



January 22, 2025

VIA DROP BOX

Juliana F. Gmur
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, California 95814

Re: Hearing on Proposed Decision on Test Claims 10-TC-02, 10-TC-03 and 10-TC-05, January 24, 2025 (California Regional Water Quality Control Board, San Francisco Region, Order No. R2-2009-0074)

Dear Ms. Gmur:

Please find the attached Declaration of Gregory J. Newmark in support of Test Claims 10-TC-02, 10-TC-03 and 10-TC-05. As this evidence is submitted to the Commission at least 24-hours prior to the hearing, we request staff post the declaration and attachments to allow all in-person and remote participants to review it and that Commission staff provide an electronic copy to the Commission, include an electronic copy in the public hearing binder at the hearing, and post a copy on the Commission's website, and share the materials with the Commission and the public using the "share screen" function. (Cal. Code Regs., tit. 2, § 1181.10(b)(1)(C)).

Sincerely,

Handwritten signature of Gregory J. Newmark in blue ink.

Gregory J. Newmark

Enclosures

5844515

1 **DECLARATION OF GREGORY J. NEWMARK**

2 I, Gregory J. Newmark, declare as follows:

3 1. I am a principal at Meyers Nave, attorneys of record for the City of Dublin and the
4 Alameda Countywide Claim Water Program (collectively the “Dublin Claimants”) and I make this
5 declaration in support of Test Claims 10-TC-02, 10-TC-03 and 10-TC-05. I have personal
6 knowledge of the facts set forth herein. If called as a witness, I could and would competently
7 testify to the matters stated herein.

8 2. The City of Dublin was subject to Municipal Regional Stormwater NPDES Permit,
9 Order No. R2-2009- 0074, issued by the Regional Board on October 14, 2009, amended by Order
10 No. R2-2011-0083 on November 28, 2011. This permit is also known as the MRP1 and is the
11 subject of the Proposed Decision in this matter. The MRP1 is Exhibit 1 to Test Claim 10-TC-02,
12 and is part of Exhibit A in the Record for this matter.

13 3. Provisions C.11.f and C.12.f of the MRP1 require the permittees to implement a
14 pilot program to evaluate the reduction of mercury and PCBs loads to the San Francisco Bay.
15 According to the MRP1, “[t]he knowledge and experience gained through pilot implementation
16 will be used to determine the implementation scope of urban runoff diversion in subsequent permit
17 terms.” (Exhibit A to Record, p. 248 (see also p. 240) [Exhibit 1 to Test Claim 10-TC-02, filed
18 October 13, 2010, at p. 99 (see also p. 91) [Order No. R2-2009-0074].) The text of MRP1 states
19 that the purpose of provisions C.11 and C.12 is to implement the requirements of mercury and
20 PCBs TMDLs. (*Id.* at Record, pp. 237, 244.)

21 4. For example, the “Problem Statement” addressed by the PCBs TMDL is that “[a]ll
22 segments of the San Francisco Bay have been identified as impaired due to elevated levels of
23 PCBs in sport fish. . . . The existing beneficial use for commercial and sport fishing is not fully
24 supported.” (Vol. 2, Exhibit BB, No. 33 to Record, p. 5 [A-1] of Basin Plan Amendment.)
25 According to the PCBs TMDL itself, the purpose is to “address[] impairment of San Francisco
26 Bay segments by PCBs. In the context of this TMDL, ‘San Francisco Bay’ refers to all of the
27 following water bodies: Sacramento/San Joaquin Delta (within Region 2), Suisun Bay, Carquinez
28 Strait, San Pablo Bay, Richardson Bay, San Francisco Bay, Central, San Francisco Bay, Lower

1 (including) Central Basin, San Francisco, Mission Creek, Oakland Inner Harbor (Fruitvale site),
2 Oakland Inner Harbor (Pacific Dry-Dock Yard 1 site) San Francisco Bay, South[.] This TMDL is
3 intended to achieve protection of the commercial and sport fishing beneficial use. . . .”
4 (hereinafter, collectively, “Water Features”). (Vol. 2, Exhibit BB, No. 33 to Record, p. 5 [A-1] of
5 Basin Plan Amendment; see also No. 32 [Mercury TMDL, similar].)

6 5. Shannan Young, Environmental & Sustainability Manager for Claimant City of
7 Dublin, with the support of the City’s technical staff, prepared a map identifying the City of
8 Dublin in relation to all the Water Features identified in the TMDLs. Attached hereto as Exhibit
9 CC-1 is a true and correct copy of this map.

