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State Mandates**

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July 18, 2017

Via e-Filing through CSM Dropbox

Heather Halsey, Executive Director
STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *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*

City of San Jose's response to April 19, 2017 Notice of Incomplete Joint Test Claim

Dear Ms. Halsey:

Here are the City of San Jose's documents in response to the Commission's April 19, 2017, Notice of Incomplete Joint Test Claim, submitted to cure San Jose's test claim 10-TC-05:

- Revised Narrative Statement (to replace Narrative Statement)
- Revised Exhibit 3 (to replace Exhibit 3)
- Amended Declaration of Chris Sommers from the Santa Clara Valley Urban Runoff Pollution Prevention Program, and Exhibits A-C, E-E-2; G-G-2 thereto (to replace Declaration of Chris Sommers and its Exhibits A through D); and


- Declaration of Napp Fukuda on behalf of San Jose and Exhibit thereto (to replace Declaration of Melody Tovar).

The City understands that the Commission will substitute these documents for the specified documents of the City's original November 2010 filing.

Thank you,

Very truly yours,

RICHARD DOYLE, City Attorney

By: 
MARGO LASKOWSKA
Senior Deputy City Attorney

Enclosures
MKL/mkl

**REVISED
NARRATIVE
STATEMENT**

**REVISED NARRATIVE STATEMENT IN SUPPORT OF TEST CLAIM
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REVISED NARRATIVE STATEMENT IN SUPPORT OF TEST CLAIM

I. INTRODUCTION

CITY OF SAN JOSE (SAN JOSE) 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 in the last year, 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 programs or otherwise required an increase in the level of stormwater pollution

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.

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, SAN JOSE 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 several categories of activities: Municipal Operations, Monitoring, Trash Load Reduction, and stormwater Diversion Studies. Each of these requirements represents an obligation SAN JOSE 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 or will impose significant financial burdens on SAN JOSE that SAN JOSE has insufficient authority to recover through the unilateral 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.⁴ 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 Any dispute about the scope of the Board's authority impose these requirements under State law is not within the scope of this Test Claim. Rather, it is the subject of a Petition for Review filed by SAN JOSE with the State Water Resources Control Board.

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

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

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.) SAN JOSE 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

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

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, SAN JOSE can provide hard copies to the Commission upon request.

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 local agency has insufficient authority to recover the costs 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, with certain limited exceptions, 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 the San Diego Decision, the Commission also discussed the impact of a newly enacted provision of section 16103 of the Water Code, which went into effect in January 2010. As the Commission explained, this new law may provide a source of fee authority under some circumstances in the future, but is of no help to permittees in the near term. (San Diego Decision at 120.) Section 16103 authorizes fees for implementation of watershed improvement plans and expressly provides that such fees are “not imposed solely as an incident of property ownership.” Cal. Water Code § 16103.

However, 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. *Id.* § 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.) SAN JOSE is unaware of the submission or consideration of any such plan that could provide a source of funding for the costs associated with complying with the new requirements in the MRP.

Moreover, on November 2, 2010, California voters approved Proposition 26. As to local governmental agencies, Proposition 26 broadly defines the term “tax” as “any levy, charge or exaction of any kind imposed by a local government” with a few exceptions. The exceptions include,

- “A charge for a specific benefit conferred or privilege granted

directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs ... of conferring the benefit or granting the privilege;”

- “A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs ... of providing the service or product;”
- “A charge imposed for the reasonable regulatory costs to a local government for issuing license and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof;”
- “A charge imposed for entrance to or use of local governmental property, or the purchase, rental or lease of local government property;”
- “A charge imposed as a condition of property development;” and
- “Assessments and property-related fees imposed in accordance with the provisions of Article XIID.”

(Proposition 26, amending California Constitution, Article XIIC.)

The local government bears the burden of proof that an exception applies, and that the amount charged is no more than necessary to cover the reasonable costs of governmental activity, and that the allocation of the costs to the payor “bears a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” (Id.)

Thus, this new legislation may further impact SAN JOSE’s ability to increase regulatory or other fees to meet requirements of the new Permit, unless it is able to establish a reasonable relationship to the payor’s burden on the stormwater system.

III. [REVISED §] THE UNFUNDED MANDATES AT ISSUE IN THIS TEST CLAIM

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

- Provision C.2—Municipal Operations
- 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 imposes 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 will impose costs beyond those which SAN JOSE is authorized to recover through the imposition of increased fees without voter approval or notice that is subject to protest.

A. Municipal Operations

The Provisions of C.2 direct SAN JOSE to control and reduce non-stormwater discharges and polluted stormwater to storm drains and watercourses during “operation, inspection, and routine repair and maintenance activities of municipal facilities and infrastructure.” Several of these provisions require a higher level of service.

