



September 27, 2016

Ms. Marni Ajello
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

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

Re: Notice of Postponement Denial and Extension Request Partial Approval
Municipal Regional Stormwater Permit – County of San Mateo, 10-TC-01
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Brisbane, Claimant

Municipal Regional Stormwater Permit – County of Alameda, 10-TC-02
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Alameda, Claimant

Municipal Regional Stormwater Permit – County of Santa Clara 10-TC-03
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
County of Santa Clara, Claimant

And

Municipal Regional Stormwater Permit – Municipal Operations (C.2), 10-TC-05
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of San Jose, Claimant

Dear Ms. Ajello:

On September 23, 2016, the Commission on State Mandates (Commission) received a request from the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), for an extension of time to submit written comments on how the recent California Supreme Court opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles), Case No. S214855, should apply to the above-captioned Test Claims, and a request to postpone the tentative hearing date. Written comments are currently due by October 21, 2016, and the matter has been tentatively scheduled for hearing on May 26, 2017. The Regional Water Board requests a postponement of the tentative hearing date from May 26, 2017 until January 26, 2018, with written comments due 60 days before the proposed January 2018 hearing.

The request is based on the grounds that Case No. S214855 is not yet final; that the state has filed a petition for rehearing in Case No. S214855; and that the California Supreme Court has extended the time the decision in that case becomes final and the time for the court to either grant

or deny the petition for rehearing until November 27, 2016 (after the time for which written comments in this case are currently due). The request asserts that if the Supreme Court grants the petition or indicates that it will modify the decision, the law on a key issue directly affecting the claims of the Bay Area permittees will remain unsettled for an undetermined period of time. The request further asserts that granting an extension and postponement of the hearing would help to ensure that the claims are resolved consistently with pending challenges to other municipal stormwater permits, which will prevent prejudice to the parties.

Request for Postponement of Hearing is Denied

The request to postpone the hearing until January 26, 2018 is denied. The hearing on this matter remains tentatively scheduled for **May 26, 2017**.

Government Code section 17530 requires the executive director to expedite all matters before the Commission. Government Code section 17553 further requires that the Commission adopt procedures to ensure a statewide cost estimate is adopted within 12 months after receipt of a test claim, which may be extended for up to six months. The procedures must also permit the hearing of a claim to be postponed *at the request of the claimant* “until the next scheduled hearing.” Section 1187.9(b) of the Commission’s regulations states that postponements are disfavored by the Commission, and a request to postpone a hearing “until the next regularly scheduled hearing” shall only be granted upon an affirmative showing of good cause.

The request to postpone the hearing from May 26, 2017 to January 26, 2018 is premature and, thus, an affirmative showing of good cause has not been provided. The request correctly states that a petition for rehearing has been filed in Case No. S214855. As of the date of this letter, however, the court has not granted the request or indicated that it intends to modify the decision.¹ The court has extended the date to consider the request until November 27, 2016, and under the Rules of Court, the petition for rehearing is deemed denied and the court’s decision becomes final if no action on the petition is taken by the court by November 27, 2016 (six months before the tentative May 26, 2017 hearing date). (Cal. Rules of Court, Rule 8.536.) If the court grants the petition for rehearing or modifies the decision, then the parties may file a request to postpone the hearing and the issue will be reconsidered at that time.

Therefore, the hearing on this matter remains tentatively scheduled for **May 26, 2017**. Commission staff will issue the Draft Proposed Decision approximately eight to ten weeks prior to the hearing in accordance with section 1183.6 of the Commission’s regulations.

Request for Extension of Time to File Written Comments is Granted for an Additional 60 Days

Section 1187.9(a) of the Commission’s regulations provides that so long as a postponement of a hearing would not be required, there is no prejudice to any party or interested party, and there is no other good reason for denial, the request for an extension of time to file comments shall be approved. Pursuant to section 1187.9(a) of the Commission’s regulations, and in light of the order issued by the California Supreme Court in Case No. S214855 extending the date for the

¹ See, e.g., “Judicial Council of California, 2015 Court Statistics Report, Statewide Caseload Trends, 2004-2005 through 2013-2014,” page 13, which indicates that the most recent motion to rehear a decision was granted in fiscal year 2007.