10 6. Ms. Young informed me that the mercury and PCBs pilot program required under
11 Provisions C.11.f. and C.12.f for Alameda County permittees was located at the Ettie Street Pump
12 Station in the City of Oakland. Ms. Young and her staff prepared a map identifying the location
13 of the Alameda County mercury and PCBs pilot program required under Provisions C.11.f. and
14 C.12.f of the MRP1 in relation to the City of Dublin. Attached hereto as Exhibit CC-2 is a true
15 and correct copy of this map .

16 7. Attached hereto as Exhibit CC-3 is a true and correct copy of an excerpt of 2025
17 CA Freshwater Sport Fishing Regulations, updated January 1, 2025,¹ showing that Alameda Creek
18 and its tributaries downstream of San Antonio, Calaveras, and Del Valle Reservoirs except for
19 Arroyo Del Valle between Bernal Ave. and the Thiessen St. intersection with Vineyard Ave., are
20 closed to fishing all year. This means all creeks and streams in Dublin are “Closed to all fishing
21 all year.” There is no commercial or sport fishing in Dublin.

22 8. Attached hereto as Exhibit CC-4 is a true and correct copy of an article published
23 on the Caltrans website, *Mile Marker: A Caltrans Performance Report*, Caltrans, Fall 2020, titled
24 “Garbage a Growing Distraction for Caltrans.”

25 9. Attached hereto as Exhibit CC-5 is a table I prepared comparing the Cal. Const.
26
27

28 ¹ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=209090&inline> [accessed Jan. 21, 2025].

1 Art. XIII D, Section 6(b), subd. (3), (4) and (5) with the language of the Proposed Decision at p.
2 386.

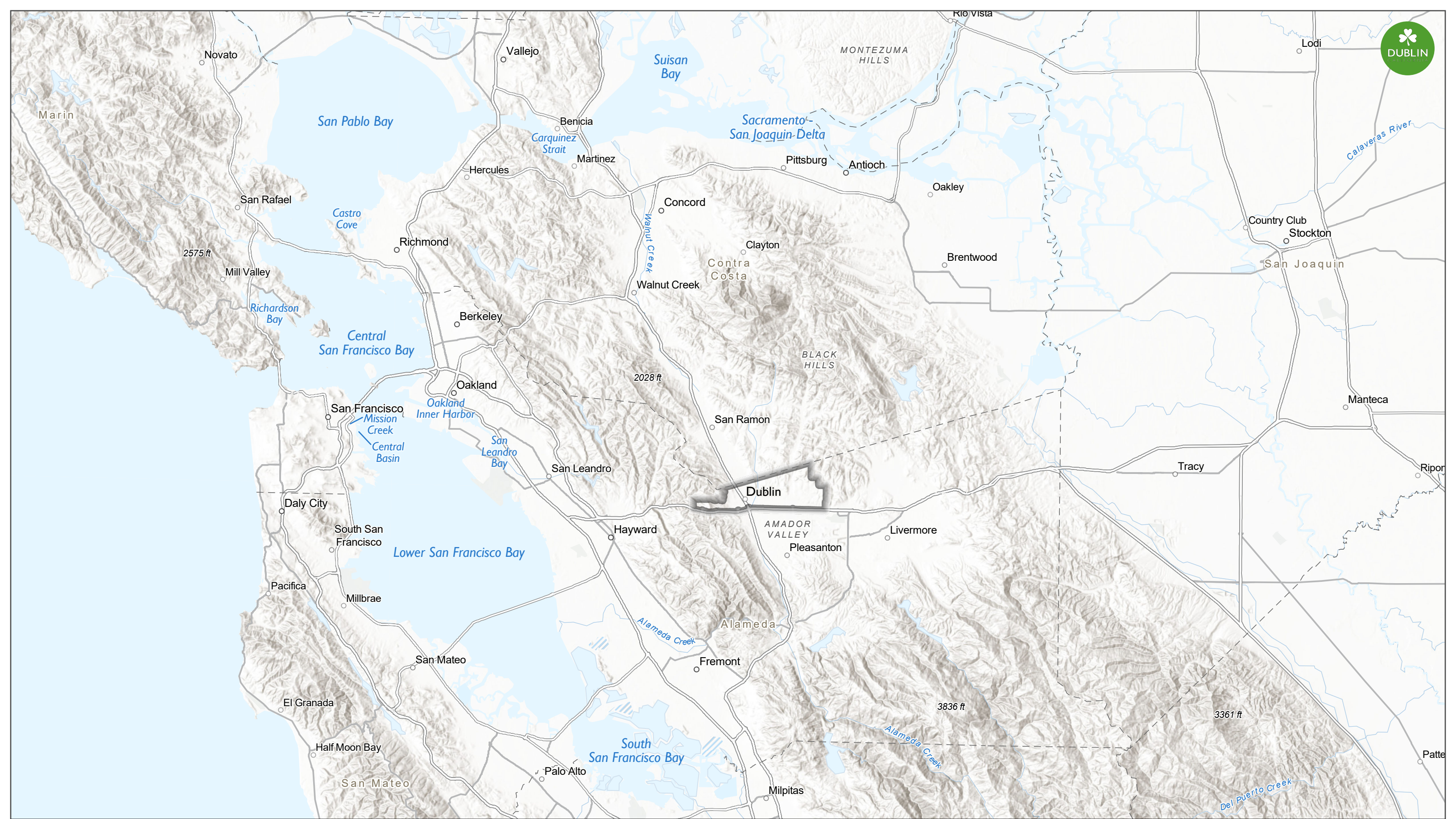
3 10. I declare under penalty of perjury under the laws of the state of California that the
4 foregoing is true and correct.