1. Provision C.2 Constitutes a New Program or Higher Level of Service.

The Prior Permit identified specific areas of practices “to the maximum extent practical.” The permit acknowledges that the “‘Maximum Extent Practicable’ (MEP) “is an ever evolving, flexible and advancing concept. As knowledge about controlling urban runoff continues to evolve so does the definition of MEP.” (Ex. 2, Provision C.2.a at p. 13, n. 4.)

Under the Prior Permit, SAN JOSE was required to implement best management practices to reduce “pollutants in stormwater discharges to the maximum extent practicable” in the areas of Illicit Connection/Illegal Discharge Control; Industrial/Commercial Discharger Control; Public Streets, Roads and Highway Operation and Maintenance; Storm Drain Operation and Maintenance; Water Utility Operation and Maintenance; and New Development Planning and Procedures and Construction Inspection.

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

The Fact Sheet to the MRP cites to Federal NPDES regulation 40 CFR 122.26, *inter alia*, for its specific legal authority to impose the requirements of C.2.b. More specifically, 40 CFR 122.26 (d)(2)(iv)(A)(1) requires:

A description for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharges as a result of deicing activities.

Id. (Ex. 1 at App. I-19.)

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.

Here, MRP not only increased the scope of covered Municipal Operations but defines how SAN JOSE must operate under it. This expansion is *not required* by federal law. Regional Water Board freely chose to include mandatory BMPs in the MRP permit, rendering these provisions state mandates. (San Diego Decision at 59, 74; Los Angeles Decision at 30-31.)

The Prior Permit required SAN JOSE to develop a Management Plan with Performance Standards that address program elements. The Performance Standards must be developed through a process that includes: (1) public participation, (2) appropriate external technical input and criteria for applicability, economic feasibility, cost effectiveness, design, operation, and maintenance; and (3) measures for evaluation of effectiveness so as to achieve pollutant reduction or

pollution prevention “to the maximum extent practicable.” (Ex. 2, Provision C.2.b.)

In contrast, the New Permit imposes new, detailed BMPs, rather than allow SAN JOSE to develop performance standards with input from its own community, and considering economic feasibility, cost effectiveness or any other criteria itemized in the Prior Permit.

(i) Provision C.2.b Imposes a Higher Level of Service.

The New Permit requires that SAN JOSE include BMPs for expansive areas, including “parking lots and garages, trash areas, gas station fueling areas, sidewalk and plaza cleaning”. In addition, SAN JOSE “shall implement the BMPs included in the BASMAA’s Mobile Surface Cleaner Program”. This specific implementation requirement removes SAN JOSE’s ability to consider alternatives which may or may not be more effective in its community. (Ex. 1 at 10.)

(ii) Provision C.2.c Imposes a Higher Level of Service.

Using its discretion, SAN JOSE may have implemented control measures for “Bridge and Structure Maintenance and Graffiti Removal”, but the New Permit itemizes requirements, not in Federal Regulation, that did not exist in the Prior Permit. (Ex. 1 at 11.)

(iii) Provision C.2.e Imposes a Higher Level of Service.

Similarly, Provision C.2.e itemizes activities for rural road and public works maintenance and construction that did not exist in the Prior Permit. The New Permit imposes BMPs for erosion and sediment control measures, including developing and implementing training on technical assistance resources for rural public works by April 1, 2010. (Ex. 1, Provision C.2.e(ii)(1), p. 13.)

The Prior Permit required San Jose to develop Performance Standards for “a) management and removal of large woody debris and live vegetation from stream channels; b) streambank stabilization projects; c) road construction, maintenance and repairs in rural areas to prevent and control road-related erosion; and d) environmental permitting for rural public works activities.” (Ex. 2, Provision C.5, p. 16.)

The New Permit expands upon this language and now requires BMPs to minimize impacts on streams and wetlands including soil erosion potential as well as slope steepness and stream habitat resources. For example, now the BMPs must insure that “new or replaced culverts shall not create a migratory fish passage barrier” and damaging shotgun culverts are replaced. [Ex. 1, Provision C.2.e (ii)(2)(c),(e),(g).] SAN JOSE must develop and implement BMPs on re-grading of unpaved rural roads to slope outward where consistent with road engineering safety standards, and installation of water bars as appropriate.” (Ex. 1, Provision C.2.e (ii)(2)(f).)

Provision C.2.e goes far beyond the Prior Permit which allowed SAN JOSE discretion to develop performance standards.

(iv) **Provision C.2.f Imposes a Higher Level of Service.**

Provision C.2.f. requires SAN JOSE to prepare, implement and maintain a site specific Stormwater Pollution Prevention Program (SWPPP) for corporate yards. Although SAN JOSE implemented SWPPPs under the Prior Permit, using the criteria developed above, the New Permit now mandates that “each SWPPP shall incorporate all applicable BMPs that are described in the California Stormwater Quality Association’s Handbook for Municipal Operations and the Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003, and its addenda, as appropriate.” (Ex. 1, Provision, C.2.f(i)(1), p. 14.) The site specific SWPPPs for the corporation yards must be completed by July 1, 2010.

