



September 12, 2023

Ms. Mara Elliott  
City of San Diego  
1200 Third Ave, Suite 1100  
San Diego, CA 92101-4100

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Notice of Extension Request Denial and Postponement of Hearing**  
*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*  
On Remand from *City of San Diego v. Commission on State Mandates*, Court of  
Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of  
Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-  
80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of  
San Diego Public Water System No. 3710020, effective January 18, 2017  
City of San Diego, Claimant

Dear Ms. Elliott:

On September 8, 2023, the Commission on State Mandates (Commission) received the City of San Diego's (claimant's) request for an unspecified extension of time to file comments on the Proposed Decision, served on September 6, 2023, and for postponement of the hearing on the above-captioned Test Claim, currently set for **Friday, September 22, 2023**.

Specifically, the request states that "the Commission served its Proposed Decision on September 6, 2023, for the hearing set for September 22, 2023, and this made any written response, including comments and evidence due the next day on September 7, 2023, as stated in the Commission's cover letter." In addition, the request states that good cause exists to postpone the hearing because: the City Attorney is currently engaged in a trial where trial call was recently set for September 21, 2023, in San Diego Superior Court – a day before the hearing for this matter (2 CCR § 1187.9(b)(2)(H)); the trial is scheduled for five days; and the trial was originally set for September 8, 2023, but was continued due to the delay of another trial in the department. Further, the request states that given the complex issues raised in the Commission's Proposed Decision, counsel will need additional time to address the merits (2 CCR § 1187.9(b)(1)(F)); that the Commission's Proposed Decision reversed its Draft Proposed Decision with new, detailed analysis finding there was not substantial evidence that the City is practically compelled to comply with the Permit Amendment; and Counsel needs additional time to respond with comments and potentially produce more evidence (by declaration and/or testimony). Also, the request states that there is insufficient time for the City to substantively respond and build its record given the closeness of the hearing date and counsel's impending trial date; given this timing, good cause exists for postponement of the hearing due to the City's "inability to obtain essential testimony, documents, or other material evidence despite diligent efforts[.]" (2 CCR § 1187.9(b)(1)(D)); and the City respectfully requests postponement of the hearing

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to December 1, 2023, and an extension of time to file comments. Finally, the request states that the City has not previously requested to postpone the hearing date (2 CCR § 1187.9(b)(2)(B)); that the postponement of the hearing set for May 26, 2023 was not requested by either party; and that, no party or interested party will be prejudiced.

Section 1183.2(b) of the Commission's regulations provides that written comments concerning the test claim shall be certified, filed, and served within 30 days from the date the test claim or amendment is issued for comment and in accordance with section 1181.3 of these regulations.

Section 1183.6(b) of the Commission's regulations provides that at least eight weeks before the hearing, or at a time required by the executive director or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and distribute it to the parties, interested parties, and those on the mailing list described in section 1181.3 of these regulations, and shall post it on the Commission's website.

Section 1183.6(c) of the Commission's regulations provide that anyone may file written comments concerning the draft proposed decision. If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations. Written comments shall be certified, filed, and served in accordance with section 1181.3 of these regulations, by the date determined and noticed by the executive director. A three-week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. All written comments timely filed shall be reviewed by Commission staff and may be incorporated into the proposed decision for the test claim.

Section 1183.6(d) of the Commission's regulations provides that it is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period described in subdivision (c) of this section. The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence filed in response to a draft proposed decision after the comment period expires.

Section 1187.6 (a-c, f) of the Commission's regulations provides that each party shall have the right to present witnesses, to introduce exhibits, and to proposed to the chairperson questions for opposing witnesses in support or rebuttal of any matter relevant to the issues even if that matter was not covered in the direct examination. The Commission chair or hearing officer, however, may limit the length of testimony to a specific amount of time, or limit the time for each party or witness; the presiding member, Commission members, hearing panel member or hearing officer may question any party or witness and may admit any relevant and material evidence; and the taking of evidence in a hearing shall be controlled by the Commission or hearing officer in the matter best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the issues and order of presenting evidence will be explained. The Commission or the executive director may require that prepared written testimony or other evidence be filed in advance of any hearing to facilitate the orderly consideration of issues at the hearing.

Section 1187.9(a) of the Commission's regulations provide that any party or interested party to a matter may request an extension of time by filing a request with the executive director before the date set for filing of comments or rebuttals with Commission staff on that matter. The request shall fully explain the reasons for the extension, propose a new date for filing, and be certified, filed, and served in accordance with section 1181.3 of these regulations.

Section 1187.9(b) of the Commission's regulations provide that while postponements are disfavored and pursuant to Government Code section 17530, the executive director has a duty to expedite all matters before the Commission, a request for postponement filed by the claimant or requester less than 15 days before the hearing may be approved by the executive director for good cause. (Cal. Code. Regs., tit. 2 § 1187.9(b)(3)(C).) Circumstances that may indicate good cause include the unavailability of a party, party representative, or witness because of death, illness, or other excusable circumstances and the number and complexity of the issues. (Cal. Code. Regs., tit. 2 § 1187.9 (b)(1)(A), (b)(1)(F).)

The Draft Proposed Decision for this matter was issued for comment on March 23, 2023 and the transmittal letter provided a due date for comments on the Draft Proposed Decision to be filed no later than **5:00 pm on April 13, 2023** and set the hearing for this matter on **Friday, May 26, 2023**. The Commission approved the State Water Resources Control Board's request for extension of time and postponement of hearing, set the hearing for this matter on **Friday, July 28, 2023**, and served the approval of extension and postponement on April 11, 2023. The claimant filed a request for extension of time to file comments on the Draft Proposed Decision, which was granted, and the claimant filed its comments on May 4, 2023. The Commission cancelled the **Friday, July 28, 2023** Meeting and issued the Notice of Cancellation of the July 28, 2023 Commission Meeting on June 21, 2023. The notice indicated that all items issued for the July hearing were rescheduled to the Commission's next regularly scheduled meeting on **September 22, 2023**.

The Proposed Decision for this matter was issued on September 6, 2023 and no deadline of the next day (September 7, 2023) was provided on the Commission's transmittal letter that accompanied the Proposed Decision, since no comment period for a Proposed Decision exists in the Commission's Government Code Sections or regulations.

However, as is indicated in the Commission's Notice and Agenda and in the transmittal that accompanied the Proposed Decision, if you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible. However, comments filed less than five days prior to a meeting or submitted at the meeting will not be included in the Commissioners' hearing binders and the commenter shall provide 12 paper copies of the comments to Commission staff at the meeting for such late filings. Commission staff shall provide copies of late comments submitted at the hearing to the Commission members and shall place a copy on a table for public review

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at the hearing (Cal. Code Regs., tit. 2, § 1181.10(b)(1)). Please also file the PDF document via the Commission's dropbox at <https://csm.ca.gov/dropbox.shtml> prior to the hearing.

Therefore, an extension request to file comments on the Proposed Decision is denied because there is no comment period on a Proposed Decision under the Commission's statutes and regulations and provisions for requests for extension only apply to comments on the Test Claim and comments on the Draft Proposed Decision.

However, a postponement of the hearing to the next regularly scheduled hearing is approved for good cause shown. This matter is now set for hearing on **Friday, December 1, 2023**.

Sincerely,



Heather Halsey  
Executive Director

## 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 September 12, 2023, I served the:

- **Current Mailing List dated September 7, 2023**
- **Notice of Extension Request Denial and Postponement of Hearing issued September 12, 2023**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*  
On Remand from *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017  
City of San Diego, Claimant

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 September 12, 2023 at Sacramento, California.

*David Chavez*

\_\_\_\_\_  
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:** 9/7/23

**Claim  
Number:** 17-TC-03-R

**Matter:** Lead Sampling in Schools: Public Water System No. 3710020

**Claimant:** City of San Diego

### 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.)

, Finance Director, *City of Citrus Heights*  
Finance Department, 6237 Fountain Square Dr, Citrus Heights , CA 95621  
Phone: (916) 725-2448  
Finance@citrusheights.net

**Lupe Acero**, Finance Director, *City of Port Hueneme*  
250 North Ventura Road, Port Hueneme, CA 93041  
Phone: (805) 986-6524  
LAcero@ci.port-hueneme.ca.us

**Jackie Acosta**, Finance Director, *City of Union City*  
34009 Alvarado-Niles Road, Union City, CA 94587  
Phone: (510) 675-5338  
JackieA@unioncity.org

**Steven Adams**, City Manager, *City of King City*  
212 South Vanderhurst Avenue, King City, CA 93930  
Phone: (831) 386-5925  
sadams@kingcity.com

**Adaoha Agu**, *County of San Diego Auditor & Controller Department*  
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 ,  
MS:O-53, San Diego, CA 92123  
Phone: (858) 694-2129  
Adaoha.Agu@sdcountry.ca.gov

**Joe Aguilar**, Finance Director, *City of Live Oak*  
Finance, 9955 Live Oak Blvd, Live Oak, CA 95953  
Phone: (530) 695-2112  
jaguilar@liveoakcity.org

**Ron Ahlers**, Chief Financial Officer, *City of Calabasas*  
Finance Department, 100 Civic Center Way, Calabasas, CA 91302  
Phone: (805) 517-6249  
RAhlers@cityofcalabasas.com

**Jason Al-Imam**, Director of Finance, *City of Newport Beach*  
3300 Newport Blvd, Newport Beach, CA 92663  
Phone: (949) 644-3123  
jalimam@newportbeachca.gov

**Douglas Alessio**, Administrative Services Director, *City of Livermore*  
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550  
Phone: (925) 960-4300  
finance@cityoflivermore.net

**Tiffany Allen**, Treasury Manager, *City of Chula Vista*  
Finance Department, 276 Fourth Avenue, Chula Vista, CA 91910  
Phone: (619) 691-5250  
tallen@chulavistaca.gov

**Mark Alvarado**, *City of Monrovia*  
415 S. Ivy Avenue, Monrovia, CA 91016  
Phone: N/A  
malvarado@ci.monrovia.ca.us

**Josefina Alvarez**, Interim Finance Director, *City of Kerman*  
850 South Madera Avenue, Kerman, CA 93630  
Phone: (559) 846-4682  
jalvarez@cityofkerman.org

**Rachelle Anema**, Division Chief, *County of Los Angeles*  
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012  
Phone: (213) 974-8321  
RANEMA@auditor.lacounty.gov

**Kofi Antobam**, Finance Director, *Town of Apple Valley*  
14955 Dale Evans Parkway, Apple Valley, CA 92307  
Phone: (760) 240-7000  
kantobam@applevalley.org

**Lili Apgar**, Specialist, *State Controller's Office*  
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA  
95816  
Phone: (916) 324-0254  
lapgar@sco.ca.gov