5 Executed on January 22, 2025, at Rolling Hills Estates, California.
6

7
8 
9 _____
10 GREGORY J. NEWMARK

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EXHIBIT CC-1



AREA MAP

CITY OF DUBLIN
ENGINEERING SERVICES
100 CIVIC PLAZA


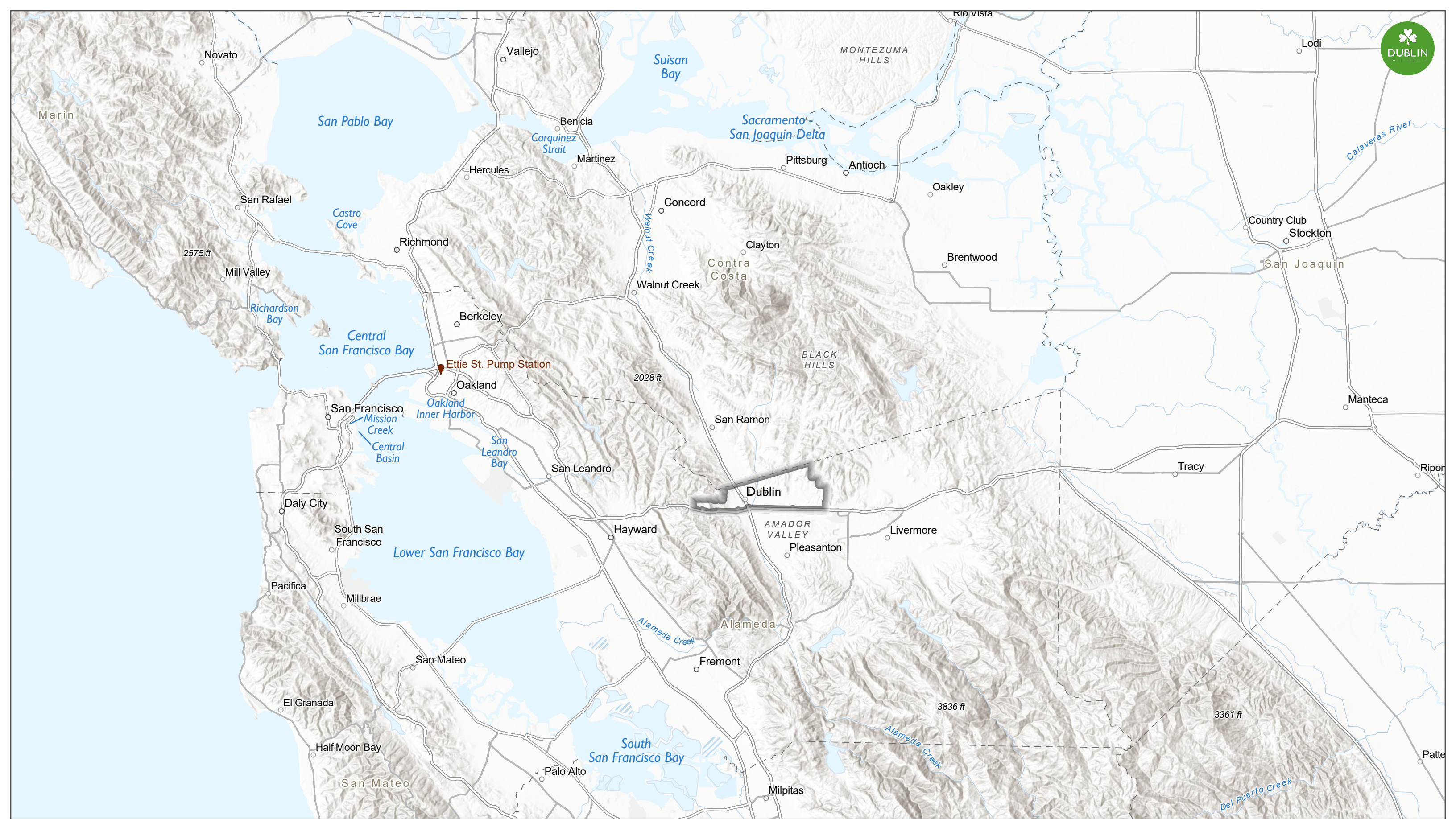
 City of Dublin




EXHIBIT CC-2



AREA MAP

CITY OF DUBLIN
ENGINEERING SERVICES
100 CIVIC PLAZA

 City of Dublin

0 10 Miles

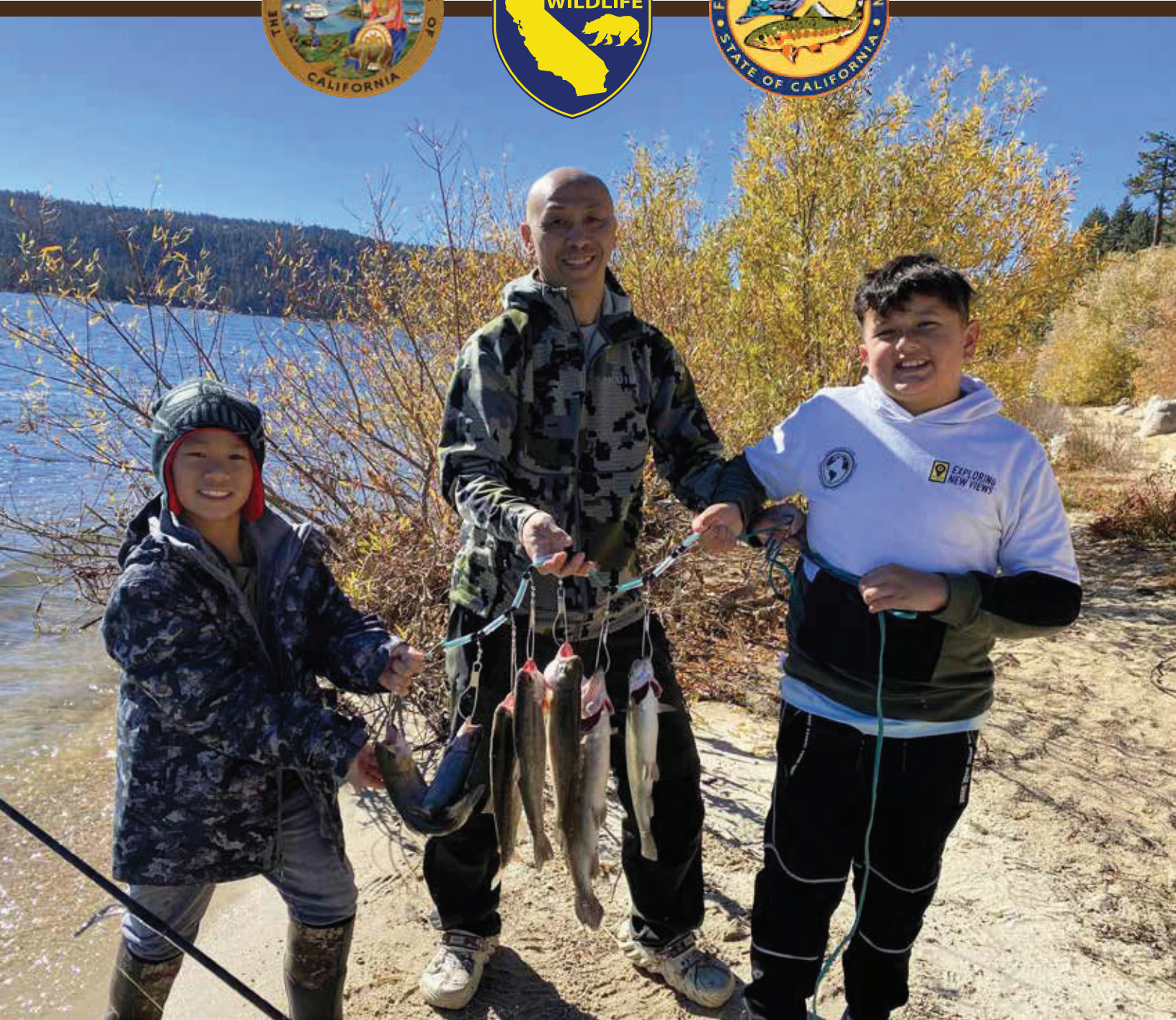


EXHIBIT CC-3

2025

CALIFORNIA FRESHWATER SPORT FISHING REGULATIONS

UPDATED JANUARY 1, 2025



2025 FRESHWATER SPORT FISHING REGULATIONS

ALPHABETICAL LIST OF HATCHERY TROUT, HATCHERY STEELHEAD, AND SALMON WATERS WITH SPECIAL FISHING REGULATIONS (§7.40)

Alphabetical List of Hatchery Trout, Hatchery Steelhead, and Salmon Waters with Special Fishing Regulations (T14 CCR §7.40)

(a) General Provisions:

(1) Every body of water listed in subsection (b) is closed to the take of hatchery trout, hatchery steelhead, and salmon and to fishing for these species, unless otherwise noted.

(2) Every body of water listed in subsection (b) is closed to all fishing except during the open season as shown. Unless otherwise provided, waters shown as open to hatchery trout, hatchery steelhead, and salmon fishing in subsection (b) are open to fishing for other species. Gear restrictions listed in this section apply to the take of all species of fish unless otherwise noted.