By creating specific obligations that must be incorporated into each SWPPP, the New Permit represents an increased level of service than that which was required under the Prior Permit.

3. **[REVISED §] SAN JOSE Incurred Significant Costs as a Result of the Increased Requirements Placed Upon Municipal Operations.**

SAN JOSE incurred significant costs as a result of the increased requirements of Provision C.2 of the MRP. These costs are stated in the declaration of NAPP FUKUDA submitted in support of this Test Claim. (Fukuda Decl. ¶9(d).) SAN JOSE incurred \$19,207 from January 1, 2010 to June 30, 2010, and \$27,543 from July 1, 2010 to June 30, 2011 in increased costs for implementation of the increased requirements of Provision C.2. (*Id.*) The assigned staff was responsible for developing and implementing a pump station monitoring program, rural roads inspection program, as well as a training program

for municipal staff on stormwater best management practices. (*Id.*)

4. **SAN JOSE Has Inadequate Fee Authority to Recover Costs Associated with Municipal Operations.**

SAN JOSE does not have adequate authority to impose a regulatory fee to recoup the costs of implementing the requirements of Provision C.2 of the MRP. There may be some limited ability to impose development related fees to recover some additional costs associated with the requirements of C.2 if a rural road is *constructed* as a part of property development. In addition, SAN JOSE has a stormwater fee that pre-dates Proposition 218. However, it cannot raise this fee without either voter approval or notice requirements subject to protest. Proposition 218 does not allow use of this fee revenue for some of the new costs associated with Provision C.2. To the extent that SAN JOSE is able to cover any of the additional C.2 costs from fee sources, this revenue will be offset in the parameters and guidelines process.

B. **Monitoring**

Provision C.8 of the MRP requires 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. (For convenience, the principles under which all of these monitoring provisions constitute a state mandate and the reasons that SAN JOSE 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 – imposes a Higher Level of Service.**

Provision C.8.b requires SAN JOSE 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 are required to participate in this monitoring program by paying their “fair share” of monitoring costs. This provision imposes 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 mandates that SAN JOSE 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 will require the Santa Clara Valley Program in which SAN JOSE participates to devote additional resources to the RMP. Program staff participation is expected to increase by roughly 2% per year in order to provide greater coordination between RMP and MRP objectives for this provision. (Declaration of Chris Sommers (“Sommers Decl.”) at ¶ 9(a)(i)(i).)

b. Provision C.8.c—Status Monitoring – Imposes a Higher Level of Service

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

This provision of the MRP imposes new, specific and detailed obligations on SAN JOSE and other Permittees in the Santa Clara Valley Program with respect to creek monitoring. Provision C.8.c of the MRP greatly expands 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 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)

(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 – Imposes a Higher Level of Service

Provision C.8.d of the MRP requires SAN JOSE 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 provides that, when status monitoring reveals a potential source of stress to the water bodies identified in Table 8.1, the Permittees are required to conduct a site-specific study to identify the stressor or source. (Ex. 1 at 71.) The study sets 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 is identified, the MRP requires 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 SAN JOSE

and other Permittees conduct these studies through the Santa Clara Valley Program, they may be 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. requires investigations into the effectiveness of BMPs. (*Id.* at 72.) SAN JOSE is required to investigate one BMP during the term of the MRP. (*Id.*)

Geomorphic Studies. Finally, Provision C.8.d.iii requires 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.)

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 are completely new to the SAN JOSE. There is 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 – Imposes a New Program

Provision C.8.e.i requires SAN JOSE 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 is 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 defines 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 sets forth explicit requirements for sampling years, minimum sampling occurrences, and sampling intervals for three categories of pollutants.

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

e. Provision C.8.e.ii—Long-Term Monitoring – Imposes a New Program.

Provision C.8.e.ii requires Long-Term monitoring at specified stations. Alternate locations are 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.) SAN JOSE and other Permittees in the Santa Clara Valley Program are 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.iii requires "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.*)

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

f. Provision C.8.e.vi—Sediment Delivery Estimate/Budget – Imposes a New Program.

Provision C.8.e.vi requires 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 must be implemented by July 1, 2012.

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

g. Provision C.8.f—Citizen Monitoring and Participation – Imposes a New Program.

Provision C.8.f requires permittees to encourage "citizen monitoring," although it does not define this term. Instead, it merely directs 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 provides no additional description or specification of what is 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.)

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

h. Provision C.8.g—Reporting –Imposes a Higher Level of Service.

Provision C.8.g.ii requires 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 requires 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 shall contain summaries of Status, Long- Term, Monitoring Projects, and Pollutants of Concern Monitoring. (*Id.*) The materials required for this submission are extensive, and include 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 requires that electronic reports be made available through a regional data center, and optionally through their web sites. SAN JOSE and other Permittees are 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.)

