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March 12, 2024

**Commission on  
State Mandates**

March 12, 2024

Heather Halsey  
Executive Director  
Commission on State Mandates 980  
Ninth Street, Suite 300  
Sacramento, CA 95814

**Test Claim 22-TC-01, California Regional Water Quality Control Board, Los Angeles Region, Order No. R4- 2021-0105**

Dear Director Halsey:

The Department of Finance (“Finance”) has reviewed the test claim filed by the County of Los Angeles (“County”) and the Los Angeles County Flood Control District (“District” and together with the County, the “Claimants”) in connection with Order No. R4-2021-0105 (“Permit”) issued by the California Regional Water Quality Control Board, Los Angeles Region (“Regional Board”) alleging that certain requirements set forth in the Permit should be deemed unfunded state mandates for which a subvention of funds is required (“Test Claim 22-TC-01”).

In Test Claim 22-TC-01, Claimants argue that certain requirements of the Permit go beyond what is required by federal law and thus constitute a new program or higher level of service within the meaning of Article XIII B, section 6 of the California Constitution. Finance defers to the State Water Resources Control Board (“State Board”) and the Regional Board as to whether any of the activities required under the Permit exceed those required by applicable federal law. Finance instead wishes to comment on Claimants’ assertions that such Permit activities require reimbursement by the state.

Claimants further argue they are entitled to reimbursement for those activities that are the subject of Tests Claim 22-TC-01 as fees or assessments to pay for those activities can only be levied upon a vote of the electorate. To that end, Claimants cite the prohibition on fees or assessments imposed without voter approval under Proposition 26. However, Proposition 26’s voter approval requirement specifically excludes assessments and property-related fees imposed in accordance with Proposition 218. As such, under Proposition 26, so long as they are imposed in accordance with Proposition 218, Claimants are not prohibited by Proposition 26 from levying fees or assessments without voter approval.

Claimants cite *Howard Jarvis Taxpayers Association v City of Salinas* (2002) 98 Cal. App. 4<sup>th</sup> 1351 to support their assertion that fees or assessments to cover Permit costs are property-related fees that are subject to voter approval under Proposition 218. However, in 2017, the California Legislature enacted Senate Bill 231 (“SB 231”) explicitly rejecting the *Salinas* holding and amending Government Code section 53750 to make it clear that assessments and fees to pay for costs such as those claimed under Test Claim TC-22-01 are exempt from Proposition 218’s voter approval requirements. Consequently, Claimants are not required by either Proposition 26 or Proposition 218 to seek voter approval before imposing fees or assessments.

In declarations associated with the filing of Test Claim 22-TC-01, Claimants indicated that they first incurred costs to implement the Permit in or around September 2021, upon the Permit becoming effective, or shortly thereafter. Since SB 231 took effect on January 1, 2018, Claimants costs were incurred subsequent to the effective date of SB 231 and thus Claimants had and continue to have sufficient statutory fee authority. This fee authority negates the need for any reimbursement by the state for those costs claimed under Test Claim 22-TC-01.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,

*Marilyn Munoz*

MARILYN MUNOZ  
Senior Staff Counsel

## 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 March 12, 2024, I served the:

- **Current Mailing List dated January 19, 2024**
- **Notice of Partial Extension Request Approval and Postponement of Hearing issued March 12, 2024**
- **Finance's Comments on the Test Claim filed March 12, 2024**
- **Water Boards' Request for Extension of Time and Postponement of Hearing filed March 8, 2024**

*California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2021-0105, 22-TC-01*

Los Angeles Regional Water Quality Control Board Order No. R4-2021-0105: Parts III.A.1, A.3.a, A.3.b, A.5.a, A.5.b, A.5.c, A.6; Parts IV.A.2 and B and Attachments J through S (except Attachments K, L and N); Part VII and Attachment E; Parts VIII.D.1, D.3, D.4; Parts VIII.F.3.c.i, F.3.c.ii, F.3.c.iii; Parts VIII.G.4.a, G.5.a, G.5.b.i, G.5.b.ii; Parts VIII.H.2 and H.5.b; and Parts VIII.I.5, I.6, I.8., effective September 11, 2021

County of Los Angeles and Los Angeles County Flood Control District, 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 March 12, 2024 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:** 1/19/24

**Claim  
Number:** 22-TC-01

**Matter:** California Regional Water Quality Control Board, Los Angeles  
Region, Order No. R4-2021-0105

**Claimants:** County of Los Angeles  
Los Angeles County Flood Control District

### **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.)

**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

**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

**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

**Susana Arredondo**, Executive Officer, *Los Angeles Regional Water Quality Control Board*

320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343

Phone: (213) 576-6605

Susana.Arredondo@waterboards.ca.gov

**Aaron Avery**, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

Aarona@csda.net

**Ginni Bella Navarre**, Deputy Legislative Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8342

Ginni.Bella@lao.ca.gov

**Guy Burdick**, Consultant, *MGT Consulting*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 833-7775

gburdick@mgtconsulting.com

**Allan Burdick**,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

**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

**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

**Teresa Calvert**, Program Budget Manager, *Department of Finance*

915 L Street, 8th Floor, Sacramento, CA 95814

Phone: (916) 322-2263  
Teresa.Calvert@dof.ca.gov

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

**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

**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@sdcountry.ca.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