(3) Unless otherwise provided, waters closed to hatchery trout, hatchery steelhead, or salmon fishing are closed to fishing for all other species, except that these closures do not apply to fishing for amphibians (see Section 5.05), freshwater clams (see Section 5.20), crayfish (see Section 5.35), and lamprey (see Section 5.40), using legal fishing methods other than hook-and-line fishing, and saltwater clams, crabs, ghost shrimp, and blue mud shrimp (see Ocean Regulations Booklet sections 29.20 to 29.87). Crabs may only be taken using hoop nets or by hand, and Dungeness crab within the North Coast District and Sonoma and Mendocino counties.

(4) Unless otherwise provided, it is unlawful to possess more than one daily bag limit.

(5) The waters in subsection (b) may also be subject to restrictions on fishing methods and gear (Sections 2.00 through 2.45), fishing hours (Section 3.00), and the use of bait (Sections 4.00 through 4.30).

(b) Alphabetical List of Hatchery Trout, Hatchery Steelhead, and Salmon Waters with Special Fishing Regulations

<i>Body of Water</i>	<i>Open Season and Special Restrictions</i>	<i>Daily Bag and Possession Limit</i>
(1) Alameda Creek and tributaries (Alameda and Santa Clara cos.).		
(A) Alameda Creek and tributaries downstream of San Antonio, Calaveras, and Del Valle Reservoirs except for Arroyo Del Valle between Bernal Ave. and the Thiessen St. intersection with Vineyard Ave.	Closed to all fishing all year.	