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Carol Augustine**, *City of Burlingame*  
501 Primrose Road, Burlingame, CA 94010  
Phone: (650) 558-7210  
caugustine@burlingame.org

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

**Van Bach**, Accounting Manager, *City of San Rafael*  
1400 Fifth Avenue, San Rafael, CA 94901  
Phone: (415) 458-5001  
van.bach@cityofsanrafael.org

**Michelle Bannigan**, Finance Director, *City of Stanton*  
7800 Katella Ave, Stanton, CA 90680  
Phone: (714) 890-4226  
MBannigan@StantonCA.Gov

**Robert Barron III**, Finance Director, *City of Atherton*  
Finance Department, 91 Ashfield Rd, Atherton, CA 94027  
Phone: (650) 752-0552  
rbarron@ci.atherton.ca.us

**Jennifer Becker**, Financial Services Director, *City of Burbank*  
275 East Olive Avenue, Burbank, CA 91502  
Phone: (818) 238-5500  
jbecker@burbankca.gov



**Ray Beeman**, Chief Fiscal Officer, *City of Gardena*  
1700 West 162nd Street, Gardena, CA 90247  
Phone: (310) 217-9516  
rbeeman@cityofgardena.org

**Jason Behrmann**, Interim City Manager, *City of Elk Grove*  
8401 Laguna Palms Way, Elk Grove, CA 95758  
Phone: (916) 478-2201  
jbehrmann@elkgrovecity.org

**Maria Bemis**, *City of Porterville*  
291 North Main Street, Porterville, CA 93257  
Phone: N/A  
mbemis@ci.porterville.ca.us

**Paul Benoit**, City Administrator, *City of Piedmont*  
120 Vista Avenue, Piedmont, CA 94611  
Phone: (510) 420-3042  
pbenoit@ci.piedmont.ca.us

**Nils Bentsen**, City Manager, *City of Hesperia*  
9700 Seventh Ave, Hesperia, CA 92345  
Phone: (760) 947-1025  
nbentsen@cityofhesperia.us

**Robin Bertagna**, *City of Yuba City*  
1201 Civic Center Blvd, Yuba City, CA 95993  
Phone: N/A  
rbertagn@yubacity.net

**Teresa Binkley**, Director of Finance, *City of Taft*  
Finance Department, 209 E. Kern St. , Taft, CA 93268  
Phone: (661) 763-1350  
tbinkley@cityoftaft.org

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

**Dalacie Blankenship**, Finance Manager, *City of Jackson*  
Administration / Finance, 33 Broadway, Sacramento, CA 95818  
Phone: (209) 223-1646  
dblankenship@ci.jackson.ca.us

**Lincoln Bogard**, Administrative Services Director, *City of Banning*  
99 East Ramsey Street, Banning, CA 92220

Phone: (951) 922-3118  
lbogard@banningca.gov

**Jaime Boscarino**, Finance Director, *City of Thousand Oaks*  
2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362  
Phone: (805) 449-2200  
jboscarino@toaks.org

**Jason Bradford**, Finance Director, *City of Glendale*  
141 N. Glendale Ave, Room 346, Glendale, CA 91206  
Phone: (818) 548-2085  
jbradford@glendaleca.gov

**David Brandt**, City Manager, *City of Cupertino*  
10300 Torre Avenue, Cupertino, CA 95014-3202  
Phone: 408.777.3212  
manager@cupertino.org

**Molly Brennan**, Director of Finance, *City of National City*  
1243 National City Blvd., National City, CA 91950  
Phone: (619) 336-4330  
finance@nationalcityca.gov

**Ken Brown**, Acting Director of Administrative Services, *City of Irvine*  
One Civic Center Plaza, Irvine, CA 92606  
Phone: (949) 724-6255  
Kbrown@cityofirvine.org

**Jessica Brown**, Chief Financial Officer, *City of Fontana*  
8353 Sierra Avenue, Fontana, CA 92335  
Phone: (909) 350-7679  
jbrown@fontana.org

**Christa Buhagiar**, Director of Finance/Treasurer, *City of Chino Hills*  
14000 City Center Drive, Chino Hills, CA 91709  
Phone: (909) 364-2460  
finance@chinohills.org

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

**Guy Burdick**, Consultant, *MGT Consulting*  
2251 Harvard Street, Suite 134, Sacramento, CA 95815  
Phone: (916) 833-7775  
gburdick@mgtconsulting.com

**Rob Burns**, *City of Chino*  
13220 Central Avenue, Chino, CA 91710  
Phone: N/A  
rburns@cityofchino.org

**Rica Mae Cabigas**, Chief Accountant, *Auditor-Controller*  
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012  
Phone: (213) 974-8309  
rcabigas@auditor.lacounty.gov

**Regan M Cadelario**, City Manager, *City of Fortuna*  
Finance Department, 621 11th Street, Fortuna, CA 95540  
Phone: (707) 725-1409  
rc@ci.fortuna.ca.us

**David Cain**, Director of Finance, *City of El Segundo*  
350 Main Street, El Segundo, CA 90245-3813  
Phone: (310) 524-2315  
dcain@elsegundo.org

**Evelyn Calderon-Yee**, Bureau Chief, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments,  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 324-5919  
ECalderonYee@sco.ca.gov

**Casha Cappuccio**, Associate Attorney, *Brown and Winters*  
3916 Riviera Drive, Apt 102, San Diego, CA 92109  
Phone: (401) 787-1514  
ccappuccio@brownandwinters.com

**Steve Carmona**, City Manager, *City of Pico Rivera*  
6615 Passons Boulevard, Pico Rivera, CA 90660  
Phone: (562) 801-4371  
scarmona@pico-rivera.org

**Pete Carr**, City Manager/Finance Director, *City of Orland*  
PO Box 547, Orland, CA 95963  
Phone: (530) 865-1602  
CityManager@cityoforland.com

**Daria Carrillo**, Director of Finance / Town Treasurer, *Town of Corte Madera*  
300 Tamalpais Drive, Corte Madera, CA 94925  
Phone: (415) 927-5050  
dcarrillo@tcmmail.org

**Manuel Carrillo**, Director of Finance and Administrative Services, *City of Bell Gardens*

7100 Garfield Ave, Bell Gardens, CA 90201

Phone: (562) 806-7700

MCarrillo@bellgardens.org

**Roger Carroll**, Finance Director/Treasurer, *Town of Loomis*

Finance Department, 3665 Taylor Road, Loomis, CA 95650

Phone: (916) 652-1840

rcarroll@loomis.ca.gov

**Nicole Casey**, Administrative Services Director, *Town of Truckee*

10183 Truckee Airport Road, Truckee, CA 96161

Phone: (530) 582-2935

ncasey@townoftruckee.com

**Javier Chagoyen-Lazaro**, Chief Financial Officer, *City of Oxnard*

300 West Third Street, Third Floor, Oxnard, CA 93030

Phone: (805) 200-5400

javier.chagoyenlazaro@oxnard.com

**Karen Chang**, Finance Director, *City of South San Francisco*

400 Grand Ave, South San Francisco, CA 94080

Phone: (650) 877-8505

Karen.Chang@ssf.net

**Sheri Chapman**, General Counsel, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8267

schapman@calcities.org

**Diego Chavez**, Administrative Services Director, *City of Murrieta*

1 Town Square, Murrieta, CA 92562

Phone: (951) 461-6437

dchavez@murrietaca.gov

**Henry Chen**, Acting Financial Services Manager, *City of Arcadia*

240 West Huntington Drive, Arcadia, CA 91007

Phone: (626) 574-5427

hchen@ArcadiaCA.gov

**Misty Cheng**, Finance Director, *City of Adelanto*

11600 Air Expressway, Adelanto, CA 92301

Phone: (760) 246-2300

mcheng@ci.adelanto.ca.us

**Erick Cheung**, Finance Manager, *City of Pleasant Hill*  
100 Gregory Lane, Pleasant Hill, CA 94523  
Phone: (925) 671-5231  
echeung@pleasanthillca.org

**Annette Chinn**, *Cost Recovery Systems, Inc.*  
705-2 East Bidwell Street, #294, Folsom, CA 95630  
Phone: (916) 939-7901  
achinnrs@aol.com

**David Chiu**, City Attorney, *City and County of San Francisco*  
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco,  
CA 94102  
Phone: (415) 554-4700  
cityattorney@sfcityatty.org

**DeAnna Christensen**, Director of Finance, *City of Modesto*  
1010 10th Street, Suite 5200, Modesto, CA 95354  
Phone: (209) 577-5371  
dachristensen@modestogov.com

**Vivian Chu**, Finance Director, *City of Sausalito*  
420 Litho Street, Sausalito, CA 94965  
Phone: (415) 289-4150  
vchu@sausalito.gov

**Carmen Chu**, Assessor-Recorder, *City and County of San Francisco*  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 190, San Francisco, CA  
94102-4698  
Phone: (415) 554-5596  
assessor@sfgov.org

**Carolyn Chu**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8326  
Carolyn.Chu@lao.ca.gov

**Paul Chung**, Finance Director, *City of San Marino*  
2200 Huntington Drive, San Marino, CA 91108  
Phone: (626) 300-0708  
pchung@cityofsanmarino.org

**Mario Cifuentez**, Deputy City Manager, *City of Visalia*  
707 West Acequia Avenue, Visalia, CA 93291  
Phone: (559) 713-4474  
Mario.Cifuentez@visalia.city

**Edgar Cisneros**, City Administrator, *City of Commerce*  
2535 Commerce Way, Commerce, CA 90040  
Phone: (323) 722-4805  
ecisneros@ci.commerce.ca.us

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

**Stephen Conway**, *City of Los Gatos*  
110 E. Main Street, Los Gatos, CA 95031  
Phone: N/A  
sconway@losgatosca.gov

**Kris Cook**, Assistant Program Budget Manager, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
Kris.Cook@dof.ca.gov

**Julia Cooper**, *City of San Jose*  
Finance, 200 East Santa Clara Street, San Jose, CA 95113  
Phone: (408) 535-7000  
Finance@sanjoseca.gov

**Viki Copeland**, *City of Hermosa Beach*  
1315 Valley Drive, Hermosa Beach, CA 90254  
Phone: N/A  
vcopeland@hermosabch.org

**Drew Corbett**, Finance Director, *City of San Mateo*  
330 West 20th Avenue, San Mateo, CA 94403-1388  
Phone: (650) 522-7102  
dcorbett@cityofsanmateo.org

**Christine Cordon**, City Manager, *City of Westminster*  
8200 Westminster Blvd, Westminster, CA 92683  
Phone: (714) 548-3178  
CCordon@westminster-ca.gov

**Erika Cortez**, Administrative Services Director, *City of Imperial Beach*  
825 Imperial Beach Boulevard, Imperial Beach, CA 91932  
Phone: (619) 423-8303  
ecortez@imperialbeachca.gov