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

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

**Donna Ferebee**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-8918  
donna.ferebee@dof.ca.gov

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

**Jennifer Fordyce**, Assistant Chief Counsel, *State Water Resources Control Board*

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

Phone: (916) 324-6682

Jennifer.Fordyce@waterboards.ca.gov

**Sophie Froelich**, Attorney III, *State Water Resources Control Board*

1001 I Street, 22nd Floor, Sacramento, CA 95812

Phone: (916) 319-8557

Sophie.Froelich@waterboards.ca.gov

**Howard Gest**, *Burhenn & Gest, LLP*

**Claimant Representative**

12401 Wilshire Blvd, Suite 200, Los Angeles, CA 90025

Phone: (213) 629-8787

hgest@burhenngest.com

**Juliana Gmur**, Acting Executive Director, *Commission on State Mandates*

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

Phone: (916) 323-3562

juliana.gmur@csm.ca.gov

**Mike Gomez**, Revenue Manager, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3240

mgomez@newportbeachca.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

**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

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, 8th Floor, 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

**Jessica Jahr**, *State Water Resources Control Board*

Central Valley Regional Water Quality Control Board, 1001 I Street, 22nd floor, Sacramento, CA 95814

Phone: (916) 341-5168

Jessica.Jahr@waterboards.ca.gov

**Jason Jennings**, Director, *Maximus Consulting*

Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236

Phone: (804) 323-3535

SB90@maximus.com

**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

**Anita Kerezsi**, *AK & Company*

2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994

akcompanysb90@gmail.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

**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

**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

**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

**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

**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

**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

**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

**Darryl Mar**, Manager, *State Controller's Office*  
3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706  
DMar@sco.ca.gov

**Hugh Marley**, Assistant Executive Officer, *Los Angeles Regional Water*  
*Quality Control Board*

320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343  
Phone: (213) 576-6686  
Hugh.Marley@waterboards.ca.gov

**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

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

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

**Jenny Newman**, Assistant Executive Officer, *Los Angeles Regional Water Quality Control Board*  
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343  
Phone: (213) 576-6686  
Jenny.Newman@waterboards.ca.gov

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

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

**Eric Oppenheimer**, Executive Director, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828  
Phone: (916) 341-5615  
eric.oppenheimer@waterboards.ca.gov

**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

**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

**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

**Mark Pestrella**, Chief Engineer, *Los Angeles County Flood Control District*  
900 South Fremont Avenue, Alhambra, CA 91803

Phone: (626) 458-4001  
mpestrella@dpw.lacounty.gov

**Darrin Polhemus**, Deputy Director, *State Water Resources Control Board*  
Division of Drinking Water, , ,

Phone: (916) 341-5045  
Darrin.Polhemus@waterboards.ca.gov

**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

**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

**Roberta Raper**, Director of Finance, *City of West Sacramento*

1110 West Capitol Ave, West Sacramento, CA 95691

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

**Ivar Ridgeway**, Senior Environmental Scientist, *Los Angeles Regional Water  
Quality Control Board*

320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343

Phone: (213) 576-6686  
iridgeway@waterboards.ca.gov

**Teresita Sablan**, *State Water Resources Control Board*

Santa Ana Regional Water Quality Control Board and San Francisco Bay  
Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento,  
CA 95814

Phone: (916) 341-5174  
Teresita.Sablan@waterboards.ca.gov

**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

**Alex Sauerwein**, Attorney, *State Water Resources Control Board*

San Diego Regional Water Quality Control Board, 1001 I Street, 22nd Floor,  
Sacramento, CA 95814

Phone: (916) 327-8581

Alex.Sauerwein@waterboards.ca.gov

**Michaela Schunk**, Legislative Coordinator, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500

mschunk@counties.org

**Cindy Sconce**, Director, *MGT*

Performance Solutions Group, 3600 American River Drive, Suite 150,  
Sacramento, CA 95864

Phone: (916) 276-8807

cskonce@mgtconsulting.com

**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

**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

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

**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

**Oscar Valdez**, Interim Auditor-Controller, *County of Los Angeles*  
**Claimant Contact**

Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles,  
CA 90012  
Phone: (213) 974-0729  
ovaldez@auditor.lacounty.gov

**Antonio Velasco**, Revenue Auditor, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3143  
avelasco@newportbeachca.gov

**Vincent Vu**, Attorney, *State Water Resources Control Board*  
San Diego Regional Water Quality Control Board, 1001 I Street, 22nd Floor,  
Sacramento, CA 95814  
Phone: (916) 323-5669  
Vincent.Vu@waterboards.ca.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

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

**Adam Whelen**, Director of Public Works, *City of Anderson*  
1887 Howard St., Anderson, CA 96007

Phone: (530) 378-6640  
awhelen@ci.anderson.ca.us

**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

**Yuri Won**, Attorney, Office of Chief Counsel, *State Water Resources Control Board*  
San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814  
Phone: (916) 327-4439  
Yuri.Won@waterboards.ca.gov

**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

**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

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

**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