

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 24, 2020

Proposed Resolution W-5218
Agenda ID: 18331

To: All Interested Persons

Enclosed is Proposed Resolution W-5218 of the Water Division, which affirms Water Division's rejection of Golden State Water Company's, Suburban Water Systems', and San Gabriel Valley Water Company's requests and rejects California Water Service Company's request to establish memorandum accounts for costs related to polyfluoroalkyl substances. Proposed Resolution W-5218 is scheduled to appear on the May 28, 2020 Commission Meeting Agenda (ID#18331).

The Commission may act on this resolution or it may postpone action until later. When the Commission acts on a proposed resolution, the Commission may adopt all or part of the proposed resolution, as written, or amend or modify the proposed resolution; or the Commission may set the proposed resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on Proposed Resolution W-5218 via email to Water.Division@cpuc.ca.gov on or before **May 13, 2020**. Please reference **"Proposed Resolution W-5218"** in the subject line.

Interested persons must also serve a copy of their comments on the utility on the same date that the comments are submitted to the Water Division. If email is unavailable, please submit comments to:

California Public Utilities Commission
Water Division
505 Van Ness Avenue
San Francisco, CA 94102

Comments should focus on factual, legal, technical errors, or policy issues in the proposed resolution.

Persons interested in receiving comments submitted may contact the Water Division at Water.Division@cpuc.ca.gov or (415) 703-1133. Please reference "Proposed Resolution W-5218."

/s/BRUCE DEBERRY

Bruce DeBerry, Program Manager
Water Division

Enclosures: Proposed Resolution W-5218
Certificate of Service
Service List

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION

RESOLUTION W-5218
May 28, 2020

RESOLUTION

(RES. W-5218) GOLDEN STATE WATER COMPANY, SUBURBAN WATER SYSTEMS, SAN GABRIEL VALLEY WATER COMPANY, AND CALIFORNIA WATER SERVICE COMPANY. THIS RESOLUTION AFFIRMS WATER DIVISION'S REJECTION OF GOLDEN STATE WATER COMPANY'S, SUBURBAN WATER SYSTEMS', AND SAN GABRIEL VALLEY WATER COMPANY'S REQUESTS AND REJECTS CALIFORNIA WATER SERVICE COMPANY'S REQUEST TO ESTABLISH MEMORANDUM ACCOUNTS FOR COSTS RELATED TO POLYFLUOROALKYL SUBSTANCES.

By Golden State Water Company's Advice Letter 1795-W-A, Suburban Water System's Advice Letter 343-W-A, San Gabriel Valley Water Company's Advice Letter 545-W, and California Water Service Company's Advice Letter 2376; filed on October 31, 2019, December 6, 2019, January 7, 2020, and March 4, 2020, respectively.

SUMMARY

This Resolution responds to requests by Golden State Water Company (Golden State), Suburban Water Systems (Suburban) and San Gabriel Valley Water Company (San Gabriel), collectively "the Utilities", for review of Water Division's rejection of Golden State's Advice Letter No. 1795-W-A, Suburban's Advice Letter No. 343-W-A, and San Gabriel's Advice Letter No. 545-W, each of which requested the establishment of a

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Polyfluoroalkyl Substance Memorandum Account (PFASMA). This Resolution affirms Water Division's disposition rejection of Advice Letters 1795-W-A, 343-W-A, and 545-W. In addition, this Resolution rejects the request of California Water Service Company (Cal Water) in Advice Letter 2376 to establish a PFASMA that is currently pending with Water Division.

BACKGROUND

Golden State Water Company (Golden State), Suburban Water Systems (Suburban), San Gabriel Valley Water Company (San Gabriel), and California Water Service Company (Cal Water) each requested to establish a Polyfluoroalkyl Substance Memorandum Account (PFASMA) to recover costs they expect to incur including:

- Laboratory testing and monitoring – due to the specialized nature of the analyses (new and developing methods, low detection limits and sensitivity for sample contamination) the cost for each analysis is much greater than routine monitoring tests.
- Customer/public notifications
- Chemical and operating costs for treatment
- Special studies related to treatment options

Polyfluoroalkyl Substances

On August 23, 2019, the California State Water Resources Control Board (SWRCB) announced updated guidelines for local water agencies to follow in detecting and reporting the presence of perfluorooctanoic ("PFOA") and perfluorooctanesulfonic acid ("PFOS") in drinking water.¹ The SWRCB also announced it has begun the process of establishing regulatory standards for these chemicals. The updated state guidelines lower the current notification levels from 14 parts per trillion ("ppt") to 5.1 ppt for PFOA and from 13 ppt to 6.5 ppt for PFOS. Notification levels are a precautionary health-based measure for concentrations in drinking water that warrant notification and further monitoring and assessment. Public water systems are encouraged to test their water for contaminants with notification levels, and in some circumstances may be ordered to test. If the systems do test, they are required to report exceedances to their

¹ State Water Board Media Release, August 23, 2019:

https://www.waterboards.ca.gov/press_room/press_releases/2019/pr082319_pfoa_pfes_guidelines_news_release.pdf

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governing boards and the SWRCB and are urged, but not required, to report this information to customers.