**Brian Cote**, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 650-8184

bcote@counties.org

**Lis Cottrell**, Finance Director, *City of Anderson*

Finance Department, 1887 Howard Street, Anderson , CA 96007

Phone: (530) 378-6626

lcottrell@ci.anderson.ca.us

**Robert Cross**, Financial Services Manager, *City of Lompoc*

100 Civic Center Plaza, Lompoc, CA 93438-8001

Phone: (805) 736-1261

r\_cross@ci.lompoc.ca.us

**Amy Cunningham**, Administrative Services Director, *City of Novato*

922 Machin Avenue, Novato, CA 94945

Phone: (415) 899-8918

ACunningham@novato.org

**Gavin Curran**, *City of Laguna Beach*

505 Forest Avenue, Laguna Beach, CA 92651

Phone: N/A

gcurran@lagunabeachcity.net

**Cindy Czerwin**, Director of Administrative Services, *City of Watsonville*

250 Main Street, Watsonville, CA 95076

Phone: (831) 768-3450

cindy.czerwin@cityofwatsonville.org

**Victor Damiani**, Finance Director, *City of Seaside*

440 Harcourt Ave, Seaside, CA 93955

Phone: (831) 899-6718

vdamiani@ci.seaside.ca.us

**Santino Danisi**, Finance Director / City Controller, *City of Fresno*

2600 Fresno St. Rm. 2157, Fresno, CA 93721

Phone: (559) 621-2489

Santino.Danisi@fresno.gov

**Chuck Dantuono**, Director of Administrative Services, *City of Highland*

Administrative Services , 27215 Base Line , Highland, CA 92346

Phone: (909) 864-6861

cdantuono@cityofhighland.org

**Eric Dargan**, Chief Operating Officer, *City of San Diego*

**Claimant Contact**

City Hall, 202 C Street, Suite 901A, San Diego, CA 92101

Phone: (858) 236-5587  
Edargan@sandiego.gov

**Fran David**, City Manager, *City of Hayward*  
Finance Department, 777 B Street, Hayward, CA 94541  
Phone: (510) 583-4000  
citymanager@hayward-ca.gov

**Thomas Deak**, Senior Deputy, *County of San Diego*  
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA  
92101  
Phone: (619) 531-4810  
Thomas.Deak@sdcounty.ca.gov

**Dilu DeAlwis**, *City of Colton*  
650 North La Cadena Drive, Colton, CA 92324  
Phone: (909) 370-5036  
financedept@coltonca.gov

**Kalyn Dean**, Senior Legislative Analyst, *California State Association of  
Counties (CSAC)*  
Government Finance and Administration, 1100 K Street, Suite 101,  
Sacramento, CA 95814  
Phone: (916) 327-7500  
kdean@counties.org

**Gigi Decavalles-Hughes**, Director of Finance, *City of Santa Monica*  
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401  
Phone: (310) 458-8281  
gigi.decavalles@smgov.net

**Shannon DeLong**, Assistant City Manager, *City of Whittier*  
13230 Penn Street, Whittier, CA 90602  
Phone: (562) 567-9301  
admin@cityofwhittier.org

**Leticia Dias**, Finance Director, *City of Ceres*  
2220 Magnolia Street, Ceres, CA 95307  
Phone: (209) 538-5757  
leticia.dias@ci.ceres.ca.us

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



**Steven Dobrenen**, Finance Director, *City of Cudahy*  
5220 Santa Ana Street, Cudahy, CA 90201  
Phone: (831) 386-5925  
sdobrenen@cityofcudahyca.gov

**Brian Dossey**, City Manager, *City of Colma*  
1198 El Camino Real, Colma, CA 94014  
Phone: (650) 997-8300  
brian.dossey@colma.ca.gov

**Kathryn Downs**, Finance Director, *City of Santa Ana*  
20 Civic Center Plaza, Santa Ana, CA 92701  
Phone: (714) 647-5420  
kdowns@santa-ana.org

**June Du**, Finance Director, *City of Los Altos*  
1 North San Antonio Road, Los Altos, CA 94022  
Phone: (650) 947-2700  
jdu@losaltosca.gov

**Peggy Ducey**, Interim City Manager, *City of Fort Bragg*  
416 N Franklin Street, Fort Bragg, CA 94537  
Phone: (707) 961-2823  
pducey@fortbragg.com

**Randall L. Dunn**, City Manager, *City of Colusa*  
Finance Department, 425 Webster St. , Colusa, CA 95932  
Phone: (530) 458-4740  
citymanager@cityofcolusa.com

**Cheryl Dyas**, *City of Mission Viejo*  
200 Civic Center, Mission Viejo, CA 92691  
Phone: N/A  
cdyas@cityofmissionviejo.org

**Pamela Ehler**, *City of Brentwood*  
150 City Park Way, Brentwood, CA 94513  
Phone: N/A  
pehler@brentwoodca.gov

**Ann Eifert**, Director of Financial Services/City Treasurer, *City of Aliso Viejo*  
12 Journey, Suite 100, Aliso Viejo, CA 92656-5335  
Phone: (949) 425-2520  
aeifert@avcity.org

**Mara Elliott**, City Attorney, *City of San Diego*  
Civil Litigation Division, 1200 Third Avenue, Suite 1100, San Diego, CA

92101-4100

Phone: (619) 533-5800

melliott@sandiego.gov

**Edward Enriquez**, Interim Assistant City Manager/CFO Treasurer, *City of Riverside*

3900 Main Street, Riverside, CA 92501

Phone: N/A

EEnriquez@riversideca.gov

**Kelly Ent**, Director of Government Services, *City of Big Bear Lake*

Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315

Phone: (909) 866-5831

kent@citybigbearlake.com

**Tina Envia**, Finance Manager, *City of Waterford*

Finance Department, 101 E Street, Waterford, CA 95386

Phone: (209) 874-2328

finance@cityofwaterford.org

**Vic Erganian**, Deputy Finance Director, *City of Pasadena*

Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215

Phone: (626) 744-4355

verganian@cityofpasadena.net

**Eric Erickson**, Director of Finance and Human Resources , *City of Mill Valley*

Department of Finance and Human Resources , 26 Corte Madera Avenue , Mill Valley, CA 94941

Phone: (415) 388-4033

finance@cityofmillvalley.org

**Jennifer Erwin**, Assistant Finance Director , *City of Perris*

Finance Department, 101 N. D Street, Perris, CA 92570

Phone: (951) 943-4610

jerwin@cityofperris.org

**Sandra Featherson**, Administrative Services Director, *City of Solvang*

Finance, 1644 Oak Street, Solvang, CA 93463

Phone: (805) 688-5575

sandraf@cityofsolvang.com

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-8918

donna.ferebee@dof.ca.gov

**Matthew Fertal**, City Manager, *City of Garden Grove*  
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840  
Phone: (714) 741-5000  
CityManager@ci.garden-grove.ca.us

**Artie Fields**, City Manager, *City of Inglewood*  
1 Manchester Boulevard, Inglewood, CA 90301  
Phone: (310) 412-5301  
AFields@Cityofinglewood.org

**Tim Flanagan**, Office Coordinator, *Solano County*  
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533  
Phone: (707) 784-3359  
Elections@solanocounty.com

**Alan Flora**, Finance Director, *City of Clearlake*  
14050 Olympic Drive, Clearlake, CA 95422  
Phone: (707) 994-8201  
aflora@clearlake.ca.us

**Sandy Fonseca**, Interim Finance Director, *City of Calexico*  
608 Heber Ave, Calexico, CA 92231  
Phone: (760) 768-2123  
sfonseca@calexico.ca.gov

**Anthony Forestiere**, Acting Finance Director, *City of Madera*  
205 West Fourth Street, Madera, CA 93637  
Phone: (559) 661-5454  
aforestiere1@madera.gov

**Kristin Forier**, Interim Finance Director, *City of Laguna Niguel*  
30111 Crown Valley Parkway, Laguna Niguel, CA 92677  
Phone: (949) 362-4361  
kforier@cityoflagunaniguel.org

**Lisa Fowler**, Finance Director, *City of San Marcos*  
1 Civic Center Drive, San Marcos, CA 92069  
Phone: (760) 744-1050  
lfowler@san-marcos.net

**Aaron France**, City Manager, *City of Buena Park*  
6650 Beach Boulevard, Second Floor, Buena Park, CA 90621  
Phone: (714) 562-3550  
afrance@buenapark.com

**Cheri Freese**, Finance Director, *City of Ridgecrest*  
100 West California Avenue, Ridgecrest, CA 93555

Phone: (760) 499-5026  
cfreese@ridgecrest-ca.gov

**Nora Frimann**, City Attorney, *City of San Jose*  
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113  
Phone: (408) 535-1900  
nora.frimann@sanjoseca.gov

**Will Fuentes**, Director of Financial Services, *City of Milpitas*  
455 East Calaveras Boulevard, Milpitas, CA 95035  
Phone: (408) 586-3111  
wfuentes@ci.milpitas.ca.gov

**PJ Gagajena**, Interim Finance Director/Assistant City Manager, *City of Moorpark*  
799 Moorpark Ave. , Moorpark, CA 93021  
Phone: (805) 517-6249  
PJGagajena@MoorparkCA.gov

**Carolyn Galloway-Cooper**, Finance Director, *City of Buellton*  
Finance Department, 107 West Highway 246, Buellton, CA 93427  
Phone: (805) 688-5177  
carolync@cityofbuellton.com

**Art Gallucci**, City Manager, *City of Cerritos*  
18125 Bloomfield Ave, Cerritos, CA 90703  
Phone: (562) 916-1310  
agallucci@cerritos.us

**Marlene Galvan**, Deputy Finance Officer, *City of Fontana*  
8353 Sierra Ave, Fontana, CA 92335  
Phone: (909) 350-7671  
Mgalvan@fontana.org

**Rebecca Garcia**, *City of San Bernardino*  
300 North , San Bernardino, CA 92418-0001  
Phone: (909) 384-7272  
garcia\_re@sbcity.org

**Martha Garcia**, Director of Management Services, *City of Monterey Park*  
320 West Newmark Ave, Monterey Park, CA 91754  
Phone: (626) 307-1349  
magarcia@montereypark.ca.gov

**Danielle Garcia**, Director of Finance, *City of Redlands*  
PO Box 3005, Redlands, CA 92373

Phone: (909) 798-7510  
dgarcia@cityofredlands.org

**Marisela Garcia**, Finance Director, *City of Riverbank*  
Finance Department, 6707 Third Street , Riverbank, CA 95367  
Phone: (209) 863-7109  
mhgarcia@riverbank.org