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court to consider whether or not to grant the request for rehearing until November 27, 2016, and the duty imposed under Government Code section 17530 for the executive director to expedite all matters within the jurisdiction of the Commission, the request for an extension of time to file written comments on how the California Supreme Court opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles), Case No. S214855, should apply to the above-captioned Test Claims, is approved, at this time, for an additional **60 days**. Written comments are now due on or before **December 20, 2016**.

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 27, 2016, I served the:

CRWQCB Request for Extension and Postponement and Notice of Postponement of Denial and Extension Request Partial Approval

Municipal Regional Stormwater Permit – County of San Mateo, 10-TC-01
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Brisbane, Claimant

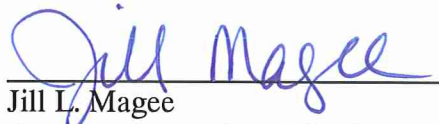
Municipal Regional Stormwater Permit – County of Alameda, 10-TC-02
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City of Alameda, Claimant

Municipal Regional Stormwater Permit – County of Santa Clara, 10-TC-03
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Municipal Regional Stormwater Permit – Municipal Operations (C.2), 10-TC-05
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of San Jose, 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 27, 2016 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-01

Matter: Municipal Regional Stormwater Permit - County of San Mateo

Claimant: City of Brisbane

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.)

Marni Ajello, *State Water Resources Control Board*

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

Phone: (916) 327-4439

marnie.ajello@waterboards.ca.gov

Leticia Alvarez, *City of Belmont*

One Twin Pines Lane, Suite 385, Belmont, CA 94002

Phone: (650) 595-7469

lalvarez@belmont.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

Tamarin Austin, *State Water Resources Control Board*

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

Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*

Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614
Phone: (949) 553-9500
sbeltran@biasc.org

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

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Randy Breault, *City of Brisbane*
Claimant Representative
50 Park Place, Brisbane, CA 94005
Phone: (415) 508-2131
rbreault@ci.brisbane.ca.us

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

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Joan Cassman, *Hanson Bridgett LLP*
425 Market Street, 26th Floor, San Francisco, CA 94105
Phone: (415) 995-5021
jcassman@hansonbridgett.com

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

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814

Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

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

Anthony Condotti, *Atchison, Barisone, Condotti & Kovacevich*
333 Church Street, Santa Cruz, CA 95060
Phone: (831) 423-8383
tcondotti@abc-law.com

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Matt Fabry, *City of Brisbane*
50 Park Place, Brisbane, CA 94005
Phone: N/A
mfabry@ci.brisbane.ca.us

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

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

Gus Guinan, *City of Burlingame*
501 Primrose Road, Burlingame, CA 94010
Phone: (650) 558-7202
gguinan@burlingame.org

Catherine George Hagan, *Senior Staff Counsel, State Water Resources Control Board*
c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

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

Sunny Han, *Project Manager, City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Dorothy Holzem, *Legislative Representative, California State Association of Counties*

1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, Executive Director, *State Water Resources Control Board*
P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

David Huynh, Associate Engineer, *Town of Atherton*
Public Works, 91 Ashfield Road, Atherton, CA 94027
Phone: (650) 752-0555
dhuynh@ci.atherton.ca.us

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@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
mlauffer@waterboards.ca.gov

Kim-Anh Le, Division Manager, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5251
kim-anh.le@fin.sccgov.org

Keith Lichten, Division Chief, *San Francisco Bay Regional Water Quality Control B*
Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2380
klichten@waterboards.ca.gov

Selina Louie, Water Resource Control Engineer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2383
SLouie@waterboards.ca.gov

Shawn Mason, *City of San Mateo*
330 W. 20th Avenue, San Mateo, CA 94403
Phone: (650) 522-7020
smason@cityofsanmateo.org

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

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

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Jeff Moneda, Director, *City of Foster City*
Public Works, 610 Foster City Boulevard, Foster City, CA 94404
Phone: (650) 286-3270
jmoneda@fostercity.org

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Justin Murphy, Public Works Director, *City of Menlo Park*
701 Laurel Street, Menlo Park, CA 94025
Phone: (650) 330-6752
jicmurphy@menlopark.org

Paul Nagengast, *Town of Woodside*
2955 Woodside Road, Woodside, CA 94062
Phone: (650) 851-6790
PNagengast@woodsidetown.org

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Gregory Newmark, *Meyers,Nave,Riback,Silver & Wilson*
555 12th Street, Suite 1500, Oakland, CA 94607
Phone: (510) 808-2000
gnewmark@meyersnave.com