On July 31, 2019, California Governor Gavin Newsom approved Assembly Bill No. 756 (“AB 756”) which authorizes the SWRCB to order a public water system to monitor for PFAS more broadly. AB756 took effect on January 1, 2020. Under AB 756, water systems are required to take a water source offline if PFAS concentrations above the response level are detected at that source. A response level is set higher than a notification level and represents a recommended chemical concentration level at which water systems consider taking a water source out of service or provide treatment. On February 6, 2020, the SWRCB lowered the response levels to 10 ppt for PFOA and 40 ppt for PFOS, down from a combined 70 ppt for both chemicals.

In addition to the updated notification and response levels, the SWRCB has requested that the California Environmental Health Hazard Assessment (“OEHHA”) develop public health goals (“PHGs”) for both PFOA and PFOS, the next step in the process of establishing regulatory standards, known as maximum contaminant levels (MCLs), in drinking water. Other chemicals in the broader group of PFAS may be considered later, either individually or grouped, as data permits. Unlike other states, California has not developed its own MCLs at this time.²

The SWRCB is currently conducting a statewide assessment to determine the scope of contamination by PFAS, including PFOA and PFOS, in water systems and groundwater. In the first phase, pursuant to Health and Safety Code section 116400, in March 2019 public water systems were ordered to sample (quarterly for one year) about 600 drinking water supply wells located near airports and landfills, where contamination is more likely, and near locations where PFAS was previously found under the federal Environmental Protection Agency’s Unregulated Contaminant Monitoring Rule 3. Following this initial phase, the assessment will likely focus on sampling water sources near industrial sites and at wastewater treatment facilities. Currently, there are only a few labs in California that are accredited for analysis of PFAS which causes public water systems to pay for a rushing fee to meet the criteria directed in the order from the SWRCB.

² New Jersey was the first state to establish regulatory standards for PFAS, with an MCL of 14 ppt for PFOA in 2017 and an MCL 13 ppt for PFOS following. Colorado, Connecticut, Michigan, and Rhode Island have established regulatory standards of 70 ppt for the combined concentrations of several PFAS chemicals. More information can be found through the Interstate Technology Regulatory Council at <https://pfas-1.itrcweb.org/fact-sheets/>.

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Golden State Water Company

On March 15, 2019, the SWRCB ordered Golden State to begin collecting PFOA and PFOS samples on 19 of its 235 wells as part of the Phase 1 initiative, pursuant to Health and Safety Code section 116400 (quarterly for one year). Golden State determined that Imperial Well #2 in the Norwalk District, contained PFOS levels that exceeded the response level and in July 2019, the well was taken offline. As a result of exceeding the response levels, notification letters were sent to the SWRCB, California Public Utilities Commission, and customers on August 21, 2019.

On October 31, 2019, Golden State submitted Advice Letter (AL) 1795-W requesting to establish a memorandum account to recover the costs for collecting and submitting samples to specialized testing facilities, customer/public notifications, chemical and operating costs for treatment, and special studies related to treatment options.

On November 18, 2019, the Public Advocates Office (Cal PA) requested to extend the protest deadline from November 20th to December 4th. Water Division granted the extension and Cal PA did not file a protest. On December 5th, a supplemental advice letter, AL 1795-W-A was submitted to Water Division, which included updates discussed between Cal PA and Golden State. Water Division rejected Golden State's AL 1795-W-A by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) on January 17, 2020. Golden State filed a Request for Review of Water Division's Disposition on January 27, 2020.

Suburban Water Systems

From August to November of 2019, Suburban performed voluntary initial and confirmation of its four Whittier system wells. All four wells detected levels of PFOS and PFOA that were above the notification level but below the response level. Consequently, Suburban sent notification letters to the SWRCB, CPUC, and its customers on December 19, 2019.

On December 6, 2019, Suburban submitted AL 343-W, requesting authorization to open a PFASMA; AL 343W was supplemented by 343-W-A on December 18, 2019 to include an inadvertently missing sheet. Water Division requested additional information related to well testing and cost predictions from Suburban on December 12, 2019. Water Division also requested the results of Suburban's voluntary well tests on December 16, 2019; Suburban timely responded to both data requests. On December 18, 2019, the Public Advocates' Office requested a 2-week extension of the protest period which

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Water Division granted. On January 6, 2020, Water Division suspended AL 343 as additional time beyond the initial review period was required; the Public Advocates' Office then timely protested on January 9, 2020. Water Division rejected Suburban's AL 344-W-A by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) on January 17, 2020. Suburban filed a Request for Review of Water Division's Disposition on January 27, 2020.

San Gabriel Valley Water Company

On March 15, 2019, the SWRCB ordered San Gabriel to begin collecting PFOA and PFAS samples from eight of its 66 active wells, pursuant to Health and Safety Code section 116400 (quarterly for one year). San Gabriel also voluntarily sampled its remaining wells and found concentrations of PFOA and PFAS at concentrations above the notification level but below the response level at Wells W1C, W6C, and W6D. Consequently, notification letters were sent to the SWRCB, California Public Utilities Commission, and San Gabriel's customers on December 19, 2019. On February 20, 2020, San Gabriel once again notified the Commission of PFAS detections above the notification levels but below the response levels, this time at Wells 2D, 2E, and 2F.