**Jeffry Gardner**, City Manager & Finance Director, *City of Plymouth*  
P.O. Box 429, Plymouth, CA 95669  
Phone: (209) 245-6941  
jgardner@cityofplymouth.org

**David Gassaway**, City Manager, *City of Fairfield*  
1000 Webster Street, Fairfield,  
Phone: (707) 428-7398  
dgassaway@fairfield.ca.gov

**David Gibson**, Executive Officer, *San Diego Regional Water Quality Control Board*  
9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340  
Phone: (858) 467-2952  
dgibson@waterboards.ca.gov

**Ross Gilb**, Finance Director/Town Treasurer, *Town of Paradise*  
5555 Skyway, Paradise, CA 95969  
Phone: (530) 872-6291  
rgilb@townofparadise.com

**David Glasser**, Finance Director, *City of Martinez*  
525 Henrietta Street, Martinez, CA 94553  
Phone: (925) 372-3579  
dglasser@cityofmartinez.org

**Jose Gomez**, Director of Finance and Administrative Services, *City of Lakewood*  
5050 Clark Avenue, Lakewood, CA 90712  
Phone: (562) 866-9771  
jgomez@lakewoodcity.org

**Jesus Gomez**, City Manager, *City of El Monte*  
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293  
Phone: (626) 580-2001  
citymanager@elmonteca.gov

**Gabe Gonzalez**, City Administrator, *City of Gilroy*  
7351 Rosanna Street, Gilroy, CA 95020

Phone: (408) 846-0202  
Denise.King@cityofgilroy.org

**Ana Gonzalez**, City Clerk, *City of Woodland*  
300 First Street, Woodland, CA 95695  
Phone: (530) 661-5830  
ana.gonzalez@cityofwoodland.org

**Jim Goodwin**, City Manager, *City of Live Oak*  
9955 Live Oak Blvd., Live Oak, CA 95953  
Phone: (530) 695-2112  
liveoak@liveoakcity.org

**Michelle Greene**, City Manager, *City of Goleta*  
130 Cremona Drive, Suite B, Goleta, CA 93117  
Phone: (805) 961-7500  
mgreene@cityofgoleta.org

**John Gross**, *City of Long Beach*  
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802  
Phone: N/A  
john.gross@longbeach.gov

**Troy Grunklee**, Director of Administrative Services, *City of La Puente*  
15900 East Main Street, La Puente, CA 91744  
Phone: (626) 855-1500  
tgrunklee@lapuente.org

**John Guertin**, City Manager, *City of Del Rey Oaks*  
650 Canyon Del Rey Road, Del Rey Oaks, CA 93940  
Phone: (831) 394-8511  
JGuertin@DelReyOaks.org

**Shelly Gunby**, Director of Financial Management, *City of Winters*  
Finance, 318 First Street, Winters, CA 95694  
Phone: (530) 795-4910  
shelly.gunby@cityofwinters.org

**Anna Guzman**, Director of Finance, *City of Weed*  
550 Main Street, PO Box 470, Weed, CA 96094  
Phone: (530) 938-5020  
guzman@ci.weed.ca.us

**Lani Ha**, Finance Manager/Treasurer, *City of Danville*  
510 La Gonda Way, Danville, CA 94526  
Phone: (925) 314-3311  
lha@danville.ca.gov

**Catherine George Hagan**, Senior Staff Counsel, *State Water Resources Control Board*

c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive,  
Suite 100, San Diego, CA 92108

Phone: (619) 521-3012

catherine.hagan@waterboards.ca.gov

**Andy Hall**, City Manager, *City of San Clemente*

910 Calle Negocio, San Clemente, CA 92673

Phone: (949) 361-8341

HallA@san-clemente.org

**Sonia Hall**, City Manager, *City of Parlier*

1100 East Parlier Avenue, Parlier, CA 93648

Phone: (559) 646-3545

shall@parlier.ca.us

**Heather Halsey**, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

heather.halsey@csm.ca.gov

**Sunny Han**, Acting Chief Financial Officer, *City of Huntington Beach*

2000 Main Street, Huntington Beach, CA 92648

Phone: (714) 536-5630

Sunny.Han@surfcity-hb.org

**Stephen Hannah**, Director, City Support Services, *City of Palos Verdes Estates*

340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274

Phone: (310) 378-0383

Shannah@Pvestates.org

**Toni Hannah**, Director of Finance, *City of Pacific Grove*

300 Forest Avenue, Pacific Grove, CA 93950

Phone: (831) 648-3100

thannah@cityofpacificgrove.org

**Jared Hansen**, Finance Director, *City of Manteca*

1001 West Center Street, Manteca, CA 95337

Phone: (209) 456-8730

jhansen@manteca.gov

**Anne Haraksin**, *City of La Mirada*

13700 La Mirada Blvd., La Mirada, CA 90638

Phone: N/A  
aharaksin@cityoflamirada.org

**George Harris**, Finance Director, *City of Lancaster*  
44933 Fern Avenue, Lancaster, CA 93534  
Phone: (661) 723-5988  
gharris@cityoflancasterca.org

**Mary Harvey**, Director of Finance, *City of Santa Maria*  
City Hall Annex, 206 East Cook Street, Santa Maria, CA 93454  
Phone: (805) 925-0951  
mharvey@cityofsantamaria.org

**Jim Heller**, City Treasurer, *City of Atwater*  
Finance Department, 750 Bellevue Rd, Atwater, CA 95301  
Phone: (209) 357-6310  
finance@atwater.org

**Eric Hendrickson**, Finance Director, *City of Laguna Hills*  
24035 El Toro Road, Laguna Hills, CA 92653  
Phone: (949) 707-2623  
ehendrickson@lagunahillsca.gov

**Jennifer Hennessy**, *City of Temecula*  
41000 Main St., Temecula, CA 92590  
Phone: N/A  
Jennifer.Hennessy@cityoftemecula.org

**Travis Hickey**, Director of Finance and Administrative Services, *City of Santa Fe Springs*  
11710 East Telegraph Road, Santa Fe Springs, CA 90670  
Phone: (562) 868-0511  
travishickey@santafesprings.org

**Robert Hicks**, *City of Berkeley*  
2180 Milvia Street, Berkeley, CA 94704  
Phone: N/A  
finance@ci.berkeley.ca.us

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

**Tiffany Hoang**, Associate Accounting Analyst, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments,  
3301 C Street, Suite 740, Sacramento, CA 95816



Phone: (916) 323-1127

THoang@sco.ca.gov

**S. Rhetta Hogan**, Finance Director, *City of Yreka*

Finance Department, 701 Fourth Street, Yreka, CA 96097

Phone: (530) 841-2386

rhetta@ci.yreka.ca.us

**Jason Holley**, City Manager, *City of American Canyon*

4381 Broadway Street, Suite 201, American Canyon, CA 94503

Phone: (707) 647-5323

jholley@cityofamericancanyon.org

**Linda Hollinsworth**, Finance Director, *City of Hawaiian Gardens*

21815 Pioneer Blvd., Hawaiian Gardens, CA 90716

Phone: (562) 420-2641

lindah@hgcity.org

**Christina Holmes**, Director of Finance, *City of Escondido*

201 North Broadway, Escondido, CA 92025

Phone: (760) 839-4676

cholmes@escondido.org

**Clay Holstine**, City Manager, *City of Brisbane*

50 Park Place, Brisbane, CA 94005

Phone: (415) 508-2110

cholstine@brisbaneca.org

**Mike Howard**, Director of Finance, *City of Soledad*

248 Main Street, Soledad, CA 93960

Phone: (831) 674-5562

mhoward@cityofsoledad.com

**Lewis Humphries**, Finance Director, *City of Newman*

Finance Department, 938 Fresno Street, Newman, CA 95360

Phone: (209) 862-3725

lhumphries@cityofnewman.com

**Diego Ibanez**, Director of Finance, *City of Tulare*

411 E Kern Ave., Tulare, CA 93274

Phone: (559) 684-4255

dibanez@tulare.ca.gov

**Heather Ippoliti**, Administrative Services Director, *City of Healdsburg*

401 Grove Street, Healdsburg, CA 95448

Phone: (707) 431-3307

hippoliti@ci.healdsburg.ca.us

**Joe Irvin**, City Manager, *City of South Lake Tahoe*  
1901 Lisa Maloff Way, South Lake Tahoe, CA 96150  
Phone: (530) 542-6000  
jirvin@cityofslt.us

**Rachel Jacobs**, Finance Director/Treasurer, *City of Solana Beach*  
635 South Highway 101, Solana Beach, CA 92075-2215  
Phone: (858) 720-2463  
rjacobs@cosb.org

**Chris Jeffers**, Interim City Manager, *City of South Gate*  
8650 California Ave, South Gate, CA 90280  
Phone: (323) 563-9503  
cjeffers@sogate.org

**Brooke Jenkins**, District Attorney, *City and County of San Francisco*  
350 Rhode Island Street, North Building, Suite 400N, San Francisco, CA  
94103  
Phone: (628) 652-4000  
districtattorney@sfgov.org

**Jason Jennings**, Director, *Maximus Consulting*  
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA  
23236  
Phone: (804) 323-3535  
SB90@maximus.com

**Heather Jennings**, Director of Finance, *City of Santee*  
10601 Magnolia Avenue, Building #3, Santee, CA 92071  
Phone: (619) 258-4100  
hjennings@cityofsanteeca.gov

**Talika Johnson**, Director, *City of Azusa*  
213 E Foothill Blvd, Azusa, CA 91702  
Phone: (626) 812-5203  
tjohnson@ci.azusa.ca.us

**Christa Johnson**, Town Manager, *Town of Ross*  
31 Sir Francis Drake Boulevard, PO Box 320, Ross, CA 94957  
Phone: (415) 453-1453  
cjohnson@townofross.org

**Sarah Johnson-Rios**, Assistant City Manager/Admin Services Director, *City of Morro Bay*  
595 Harbor Street, Morro Bay, CA 93442

Phone: (805) 772-6217  
sjohnson-rios@morrobayca.gov

**Hamed Jones**, Finance Director, *City of Tehachapi*  
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561  
Phone: (661) 822-2200  
hjones@tehachapicityhall.com

**Susan Jones**, Finance Manager, *City of Pismo Beach*  
Finance, 760 Mattie Road, Pismo Beach, CA 93449  
Phone: (805) 773-7012  
swjones@pismoeach.org

**Angelo Joseph**, Supervisor, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments,  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 323-0706  
AJoseph@sco.ca.gov

**Kim Juran Karageorgiou**, Administrative Services Director, *City of Rancho Cordova*  
2729 Prospect Park Drive , Rancho Cordova, CA 95670  
Phone: (916) 851-8731  
kjuran@cityofranhocordova.org