The Prior Permit required SAN JOSE 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 requires electronic reporting and requires 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 is new. This submission prescribes roughly similar report contents, but due to the increased number of data parameters and programs, the total level of reporting effort will increase.

i. Provision C.8.h— Monitoring Protocols and Data Quality – Imposes a Higher Level of Service.

Provision C.8.h requires 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.)

The Prior Permit makes no mention of the SWAMP program. By contrast, Provision C.8.h of the MRP requires 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 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) will also have to be developed, documented and adhered to by the Santa Clara Valley Program at all times, which requires 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 cites 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 cites 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

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

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, “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 “Copermittees 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 require SAN JOSE 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 SAN JOSE. As explained above, *Hayes v. Comm'n on State Mandates* makes it clear that only 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. *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 are *not required* by

than stormwater.

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, impose new requirements to measure specific constituents in stormwater. The level of specificity in these provisions goes 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 is 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 require the SAN JOSE 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 describes 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 cites 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 is a requirement freely chosen by the Regional Water Board and is a state mandate.

3. [REVISED §] SAN JOSE Incurred Significant Costs as a Result of the Increased Monitoring Requirements Imposed Under Provision C.8 of the MRP.

SAN JOSE incurred significant additional costs as a result of the increased monitoring requirements imposed under Provision C.8 of the MRP. SAN JOSE incurred \$22,072 and \$125,560 in additional costs for implementing these requirements for fiscal years 2009-2010 and 2010-2011, respectively, as part of the Santa Clara Valley Program. These costs are stated in the Revised Exhibit 3 to the Test Claim and in the Amended Declaration of CHRIS SOMMERS submitted by the Santa Clara Valley Program in support of this Test Claim. (Amended Sommers Decl. ¶¶16(b) & 17(b) & Exhibits E-1 & E-2 thereto.)

In addition to the costs incurred as part of the Santa Clara Valley Program, SAN JOSE incurred an increase of \$21,627 for staff resources from January 1, 2010 to June 30, 2010, and an increase of \$46,842 from July 1, 2010 to June 30, 2011, as stated in the declaration of NAPP FUKUDA attached to this Test Claim. (Fukuda Decl. ¶9(a) & exhibit thereto.) The additional work included conducting review of monitoring plans, providing field assistance to Program (EOA) staff, facilitating access to monitoring sites, and report review, among other tasks. (*Id.*) SAN JOSE also incurred \$16,890 in increased vendor costs in FY 2010-2011 for Provision C.8 requirements. (*Id.*)

4. SAN JOSE Has Inadequate Fee Authority to Recover Monitoring Costs.

SAN JOSE 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. Any increase in SAN JOSE's property based fee would trigger Proposition 218's voter approval requirement, or be subject to notice and the opportunity to protest. For this reason, Provision C.8.b does not fall within the exception of section 17556(d) of the Government Code.

C. Trash Load Reduction

Provision C.10 of the MRP requires SAN JOSE 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 may be measured. SAN JOSE must also take immediate steps to identify “trash hot spots” within its jurisdiction and to perform and document cleanup actions in those areas. Finally, SAN JOSE must 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 requires SAN JOSE 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 requires SAN JOSE to document the amount of trash currently 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.). SAN JOSE is 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 requires SAN JOSE 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 requires 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 defines “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 introduces a number of cleanup and reporting activities for SAN JOSE. SAN JOSE is 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 is provided. Provision C.10.b.i describes 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 suggests 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 provides that SAN JOSE 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 requires SAN JOSE 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 is set forth in Attachment J of the MRP.

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

Provision C.10.b.iii requires SAN JOSE 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 requires 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 requires SAN JOSE to report annually on its trash load reduction efforts and maintain records documenting these actions and their effects. Provision C.10.d.i requires 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 requires SAN JOSE to retain records and documentation of trash load reduction efforts “for review,” and requires 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 is a New Program.

The Prior Permit contained no comparable provisions. Provision C.10

clearly is a new program and each of its provisions requires a higher level of service from SAN JOSE.

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

The Fact Sheet prepared by Regional Water Board staff in connection with the MRP contains 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 describes 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 Regional Water Board's adoption of this prohibition and other provisions of the Basin Plan represent the exercise of discretion in choosing the means and manner that the federal Clean Water Act will be applied to receiving waters within its jurisdiction. The Trash Load Reduction measures in C.10 of the MRP represent a second and additional level of discretion by the Regional Water Board, which chose the means and manner by which this prohibition of the Basin Plan is applied to the Co-Permittees under the MRP. The requirements of Provision C.10 are therefore at least two steps 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 section C.10 a state, not a federal, mandate. *Hayes v. Comm'n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593. In the Los Angeles Decision, the Commission applied a similar rationale, and concluded that street-sweeping requirements designed to reduce trash in stormwater were far more specific than what was required under federal law. (Los Angeles Decision at p. 55.) The same logic applies and compels the same result with respect to the trash load reduction provisions in the MRP.