1. Arroyo Del Valle between Bernal Ave. and the Thiessen St. intersection with Vineyard Ave.	All year. Only artificial lures with barbless hooks may be used.	0 trout
(2) Albion River (Mendocino Co.). Also see subsection 8.00(b) Low-Flow Restrictions. Main stem below the confluence of South Fork Albion.	Fourth Sat. in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Sat. in May through Oct. 31. Only barbless hooks may be used from Nov. 1 through Mar. 31.	2 hatchery trout or hatchery steelhead*. 4 hatchery trout or hatchery steelhead* in possession.
(3) Alder Creek (Mendocino Co.). Also see subsection 8.00(b) Low-Flow Restrictions. Main stem below Tramway Gulch.	Fourth Sat. in May through Mar. 31. Only artificial lures with barbless hooks may be used from the fourth Sat. in May through Oct. 31. Only barbless hooks may be used from Nov. 1 through Mar. 31.	2 hatchery trout or hatchery steelhead*. 4 hatchery trout or hatchery steelhead* in possession.
(4) American River (Sacramento Co.)		
(A) From Nimbus Dam to the U.S. Geological Survey gauging station cable crossing about 300 yards downstream from the Nimbus Hatchery fish rack site.	Closed to all fishing all year.	
* Hatchery trout or steelhead in anadromous waters are those showing a healed adipose fin clip (adipose fin is absent). Unless otherwise provided, all other trout and steelhead must be immediately released. Wild trout or steelhead are those not showing a healed adipose fin clip (adipose fin is present).		