On January 7, 2020, San Gabriel submitted AL 545-W, requesting authorization to open the PFASMA. Water Division requested additional information related to well testing and cost predictions from San Gabriel on January 13, 2019. On January 17, 2020, the Public Advocates' Office requested a 2-week extension of the protest period; this was not granted because Water Division rejected San Gabriel's AL 545-W by disposition letter pursuant to General Order 96-B, General Rule 7.6.1 and Water Industry Rule 7.3.2(5) the same day. San Gabriel filed a Request for Review of Water Division's Disposition on January 27, 2020.

California Water Service Company

On March 15, 2019, the SWRCB ordered Cal Water to begin collecting PFOA and PFOS samples on 23 of its 700 plus wells as part of the Phase 1 initiative, pursuant to Health and Safety Code section 116400 (quarterly for one year). In AL 2376, Cal Water did not report any test results from the 23 wells that exceeded either the response level or notification level for PFOA and PFOS.

On March 4, 2020, Cal Water submitted AL 2376, requesting authorization to open a PFASMA. On March 19, 2020, the Public Advocates' Office submitted a timely protest to AL 2376. Cal Water responded to Public Advocates' protest on March 26, 2020.

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Advice Letter 2376 was suspended by Water Division on April 2, 2020 and currently remains a pending matter.

NOTICE AND PROTESTS

In accordance with General Rules 4.3 and 7.2 and Water Industry Rule 4.1 of General Order 96-B, Golden State served copies of Advice Letter (AL) 1795-W to adjacent utilities and other parties requesting such notification on October 31, 2019 with AL-1795A being served on December 5, 2019. Suburban served AL 343-W on December 6, 2019, San Gabriel served AL 545-W on January 7, 2020, and Cal Water served AL 2376 on March 4, 2020. In accordance with Water Industry Rule 3.3 (*id.*), Golden State, San Gabriel, Suburban, and Cal Water also posted the advice letters on their respective websites.

No protests were received in response to the filing for Golden State AL 1795-W-A and San Gabriel AL 545-W. Cal PA's January 17, 2020 request for a two-week extension of the protest period for San Gabriel AL 545-W was rendered moot by Water Division disposition letter of AL 545-W on the same day.

On December 18, 2019, the Public Advocates' Office (Cal PA) requested a two-week extension of the protest period for Suburban's Advice Letter 343. Cal PA then timely protested Advice Letter 343 on January 9, 2020.

On March 19, 2020 Cal PA timely protested Cal Water's AL 2376.

REQUEST FOR REVIEW

By letter, submitted in accordance with Section 7.7.1 of G.O.96-B, the Utilities request Commission review of Water Division's disposition of Golden State's AL 1795-W-A, Suburban's AL 343-W-A, and San Gabriel's AL 545-W. Golden State, Suburban, and San Gabriel outline the specific grounds on which they contend that Water Division's action is erroneous, as summarized below.

1. The rejection of each utility's advice letter does not serve the interests of ratepayers by way of delaying remediation of PFAS contamination.
2. Water Division failed to consider the necessary and substantial incremental costs that are expected to be incurred.

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3. The full extent of costs that will be incurred is difficult to forecast at this time but are not speculative and will very likely be substantial.
4. Water Division's claims that any needed treatment costs will not occur before the Utilities' next respective rate cases are not true.
5. Water Division fails to acknowledge that any incremental PFAS-related costs incurred prior to the Utilities' next respective test years can never be recovered if the ALs are rejected.

Subsequent to Water Division's rejection of the three Advice Letters, Cal PA requested the opportunity to respond to the Utilities' Requests for Review, which Water Division granted.

DISCUSSION

We affirm the Water Division's rejection of Golden State's Advice Letter 1795-W, Suburban's Advice Letter 343-W-A, and San Gabriel's Advice Letter 545-W. We further reject Cal Water's pending request in AL 2376 to establish a PFASMA. We determine that denial of the four advice letters is appropriate. We hereby issue this Resolution rejecting each of the utilities' respective advice letters.

First, it is erroneous for the Utilities to claim without the PFASMA they would be "forced to tell their customers" that they need Commission approval to deal with PFAS contamination.³ Utilities do not need Commission approval to take action to protect their water supplies. Indeed, General Order 103-A requires utilities to "provide water that is not harmful or dangerous to health," and this responsibility exists independent of the ability to establish a memo account. If utilities believe plant additions are necessary to provide safe water service in the immediate term, they have the opportunity to either use existing capital budget spending authority previously authorized by the Commission or file applications to demonstrate the need for incremental capital budgetary authority.

The Utilities claim that Water Division erred in the original disposition by referring to "treatment costs" rather than all the costs the Utilities propose to include in the PFASMA, but the Utilities have ultimately not made an adequate showing that the incremental operating costs associated with PFAS will be substantial. This is especially true for changes in source of supply costs, which the Utilities are already able to recover

³ Golden State Request for Commission Review, p. 8

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by way of water cost offsets. Even with DDW's updated response levels, the majority of the water sources for all four utilities have PFAS detections well below the response levels, if any.

Therefore, the costs that might be outside the utilities' control would be only those incremental costs associated with response level exceedances and DDW-ordered testing. Consequently, the costs that might be eligible for memorandum account recovery would be the subset of those costs which occur before the utilities' next rate case which, overall, are *de minimis*. We understand that the incremental plant investments associated with PFAS remediation have the potential to be substantial, but as discussed above, we believe utilities can either use existing capital budgetary authority previously authorized by the Commission or file applications to demonstrate the need for incremental capital budgetary authority.