3. **[REVISED §] SAN JOSE Incurred Significant Additional Costs as the Result of the New Trash Load Reduction Requirements Imposed Under Provision C.10 of the MRP.**

SAN JOSE incurred significant additional costs as a result of the new trash load reduction requirements imposed under Provision C.10 of the MRP. SAN JOSE incurred \$12,004 and \$57,019 in implementing these requirements for fiscal years 2009-2010 and 2010-2011, respectively, as part of the Santa Clara Valley Program. (Amended Sommers Decl. ¶¶16(b) & 17(b), and Exhibits E-1 & E-2 thereto.) These costs are stated in the Revised Exhibit 3 to the Test Claim, and in the Amended SOMMERS Declaration submitted on behalf of the Santa Clara Valley Program in support of this Test Claim. (*Id.*)

In addition to the costs incurred as part of the Santa Clara Valley Program,

SAN JOSE incurred increased costs of \$139,170 for staff resources from January 1, 2010 to June 30, 2010, and \$418,945 from July 1, 2010 to June 30, 2011. (Fukuda Decl. ¶9(b) & exhibit thereto.) Those costs included San Jose Police Department labor supporting mandatory trash hotspot clean-ups. (*Id.*) The additional work included developing a City-specific short-term trash load reduction plan, implementing a trash hotspot clean-up program, participating in regional level discussions on the new requirement of Provision C.10, and other tasks. (*Id.*) SAN JOSE also incurred \$83,556 in vendor costs in fiscal year 2010-2011 for implementation of Provision C.10. (*Id.*)

4. SAN JOSE 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, SAN JOSE does not have 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).

Proposition 26, passed by voters in November of this year, requires that SAN JOSE demonstrate that the cost of the governmental activity and the allocation of the costs to the payor “bears a fair or reasonable relationship to the payor’s burdens on, or benefits derived from, a government activity.” As to the requirements of C.10, it will be difficult for SAN JOSE to meet its burden of proof regarding any payor’s creation of hot spots or pollution.

The only fee that would suffice would have to be a broad-based property fee. A new property based fee or an increase in an existing fee would

trigger Proposition 218's voter approval requirement or subject to the notice and protest procedures. For this reason, Provision C.10 does not fall within the exception of section 17556(d) of the Government Code.

D. Mercury and PCB Diversion Studies

Provisions C.11.f and C.12.f of the MRP require SAN JOSE 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 are also required to quantify and report the reductions achieved during the pilot program. (*Id.*)

SAN JOSE and other Permittees are 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 contains a virtually identical provision. (*Id.* at 99.) The results of the feasibility studies are to be used by Permittees to collectively select five pump stations and five alternates for pilot diversion studies. At least one diversion pilot program must 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 direct that the pilot studies be conducted "in industrially- dominated catchments where elevated PCB concentrations are documented. (*Id.* at 91, 99). The Permittees are 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 are new programs.

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

For purposes of establishing legal authority, the Fact Sheet lumps 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 are state, not a federal, mandates. *Hayes v. Comm'n on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593.

3. [REVISED §] SAN JOSE Incurred Significant Costs as a Result of the Diversion Studies Required Under Provisions C.11.f and C.12.f of the MRP.

SAN JOSE 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, as explained in the Amended Declaration of CHRIS SOMMERS, paragraph 15(e) and 18(b), and in Exhibit C to that declaration. Under the Santa Clara Valley Program's funding formula, SAN

JOSE is allocated 30.01% of costs for shared Program responsibilities. (Amended Sommers Decl., ¶9.) The Program's increased costs for C.11.f and C.12.f Provisions during the term of the MRP (from January 2010 to December 2015) were \$422,500. (Amended Sommers Decl., Exh. C thereto.) Therefore, at 30.01% of the Program's, SAN JOSE's allocated increased actual costs for the term of the MRP were \$126,792.

4. SAN JOSE 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 the reasons discussed herein, SAN JOSE cannot impose a broad-based property fee without Proposition 218's voter approval requirement or notice and the ability to protest. For this reason, Provisions C.11.f and C.2.f do not fall within the exception of section 17556(d) of the Government Code.

IV. [REVISED §] INCREASED COSTS INCURRED TO IMPLEMENT MANDATED ACTIVITIES

Over the five-year term of the MRP, SAN JOSE incurred significant new costs to implement and administer the new programs and higher levels of service mandated by Provisions C.2, C.8, and C.10. The Santa Clara Valley Program assessed actual and estimated costs to implement these measures on a Program-wide basis. Each Permittee's share of these mandated costs is based on an established funding formula which apportions costs among Program members based on each Permittee's total area and total population with certain minimum cost shares.