**Will Kaholokula**, Finance Director, *City of San Gabriel*  
425 South Mission Drive, San Gabriel, CA 91776  
Phone: (626) 308-2812  
wkaholokula@sgch.org

**Dennis Kauffman**, Finance Director, *City of Roseville*  
311 Vernon Street, Roseville, CA 95678  
Phone: (916) 774-5313  
dkauffman@roseville.ca.us

**Naomi Kelly**, City Administrator, *City and County of San Francisco*  
City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA  
94102  
Phone: (415) 554-4851  
city.administrator@sfgov.org

**Anita Kerezsi**, *AK & Company*  
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446  
Phone: (805) 239-7994  
akcompanysb90@gmail.com

**Joanne Kessler**, Fiscal Specialist, *City of Newport Beach*  
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266  
Phone: (949) 644-3199  
jkessler@newportbeachca.gov

**Kevin King**, Deputy City Attorney, Affirmative Civil Enforcement Unit, *San Diego City Attorney's Office*  
1200 Third Avenue, Suite 1100, San Diego, CA 92101  
Phone: (619) 533-6103  
KBKing@sandiego.gov

**Jennifer King**, Acting Finance Director, *City of Tustin*  
300 Centennial Way, Tustin, CA 92780  
Phone: (714) 573-3079  
jking@tustinca.org

**Rafaela King**, Finance Director, *City of Monterey*  
735 Pacific Street, Suite A, Monterey, CA 93940  
Phone: (831) 646-3940  
King@monterey.org

**Tim Kiser**, City Manager, *City of Grass Valley*  
125 East Main Street, Grass Valley, CA 95945  
Phone: (530) 274-4312  
timk@cityofgrassvalley.com

**Zach Korach**, Finance Director, *City of Carlsbad*  
1635 Faraday Ave., Carlsbad, CA 92008  
Phone: (442) 339-2127  
zach.korach@carlsbadca.gov

**James Krueger**, Director of Administrative Services, *City of Coronado*  
1825 Strand Way, Coronado, CA 92118  
Phone: (619) 522-7309  
jkrueger@coronado.ca.us

**John Kunkel**, Interim City Manager, *City of Huron*  
36311 Lassen Avenue, PO Box 339, Huron, CA 93234  
Phone: (559) 945-2241  
John@cityofhuron.com

**Lisa Kurokawa**, Bureau Chief for Audits, *State Controller's Office*  
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 327-3138  
lkurokawa@sco.ca.gov

**Mali LaGoe**, City Manager, *City of Scotts Valley*  
1 Civic Center Drive, Scotts Valley, CA 95066  
Phone: (831) 440-5600  
mlagoe@scottsvalley.gov

**Ramon Lara**, City Administrator, *City of Woodlake*  
350 N. Valencia Blvd., Woodlake, CA 93286  
Phone: (559) 564-8055  
rlara@ci.woodlake.ca.us

**Nancy Lassey**, Finance Administrator, *City of Lake Elsinore*  
130 South Main Street, Lake Elsinore, CA 92530  
Phone: N/A  
nlassey@lake-elsinore.org

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

**Eric Lawyer**, Legislative Advocate, *California State Association of Counties (CSAC)*  
Government Finance and Administration, 1100 K Street, Suite 101,  
Sacramento, CA 95814  
Phone: (916) 650-8112  
elawyer@counties.org

**Tamara Layne**, *City of Rancho Cucamonga*  
10500 Civic Center Drive, Rancho Cucamonga, CA 91730  
Phone: (909) 477-2700  
Tamara.Layne@cityofrc.us

**Kim-Anh Le**, Deputy Controller, *County of San Mateo*  
555 County Center, 4th Floor, Redwood City, CA 94063  
Phone: (650) 599-1104  
kle@smcgov.org

**Linda Leaver**, Finance Director, *City of Crescent City*  
377 J Street, Crescent City, CA 95531  
Phone: (707) 464-7483  
lleaver@crescentcity.org

**Krysten Lee**, Finance Director, *City of Newark*  
37101 Newark Blvd, Newark, CA 94560  
Phone: (510) 578-4288  
krysten.lee@newark.org

**Fernando Lemus**, Principal Accountant - Auditor, *County of Los Angeles*  
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,  
CA 90012

Phone: (213) 974-0324

flemus@auditor.lacounty.gov

**Grace Leung**, City Manager, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3001

gleung@newportbeachca.gov

**Erika Li**, Chief Deputy Director, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

erika.li@dof.ca.gov

**Pearl Lieu**, Director of Finance, *City of Alhambra*  
111 South First Street, Alhambra, CA 91801

Phone: (626) 570-5020

plieu@cityofalhambra.org

**Shally Lin**, Director of Finance - Interim, *City of Fountain Valley*  
10200 Slater Avenue, Fountain Valley, CA 92708

Phone: (714) 593-4418

Shally.Lin@fountainvalley.org

**Gilbert A. Livas**, City Manager, *City of Downey*  
11111 Brookshire Ave, Downey, CA 90241-7016

Phone: (562) 904-7102

glivas@downeyca.org

**Rudolph Livingston**, Finance Director, *City of Ojai*  
PO Box 1570, Ojai, CA 93024

Phone: N/A

livingston@ojaicity.org

**Juan Lopez**, Finance Director, *City of Marina*  
211 Hillcrest Avenue, Marina, CA 93933

Phone: (831) 884-1221

jlopez@cityofmarina.org

**Diego Lopez**, Consultant, *Senate Budget and Fiscal Review Committee*  
1020 N Street, Room 502, Sacramento, CA 95814

Phone: (916) 651-4103

Diego.Lopez@sen.ca.gov

**Brian Loventhal**, City Manager, *City of Campbell*  
70 North First Street, Campbell, CA 95008  
Phone: (408) 866-2100  
dianaj@cityofcampbell.com

**Everett Luc**, Accounting Administrator I, Specialist, *State Controller's Office*  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 323-0766  
ELuc@sco.ca.gov

**Elizabeth Luna**, Accounting Services Manager, *City of Suisun City*  
701 Civic Center Blvd, Suisun City, CA 94585  
Phone: (707) 421-7320  
eluna@suisun.com

**Janet Luzzi**, Finance Director, *City of Arcata*  
Finance Department, 736 F Street, Arcata, CA 95521  
Phone: (707) 822-5951  
finance@cityofarcata.org

**Martin Magana**, City Manager/Finance Director, *City of Desert Hot Springs*  
Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240  
Phone: (760) 329-6411, Ext.  
CityManager@cityofdhs.org

**Carmen Magana**, Director of Administrative Services, *City of Santa Clarita*  
23920 Valencia Blvd, Santa Clarita, CA 91355  
Phone: (661) 255-4997  
cmagana@santa-clarita.com

**Jill Magee**, Program Analyst, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Jill.Magee@csm.ca.gov

**Jennifer Maguire**, City Manager, *City of San Jose*  
200 East Santa Clara Street, San Jose, CA 95113  
Phone: (408) 535-8111  
Jennifer.Maguire@sanjoseca.gov

**James Makshanoff**, City Manager, *City of Pomona*  
505 South Garey Ave, Pomona, CA 91766  
Phone: (909) 620-2051  
james\_makshanoff@ci.pomona.ca.us

**Licette Maldonado**, Administrative Services Director, *City of Carpinteria*  
5775 Carpinteria Avenue, Carpinteria, CA 93013

Phone: (805) 755-4448  
licettem@carpinteriaca.gov

**Hrant Manuelian**, Director of Finance/City Treasurer, *City of Lawndale*  
14717 Burin Avenue, Lawndale, CA 90260  
Phone: (310) 973-3200  
hmanuelian@lawndalecity.org

**Darryl Mar**, Manager, *State Controller's Office*  
3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 323-0706  
DMar@sco.ca.gov

**Terri Marsh**, Finance Director, *City of Signal Hill*  
Finance, 2175 Cherry Ave., Signal Hill, CA 90755  
Phone: (562) 989-7319  
Finance1@cityofsignalhill.org

**Cyndie Martel**, Town Clerk and Administrative Manager, *Town of Ross*  
31 Sir Francis Drake Blvd, PO Box 320, Ross, CA 94957  
Phone: (415) 453-1453  
cmartel@townofross.org

**Pio Martin**, Finance Manager, *City of Firebaugh*  
Finance Department, 1133 P Street, Firebaugh, CA 93622  
Phone: (559) 659-2043  
financedirector@ci.firebaugh.ca.us

**Ken Matsumiya**, Director of Finance, *City of Vacaville*  
650 Merchant Street, Vacaville, CA 95688  
Phone: (707) 449-5450  
Ken.Matsumiya@cityofvacaville.com

**Dennice Maxwell**, Finance Director, *City of Redding*  
Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001  
Phone: (530) 225-4079  
finance@cityofredding.org

**Kevin McCarthy**, Director of Finance, *City of Indian Wells*  
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497  
Phone: (760) 346-2489  
kmccarthy@indianwells.com

**Tim McDermott**, Director of Finance, *City of Poway*  
13325 Civic Center Drive, Poway, CA 92064



Phone: (858) 668-4411  
tmcdermott@poway.org

**Elizabeth McGinnis**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Elizabeth.McGinnis@csm.ca.gov

**Bridgette McInally**, Accounting Manager, *City of Buena Ventura*  
Finance and Technology , 501 Poli Street, Ventura, CA 93001  
Phone: (805) 654-7812  
bmcinally@ci.ventura.ca.us

**Randy McKeegan**, Finance Director, *City of Bakersfield*  
1600 Truxtun Avenue, Bakersfield, CA 93301  
Phone: (661) 326-3742  
RMcKeegan@bakersfieldcity.us

**Tina McKendell**, *County of Los Angeles*  
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,  
CA 90012  
Phone: (213) 974-0324  
tmckendell@auditor.lacounty.gov

**Larry McLaughlin**, City Manager, *City of Sebastopol*  
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472  
Phone: (707) 823-1153  
lwmclaughlin@juno.com

**Jane McPherson**, Financial Services Director, *City of Oceanside*  
300 North Coast Highway, Oceanside, CA 92054  
Phone: (760) 435-3055  
JmcPherson@oceansideca.org

**Paul Melikian**, *City of Reedley*  
1717 Ninth Street, Reedley, CA 93654  
Phone: (559) 637-4200  
paul.melikian@reedley.ca.gov

**Brittany Mello**, Administrative Services Director, *City of Menlo Park*  
701 Laurel Street, Menlo Park, CA 94025  
Phone: (650) 330-6675  
bkmello@menlopark.gov

**Erica Melton**, Director of Finance / City Treasurer, *City of San Fernando*  
117 Macneil Street, San Fernando, CA 91340

Phone: (818) 898-1212  
EMelton@sfcity.org

**Rebecca Mendenhall**, *City of San Carlos*  
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309  
Phone: (650) 802-4205  
rmendenhall@cityofsancarlos.org