Memorandum accounts are intended to allow utilities to recover substantial costs that are outside of their control and that occur between rate case cycles. While the Utilities dispute Water Division's application of the memorandum account criteria, including that costs should be substantial to qualify for memo account treatment, it stands to reason that costs which are not substantial should be readily absorbable in utilities' existing revenue requirements. The Commission does not manage the business of the utilities; they are granted a reasonable return on equity to compensate for the risk associated with providing service. The inability to recover incremental costs is encompassed by this risk, especially when the subset of costs that would be eligible for memorandum account recovery is insubstantial.

COMMENTS

Public Utilities Code section 311(g)(1) requires that a proposed resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.

Accordingly, this proposed resolution was mailed to the utilities and their service lists and made available for public comment on April 24, 2020.

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FINDINGS AND CONCLUSIONS

1. By AL 1795-W and 1795-W-A, filed on October 31, 2019 and December 5, 2019, respectively, Golden State Water Company (Golden State) requested to establish a Polyfluoroalkyl Substances Memorandum Account (PFASMA).
2. By AL 343-W and 343-W-A, filed on December 6, 2019 and December 18, 2019, respectively, Suburban Water Systems (Suburban) requested to establish a PFASMA.
3. By AL 545, filed on January 7, 2020, San Gabriel Valley Water Company (San Gabriel) requested to establish a PFASMA.
4. By AL 2376, filed on March 4, 2020, California Water Service Company (Cal Water) requested to establish a PFASMA.
5. On January 17, 2020, Water Division rejected ALs 1795-W-A, 343-W-A, and 545-W because Golden State, Suburban, and San Gabriel had not satisfied the four conditions set forth in Decision 02-08-054 for the establishment of a memorandum account.
6. On January 27, 2020, the Utilities each requested Commission review of Water Division's rejection of their respective advice letters.
7. Cal Water's pending AL 2376 raises the same issues posed in the rejected advice letters submitted by Golden State, Suburban, and San Gabriel.
8. The Department of Drinking Water (DDW) has not yet established a Maximum Contaminant Level (MCL) for PFAS.
9. The appropriate place to request rate increases to cover incremental plant costs is an application where the utility can make the showing that the incremental plant is necessary to provide safe water service.
10. Costs related to alternative water supplies are addressed through the water cost offset accounts.
11. The Utilities have not adequately made the showing that the incremental operating costs that are outside of their control and that would occur before their next rate cases are substantial.
12. Cal Water's AL 2376 should be resolved in this Resolution consistent with Water Division's disposition of the advice letters for Golden State, Suburban, and San Gabriel.

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THEREFORE, IT IS ORDERED THAT:

1. Water Division's rejections of Golden State Water Company's Advice Letter No. 1795-W-A, Suburban Water Systems' Advice Letter No. 343-W-A, and San Gabriel Valley Water Company's Advice Letter No. 545-W are affirmed.
2. California Water Service Company's Advice Letter No. 2376 is rejected consistent with Water Division's rejection of the advice letters in Ordering Paragraph No. 1 and as discussed in this Resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 28, 2020; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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CERTIFICATE OF SERVICE

I certify that I have by either electronic mail or postal mail, this day, served a true copy of Proposed Resolution No. W-5218 on all parties in these filings or their attorneys as shown on the attached lists.

Dated April 24, 2020, at San Francisco, California.

/s/ROBIN BRYANT

Robin Bryant

Parties should notify the Water Division,
Third Floor, California Public Utilities
Commission, 505 Van Ness Avenue, San
Francisco, CA 94102, of any change of
address to ensure that they continue to
receive documents. You must indicate the
Resolution number on which your name
appears.

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Attachments

Service Lists, emails, USPS

Golden State Water Company- Advice Letter 1795-A (Service List Attached)

Keith Switzer kswitzer@gswater.com

Gladys Estrada grosendo@gswater.com

Jon Pierotti Jon.Pierotti@gswater.com

Ronald K. Moore RKMOORE@gswater.com

Suburban Water Systems – Advice Letter 343-A (Service List Attached)

Robert L Kelly bkelly@swwc.com

Kiki Carlson kcarlson@swwc.com

San Gabriel Valley Water Company – Advice Letter 545 (Service List Attached)

Daniel A. Dell'Osa dadellosa@sgvwater.com

Joel Reiker jmreiker@sgvwater.com

California Water Service Company – Advice Letter 2376 (Service List Attached)