For fiscal year 2009-2010, SAN JOSE's additional costs to implement the mandated activities for Provisions C.2, C.8 and C.10 described above were **\$214,080**. That sum consisted of SAN JOSE's share of Santa Clara Valley Plan increased costs of \$34,076 plus SAN JOSE's increased staff and vendor costs of \$180,004. (Revised Exh. 3, Amended Sommers Decl. Exh. E-1, & Fukuda Decl. ¶9(a)-(c) & exhibit thereto.)

For fiscal year 2010-2011, the additional costs for Provisions C.2, C.8, and C.10 were **\$776,356**, consisting of \$182,579 of SAN JOSE's share in the Santa Clara Valley Program, and \$593,777 of SAN JOSE's increased staff and vendor costs. (Revised Exh. 3, Amended Sommers Decl. Exh. E-2, & Fukuda Decl. ¶9(a)-(c) & exhibit thereto.)

In sum, SAN JOSE's total increased costs for the two time periods were **\$990,436**.

V. [REVISED §] STATEWIDE COST ESTIMATE

The MRP relates only to a portion of the San Francisco Bay region. This Test Claim is even narrower in scope in that, for some programs, it pertains to new programs and higher levels of service imposed by the MRP on SAN JOSE directly or indirectly in the form of contributions to work that was performed jointly with other Permittees within the Santa Clara Valley Program or in other collaborative efforts, compared to the Prior Permit. Therefore, the costs relate only to SAN JOSE and other Permittees participating in the Santa Clara Valley Program. These costs are detailed in the Amended SOMMERS Declaration submitted on behalf of the Santa Clara Valley Program in support of this Test Claim. (Amended Sommers Decl. ¶19 & Exh. G, G-1 & G-2.)

VI. [REVISED §] FUNDING SOURCES

As discussed in more detail above, SAN JOSE does not have fee authority to offset these costs. With the exception of the partial potential funding source set forth below, SAN JOSE is not aware of any state, federal or non-local agency funds that are or will be available to fund these new activities. (Fukuda Decl. ¶10.)

VII. PRIOR MANDATE DETERMINATIONS

SAN JOSE 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 many of the same issues described in this Test Claim. The provisions of the MRP discussed above are analogous to several provisions in the Los Angeles and San Diego municipal stormwater permits that the Commission determined were unfunded mandates within the meaning of section 6 of Article XIII D.

VIII. [NEW §] SAN JOSE AGREES ON ALL ISSUES IN COUNTY OF SANTA CLARA'S TEST CLAIM

SAN JOSE agrees that the Permit Provisions at issue in the County of Santa Clara's Test Claim are identical to those in SAN JOSE's Test Claim, except that SAN JOSE also raises Provision C.2. (Fukuda Decl. ¶12.)

IX. CONCLUSION

Through the MRP, the California Regional Water Quality Control Board, San Francisco Bay Region has exercised its discretion to impose many new state-mandated activities and demand that SAN JOSE deliver a higher level of services than what was required under the Prior Permit. As detailed above, their development and implementation imposes substantial costs. SAN JOSE believes that the costs incurred and to be 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.

**REVISED
EXHIBIT 3**

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>		30.01%	5.94%
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

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>		30.01%	5.94%
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

**AMENDED
DECLARATION OF
CHRIS SOMMERS**

**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 \$244,7478.** 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).

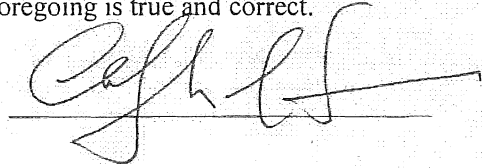
(c) Additionally, the estimated statewide costs for the entire time period covered by the MRP (Year 1-Year 7), which include expenditures related to MRP provisions C.11.f and C.12.f as incurred in **Year 3-Year 7**, are estimated to be **\$12,088,210.** These costs are detailed in Exhibit G to this Amended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

A handwritten signature in black ink, appearing to read "Chris Sommers", written over a horizontal line.

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)*

**EXHIBIT A 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).

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

**EXHIBIT B TO
AMENDED
DECLARATION OF
CHRIS SOMMERS**

EXHIBITS TO SUPPLEMENTAL 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

**EXHIBIT C TO
AMENDED
DECLARATION OF
CHRIS SOMMERS**

EXHIBITS TO SUPPLEMENTAL 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

**EXHIBIT E TO
AMENDED
DECLARATION OF
CHRIS 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															Totals
		Campbell	Cupertino	Los Altos	Los Altos Hills	Los Gatos	Millpitas	Monte Sereno	Mountain View	Palo Alto	San Jose	Santa Clara	Saratoga	Sunnyvale	Santa Clara County	SCVWD	
% 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	\$1,550	\$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	\$14,424	\$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	\$289	\$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 SUPPLEMENTAL 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	\$2,226	\$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

**EXHIBIT E-1 TO
AMENDED
DECLARATION OF
CHRIS 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>		30.01%	5.94%
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