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

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Roger Peters, *Best Best & Krieger,LLP*
2001 N. Main Street., Suite 390, Walnut Creek, CA 94597
Phone: (925) 977-3300
roger.peters@bbklaw.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*
70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5920
elizabeth.pianca@cco.sccgov.org

James Porter, *County of San Mateo*
555 County Center, 5th Floor, Redwood City, CA 94063
Phone: (650) 559-1421
jporter@co.sanmateo.ca.us

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@atc.sbcounty.gov

Cecilia Quick, *City of Pacifica*
170 Santa Maria Ave, Pacifica, CA 94044
Phone: (650) 738-7408
quickc@ci.pacifica.ca.us

Veronica Ramirez, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7200
vramirez@redwoodcity.org

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Michael Roush, *Emergency Services-Marina Services-Public Works*
50 Park Place, Brisbane, CA 94005

Phone: (415) 508-2136
mroush@ci.brisbane.ca.us

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Patrick Sweetland, *City of Daly City*
153 Lake Merced Boulevard, Daly City, CA 94015
Phone: (650) 991-8201
psweetland@dalycity.org

Jimmy Tan, Director, *City of San Bruno*
Public Services, 567 El Camino Real, San Bruno, CA 94066
Phone: (650) 616-7065
jtan@sanbruno.ca.gov

Charles Taylor, *City of Menlo Park*
701 Laurel Street, Menlo Park, CA 94025-3483
Phone: (650) 858-6740
CWTaylor@MenloPark.org

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

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

Jay Walter, Director, *City of San Carlos*
Public Works, 600 Elm Street, San Carlos, CA 94070
Phone: (650) 802-4203
jwalter@cityofsancarlos.org

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

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento , CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Paul Willis, Director, *Town of Hillsborough*
Public Works, 1600 Floribunda Avenue, Hillsborough, CA 94010
Phone: (650) 375-7444
pwillis@hillsborough.net

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5200
tjyang-wurm@fin.sccgov.org

Howard Young, *Town of Portola Valley*
765 Portola Road, Portola Valley, CA 94028
Phone: (650) 851-1700
hyoung@portolavalley.net

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-02

Matter: Municipal Regional Stormwater Permit - County of Alameda

Claimant: City of Alameda

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Marni Ajello, *State Water Resources Control Board*

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

Phone: (916) 327-4439

marnie.ajello@waterboards.ca.gov

Daniel Akagi, *City of Berkeley*

1947 Center Street, 4th Floor, Berkeley, CA 94704

Phone: (510) 981-6394

dakagi@ci.berkeley.ca.us

Nicole Almaguer, *City of Albany*

1000 San Pablo Avenue, Albany, CA 94706

Phone: (510) 528-5754

nalmaguer@albanyca.org

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

Tamarin Austin, *State Water Resources Control Board*

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

Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

John Bakker, *City of Dublin*

100 Civic Center Plaza, Dublin, CA 94568

Phone: (925) 833-6600

jbakker@meyersnave.com

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Jim Barse, *City of Alameda*
950 West Mall Square, Room 110, Alameda, CA 94501
Phone: (510) 749-5857
jbarse@alamedaca.gov

Robert Bauman, *City of Hayward*
777 B Street, Hayward, CA 94541
Phone: (510) 583-4710
Robert.Bauman@hayward-ca.gov

Lacey Baysinger, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614
Phone: (949) 553-9500
sbeltran@biasc.org

David Benoun, City Attorney, *City of Newark*
37101 Newark Boulevard, Newark, CA 94560
Phone: (510) 578-4427
david.benoun@newark.org

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

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Randy Breault, *City of Brisbane*
50 Park Place, Brisbane, CA 94005
Phone: (415) 508-2131
rbreault@ci.brisbane.ca.us