Beverly Johnson bjohnson@calwater.com

Natalie Wales Nwales@calwater.com

Melody Singh msingh@calwater.com

Sergio Esquivel sesquivel@calwater.com

Henry Wind hwind@calwater.com

Michael Duque mduque@calwater.com

Water Division

Lucian Filler lucian.filler@cpuc.ca.gov

Bruce DeBerry bruce.deberry@cpuc.ca.gov

Jim Boothe james.booth@cpuc.ca.gov

Jefferson Hancock jefferson.hancock@cpuc.ca.gov

Jeremy Ho jeremy.ho@cpuc.ca.gov

Kevin Truong Viet.Truong@cpuc.ca.gov

water.division@cpuc.ca.gov

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Cal PA

DRAWaterAL@cpuc.ca.gov

PublicAdvocatesOffice@cpuc.ca.gov

Richard Rauschmeier richard.rauschmeier@cpuc.ca.gov

Richard Smith richard.smith@cpuc.ca.gov

Victor Chan victor.chan@cpuc.ca.gov

Patricia Ma patricia.ma@cpuc.ca.gov

Ting-Pong Yuen ting-pong.yuen@cpuc.ca.gov

Cortney Sorensen cortney.sorensen@cpuc.ca.gov

Anthony Andrade anthony.andrade@cpuc.ca.gov

Hani Moussa hani.moussa@cpuc.ca.gov

Elizabeth Echols elizabeth.echols@cpuc.ca.gov

Chris Ungson chris.ungson@cpuc.ca.gov

CPUC Commissioner and Executive staff distribution lists

commrandolphstaff@cpuc.ca.gov

commissionershiromasstaff@cpuc.ca.gov

CommissionerRechtschaffenStaff@cpuc.ca.gov

CommissionerGuzmanAcevesStaff@cpuc.ca.gov

commissionerbatjerooffice@cpuc.ca.gov

Executive_Directors_Office@cpuc.ca.gov

California Water Association

Jennifer Capitolo jcapitolo@calwaterassn.com

Nossaman LLP

Martin Mattes mmattes@nossaman.com

LoriAnne Dolqueist ldolqueist@nossaman.com

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

Sacramento Suburban Water Dist.
3701 Marconi Avenue – Suite 100
Sacramento, CA 95821
HHernandez@sswd.org
DYork@sswd.org

Carmichael Water District
7837 Fair Oaks Blvd.
Carmichael, CA 95608-2405

Cypress Ridge Owner's Association
Attn: President
1400 Madonna Road
San Luis Obispo, CA 93405
Cory.Bauer@managementtrust.com

City of Folsom
50 Natoma Street
Folsom, CA 95630

Director
Sacramento County Water Agency
827-7th Street, Room 301
Sacramento, CA 95814
DWRexecsecretary@saccounty.net

Bay Point Municipal Advisory Council
3105 Willow Pass Road
Bay Point, CA 94565-3149

Contra Costa Water District
P. O. Box H2O
Concord, CA 94520

Diablo Water District
P. O. Box 127
Raley's Shopping Center – 2107 Main Street
Oakley, CA 94561-0127
Dmuelrath@diablowater.org
cbelleci@diablowater.org

City of Martinez
525 Henrietta Avenue
Martinez, CA 94553

Citrus Heights Water District
6230 Sylvan Road
Citrus Heights, CA 95610

California-American Water Co.
4701 Beloit Drive
Sacramento, CA 95838-2434
ca.rates@amwater.com

Fair Oaks Water District
10317 Fair Oaks Blvd.
Fair Oaks, CA 95628

Orange Vale Water Co
P. O. Box 620800
9031 Central Avenue
Orange Vale, CA 95662
swilcox@orangevalewater.com

City of Antioch
P. O. Box 5007
Antioch, CA 94531

City of Brentwood
Public Works Operations
Eric Brennen, Water Operations Manager
2201 Elkins Way
Brentwood, CA 94513

Contra Costa County
Chief Assistant Clerk of the Board
651 Pine Street, Room 106
Martinez, CA 94553
Jami.napier@cob.cccounty.us

Richard Lou, Principal Management Analyst
East Bay Municipal Utility District
375 – 11th Street, MS#804
Oakland, CA 94607
RLou@ebmud.com

Highlands Water Company
14580 Lakeshore Drive
Clearlake, CA 95422-8100

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

Konocti County Water District

15844 – 35th Street
Clearlake, CA 95422
kcwd@mchsi.com

Arroyo Grande Municipal Water Dept.

P.O. Box 550
Arroyo Grande, CA 93420
staylor@arroyogrande.org

Cambria Community Services Dist.

1316 Tamson Drive – Suite 201
P.O. Box 65
Cambria, CA 93428

Los Osos CSD

2122 - 9th Street
Los Osos, CA 93402

S & T Mutual Water Co.

P.O. Box 6391
Los Osos, CA 93412
STMutualwater@gmail.com

Nipomo Community Services Dist.

147 S. Wilson Street
Nipomo, CA 93444-0326
MIglesias@ncsd.ca.gov

Calleguas Municipal Water District

2100 Olsen Road
Thousand Oaks, CA 91360
staylor@calleguas.com

City Clerk

City of Clearlake

14050 Olympic Drive
Clearlake, CA 95422
mswanson@clearlake.ca.us

City Attorney & City Clerk

City of Santa Maria

110 East Cook Street
Santa Maria, CA 93454
rgarietz@ci.santa-maria.ca.us
psinco@cityofsantamaria.org

County Clerk

County of Sacramento

720 9th Street
Sacramento, CA 95814

Local Agency Formation Commission

P. O. Box 2694
Granite Bay, CA 95746
j.benoit4@icloud.com

Avila Beach Community Service District

P O Box 309
191 San Miguel Street
Avila Beach, CA 93424
avilacsd@gmail.com

Community Services District

P. O. Box 6064
Los Osos, CA 93412

Morro Bay City Water (City Hall)

