



April 6, 2017

Mr. David Burhenn
Burhenn & Gest LLP
624 S. Grand Ave.,
Suite 2200
Los Angeles, CA 90017

Mr. Mike Cory
Acting Public Works &
Utility Services Director
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Mr. Gregory Devereaux
Chief Executive Officer
County of San Bernardino and
San Bernardino County
Flood Control District
385 North Arrowhead Ave.,
Fifth Floor
San Bernardino, CA 92415

Mr. Michael Fleager
City Manager
City of Chino Hills
14000 City Center Drive
Chino Hills, CA 91709

Mr. Patrick Glover
City Manager
City of Chino
13220 Central Avenue
Chino, CA 91710

Mr. Michael Hudson
City Engineer
City of Montclair
5111 Benito Street
Montclair, CA 91763

Mr. Chris Hughes
City Manager
City of Ontario
393 E. B Street
Ontario, CA 91764

Mr. Joseph Hughes
City Manager
City of Highland
27215 Base Line
Highland, CA 92346

Mr. Kenneth Hunt
City Manager
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335

Mr. Jack Lam
City Manager
City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, CA 91730

Mr. David Lawrence
Director of Public Works/
City Engineer
City of Big Bear Lake
39707 Big Bear Blvd;
PO Box 6133
Big Bear Lake, CA 92315

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

RE: Notice of Incomplete Joint Test Claim Filing

*Santa Ana Region Water Permit – County of San Bernardino, 10-TC-10
County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, Co-Claimants*

Dear Messrs. Burhenn, Cory, Devereaux, Fleager, Glover, Hudson, Hughes, Hughes, Hunt, Lam, and Lawrence:

The Commission on State Mandates (Commission) received the joint test claim filed by the County of San Bernardino, the San Bernardino County Flood Control District, and the Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland, Montclair, Ontario, and Rancho Cucamonga (co-claimants) on June 30, 2011 and corrected on July 29, 2011. The Test Claim alleges reimbursable state-mandated activities arising from the NPDES permit No. CAS618036, Order R8-2010-0036 (Order), adopted by the California Regional Water Quality Control Board, Santa Ana Region (regional board). The test claim permit became effective on the date of its adoption, January 29, 2010.

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Commission on State Mandates

980 9th Street, Suite 300 Sacramento, CA 95814 | www.csm.ca.gov | tel (916) 323-3562 | email: csminfo@csm.ca.gov

Although the filing was deemed complete on July 12, 2011, an initial review of the filing by legal staff has revealed that the filing is incomplete because it: (1) was filed beyond the statute of limitation because it was filed more than 12 months beyond the effective date of the Order; (2) does not meet the requirements in Title 2, California Code of Regulations, section 1183.1(a) specifying personnel authorized to file a test claim on behalf of a local agency; and (3) is missing a detailed description of increased costs and a statewide estimate of costs as required by Government Code section 17553.¹ However, it may be possible to cure this filing as described below.

To Be Considered Timely Filed

Government Code 17551(c) requires a local agency to file a test claim “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183 of the Commission regulations state that “[f]or the purposes of claiming based on the date of first incurred costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were *first incurred* by the test claimant.” (Emphasis added.)

The parties do not dispute the January 29, 2010 adoption date and effective date of the Order.² In this case, 12 months after the effective date of the Order is January 29, 2011. The Test Claim here was filed on June 30, 2011, beyond the statute of limitations in section 17551 and there is no assertion that the claim was filed based on the date of first incurring costs nor evidence in the record of when costs were first incurred under the Order. Therefore, per the Order’s effective date, the Test Claim was filed beyond the statute of limitations.

It is settled principle that administrative agencies have only such powers as have been conferred upon them, expressly or by implication, by constitution or statute. An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. When an administrative agency acts in excess of the powers conferred upon it, its action is void.³ The Commission is a quasi-judicial administrative agency, whose authority is provided solely by statute. Pursuant to Government Code section 17551(b), the Commission’s review of a test claim may be had “*only if*” the test claim is filed within the time limits specified in sections 17551(c), 17573, and 17574. Therefore, the Commission, by statute, does not have jurisdiction over this Test Claim because based on the evidence in the record, the claim was filed beyond the statute of limitations as a matter of law. Administrative orders are void when

¹ A completeness review of a test claim is not intended as a legal review, and in fact, does not go through legal review.

² Test Claim 10-TC-10, pages 2 and 273 (*Section 4. Test Claim Statutes or Executive Orders Cited* of the test claim form and Order No. R8-2010-0036 (NPDES No. CAS 618036) Area-wide Urban Storm Water Runoff Management Program San Bernardino County MS4 Permit, page 2).

³ *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *Graves v. Commission on Professional Competence* (1976) 63 Cal.App.3d 970, 976.

rendered without fundamental jurisdiction, or in excess of the agency's statutory powers, and may be collaterally attacked at any time.⁴

Who May File a Test Claim on Behalf of a Local Agency?