EXHIBIT CC-4


[Home](#)
[Programs](#)
[Public Affairs](#)
[Mile Marker](#)
[Mile Marker: A Caltrans Performance Report, Fall 2020](#)
[Garbage a Growing Distraction for Caltrans](#)

Garbage a Growing Distraction for Caltrans

Workers Spent 368,000 Hours Collecting 1.3 Million Bags' Worth in 2018-19



Caltrans is responsible for removing trash from along state roadways, a mammoth effort that costs the Department tens of millions of dollars annually. Full-time Caltrans landscaping crews do this dirty work; veterans, parolees and Adopt-A-Highway volunteers also pitch in.

Don't Trash California — a plea that the public has seen and heard as part of a concerted anti-litter campaign for many years.

That message still hasn't gotten through to some, judging by the amount of roadside trash that Caltrans picks up.

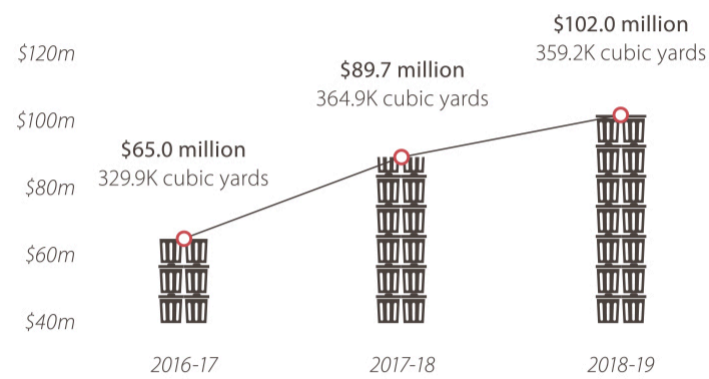
Keeping the State Highway System litter free is a costly and time-consuming endeavor. During fiscal year (FY) 2018-2019, Caltrans workers alone collected more than 186,000 cubic yards of litter on and along state highway areas.

How much is 186,000 cubic yards? Enough that if stacked one yard high and one yard wide, the line of garbage would extend for approximately 105 miles — from, for example, Santa Ana to Tijuana, or Roseville to San Francisco. It is the approximate equivalent of 1,302,000 bags of trash.

Volume is not the only way to measure how litter weighs down Caltrans. There are substantial expenses involved, too.

In the previous fiscal year that ended June 30, 2019, Caltrans spent more than \$102 million on litter and debris collection, a figure that does not include the ballooning costs affiliated with cleaning up the unsheltered encampments. (Those totals are still being compiled.) Expenditures included

Caltrans' Financial Toll of Litter Removal



transportation to and from waste-pickup sites, materials (such as gloves, bags and retrieval tools) and time. In FY 2018-19, Caltrans workers logged about 368,000 hours collecting and disposing of roadside garbage.

How much is 368,000 hours? It is the equivalent to 192 people whose sole job is to scoop up and bag litter for 40 hours a week, 48 weeks a year. In that scenario, almost 1 percent of the Department's 20,000-plus workforce would be full-time trash collectors.

Time taken away from other road maintenance



Caltrans' full-time landscape workers

If you bagged all the garbage that Caltrans crews collected last fiscal year and put them side by side, the line would extend for 105 miles.

increasingly have devoted a large amount of on-the-clock time to litter removal. That means they have less time to perform important duties such as irrigation operations and vegetation control along roadways and on median strips.

Litter's total financial toll on Caltrans has risen steadily, from \$65 million in 2016-2017 (when more than 329,930 cubic yards of garbage were collected) to \$89.7 million in 2017-2018 (364,917 cubic yards) to more than \$102 million in 2018-2019 (359,154 cubic yards). That represents a 21.9 percent cost increase over those three years.