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

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8222

Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*

925 L Street, Sacramento, CA 95814

Phone: (916) 319-8326

Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*

2217 Isle Royale Lane, Davis, CA 95616

Phone: (530) 758-3952

coleman@muni1.com

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

G. Duerig, *Alameda County Flood Control & Water Conservation*

100 North Canyons Parkway, Livermore, CA 94551

Phone: (925) 454-5000

jduerig@zone7water.com

Lesley Estes, *City of Oakland*

250 Frank H. Ogawa Plaza, Suite 4314, Oakland, CA 94612-2034

Phone: (510) 238-7431

lcestes@oaklandnet.com

Matt Fabry, *City of Brisbane*

50 Park Place, Brisbane, CA 94005

Phone: N/A

mfabry@ci.brisbane.ca.us

Soren Fajeau, *City of Newark*

37101 Newark Boulevard, Newark, CA 94560

Phone: (510) 578-4286

soren.fajeau@newark.org

Robert Falk, *Morrison & Foerster LLP*

425 Market Street, 32nd Floor, San Francisco, CA 94105

Phone: (415) 268-6294

Rfalk@mof.com

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, *Legislative Representative, California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@cgsda.net

Sharon Gosselin, *County of Alameda, Alameda Co Flood Control & Water*
399 Elmhurst Street, Hayward, CA 94544
Phone: (510) 670-6547
sharon@acpwa.org

Darren Greenwood, *City of Livermore*
101 W. Jack London Boulevard, Livermore, CA 94551
Phone: (925) 960-8120
dgreenwood@ci.livermore.ca.us

Gary Grimm, *Law Office of Gary J. Grimm*
2390 Vine Street, Berkeley, CA 94708
Phone: (510) 848-4140
ggrimm@garygrimmlaw.com

Kathy Guarnieri, *City of Fremont*
39550 Liberty Street, Fremont, CA 94537
Phone: (510) 494-4583
kcote@fremont.gov

Catherine George Hagan, *Senior Staff Counsel, State Water Resources Control Board*
c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

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

Sunny Han, *Project Manager, City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Julie Harryman, *City of Pleasanton*
123 Main Street, Pleasanton, CA 94566
Phone: (925) 931-5018
jharryman@ci.pleasanton.ca.us

Dorothy Holzem, *Legislative Representative, California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, *Executive Director, State Water Resources Control Board*

P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Maurice Kaufman, Public Works Director/City Engineer, *City of Emeryville*
1333 Park Avenue, Emeryville, CA 94608
Phone: (510) 596-4334
mkaufman@emeryville.org

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@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
mlauffer@waterboards.ca.gov

Kim-Anh Le, Division Manager, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5251
kim-anh.le@fin.sccgov.org

Keith Lichten, Division Chief, *San Francisco Bay Regional Water Quality Control B*
Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2380
klichten@waterboards.ca.gov

Selina Louie, Water Resource Control Engineer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2383
SLouie@waterboards.ca.gov

Debra Margolis, *City of Fremont*

3300 Capitol Avenue, Building A, Fremont, CA 94538
Phone: (510) 284-4030
dmargolis@fremont.gov

Abbas Masjedi, *City of Pleasanton*

3333 Busch Road, Pleasanton, CA 94566
Phone: (925) 931-5508
amasjedi@ci.pleasanton.ca.us

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*

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

Meredith Miller, Director of SB90 Services, *MAXIMUS*

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Gregory Newmark, *Meyers,Nave,Riback,Silver & Wilson
Claimant Representative*

555 12th Street, Suite 1500, Oakland, CA 94607
Phone: (510) 808-2000
gnewmark@meyersnave.com

Andy Nichols, *Nichols Consulting*

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

Celso Ortiz, *City of Oakland*

One Frank Ogawa Plaza, 6th Floor, Oakland, CA 94612
Phone: (510) 238-6236
cortiz@oaklandcityattorney.org

Arthur Palkowitz, *Artiano Shinoff*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

apalkowitz@as7law.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*

70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770

Phone: (408) 299-5920

elizabeth.pianca@cco.sccgov.org

Richard Pio Roda, City Attorney, *City of San Leandro*

835 East 14th Street, San Leandro, CA 94577

Phone: (510) 577-6098

rpioroda@meyersnave.com

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@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*

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

Phone: (949) 440-0845

markrewolinski@maximus.com

Benjamin Reyes, *City of Union City*

34009 Alvarado-Niles Road, Union City, CA 94587

Phone: (510) 471-3232

breyes@meyersnave.com

Nick Romo, Policy Analyst, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8254

nromo@cacities.org

James Scanlin, Environmental Compliance Specialist, *County of Alameda*

Public Works, 399 Elmhurst Street, Hayward, CA 94544

Phone: (510) 670-6548

jims@acpwa.org

Carla Shelton, *Commission on State Mandates*

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

Phone: (916) 327-6490

carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*

Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8850

wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849

jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

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

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

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5200
tjyang-wurm@fin.sccgov.org