Pursuant to section 1183.1(a) of Commission regulations, only specified authorized local agency officials may file on behalf of a city, county, or special district.

For counties, only a "county auditor, auditor-controller, or director of finance who has assumed the duties of controller, may file on behalf of a county." In this filing, Mr. Gregory Devereaux, Chief Executive Officer may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form because his position is not listed in section 1183.1(a)(1). However, anyone who specifically requests to be on the mailing list for a matter is included on all service of written materials and may participate in the mandate determination process.

For cities, pursuant to section 1183.1(a)(2) of Commission regulations, only a "city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council, may file on behalf of a city." Therefore, only an official authorized in section 1183.1(a)(2) of the Commission's regulations may be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form. Thus, Messrs. Cory, Hudson, and Lawrence may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may they act as the authorized signatory for the purposes of *Section 8. Claim Certification* of the test claim form because their positions are not listed in section 1183.1(a)2, nor is it clear that they have authority to legally bind the cities. Again, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials.

Further, *Section 8. Claim Certification* of the test claim form may be signed by a different person (i.e. another *authorized* local agency official specified section 1183.1(a) of Commission regulations) than is indicated in *Section 2. Claimant Information* so long as the declarant's address, telephone number, and e-mail address are also provided. (Government Code 17553(b)(4)). Note that the designated representative may not sign here because this is also the form that provides for the official designation of the representative by the claimant and only the claimant may make such a designation.

Additionally, *Section 4. Test Claim Statutes or Executive Orders Cited* of the test claim form for the City of Colton is blank. The identification of all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate including the effective date of regulations or executive orders pled is required. (Government Code 17553(b)(1)).

⁴ *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 677-679; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 234; *City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400.

A Detailed Description of Costs Is Required.

Government Code section 17553 specifies that all test claim filings contain at least the following elements:

- (A) *A detailed description of the new activities and costs that arise from the mandate.*
- (B) *A detailed description of existing activities and costs that are modified by the mandate.*
- (C) *The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.*
- (D) *The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*
- (E) *A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*

Under *Section 5. Written Narrative*, the claimants are directed to:

Include a statement that the actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), **and** include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

For this filing to be complete, the detailed costs description set forth in Government Code section 17553, must be included in the narrative of the Test Claim.

Curing This Filing

1. To cure this filing, please provide all of the following: Evidence of the date and amount of costs *first* incurred as a result of the alleged new activities required under the Order.
2. A revised test claim form from the County of San Bernardino, and the cities of Big Bear Lake, Colton, and Montclair that:
 - A. Provides claimant information of an individual authorized to file on behalf of the agency under section 1183.1 of the Commission's regulations in *Section 2. Claimant Information*.
 - B. Identifies all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate, including the effective dates of executive

orders or regulations pled in *Section 4. Test Claim Statutes or Executive Orders Cited*.

- C. Provides a signature and complete contact information of an individual authorized to file on behalf of the agency pursuant to section 1183.1 of the Commission's regulations in *Section 8. Claim Certification*.

To file a *joint* test claim, all claimants must indicate that they agree on all issues of the test claim and designate a single claimant representative, common to all joint claimants, in *Section 3.*

Claimant Representative Information on the test claim form pursuant to section 1183.1(g)(3) of Commission regulations.⁵

3. Revised written narratives and declarations from each co-claimant that provide a detailed description of the costs that are modified by the alleged mandate including the *actual* increased costs incurred by each co-claimant during the fiscal year for which the joint test claim was filed as well as the actual or estimated annual costs that will be incurred by each co-claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed. In addition, please provide the statewide cost estimate (in this case the "statewide cost" is the cost for all of the local agency co-permittees, whether named or not, for the alleged new program or higher level of service imposed by the permit at issue) for increased costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed.

Please note that section 17553(b)(2) of the Government Code requires the following with regard to the written narrative:

The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information or belief, and signed by persons who are authorized and competent to do so as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(D) If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined

⁵ It has been noted that all of the test claim forms filed for this matter have designated a single representative as required in *Section 3: Claimant Representative Information*, in this case Mr. David Burhenn, to represent the joint claimants. The revised forms should also include a single claimant representative.

