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RECEIVED
January 06, 2017
**Commission on
State Mandates**

January 6, 2017

Via e-Filing through CSM Dropbox

Heather Halsey, Esq.
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: **Improper Briefing by Regional Water Quality Control Board and California Department of Finance**
California Regional Water Quality Control Board,
San Francisco Bay Region, Order No. R2-2009-0074
Consolidated 10-TC-01, 10-TC-02, 10-TC-03 and 10-TC-05

Dear Ms. Halsey:

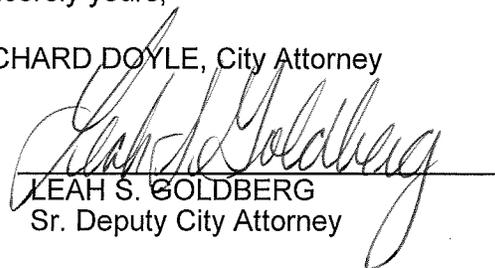
The City of San Jose objects to the scope of the Department of Finance's and the Regional Water Quality Control Board's Additional Briefing letters, both dated December 20, 2016, and urges the Commission to disregard these Additional Briefing letters to the extent that they exceed the scope of the additional briefing requested by the Commission. The Counties of Alameda, Santa Clara and San Mateo submitted a letter to you on January 5, 2017, detailing the arguments in favor of this request. Rather than restate the same arguments, the City of San Jose concurs with and incorporates the Counties' letter by reference into this request.

Please do not hesitate to call with any questions or comments.

Sincerely yours,

RICHARD DOYLE, City Attorney

By:


LEAH S. GOLDBERG
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Enclosure

January 5, 2017

VIA ELECTRONIC FILING

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California Department of Finance**
*California Regional Water Quality Control Board,
San Francisco Bay Region, Order No. R2-2009-0074*
Consolidated 10-TC-01, 10-TC-02, 10-TC-03 and 10-TC-05

Dear Ms. Halsey:

This letter is submitted on behalf of the Alameda¹ and San Mateo² County Claimants and the County of Santa Clara³ in regard to the Response to Request for Additional Briefing submitted by the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") on December 20, 2016 ("Board Response"), and to the letter response submitted on December 20, 2016 by the California Department of Finance ("DOF Letter").

¹ The "Alameda County Claimants" are the following entities, which submitted Test Claim No. 10-TC-02: the City of Alameda and the County of Alameda, the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Pleasanton, San Leandro and Union City, the Alameda County Flood Control and Water Conservation District, and the Alameda County Flood Control and Water Conservation District, Zone 7.

² The "San Mateo County Claimants" are the following entities, which submitted Test Claim No. 10-TC-01: the City of Brisbane and the County of San Mateo, the San Mateo County Flood Control District, the Cities of Belmont, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo and South San Francisco, and the Towns of Atherton, Colma, Hillsborough, Portola Valley and Woodside.

³ The County of Santa Clara is the claimant in Test Claim No. 10-TC-03.

Heather Halsey, Esq.
January 5, 2017
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Both the Board Response and the DOF Letter far exceed the scope of additional briefing permitted by the Commission. As specified in its September 21, 2016, and September 27, 2016, letters, the Commission requested additional briefing solely to address the issue of the impact of the California Supreme Court's opinion in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 ("*Dep't of Finance*") on the above-captioned consolidated test claims (collectively, "Test Claims").

The Regional Water Board went well beyond the Commission's request, and submitted an improper reply brief asserting several unrelated legal and factual arguments. The vast majority of the Board Response – from Sections 2 through 7 – has limited discussion of the applicability of the *Dept' of Finance* decision. Instead, the Board Response improperly asserts both new arguments and positions previously stated in the Regional Water Board's May 17, 2011 Response to Test Claims. The Regional Water Board also attaches 31 additional documents to the Board Response in support of new factual arguments.

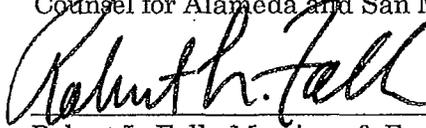
The DOF Letter does not substantively address the *Dep't of Finance* decision at all, stating instead that the Department "defers" to the arguments submitted by the Regional Water Board. The remainder of the DOF Letter addresses the test claimants' authority to levy fees to cover the costs imposed by the challenged permit requirements – an issue not addressed in or affected by the California Supreme Court's recent opinion.

The Alameda and San Mateo County Claimants and the County of Santa Clara object to the improper arguments and attachments that exceed the proper scope of the additional briefing and respectfully request that the Commission decline to consider them.

Thank you for your consideration of this matter.

Sincerely,


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Counsel for Alameda and San Mateo County Claimants


Robert L. Falk, Morrison & Foerster LLP
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 6, 2017, I served the:

**Claimant (City of San Jose) Comments on the Response to Request for
Additional Briefing**

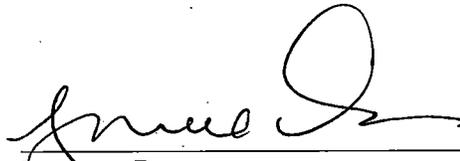
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d,
C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and
C.12.f,*

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 6, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/5/17

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Claimant: Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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