td> </tr> <tr> <td>San Jose</td> <td>30.01%</td> <td>1,334,637</td> </tr> <tr> <td>Santa Clara</td> <td>6.23%</td> <td>277,067</td> </tr> <tr> <td>Saratoga</td> <td>1.59%</td> <td>70,712</td> </tr> <tr> <td>Sunnyvale</td> <td>7.25%</td> <td>322,430</td> </tr> <tr> <td>County of Santa Clara*</td> <td>5.94%</td> <td>264,170</td> </tr> <tr> <td>SCVWD</td> <td>30.02%</td> <td>1,335,082</td> </tr> <tr> <td>TOTAL</td> <td>100.00%</td> <td>4,447,309</td> </tr> </table>	Co-Permittee	Percent	Assessment	Campbell	1.88%	83,609	Cupertino	2.46%	109,404	Los Altos	1.59%	70,712	Los Altos Hills	0.43%	19,123	Los Gatos	1.74%	77,383	Milpitas	2.75%	122,301	Monte Sereno	0.14%	6,226	Mountain View	3.91%	173,890	Palo Alto	4.06%	180,561	San Jose	30.01%	1,334,637	Santa Clara	6.23%	277,067	Saratoga	1.59%	70,712	Sunnyvale	7.25%	322,430	County of Santa Clara*	5.94%	264,170	SCVWD	30.02%	1,335,082	TOTAL	100.00%	4,447,309		
Co-Permittee	Percent	Assessment																																																				
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TOTAL	100.00%	4,447,309																																																				
<p>* Total County Assessment including \$10,000 Eco-Gardener Project is \$274,170</p>																																																						
		Total	\$274,170.00																																																			

#13 FO# 102914

PO/Vendor # 5002068
 Mat Doc # _____
 Doc # 1903932606
 Date posted 7/16/15
 GL/CC 5320100 - 5062 1/0-102914
 Warrant # _____
 Date cleared _____
 Pay code 32
 Approval Michael Rhoades

EXHIBIT B

Supporting Spreadsheet of Payments

Vendor	Document Number	Document Typing	Posting Date	Document Date	Amount in doc. curr.	Text	Cost Center	Fund	FundsCtr
5002068	1901928513	KR	7/15/2009	7/1/2009	(211,867.00)	*09-10 Contribution to SCV Pollution Prevention Pr	1184	0001	02601184
5002068	1902286664	KR	7/9/2010	7/1/2010	(222,809.00)	*FY10/11 Contribution to SCVURPollution Prevention	1184	0001	02601184
5002068	1902639775	KR	7/21/2011	7/1/2011	(234,743.00)	*FY11/12 Contrib to SCVUR Pollution Prev Prog	1184	0001	02601184
5002068	1902947950	KR	7/10/2012	7/1/2012	(245,659.00)	*FY12/13 Contrib to SCVUR Pollution Prev Prog	1184	0001	02601184
5002068	1903280513	KR	7/15/2013	7/1/2013	(253,313.00)	*FY13/14 Contrib to SCVURPPP	1184	0001	02601184
5002068	1903638377	KR	8/20/2014	8/20/2014	(253,281.00)	*FY14/15 Contribution to SCVURPPP	5662	0001	02625662
5002068	1903932606	KR	7/16/2015	7/16/2015	(264,170.00)	*FY15/16 Contrib to SCVURPPP	5662	0001	02625662

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 July 18, 2017, I served the:

- **Claimant (County of Santa Clara) Response to Notice of Incomplete Joint Test Claim Filing filed July 18, 2017**

*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 July 18, 2017 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: 7/14/17

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:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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