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

**Olga Mendoza**, *City of Ceres*  
2220 Magnolia Street, Ceres, CA 95307  
Phone: (209) 538-5766  
olga.mendoza@ci.ceres.ca.us

**Dawn Merchant**, *City of Antioch*  
P.O. Box 5007, Antioch, CA 94531  
Phone: (925) 779-7055  
dmerchant@ci.antioch.ca.us

**Joan Michaels Aguilar**, *City of Dixon*  
600 East A Street, Dixon, CA 95620  
Phone: N/A  
jmichaelsaguilar@ci.dixon.ca.us

**Ron Millard**, Finance Director, *City of Vallejo*  
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590  
Phone: (707) 648-4592  
alison.hughes@cityofvallejo.net

**Brett Miller**, Director of Administrative Services, *City of Hollister*  
375 Fifth Street, Hollister, CA 95023  
Phone: (831) 636-4301  
brett.miller@hollister.ca.gov

**Leyne Milstein**, Director of Finance, *City of Sacramento*  
915 I Street, 5th Floor, Sacramento, CA 98514  
Phone: (916) 808-5845  
lmilstein@cityofsacramento.org

**Greg Minor**, City Administrator, *City of Oakland*  
1 Frank H Ogawa Plaza, Oakland, CA 94612  
Phone: (510) 238-3301  
gminor@oaklandca.gov

**April Mitts**, Finance Director, *City of St. Helena*  
1480 Main Street, Saint Helena, CA 94574  
Phone: (707) 968-2751  
amitts@cityofsthelena.org

**Kevin Mizuno**, Finance Director, *City of Clayton*  
Finance Department, 600 Heritage Trail, Clayton, CA 94517  
Phone: (925) 673-7309  
kmizuno@ci.clayton.ca.us

**Bruce Moe**, City Manager, *City of Manhattan Beach*  
1400 Highland Ave., Manhattan Beach, CA 90266  
Phone: (310) 802-5302  
bmoe@citymb.info

**Brian Mohan**, Chief Financial Officer, *City of Moreno Valley*  
14177 Frederick Street, PO Box 88005, Moreno Valley, CA 92552  
Phone: (951) 413-3021  
brianm@moval.org

**Monica Molina**, Finance Manager/Treasurer, *City of Del Mar*  
1050 Camino Del Mar, Del Mar, CA 92014  
Phone: (858) 755-9354  
mmolina@delmar.ca.us

**Lourdes Morales**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8320  
Lourdes.Morales@LAO.CA.GOV

**Isaac Moreno**, Finance Director, *City of Turlock*  
156 South Broadway, Suite 230, Turlock, CA 95380  
Phone: (209) 668-6071  
IMoreno@turlock.ca.us

**Debbie Moreno**, *City of Anaheim*  
200 S. Anaheim Boulevard, Anaheim, CA 92805  
Phone: (716) 765-5192  
DMoreno@anaheim.net

**Walter Munchheimer**, Interim Administrative Services Manager, *City of Marysville*  
Administration and Finance Department, 526 C Street, Marysville, CA 95901  
Phone: (530) 749-3901  
wmunchheimer@marysville.ca.us

**Marilyn Munoz**, Senior Staff Counsel, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-8918  
Marilyn.Munoz@dof.ca.gov

**Bill Mushallo**, Finance Director, *City of Petaluma*  
Finance Department, 11 English St., Petaluma, CA 94952  
Phone: (707) 778-4352  
financeemail@ci.petaluma.ca.us

**Renee Nagel**, Finance Director, *City of Visalia*  
707 W. Acequia Avenue, City Hall West, Visalia, CA 93291  
Phone: (559) 713-4375  
Renee.Nagel@visalia.city

**Tim Nash**, Director of Finance, *City of Encinitas*  
505 S Vulcan Avenue, Encinitas, CA 92054  
Phone: N/A  
finmail@encinitasca.gov

**Mansour Nasser**, Water and Sewer Division Manager, *City of Sunnyvale*  
456 West Olive Avenue, Sunnyvale, CA 94086  
Phone: (408) 730-7578  
MNasser@sunnyvale.ca.gov

**Renee Neermann**, Finance Manager, *City of Malibu*  
23825 Stuart Ranch Road, Malibu, CA 90265  
Phone: (310) 456-2489  
RNeermann@malibucity.org

**Kaleb Neufeld**, Assistant Controller, *City of Fresno*  
2600 Fresno Street, Fresno, CA 93721  
Phone: (559) 621-2489  
Kaleb.Neufeld@fresno.gov

**Keith Neves**, Director of Finance/City Treasurer, *City of Lake Forest*  
Finance Department, 100 Civic Center Drive, Lake Forest, CA 92630  
Phone: (949) 461-3430  
kneves@lakeforestca.gov

**Tim Nevin**, Director of Finance and Administrative Services, *City of Daly City*  
333 90th Street, Daly City, CA 94015  
Phone: (650) 991-8040  
tnevin@dalycity.org

**Dat Nguyen**, Finance Director, *City of Morgan Hill*  
17575 Peak Avenue, Morgan Hill, CA 95037

Phone: (408) 779-7237  
dat.nguyen@morgan-hill.ca.gov

**Trang Nguyen**, Director of Finance, *City of Orange*  
300 E. Chapman Avenue, Orange, CA 92866-1508  
Phone: (714) 744-2230  
nguyent@cityoforange.org

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

**Dale Nielsen**, Director of Finance/Treasurer, *City of Vista*  
Finance Department, 200 Civic Center Drive, Vista, CA 92084  
Phone: (760) 726-1340  
dnielsen@ci.vista.ca.us

**David Noce**, Accounting Division Manager, *City of Santa Clara*  
1500 Warburton Ave, Santa Clara, CA 95050  
Phone: (408) 615-2341  
dnoce@santaclaraca.gov

**Vontray Norris**, City Manager Director of Community Services, *City of Hawthorne*  
4455 W 126th St, Hawthorne, CA 90250  
Phone: (310) 349-2908  
vnorris@hawthorneca.gov

**Kiely Nose**, Interim Director of Administrative Services, *City of Palo Alto*  
250 Hamilton Avenue, Palo Alto, CA 94301  
Phone: (650) 329-2692  
Kiely.Nose@cityofpaloalto.org

**Adriana Nunez**, Staff Counsel, *State Water Resources Control Board*  
Los Angeles Regional Water Quality Control Board, 1001 I Street, 22nd Floor,  
Sacramento, CA 95814  
Phone: (916) 322-3313  
Adriana.Nunez@waterboards.ca.gov

**Michael O'Brien**, Administrative Services Director, *City of San Dimas*  
245 East Bonita Ave, San Dimas, CA 91773  
Phone: (909) 394-6200  
mobrien@sandimasca.gov

**Michael O'Kelly**, Director of Administrative Services, *City of Fullerton*  
303 West Commonwealth Avenue, Fullerton, CA 92832

Phone: (714) 738-6803  
mokelly@cityoffullerton.com

**Jim O'Leary**, Finance Director, *City of San Bruno*  
567 El Camino Real, San Bruno, CA 94066  
Phone: (650) 616-7080  
webfinance@sanbruno.ca.gov

**Brenda Olwin**, Finance Director, *City of East Palo Alto*  
2415 University Avenue, East Palo Alto, CA 94303  
Phone: (650) 853-3122  
financedepartment@cityofepa.org

**Cathy Orme**, Finance Director, *City of Larkspur*  
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939  
Phone: (415) 927-5019  
cathy.orme@cityoflarkspur.org

**John Ornelas**, Interim City Manager, *City of Huntington Park*  
, 6550 Miles Avenue, Huntington Park, CA 90255  
Phone: (323) 584-6223  
scrum@hpeca.gov

**Odi Ortiz**, Assistant City Manager/Finance Director, *City of Livingston*  
Administrative Services, 1416 C Street, Livingston, CA 95334  
Phone: (209) 394-8041  
oortiz@livingstoncity.com

**Patricia Pacot**, Accountant Auditor I, *County of Colusa*  
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932  
Phone: (530) 458-0424  
ppacot@countyofcolusa.org

**Wayne Padilla**, Interim Director, *City of San Luis Obispo*  
Finance & Information Technology Department, 990 Palm Street, San Luis  
Obispo, CA 93401  
Phone: (805) 781-7125  
wpadilla@slocity.org

**Arthur Palkowitz**, *Law Offices of Arthur M. Palkowitz*  
12807 Calle de la Siena, San Diego, CA 92130  
Phone: (858) 259-1055  
law@artpalk.onmicrosoft.com

**Raymond Palmucci**, Deputy City Attorney, *Office of the San Diego City  
Attorney*  
**Claimant Representative**

1200 Third Avenue, Suite 1100, San Diego, CA 92101

Phone: (619) 236-7725

rpalmucci@sandiego.gov

**Kirsten Pangilinan**, Specialist, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 322-2446

KPangilinan@sco.ca.gov

**Donald Parker**, Director of Finance, *City of Montclair*

5111 Benito St., Montclair, CA 91763

Phone: N/A

dparker@cityofmontclair.org

**Nancy Pauley**, Director of Finance, *City of Palm Springs*

3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Phone: (760) 323-8229

Nancy.Pauley@palmspringsca.gov

**Nick Pegueros**, Administrative Services Director, *City of Saratoga*

13777 Fruitvale Avenue, Saratoga, CA 94025

Phone: (408) 868-1221

npegueros@saratoga.ca.us

**David Persselin**, Finance Director, *City of Fremont*

3300 Capitol Ave, Fremont, CA 94538

Phone: (510) 494-4790

DPersselin@fremont.gov

**Marie Peterson**, Interim Finance Director, *City of Patterson*

1 Plaza Circle, Patterson, CA 95363

Phone: (209) 895-8047

mpeterson@ci.patterson.ca.us

**Marcus Pimentel**, *City of Santa Cruz*

809 Center Street, Rm 101, Santa Cruz, CA 95060

Phone: N/A

dl\_Finance@cityofsantacruz.com

**Johnnie Pina**, Legislative Policy Analyst, *League of Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8214

jpina@cacities.org

**Adam Pirrie**, City Manager and Acting Finance Director, *City of Claremont*

207 Harvard Ave, Claremont, CA 91711

Phone: (909) 399-5456  
apirrie@ci.claremont.ca.us

**Bret M. Plumlee**, City Manager, *City of Los Alamitos*  
3191 Katella Ave., Los Alamitos, CA 90720  
Phone: (562) 431-3538 ext.  
bplumlee@cityoflosalamitos.org

**Sheila Poisson**, Finance Director, *City of Torrance*  
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503  
Phone: (310) 618-5850  
SPoisson@TorranceCA.Gov