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-03

Matter: Municipal Regional Stormwater Permit - County of Santa Clara

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Marni Ajello, *State Water Resources Control Board*

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

Phone: (916) 327-4439

marnie.ajello@waterboards.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

Tamarin Austin, *State Water Resources Control Board*

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

Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*

Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614

Phone: (949) 553-9500

sbeltran@biasc.org

Cindy Black, City Clerk, *City of St. Helena*

1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
cityclerk@cityofstheleena.org

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Randy Breault, *City of Brisbane*
50 Park Place, Brisbane, CA 94005
Phone: (415) 508-2131
rbreault@ci.brisbane.ca.us

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

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

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

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

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

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Matt Fabry, *City of Brisbane*
50 Park Place, Brisbane, CA 94005
Phone: N/A
mfabry@ci.brisbane.ca.us

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

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

Catherine George Hagan, *Senior Staff Counsel, State Water Resources Control Board*
c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

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

Sunny Han, *Project Manager, City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Dorothy Holzem, *Legislative Representative, California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, *Executive Director, State Water Resources Control Board*
P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, *Program Budget Manager, Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-5919

akato@sco.ca.gov

Anita Kerezsi, *AK & Company*

3531 Kersey Lane, Sacramento, CA 95864

Phone: (916) 972-1666

akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0256

JLal@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

mlauffer@waterboards.ca.gov

Kim-Anh Le, Division Manager, *County of Santa Clara*

Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112

Phone: (408) 299-5251

kim-anh.le@fin.sccgov.org

Keith Lichten, Division Chief, *San Francisco Bay Regional Water Quality Control B*

Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612

Phone: (510) 622-2380

klichten@waterboards.ca.gov

Selina Louie, Water Resource Control Engineer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612

Phone: (510) 622-2383

SLouie@waterboards.ca.gov

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3000

hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845

michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670

Phone: (972) 490-9990

meredithmiller@maximus.com

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Gregory Newmark, *Meyers,Nave,Riback,Silver & Wilson*

555 12th Street, Suite 1500, Oakland, CA 94607
Phone: (510) 808-2000
gnewmark@meyersnave.com

Andy Nichols, *Nichols Consulting*

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

Arthur Palkowitz, *Artiano Shinoff*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*

Claimant Representative

70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5920
elizabeth.pianca@cco.sccgov.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@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*

808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Carla Shelton, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*

Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

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

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

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5200
tjyang-wurm@fin.sccgov.org

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-05

Matter: Municipal Regional Stormwater Permit - Municipal Operations (C.2)

Claimant: City of San Jose

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Marni Ajello, *State Water Resources Control Board*

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

Phone: (916) 327-4439

marnie.ajello@waterboards.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

Tamarin Austin, *State Water Resources Control Board*

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

Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*

Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614

Phone: (949) 553-9500

sbeltran@biasc.org

Cindy Black, City Clerk, *City of St. Helena*

1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
cityclerk@cityofstheleena.org

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

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

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

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

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

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

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Norberto Duenas, City Manager, *City of San Jose*
Claimant Representative
200 East Santa Clara Street, 17th Floor, San Jose, CA 95113

Phone: (408) 535-8111
Norberto.duenas@sanjoseca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

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

Leah Goldberg, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1901
leah.goldberg@sanjoseca.gov

Catherine George Hagan, *Senior Staff Counsel, State Water Resources Control Board*
c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

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

Sunny Han, *Project Manager, City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Dorothy Holzem, *Legislative Representative, California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, *Executive Director, State Water Resources Control Board*
P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, *Program Budget Manager, Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*

3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Margo Laskowska, *City of San Jose*

Office of the City Attorney, 200 E Santa Clara St, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1969
margo.laskowska@sanjoseca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*

1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
mlauffer@waterboards.ca.gov

Kim-Anh Le, Division Manager, *County of Santa Clara*

Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5251
kim-anh.le@fin.sccgov.org

Keith Lichten, Division Chief, *San Francisco Bay Regional Water Quality Control B*

Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2380
klichten@waterboards.ca.gov

Selina Louie, Water Resource Control Engineer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2383
SLouie@waterboards.ca.gov

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

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

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*
70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5920
elizabeth.pianca@cco.sccgov.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@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San

Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

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

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

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5200
tjyang-wurm@fin.sccgov.org