595 Harbor Blvd.
Morro Bay, CA 93442
rlivick@morrobayca.gov

San Luis Obispo City Water

879 Morro Street
San Luis Obispo, CA 93403

City of Santa Maria

2065 East Main Street
Santa Maria, CA 93454
lmilong@ci.santa-maria.ca.us

City Attorney

City of Clearlake

14050 Olympic Drive
Clearlake, CA 95422

City Clerk & City Attorney

City of Guadalupe

918 Obispo Street
Guadalupe, CA 93434

City Clerk & City Attorney

City of Simi Valley

2929 Tapo Canyon Road
Simi Valley, CA 93065

County Clerk

County of San Luis Obispo

1055 Monterey Street - #D-120
San Luis Obispo, CA 93408

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

Department of Water Resources
Steve Pedretti, Division Chief
827 7th Street, Room 301
Sacramento, CA 95814
DWRexecsecretary@saccounty.net

County Counsel
105 East Anapamu Street, Rm. 201
Santa Barbara, CA 93101

LAFCO
1042 Pacific Street, Suite A
San Luis Obispo, CA 93401
dbloyd@slolafco.com

**City of Bellflower
Water Department**
16600 Civic Center Drive
Bellflower, CA 90706
RStover@bellflower.org

**City of Downey
Director of Public Works**
P. O. Box 90241-7016
Downey, CA 90241

**City of Huntington Park
Water Department**
6550 Miles Street
Huntington Park, CA 90255

**City of Lakewood
Water Department**
P.O. Box 220
Lakewood, CA 90714-0220

**Honorable Mayor Eric Garcetti
City of Los Angeles**
200 N. Spring Street – Room 303
Los Angeles, CA 90012

**City of Norwalk
Water Department**
12700 Norwalk Blvd. – Room #5
Norwalk, CA 90650

**City of Santa Fe Springs
Water Department**
11736 E. Telegraph Road
Santa Fe Springs, CA 90670

County Counsel
County of San Luis Obispo
County Government Center - #D-320
San Luis Obispo, CA 93408

John Farnkopf, Senior Vice President
HILTON FARNKOPF & HOBSON, LLC
2175 N. California Blvd – Suite 990
Walnut Creek, CA 94596
jfarnkopf@hfh-consultants.com

Santa Barbara LAFCO
105 E. Anapamu - Room 406
Santa Barbara, CA 93101
lafco@sblafco.org

**City of Cerritos
Water Department**
P.O. Box 3130
Cerritos, CA 90703
bortega@cerritos.us

City of Hawthorne
4455 W. 126th Street
Hawthorne, CA 90250

City of Inglewood
One Manchester Blvd. - Suite 900
P. O. Box 6500
Inglewood, CA 90301

**Long Beach Water Department
Chris Garner, General Manager**
1800 E. Wardlow Road
Long Beach, CA 90807

**City of Los Angeles
Department of Water & Power**
P O Box 51111
Los Angeles, CA 90051-0100

**City of Paramount
Water Department**
16420 Colorado Street
Paramount, CA 90723
sho@paramountcity.com

**City of South Gate
Water Department**
8650 California Street
South Gate, CA 90280
rdickey@sogate.org
dtorres@sogate.org

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

**City of Torrance
Water Department**
3031 Torrance Blvd.
Torrance, CA 90503
cschaich@TorranceCA.gov

California Water Service Co.
2632 West 237th Street
Torrance, CA 90505-5272
mduque@calwater.com

Liberty Utilities
9750 Washburn Road
Downey, CA 90241
Diana.lemoli@LibertyUtilities.com

Maywood Mutual Water - No. 2
3521 East Slauson Street
Maywood, CA 90270

**Orchard Dale County
Water District**
13819 East Telegraph Road
Whittier, CA 90604
rsilvett@odwd.org
ecastaneda@odwd.org
Misskey@odwd.org

San Gabriel Valley Water Co.
11142 Garvey Avenue
El Monte, CA 91733
dadellosa@sgvwater.com

Tract 180 - Mutual Water Co.
4544 E. Florence Avenue
Cudahy, CA 90201
Tract180@hotmail.com

**Central Basin MWD
General Manager**
6252 Telegraph Road
Commerce, CA 90040-2512

**Hilda Solis – 1st District
L.A. County Board of Supervisors**
856 Kenneth Hahn Hall of Admin
500 West Temple Street
Los Angeles, CA 90012

**Jeff Collier, City Manager
City of Whittier**
13230 Penn Street
Whittier, CA 90602
Jcollier@cityofwhittier.org

**California Water Service
Rancho Dominguez District**
2632 West 237th Street
Torrance, CA 90505-5272
hwind@calwater.com

Maywood Mutual Water - No. 1
5953 Gifford Street
Huntington Park, CA 90255
MaywoodWater1@aol.com

Maywood Mutual Water - No. 3
6151 Heliotrope Avenue
Maywood, CA 90270-3418

Pico County Water District
P. O. Box 758
Pico Rivera, CA 90660-0768

**Robert Kelly, VP of Regulatory Affairs
Suburban Water Systems**
1325 N. Grand Avenue, Suite 100
Covina, CA 91724-4044

**Water Replenishment District
General Manager**
4040 Paramount Blvd.
Lakewood, CA 90712-4127
rwhitaker@ wrd.org

**West Basin MWD
Julie Frazier-Mathews – Executive Asst.
Patrick Sheilds – General Manager**
17140 S. Avalon Blvd. – Suite 210
Carson, CA 90746-1296
JulieF@westbasin.org
PatrickS@westbasin.org