Why is it that although less trash was collected in 2018-2019 than during the fiscal year before, related expenses rose \$12.3 million? There are several explanations, including that the cost per cubic yard of encampment litter cleanups is greater than regular litter pickup due to the extra costs associated to requiring hazardous material removal contracts and support from other agencies. Also, there are extra expenses involved when there are emergency orders executed to handle encampments.

Caltrans also oversees two trash pickup programs not staffed by employees. Volunteers with the [Adopt-A-Highway Program](#), and those who work with the Special People Program (SPP) bagged 172,537 cubic yards of trash in 2018-19, and more than 160,000 cubic yards in each of the two previous fiscal years. More than 120,000 Californians have cleaned and enhanced over 15,000 shoulder-miles of roadside since the inception of the Adopt-A-Highway Program in 1989.

The SPP focuses on at-risk parolees and veterans and provides training and life skills to reintegrate these persons back into society, while Caltrans receives the benefit of their help keeping roadsides clean. This program has grown from eight crews (eight persons per crew) from 2009 to 2016, to 55 crews in 2018-2019. In turn, costs have also increased from \$6.7 million to \$27.2 million during that same time.

Those two programs' costs are part of the \$102 million-plus that Caltrans spent on litter removal in the last fiscal year.



Where does all the trash come from? Not just from motorists tossing things out of windows. Trucks' unsecured loads are a big source, too.

Garbage flows, floats downstream

Not only is litter unsightly, but much of it eventually winds up in waterways used for household consumption and recreation. Rain and wind can carry trash and tainted materials such as cigarette butts from roadways into storm drain systems, which then flows to streams, rivers and lakes — and eventually to bays and the ocean.

The sources of all the trash are many. Yes, garbage is thoughtlessly tossed out of car windows or dumped in vacated spots. However, most of the litter comes from loads that are improperly tarped or tied down.

The California Highway Patrol is responsible for enforcing anti-littering laws along the State Highway System and can issue violation citations that start at \$250, depending on the location.

Caltrans is committed to reduce pollution in the communities it serves, one of the key goals of its 2015-2020 Strategic Management Plan. As the Department finalizes its next strategic plan, it continues to look for innovative ways to make California's roadways tidier and less burdensome on Caltrans' finite resources.

Caltrans Tackles Trash Capture with Renewed Strategies

Throughout the state, trash generated on land is carried during rainy periods to waterways such as rivers, lakes, and oceans. Caltrans is conducting statewide trash reduction efforts to meet the requirements of the Caltrans stormwater permit issued by the State Water Resources Control Board. The public traveling on the State Highway System have an important role to preserve California's valuable water resources by doing their part not to litter.

Timely implementation of trash control measures is a priority for Caltrans in all high trash-generating land uses near the state highway system — high-density residential, commercial and industrial areas, as well as rest areas and park-and-ride zones.

Caltrans has undertaken critical steps to reduce trash throughout the state. They include:

Innovative Trash Capture Devices



This Gross Solids Removal Device captures debris carried by water, which then flows back into the drainage system. The solid matter is then collected for disposal.

Caltrans has worked diligently to install trash capture devices, seeing through the process that includes product

development and effectiveness monitoring. Engineers now deploy additional trash control tools when working on construction projects, utilizing new treatment opportunities and modifying existing drainage features.

One example is an end-of-pipe full trash capture net designed to remove trash from stormwater runoff flowing in a drainage system. These devices are easily installed in Caltrans' right of way and are highly effective at collecting trash that enters the drainage system and is carried into the net. The nets are replaced once a year, and collected trash is disposed of appropriately.



Promising new trash-capture devices that can be retrofitted to existing

Trash capture nets attached to the end of drain pipes are an inexpensive and highly effective way to contain garbage.

infrastructure are being developed, providing additional low-cost tools that meet full trash capture compliance.

The Gross Solids Removal Device is another example of an approved treatment practice that has been certified by the state water board as meeting full trash capture requirements. Stormwater runoff enters a pipe or cage where waste solids (or trash) are captured. The screened water then runs out of the pipe or cage into a shallow concrete vault and is routed back into the drainage system.

Public Education

In 2000, Caltrans conducted a successful public education campaign, “Don’t Trash California,” to reduce the rate of littering within the state. The Department later expanded the program and initiated a statewide, multimedia bilingual campaign to educate the public on the importance of keeping pollutants out of the storm drain system. The “Protect Every Drop” program emphasized the importance of activities and behaviors that can reduce pollutants in stormwater runoff. A new stormwater education campaign that will continue the research, public education, and advertising efforts is being developed.