**Darrin Polhemus**, Deputy Director, *State Water Resources Control Board*  
Division of Drinking Water, , ,  
Phone: (916) 341-5045  
Darrin.Polhemus@waterboards.ca.gov

**Neil Polzin**, City Treasurer, *City of Covina*  
125 East College Street, Covina, CA 91723  
Phone: (626) 384-5400  
npolzin@covinaca.gov

**Brian Ponty**, *City of Redwood City*  
1017 Middlefield Road, Redwood City, CA 94063  
Phone: (650) 780-7300  
finance@redwoodcity.org

**Rajneil Prasad**, Deputy Finance Director, *City of Napa*  
955 School Street, PO Box 660, Napa, CA 94559  
Phone: (707) 257-9510  
rprasad@cityofnapa.org

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

**Mark Prestwich**, City Manager, *City of Hemet*  
445 East Florida Avenue, Hemet, CA 92543  
Phone: (951) 765-2301  
mprestwich@hemetca.gov

**Tom Prill**, Finance Director, *City of San Jacinto*  
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583



Phone: (951) 487-7340  
tprill@sanjacintoca.gov

**Rod Pruett**, City Administrator, *City of Chowchilla*  
130 South 2nd Street, Chowchilla, CA 93610  
Phone: (559) 665-8615  
RPruett@cityofchowchilla.org

**Tim Przybyla**, Finance Director, *City of Oakley*  
Finance Department, 3231 Main Street, Oakley, CA 94561  
Phone: (925) 625-7010  
przybyla@ci.oakley.ca.us

**Marc Puckett**, Interim Director of Finance, *City of Barstow*  
220 East Mountain View Street, Barstow, CA 92311  
Phone: (760) 255-5117  
mpuckett@barstowca.org

**Mubeen Qader**, Acting Director of Finance, *City of Richmond*  
450 Civic Center Plaza, Richmond, CA 94804  
Phone: (510) 620-2077  
Mubeen\_Qader@ci.richmond.ca.us

**Jonathan Quan**, Associate Accountant, *County of San Diego*  
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123  
Phone: 6198768518  
Jonathan.Quan@sdcounty.ca.gov

**Frank Quintero**, *City of Merced*  
678 West 18th Street, Merced, CA 95340  
Phone: N/A  
quinterof@cityofmerced.org

**Derek Rampone**, Finance and Administrative Services Director, *City of Mountain View*  
500 Castro Street, Mountain View, CA 94041  
Phone: (650) 903-6316  
Derek.Rampone@mountainview.gov

**Paul Rankin**, Finance Director, *City of Orinda*  
22 Orinda Way, Second Floor, Orinda, CA 94563  
Phone: (925) 253-4224  
prankin@cityoforinda.org

**Roberta Raper**, Director of Finance, *City of West Sacramento*  
1110 West Capitol Ave, West Sacramento, CA 95691

Phone: (916) 617-4509  
robertar@cityofwestsacramento.org

**Karan Reid**, Finance Director, *City of Concord*  
1950 Parkside Drive, Concord, CA 94519  
Phone: (925) 671-3178  
karan.reid@cityofconcord.org

**Tae G. Rhee**, Finance Director, *City of Bellflower*  
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706  
Phone: (562) 804-1424  
trhee@bellflower.org

**Terry Rhodes**, Accounting Manager, *City of Wildomar*  
23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595  
Phone: (951) 677-7751  
trhodes@cityofwildomar.org

**Marie Ricci**, Administrative Services Director/City Treasurer, *City of Glendora*  
116 East Foothill Road, Glendora, CA 91741-3380  
Phone: (626) 914-8245  
mricci@cityofglendora.org

**David Rice**, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95814  
Phone: (916) 341-5161  
david.rice@waterboards.ca.gov

**Rachelle Rickard**, City Manager, *City of Atascadero*  
Finance Department, 6500 Palma Ave, Atascadero, CA 93422  
Phone: (805) 461-7612  
rrickard@atascadero.org

**Rosa Rios**, *City of Delano*  
1015 11th Ave., Delano, CA 93216  
Phone: N/A  
rrios@cityofdelano.org

**Luke Rioux**, Finance Director, *City of Goleta*  
130 Cremona Drive, Suite B, Goleta, CA 93117  
Phone: (805) 961-7500  
Lrioux@cityofgoleta.org

**Mark Roberts**, Director of Finance, *City of Salinas*  
200 Lincoln Ave, Salinas, CA 93901

Phone: (831) 758-7211

Dof@ci.salinas.ca.us

**Rob Rockwell**, Director of Finance, *City of Indio*

Finance Department, 100 Civic Center Mall, Indio, CA 92201

Phone: (760) 391-4029

rrockwell@indio.org

**Paul Rodrigues**, Director of Finance, *City of Pittsburg*

65 Civic Avenue, Pittsburg, CA 94565

Phone: (925) 252-4848

prodrigues@pittsburgca.gov

**Benjamin Rosenfield**, City Controller, *City and County of San Francisco*

1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102

Phone: (415) 554-7500

ben.rosenfield@sfgov.org

**David Rowlands**, City Manager, *City of Fillmore*

250 Central Avenue, Fillmore, CA 93015

Phone: (805) 524-1500

drowlands@ci.fillmore.ca.us

**Tammi Royales**, Director of Finance, *City of La Mesa*

8130 Allison Avenue, PO Box 937, La Mesa, CA 91944-0937

Phone: (619) 463-6611

findir@cityoflamesa.us

**Brittany Ruiz**, Interim Director of Finance, *City of Rancho Palos Verdes*

30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275

Phone: (310) 544-5304

bruiz@rpvca.gov

**Cynthia Russell**, Chief Financial Officer/City Treasurer, *City of San Juan Capistrano*

Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675

Phone: (949) 443-6343

crussell@sanjuancapistrano.org

**Pete Salazar**, Interim Finance Director/City Treasurer, *City of El Cerrito*

10890 San Pablo Ave, El Cerrito, CA 95430-2392

Phone: (510) 215-4335

psalazar@ci.el-cerrito.ca.us

**Leticia Salcido**, *City of El Centro*

1275 Main Street, El Centro, CA 92243

Phone: N/A  
lsalcido@ci.el-centro.ca.us

**Robert Samario**, *City of Santa Barbara*  
P.O. Box 1990, Santa Barbara, CA 93102-1990  
Phone: (805) 564-5336  
BSamario@SantaBarbaraCA.gov

**Janelle Samson**, Director of Finance, *City of Palmdale*  
38300 Sierra Highway, Suite D, Palmdale, CA 93550  
Phone: (661) 267-5440  
jsamson@cityofpalmdale.org

**Tony Sandhu**, Interim Finance Director, *City of Capitola*  
Finance Department, 480 Capitola Ave, Capitola, CA 95010  
Phone: (831) 475-7300  
tsandhu@ci.capitola.ca.us

**Jessica Sankus**, Senior Legislative Analyst, *California State Association of Counties (CSAC)*  
Government Finance and Administration, 1100 K Street, Suite 101,  
Sacramento, CA 95814  
Phone: (916) 327-7500  
jsankus@counties.org

**Kim Sao**, Finance Director, *City of Paramount*  
16400 Colorado Avenue, Paramount, CA 90723  
Phone: (562) 220-2200  
ksao@paramountcity.com

**Lori Sassoon**, City Manager, *City of Norco*  
2870 Clark Avenue, Norco, CA 92860  
Phone: (951) 270-5617  
LSassoon@ci.norco.ca.us

**Robin Scattini**, Finance Manager, *City of Carmel*  
PO Box CC, Carmel, CA 93921  
Phone: (831) 620-2019  
rscattini@ci.carmel.ca.us

**Jay Schengel**, Finance Director/City Treasurer, *City of Clovis*  
1033 5th Street, Clovis, CA 93612  
Phone: (559) 324-2113  
jays@ci.clovis.ca.us

**Donna Schwartz**, City Clerk, *City of Huntington Park*  
6550 Miles Avenue, Huntington park, CA 90255-4393

Phone: (323) 584-6231  
DSchwartz@hpca.gov

**Cindy Sconce**, Director, *MGT*  
Performance Solutions Group, 3600 American River Drive, Suite 150,  
Sacramento, CA 95864  
Phone: (916) 276-8807  
csconce@mgtconsulting.com

**Tami Scott**, Administrative Services Director, *Cathedral City*  
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA  
92234  
Phone: (760) 770-0356  
tscott@cathedralcity.gov

**Kelly Sessions**, Director of Administrative Services, *City of San Ramon*  
Finance Department, 7000 Bollinger Canyon Road, Building #2, San Ramon,  
CA 94583  
Phone: (925) 973-2500  
ksessions@sanpabloca.gov

**Mel Shannon**, Finance Director, *City of La Habra*  
Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337  
Phone: (562) 383-4050  
mshannon@lahabraca.gov

**Terry Shea**, Finance Director, *City of Canyon Lake*  
31516 Railroad Canyon Road, Canyon Lake, CA 92587  
Phone: (951) 244-2955  
terry@ramscpa.net

**Camille Shelton**, Chief Legal Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Carla Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
carla.shelton@csm.ca.gov

**Natalie Sidarous**, Chief, *State Controller's Office*  
Local Government Programs and Services Division, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: 916-445-8717  
NSidarous@sco.ca.gov

**Stephanie Sikkema**, Finance Director, *City of West Covina*  
1444 West Garvey Street South, West Covina, CA 91790  
Phone: (626) 939-8438  
ssikkema@westcovina.org

**Kim Sitton**, Director of Finance, *City of Corona*  
400 South Vicentia Ave., Corona, CA 92882  
Phone: (951) 279-3532  
Kim.Sitton@CoronaCA.gov

**Michelle Skaggs Lawrence**, City Manager, *City of Oceanside*  
300 North Coast Highway, Oceanside, CA 92054  
Phone: (760) 435-3055  
citymanager@oceansideca.org

**Laura Snideman**, City Manager, *City of Calistoga*  
1232 Washington Street, Calistoga, CA 94515  
Phone: (707) 942-2802  
LSnideman@ci.calistoga.ca.us

**Eileen Sobeck**, Executive Director, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828  
Phone: (916) 341-5183  
Eileen.Sobeck@waterboards.ca.gov

**Eugene Solomon**, City Treasurer, *City of Redondo Beach*  
415 Diamond Street, Redondo Beach, CA 90277  
Phone: (310) 318-0657  
eugene.solomon@redondo.org

**Greg Sparks**, City Manager, *City of Eureka*  
531 K Street, Eureka, CA 95501  
Phone: (707) 441-4144  
cityclerk@ci.eureka.ca.gov

**Kenneth Spray**, Finance Director, *City of Millbrae*  
621 Magnolia Avenue, Millbrae, CA 94030  
Phone: (650) 259-2433  
kspray@ci.millbrae.ca.us