**Mark Ridley-Thomas – 2nd District
L. A. County Board of Supervisors**
Room 866 - Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Markridley-thomas@bos.lacounty.gov
kkatona@bos.lacounty.gov

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

City Attorney & City Clerk
City of Artesia
18747 Clarksdale Avenue
Artesia, CA 90701

City Manager
City of Bell Gardens
7100 S. Garfield Avenue
Bell Gardens, CA 90201
ssimonian@bellgardens.org
joropeza@bellgardens.org
aclark@bellgardens.org

City Attorney & City Clerk
City of Cerritos
P.O. Box 3130
Cerritos, CA 90703

City Manager & City Clerk
City of Cudahy
5250 Santa Ana Street
Cudahy, CA 90201
jpulido@cityofcudahyca.gov

City Attorney & City Clerk
City of Downey
11111 Brookshire Avenue
Downey, CA 90241
cityclerk@downeyca.gov

City Clerk
City of Gardena
1700 W. 162nd Street
Gardena, CA 90247
cityclerk@ci.gardena.ca.us

City Attorney & City Clerk
City of Hawthorne
4460 W. 126th Street
Hawthorne, CA 90250
cityclerk@cityofhawthorne.org

City Attorney & City Clerk
City of Inglewood
One Manchester Blvd.
P O Box 6500
Inglewood, CA 90301

City Attorney, Clerk & Manager
City of Bell
6330 Pine Avenue
Bell, CA 90201
Daleshire@awattorneys.com – Dale Aleshire
ABustamonte@CityofBell.org – City Clerk
jchoi@cityofbell.org – Jackie Choi

City Attorney & City Clerk
City of Carson
701 E. Carson Street
Carson, CA 90745

City Attorney & City Clerk
City of Compton
205 W. Willowbrook Avenue
Compton, CA 90220
ccornwell@comptoncity.org

City Attorney & City Clerk
City of Culver City
9770 Culver Blvd.
Culver City, CA 90230
City.clerk@culvercity.org
City.attorney@culvercity.org

City Attorney & City Clerk
City of El Segundo
350 Main Street
El Segundo, CA 90245

City Attorney & City Clerk
City of Hawaiian Gardens
21815 Pioneer Blvd.
Hawaiian Gardens, CA 90716

City Clerk
City of Huntington Park
6550 Miles Avenue
Huntington Park, CA 90255

City Clerk
City of Lakewood
5050 N. Clark Avenue
Lakewood, CA 90714
CityClerk@LakewoodCity.org

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

City Attorney & City Clerk
City of La Mirada
13700 La Mirada Blvd.
La Mirada, CA 90638
AHaraksin@CityofLaMirada.org

City Clerk
City of Long Beach
333 Ocean Boulevard
Long Beach, CA 90802
cityclerk@longbeach.gov

City Attorney & City Clerk
City of Paramount
16400 S. Colorado Avenue
Paramount, CA 90723
JCavanaugh@Cavanaughlaw.net

City Attorney & City Clerk
City of South Gate
8650 California Avenue
South Gate, CA 90280

County Clerk
County of Orange
12 Civic Center Plaza
Santa Ana, CA 92702

County of LA Waterworks Dist.
23533 West Civic Center Way
Malibu, CA 90265
Attn: Mark Carney
drydman@dpw.lacounty.gov

Director of Public Services
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

California Department of Corrections
P. O. Box 5001
7018 Blair Road
Calipatria, CA 92233

California Dept. of Forestry Hdqtrs
3800 N. Sierra Way
San Bernardino, CA 92405

Daggett Community Service
P.O. Box 308
Daggett, CA 92327

City Attorney & City Clerk
City of Lawndale
14717 Burin Avenue
Lawndale, CA 90260
tvickrey@awattorneys.com

City Attorney & City Clerk
City of Norwalk
12700 Norwalk Blvd.
Norwalk, CA 90650

City Attorney & City Clerk
City of Santa Fe Springs
11710 E. Telegraph Road
Santa Fe Springs, CA 90670
janetmartinez@santafesprings.org

County Clerk
County of Los Angeles
12400 Imperial Highway
Norwalk, CA 90650

County Counsel
City of Orange
333 W. Santa Ana Blvd., 4th Floor
Santa Ana, CA 92701

Apple Valley Ranchos Water Co.
Tony Penna – General Manager
21760 Ottawa Road
P. O. Box 7005
Apple Valley, CA 92308
tpenna@avrwater.com

Barlen Mutual Water
P. O. Box 77
Barstow, CA 92311
barlenwater@hotmail.com

California Dept. of Forestry
7105 Airway Drive
Yucca Valley, CA 92284

County Water
P. O. Box 5001
Victorville, CA 92393-5001

East Orange County Water
185 N. McPherson Road
Orange, CA 92869-3720
lohlund@eocwd.com
eoeh20@eocwd.com

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

East Pasadena Water Co.
3725 Mountain View Avenue
Pasadena, CA 91107
Larry@epwater.com