**EXHIBIT E-2 TO
AMENDED
DECLARATION OF
CHRIS 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>		30.01%	5.94%
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

**EXHIBIT G TO
AMENDED
DECLARATION OF
CHRIS SOMMERS**

EXHIBITS TO SUPPLEMENTAL 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					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 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

EXHIBITS TO SUPPLEMENTAL 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					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
			Populations	1,534,551	846,660	739,469	1,745,412	
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
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

EXHIBITS TO SUPPLEMENTAL 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					Totals
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	
Populations			1,534,551	846,660	739,469	1,745,412	254,589	
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
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	Totals
Grand Total Increased Costs			\$3,622,560	\$1,998,680	\$1,745,638	\$4,120,332	\$600,999	\$12,088,210

**EXHIBIT G-1 TO
AMENDED
DECLARATION OF
CHRIS SOMMERS**

EXHIBITS TO SUPPLEMENTAL 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					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 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)			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	Totals
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			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 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
			Alameda	Contra Costa	San Mateo	Santa Clara	Solano	Totals
Grand Total Increased Costs			\$534,894	\$295,118	\$257,754	\$608,393	\$86,577	\$1,782,736

**EXHIBIT G-2 TO
AMENDED
DECLARATION OF
CHRIS 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					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 NAPP FUKUDA

Test Claim: Municipal Regional Stormwater Permit
Claimant: CITY OF SAN JOSE
Section 6. Fukuda Declaration

**DECLARATION OF NAPP FUKUDA ON BEHALF OF CITY OF SAN JOSE
IN SUPPORT OF TEST CLAIM 10-TC-05**

I, NAPP FUKUDA, declare as follows:

1. I make this declaration based on my personal knowledge, except for matters based on information and belief, and as to those matters I believe them to be true, and if called to testify, I could and would competently testify to the matters in this declaration.
2. I am employed by the CITY OF SAN JOSE (“SAN JOSE”) as Deputy Director for the Environmental Services Department, Watershed Protection Division.
3. I have held my current position for over five years. My duties include development and supervision of municipal stormwater programs, overseeing regional coordination of stormwater compliance efforts with other co-permittees under the Municipal Regional Stormwater NPDES Permit, and overseeing staff in stormwater programs. Before that, I held the position of Sustainability & Compliance Manager and Environmental Compliance Officer for a combined seven years or so. My duties during that time included development and supervision of a broad spectrum of environmental health and safety programs as well as energy-related programs.
4. I also serve as SAN JOSE’s representative to the Management Committee of the Santa Clara Valley Urban Runoff Pollution Prevention Program (“Santa Clara Valley Program”), a consortium of public agencies in Santa Clara County that discharge stormwater to the San Francisco Bay. The Management Committee is the main decision-making body for the Santa Clara Valley Program, and its responsibilities include providing overall direction for activities that the member agencies undertake as a group, and approving work plans and budgets for these activities.
5. From January 2010 through December 2015, SAN JOSE 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) (“MRP”). I have reviewed the MRP and understand its general requirements.
6. I am also familiar with the general requirements of NPDES Permit No. CAS029718 issued by Regional Water Board Order No. 01-024 on April 21, 2001, amended by Order

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No 01-119 on October 17, 2001, and by Order No. R2-2005-0035 on July 20, 2005 (“Prior Permit”), under which SAN JOSE was a permittee before the MRP.

7. I have reviewed the Amended Declaration of Chris Sommers, consultant for the Santa Clara Valley Program, dated July 12, 2017, and its exhibits, prepared in support of SAN JOSE’S Test Claim (“Sommers Amended Declaration”). Based on my understanding of the Prior Permit and the MRP, and my discussions with Chris Sommers, I believe that the Sommers Amended Declaration accurately describes the provisions of the MRP in sections C.8, C.10 and C.11.f/C.12.f that required SAN JOSE to perform new activities or provide a higher level of service that had not been required by the Prior Permit.
8. I have reviewed the Prior Permit and the MRP as to section C.2, and believe that its provisions require SAN JOSE to provide a higher level of service than that required by the Prior Permit. The Prior Permit allowed SAN JOSE to develop its Management Plan with Performance Standards that addressed program elements. In contrast, the MRP mandated BMPs in Municipal Operations rather than allowing SAN JOSE to develop standards after consideration of the above criteria.
9. After my review of Mr. Sommers’ Amended Declaration, discussion with Mr. Sommers, review of the City’s records, and consultation with my staff, I believe that SAN JOSE incurred at least the amounts stated as increased costs in Mr. Sommers’ Amended Declaration and its exhibits. My staff reviewed the City’s financial management system, records in the City’s PeopleSoft system, and the City’s Budget Office reports for actual increased expenditures for the MRP Provisions. Because the City’s written records do not delineate how much time staff spent on work relevant to each provision of the Test Claim, the allocation of staff time to each MRP Provision was determined based on conversations with staff knowledgeable of the work performed.
 - (a) In addition to the charges Mr. Sommers identifies as increased costs associated with Provision C.8 that SAN JOSE incurred as a result of its participation in the Santa Clara Valley Program, SAN JOSE incurred increased costs for Provision C.8 for staff resources in the sum of \$21,627 from January 1 to June 30, 2010, and \$46,842 from July 1, 2010 to June 30, 2011. These amounts are reflected in the exhibit attached to this declaration, consisting of a summary table of the City’s