**Kelly Stachowicz**, Assistant City Manager, *City of Davis*  
23 Russell Blvd, Davis, CA 95616  
Phone: (560) 757-5602  
kstachowicz@cityofdavis.org

**Kent Steffens**, City Manager, *City of Sunnyvale*  
456 West Olive Avenue, Sunnyvale, CA 94086

Phone: (408) 730-7911

ksteffens@ci.sunnyvale.ca.us

**Sean Sterchi**, *State Water Resources Control Board*

Division of Drinking Water, 1350 Front Street, Room 2050, San Diego, CA 92101

Phone: (619) 525-4159

Sean.Sterchi@waterboards.ca.gov

**Katherine Stevens**, Director of Finance, *City of Rialto*

150 South Palm Avenue, Rialto, CA 92376

Phone: (909) 421-7242

kstevens@rialto.ca.gov

**Jana Stuard**, Finance Director, *City of Norwalk*

12700 Norwalk Blvd, Norwalk, CA 90650

Phone: (562) 929-5748

jstuard@norwalkca.gov

**Edmund Suen**, Finance Director, *City of Foster City*

610 Foster City Blvd., Foster City, CA 94404

Phone: (650) 853-3122

esuen@fostercity.org

**Karen Suiker**, City Manager, *City of Trinidad*

409 Trinity Street, PO Box 390, Trinidad, CA 95570

Phone: (707) 677-3876

citymanager@trinidad.ca.gov

**Suzanne Sweitzer**, Director of Administrative Services, *Town of Tiburon*

1505 Tiburon Boulevard, Tiburon, CA 94920

Phone: (415) 435-7373

ssweitzer@townoftiburon.org

**Michael Szczech**, Finance Director, *City of Piedmont*

120 Vista Avenue, Piedmont, CA 94611

Phone: (510) 420-3045

mszczech@piedmont.ca.gov

**Tatiana Szerwinski**, Assistant Director of Finance, *City of Beverly Hills*

455 North Rexford Drive, Beverly Hills, CA 90210

Phone: (310) 285-2411

tszerwinski@beverlyhills.org

**Leo Tacata**, Finance Director, *City of Rohnert Park*

130 Avram Avenue, Rohnert Park, CA 94928-1180

Phone: (707) 588-2247  
ltacata@rpcity.org

**Rose Tam**, Finance Director, *City of Baldwin Park*  
14403 East Pacific Avenue, Baldwin Park, CA 91706  
Phone: (626) 960-4011  
rtam@baldwinpark.com

**Stacey Tamagni**, Director of Finance / CFO, *City of Folsom*  
50 Natoma Street, Folsom, CA 95630  
Phone: (916) 461-6712  
stamagni@folsom.ca.us

**Christopher Tavarez**, Finance Director, *City of Hanford*  
315 North Douty Street, Hanford, CA 93230  
Phone: (559) 585-2500  
ctavarez@cityofhanfordca.com

**Lynn Theissen**, Finance Director, *City of Chico*  
411 Main St., Chico, CA 95927  
Phone: (530) 879-7300  
lynn.theissen@chicoca.gov

**Donna Timmerman**, Financial Manager, *City of Ferndale*  
Finance Department, 834 Main Street, Ferndale, CA 95535  
Phone: (707) 786-4224  
finance@ci.ferndale.ca.us

**Jolene Tollenaar**, *MGT Consulting Group*  
2251 Harvard Street, Suite 134, Sacramento, CA 95815  
Phone: (916) 243-8913  
jolenetollenaar@gmail.com

**Joseph Toney**, Director of Administrative Services, *City of Simi Valley*  
2929 Tapo Canyon Road, Simi Valley, CA 93063  
Phone: (805) 583-6700  
admins@simivalley.org

**Kimberly Trammel**, Chief Financial Officer/Administrative Services  
Director, *City of Stockton*  
425 North El Dorado Street, Stockton, CA 95202  
Phone: (209) 937-8460  
Kimberly.Trammel@stocktonca.gov

**Colleen Tribby**, Finance Director, *City of Dublin*  
100 Civic Plaza, Dublin, CA 94568



Phone: (925) 833-6640  
colleen.tribby@dublin.ca.gov

**Albert Trinh**, Finance Manager, *City of South Pasadena*  
1414 Mission Street, South Pasadena, CA 91030  
Phone: (626) 403-7250  
FinanceDepartment@southpasadenaca.gov

**Jeff Tschudi**, Finance Director, *City of Benicia*  
250 East L Street, Benicia, CA 94510  
Phone: (707) 746-4225  
JTschudi@ci.benicia.ca.us

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

**Stefanie Turner**, Finance Director, *City of Rancho Santa Margarita*  
Finance Department, 22112 El Paseo, Rancho Santa Margarita, CA 92688  
Phone: (949) 635-1808  
sturner@cityofrsm.org

**Brian Uhler**, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8328  
Brian.Uhler@LAO.CA.GOV

**Mark Uribe**, Finance Director, *City of Camarillo*  
601 Carmen Drive, Camarillo, CA 93010  
Phone: (805) 388-5320  
muribe@cityofcamarillo.org

**Tameka Usher**, Director of Administrative Services, *City of Rocklin*  
3970 Rocklin Road, Rocklin, CA 95677  
Phone: (916) 625-5050  
tameka.usher@rocklin.ca.us

**Nicole Valentine**, Interim Director of Administrative Services, *City of Arroyo Grande*  
300 E. Branch Street, Arroyo Grande, CA 93420  
Phone: (804) 473-5410  
nvalentine@arroyo grande.org

**Antonio Velasco**, Revenue Auditor, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3143  
avelasco@newportbeachca.gov

**Norman Veloso**, Director of Finance, *City of San Pablo*  
1000 Gateway Avenue, San Pablo, CA 94806  
Phone: (510) 215-3021  
NormanV@sanpabloca.gov

**Matthew Vespi**, Chief Financial Officer, *City of San Diego*  
202 C Street, 9th Floor, San Diego, CA 92101  
Phone: (619) 236-6218  
mvespi@sandiego.gov

**Nawel Voelker**, Acting Director of Finance (Management Analyst), *City of Belmont*  
Finance Department, One Twin Pines Lane, Belmont, CA 94002  
Phone: (650) 595-7433  
nvoelker@belmont.gov

**Emel Wadhvani**, Senior Staff Counsel, *State Water Resources Control Board*  
Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814  
Phone: (916) 322-3622  
emel.wadhvani@waterboards.ca.gov

**Ada Waelder**, Legislative Analyst, Government Finance and Administration,  
*California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
awaelder@counties.org

**Nicholas Walker**, Finance Director, *City of Lakeport*  
225 Park Street, Lakeport, CA 95453  
Phone: (707) 263-5615  
nwalker@cityoflakeport.com

**Joe Ware**, Finance Director, *City of Lemon Grove*  
3232 Main Street, Lemon Grove, CA 91945  
Phone: (619) 825-3803  
jware@lemongrove.ca.gov

**Dave Warren**, Director of Finance, *City of Placerville*  
Finance Department, 3101 Center Street, Placerville, CA 95667  
Phone: (530) 642-5223  
dwarren@cityofplacerville.org

**Gary Watahira**, Administrative Services Director, *City of Sanger*  
1700 7th Street, Sanger, CA 93657

Phone: (559) 876-6300  
gwatahira@ci.sanger.ca.us

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

**Kevin Werner**, City Administrator, *City of Ripon*  
Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366  
Phone: (209) 599-2108  
kwerner@cityofripon.org

**Michael Whitehead**, Administrative Services Director & City Treasurer, *City of Rolling Hills Estates*  
Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274  
Phone: (310) 377-1577  
MikeW@RollingHillsEstatesCA.gov

**David Wilson**, *City of West Hollywood*  
8300 Santa Monica Blvd., West Hollywood, CA 90069  
Phone: N/A  
dwilson@weho.org

**Colleen Winchester**, Senior Deputy City Attorney, *City of San Jose*  
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113  
Phone: (408) 535-1987  
Colleen.Winchester@sanjoseca.gov

**Chris Woidzik**, Finance Director, *City of Avalon*  
Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704  
Phone: (310) 510-0220  
Scampbell@cityofavalon.com

**Harry Wong**, Director of Finance, *City of Lynwood*  
11330 Bullis Road, Lynwood, CA 90262  
Phone: (310) 603-0220  
hwong@lynwood.ca.us

**Jacqueline Wong-Hernandez**, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*  
1100 K Street, Sacramento, CA 95814  
Phone: (916) 650-8104  
jwong-hernandez@counties.org

**Paul Wood**, Interim City Manager, *City of Greenfield*  
599 El Camino Real, Greenfield, CA 93927  
Phone: 8316745591  
pwood@ci.greenfield.ca.us

**Kevin Woodhouse**, City Manager, *City of Pacifica*  
170 Santa Maria Avenue, Pacifica, CA 94044  
Phone: (650) 738-7409  
woodhousek@ci.pacifica.ca.us

**Jane Wright**, Finance Manager, *City of Ione*  
Finance Department, 1 East Main Street , PO Box 398, Ione, CA 95640  
Phone: (209) 274-2412  
JWright@ione-ca.com

**Elisa Wynne**, Staff Director, *Senate Budget & Fiscal Review Committee*  
California State Senate, State Capitol Room 5019, Sacramento, CA 95814  
Phone: (916) 651-4103  
elisa.wynne@sen.ca.gov

**Curtis Yakimow**, Town Manager, *Town of Yucca Valley*  
57090 Twentynine Palms Highway, Yucca Valley, CA 92284  
Phone: (760) 369-7207  
townmanager@yucca-valley.org

**Bobby Young**, *City of Costa Mesa*  
77 Fair Drive, Costa Mesa, CA 92626  
Phone: N/A  
Bobby.Young@costamesaca.gov

**Michael Yuen**, Finance Director, *City of San Leandro*  
835 East 14th St., San Leandro, CA 94577  
Phone: (510) 577-3376  
myuen@sanleandro.org

**Luis Zamora**, Confidential Executive Assistant to the City Attorney, *City and County of San Francisco*  
Office of the City Attorney, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102  
Phone: (415) 554-4748  
Luis.A.Zamora@sfcityatty.org

**Bill Zenoni**, Finance Director, *City of Emeryville*  
1333 Park Ave., Emeryville, CA 94608  
Phone: (510) 596-4352  
bill.zenoni@emeryville.org

**Helmholt Zinser-Watkins**, Associate Governmental Program Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,  
3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-7876

HZinser-watkins@sco.ca.gov

**Jeffery Zuba**, Finance and Administrative Services Director, *Town of San Anselmo*

525 San Anselmo Ave, San Anselmo, CA 94960

Phone: (415) 258-4600

jzuba@townofsananselmo.org