Messrs. Burhenn, Cory, Devereaux, Fleager, Glover, Hudson, Hughes, Hughes, Hunt, Lam, and Lawrence

April 6, 2017

Page 6

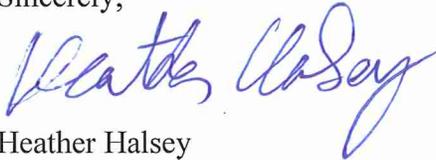
mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

Retaining Your Original Filing Date

To retain the original filing date, please refile *only* the following required elements to cure this filing:⁶ (1) evidence of the date and amount of costs *first* incurred as a result of the alleged new activities required under the order; (2) revised test claim forms from the co-claimants, as applicable; (3) and revised written narratives and declarations as specified above to supersede your initial filing with the Commission within 30 days of the date of this letter by **May 8, 2017**. If a complete test claim filing is not received within 30 calendar days from the date the incomplete test claim filing was returned, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).) As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

The filing may be submitted electronically via the Commission's e-filing system pursuant to section 1181.3 of the Commission's regulations and will replace the specified elements of the original filing. Please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.php

Sincerely,



Heather Halsey
Executive Director

⁶ Please do not refile the supporting documentation, which is nearly 500 pages. Commission staff will replace the current test claim forms, written narratives, and declarations with the revised ones and will append any additional supporting documentation filed as evidence of costs to the back of the supporting documentation currently on file.

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 April 6, 2017, I served the:

Notice of Incomplete Joint Test Claim Filing

Santa Ana Region Water Permit – County of San Bernardino, 10-TC-10
County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, Co-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 April 6, 2017 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: 3/22/17

Claim Number: 10-TC-10

Matter: Santa Ana Region Water Permit - County of San Bernardino

Claimants: City of Big Bear Lake
City of Chino
City of Chino Hills
City of Colton
City of Fontana
City of Highland
City of Montclair
City of Ontario
City of Rancho Cucamonga
County of San Bernardino
San Bernardino 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.)

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

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@biasec.org

Kurt Berchtold, Executive Officer, *Santa Ana Regional Water Quality Control Board*
3737 Main Street, Suite 500, Riverside, CA 92501-3348
Phone: (951) 782-3286
kberchtold@waterboards.ca.gov

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

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

David Burhenn, *Burhenn & Gest, LLP*
Claimant Representative
624 S. Grand Ave., Suite 2200, Los Angeles, CA 90017
Phone: (213) 629-8788
dburhenn@burhenngest.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

Mike Cory, Acting Public Works & Utility Services Director, *City of Colton*
650 N La Cadena Dr, Colton, CA 92324
Phone: (909) 370-5065
mcory@coltonca.gov

Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,

Sacramento, CA 95816
Phone: (916) 324-4112
Adagan@sco.ca.gov

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

Gregory Devereaux, Chief Executive Officer, *County of San Bernardino*

San Bernardino County Flood Control District, 385 North Arrowhead Avenue, Fifth Floor, San Bernardino, CA 92415-0120
Phone: (909) 387-5417
gdevereaux@cao.sbcounty.gov

Donna Ferebee, *Department of Finance*

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

Michael Fleager, City Manager, *City of Chino Hills*

14000 City Center Drive, Chino Hills, CA 91709
Phone: (909) 364-2600
mfleager@chinohills.org

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

Patrick Glover, City Manager, *City of Chino*

13220 Central Avenue, Chino, CA 91710
Phone: (909) 591-9806
pglover@cityofchino.org

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@esm.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

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

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

Michael Hudson, City Engineer, *City of Montclair*
5111 Benito Street, Montclair, CA 91763
Phone: (909) 625-9441
mhudson@cityofmontclair.org

Chris Hughes, City Manager, *City of Ontario*
393 E. B Street, Ontario, CA 91764
Phone: (909) 395-2555
chughes@ci.ontario.ca.us

Joseph Hughes, City Manager, *City of Highland*
27215 Base Line, Highland, CA 92346
Phone: (909) 864-6861
jhughes@cityofhighland.org

Kenneth Hunt, City Manager, *City of Fontana*
8353 Sierra Avenue, Fontana, CA 92335
Phone: (909) 350-7653
khunt@fontana.org

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

Amer Jakher, Director of Public Works, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8520
Ajakher@ci.beaumont.ca.us

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

Jack Lam, City Manager, *City of Rancho Cucamonga*
10500 Civic Center Drive, Rancho Cucamonga, CA 91730
Phone: (909) 477-2700
jack.lam@cityofrc.us

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

David Lawrence, Director of Public Works/City Engineer, *City of Big Bear Lake*
P.O. Box 10000, 39707 Big Bear Blvd., Big Bear Lake, CA 92315-8900
Phone: (909) 866-5831
dlawrence@citybigbearlake.com

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

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

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
P.O. Box 100, Sacramento, CA 95812
Phone: (916) 322-3313
Adriana.nunez@waterboards.ca.gov

Lori Okun, Assistant Chief Counsel, *State Water Resources Control Board*
Regional Water Board Legal Services, 1001 I Street, Sacramento, CA 95814

Phone: (916) 341-5165
Lori.Okun@waterboards.ca.gov

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

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

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

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

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

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) 327-6490
carla.shelton@csm.ca.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

Tracy Sullivan, Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8124
tsullivan@counties.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

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

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