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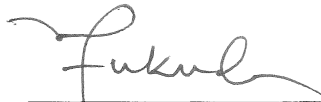
additional expenses. The additional work included reviewing monitoring plans, providing field assistance to Program (EOA) staff, facilitating access to monitoring sites, and report review, among other tasks. SAN JOSE also incurred \$16,890 in increased vendor costs for Provision C.8 requirements, as shown in the attached exhibit.

- (b) In addition to the charges Mr. Sommers identifies as costs associated with Provision C.10 that SAN JOSE incurred as a result of its participation in the Santa Clara Valley Program, SAN JOSE incurred increased costs for Provision C.10 for staff resources in the sum of \$139,170 from January 1 to June 30, 2010, and \$418,945 from July 1, 2010 to June 30, 2011, as shown in the exhibit attached to this declaration. Those costs included San Jose Police Department labor supporting mandatory trash hotspot clean-ups. The additional work included developing a City-specific short-term trash load reduction plan, implementing a trash hotspot clean-up program, participating in regional level discussions on the new requirements of Provision C.10, and other tasks. SAN JOSE also incurred \$83,556 in vendor costs in fiscal year 2010-2011 for implementation of Provision C.10, as shown in the attached exhibit.
- (c) SAN JOSE incurred no increased charges associated with Provisions C.11.f and C.12.f in addition to those Mr. Sommers identifies as incurred by SAN JOSE as a result of participation in the Santa Clara Valley Program.
- (d) Mr. Sommers' Amended Declaration does not provide the increased costs associated with Provision C.2. SAN JOSE incurred \$19,207 from January 1, 2010 to June 30, 2010, and \$27,543 from July 1, 2010 to June 30, 2011 in increased costs for implementation of the increased requirements of Provisions C.2.b, C.2.c, C.2.e, and C.2.f, as shown in the exhibit attached to this declaration. The assigned staff was responsible for developing and implementing a rural roads inspection program and a training program for municipal staff on stormwater best management practices.

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10. I am not aware of any dedicated state or federal funds that were available to pay for these increased costs. I have no knowledge of any funds other than SAN JOSE funds that paid for these increased costs.
11. Although SAN JOSE has a stormwater fee adopted prior to the adoption of Proposition 218, I am not aware of any authority for SAN JOSE to assess or raise its fee to offset these increased costs, except on approval by a majority vote of the people of SAN JOSE, or on notice and subject to written protest by property owners.
12. I have reviewed the Test Claim submitted by the County of Santa Clara and agree that the permit provisions at issue in the County of Santa Clara Test Claim are identical to those in SAN JOSE's Test Claim, except that SAN JOSE also raises Provision C.2.

Executed this 17th day of July, 2017, at San Jose, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



NAPP FUKUDA

**EXHIBIT TO
DECLARATION OF
NAPP FUKUDA**

**City of San Jose's expenses for NPDES Permit No. CAS612008 (additional to San Jose's costs for implementation of SCVURPPP) in support of Test Claim
10-TC-05**

CITY STAFF TIME				
PROVISION TITLE		FY 2009-2010*	FY 2010-2011	Total Cost
C.2	Municipal Operations	19,207	27,543	46,750
C.8	Water Quality Monitoring	21,627	46,842	68,470
C.10	Trash Load Reduction	134,004	335,469	469,473
C.10 (Police Department Expenses)	Trash Load Reduction	5,165	83,476	88,641
C.11-12	Mercury Controls/Polychlorinated Biphenyls (PCBs) Controls	-	-	-
Total Stormwater Personal Services		\$ 180,004	\$ 493,330	\$ 673,334
VENDOR PURCHASES				
PROVISION TITLE		FY 2009-2010*	FY 2010-2011	Total Cost
C.8	Water Quality Monitoring		16,890	16,890
C.10	Trash Load Reduction		83,556	83,556
Total Non Personal			100,446	100,446
TOTAL		\$ 180,004	\$ 593,777	\$ 773,781
* January 1, 2010 - June 30, 2010				

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:

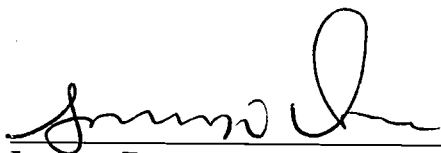
- **Claimant (City of San Jose) Response to Notice of Incomplete Joint Test Claim Filing filed July 18, 2017**

*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
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(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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