On another front, Caltrans regional districts across the state hosted another successful litter day event in June to educate the public about the importance of keeping roads clean. Littering is not only illegal, but pollutes California’s waterways and puts Caltrans maintenance crews at risk when having to work alongside the freeway to remove trash.

Agency Partnerships

Agencies such as Caltrans, California Highway Patrol, local municipalities, and state and regional boards have committed resources toward trash prevention by sharing ideas for solutions leading to improved trash source control. Caltrans continues to work with CHP to explore ways to reduce trash along the freeway system through increased and more effective enforcement of existing littering laws. Last year, CHP officers issued more than 3,100 citations for littering, and roughly one-third of those violations involved someone throwing out a lit cigarette.

Caltrans partners with local municipalities by providing funding for local projects that can treat large areas. These coordinated efforts remove harmful pollutants and trash from stormwater with the goal of restoring water quality in vulnerable areas.

Sources: *Kenneth H. Johansson, Acting Stormwater Coordinator, Division of Environmental Analysis; Kenneth Murray, Senior Landscape Architect; Jason Probst, Staff Services Manager I; and Andrew Morse, Statewide Litter Abatement Coordinator, Caltrans Division of Maintenance.*

- › [Director's Message](#)
- › [Mile Markers](#)
- › [Creating Safer Corridors](#)
- › [Clean-Air Travel Options Expanding](#)
- › [Caltrans, Partners Push More Inclusive Safety Plan](#)
- › [Connecting the \(Data\) Dots](#)
- › [Project Spotlight: Washed-Out Roads Isolate Town, Put Caltrans to the Test](#)
- › [Caltrans Strives for Fairness, Inside and Out](#)
- › [Highway System Gets Good Marks on Report Card](#)
- › [Mileposts](#)
- › [Most Project Timelines, Budgets Met](#)
- › [Garbage a Growing Distraction for Caltrans](#)
- › [COVID-19 Update](#)

Statewide Campaigns

- › [ADA Access](#)
- › [Adopt-A-Highway](#)
- › [Amber Alert](#)
- › [Be Work Zone Alert](#)
- › [CAL FIRE](#)
- › [Cal OES: Power Outage and Fire Recovery Resources](#)
- › [California Climate Investments](#)
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EXHIBIT CC-5

EXHIBIT CC-5

Cal. Const. Art. XIII D, Section 6(b)	Proposed Decision at p. 386
(3)The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.	“...the fee would not exceed the proportional cost of the service attributable to the parcel”
(4)No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.	“...that the service is actually used by or immediately available to the property owner...”
(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.	“...the fee would not be imposed to the public at large...”

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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 January 23, 2025, I served the:

- **Current Mailing List dated January 16, 2025**
- **Claimant's (City of Dublin's) Late Comments filed January 22, 2025**

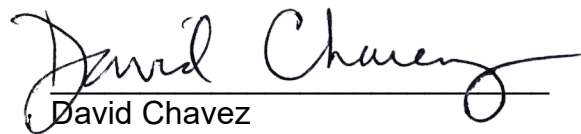
California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, 10-TC-02, 10-TC-03, and 10-TC-05

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Sections C.2.b, C.2.c, C.2.e, C.2.f, C.8.b., C.8.c., C.8.d.i, C.8.d.ii., C.8.d.iii., C.8.e.i., C.8.e.ii., C.8.e.iii., C.8.e.iv., C.8.e.v., C.8.e.vi., C.8.f., C.8.g.i. (first sentence only), C.8.g.ii., C.8.g.iii., C.8.g.v., C.8.g.vi., C.8.g.vii., C.8.h, C.10.a.i., C.10.a.ii., C.10.a.iii., C.10.b.i., C.10.b.ii., C.10.b.iii., C.10.c., C.10.d.i., C.10.d.ii., C.11.f., and C.12.f., Adopted October 14, 2009 and Effective December 1, 2009

Cities of Dublin 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 January 23, 2025 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/16/25

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

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions

Matter: 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 vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f

Claimants: City of Dublin
City of San Jose
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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Jeanette Bazar, *County of Santa Clara*Controller-Treasurer Department, 70 W. Hedding Street, East Wing, 2nd Floor,
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