Jurg Heuberger, CEP, Executive Officer
LAFCO
1122 W. State Street, Suite D
El Centro, CA 92243-2840

Local Agency Formation Commission
215 North D Street – Suite 204
San Bernardino, CA 92415-0490
lafoo@lafoo.sbcouno.gov

Morongo Valley Community
Service Distribution
P.O. Box 46
Morongo Valley, CA 92256

Rancheritos Water Co.
P. O. Box 348
Apple Valley, CA 92307
RMWC1954@gmail.com

Seeley County Water District
P. O. Box 161
Seeley, CA 92273

Sheep Creek Water Company
P. O. Box 291820
Phelan, CA 92329-1820
Attn: Chris Cummings
sheepcreek@verizon.net

Twentynine Palms Water District
72401 Hatch Road
P.O. Box 1735
Twentynine Palms, CA 92277
RKolisz@29PalmsWater.org

Walnut Valley Water District
271 S. Brea Canyon Road
Walnut, CA 91789

Water Issues Committee
Wrightwood Property Owners Assoc.
P.O. Box 487
Wrightwood, CA 92397

City of Arcadia Water Co.
P. O. Box 60021
240 W. Huntington Drive
Arcadia, CA 91066-6021
ttait@ci.arcadia.ca.us

Raymond Castillo, Chairman
County Administration Center
940 W. Main Street - #212
El Centro, CA 92243-2871

Juniper Riviera CWD
P.O. Box 386
Apple Valley, CA 92307
jrcwd@basicisp.net

Mariana Ranchos County Water District
9600 Manzanita Street
Apple Valley, CA 92308
MarianaCWD@mrcwd.org

Navajo Mutual Water Company
P. O. Box 392
Apple Valley, CA 92307
Gmmnwc@gmail.com

San Gabriel County Water Co.
8366 Grand Avenue
Rosemead, CA 91770
Jim@sgcwg.com

Serrano Water Dist. – Villa Park
18021 East Lincoln Street
Villa Park, CA 92667

Sunny Slope Water Co.
1040 El Campo Drive
Pasadena, CA 91107-5506
Ken@SunnySlopeWaterCompany.com
Karen@SunnySlopeWaterCompany.com

Victor Valley Water District
14343 Civic Drive
P O Box 5001
Victorville, CA 92392

Westmorland Water Company
P.O. Box 698
Westmorland, CA 92281

City of Anaheim
City Clerk's Office
200 S. Anaheim Blvd. – Suite 217
Anaheim, CA 92805

City of Alhambra Utilities Dept.
111 S. First Avenue
Alhambra, CA 91801

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

City of Brawley Water Co.
400 Main Street
Brawley, CA 92227
TSalcido@brawley-ca.gov

City of Brea
Water Department
#1 Civic Center Drive
Brea, CA 92621

City of Buena Park
6650 Beach Boulevard
Buena Park, CA 90620
Fgutierrez@BuenaPark.com

City of Calexico Water Co.
608 Heber Avenue
Calexico, CA 92231

City of Covina
534 Barranca Avenue
Covina, CA 91723-2199
CMarcarello@covinaca.gov

City of El Centro Water Co.
307 W. Brighton Avenue
El Centro, CA 92243

City Attorney
City of El Monte
11333 Valley Blvd.
El Monte, CA 91732
cmoseley@elmonte.ca.us

City of Fullerton Water
Fullerton Water Department
303 W. Commonwealth Avenue
Fullerton, CA 92631
garh@ci.fullerton.ca.us

City of Garden Grove
13802 Newhope Street
Garden Grove, CA 92643
Zackb@ci.garden-grove.ca.us

City of Glendora
116 East Foothill Blvd.
Glendora, CA 91740

Heber Public Utility District
P. O. Box H
Heber, CA 92249

City of Hesperia
Water Department
9700 Seventh Avenue
Hesperia, CA 92345
jwyman@cityofhesperia.us

City of Imperial
Water Department
420 S. Imperial Avenue
Imperial, CA 92251

City of La Palma
7822 Walker Street
La Palma, CA 90623
Attn: Jeff Moneda, PW Director

City of La Verne
Water Department
3660 "D" Street
La Verne, CA 91750
lestrella@ci.la-verne.ca.us

Monte Vista Water District
10575 Central Avenue
Montclair, CA 91763

City of Monterey Park Water Co.
320 W. Newmark Avenue
Monterey Park, CA 91754

City Attorney
City of Monterey Park
2600 W. Olive Avenue, Suite 500
Burbank, CA 91505
Kberger@hensleylawgroup.com

City of Monrovia Water Company
415 S. Ivy Avenue
Monrovia, CA 91016

City of Orange
Water Department
189 South Water Street
Orange, CA 92866
jdefrancesco@cityoforange.org

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

City of Santa Ana Water
20 Civic Center Plaza
Santa Ana, CA 92702
ryhernandez@santa-ana.org

City of Seal Beach
211 8th Street
Seal Beach, CA 90740

**City of West Covina
Water Department**
825 S. Sunset Avenue
West Covina, CA 91790

**Steve Conklin, Acting General Manager
Yorba Linda Water District**
1717 E. Miraloma Avenue
Placentia, CA 92870
Sconklin@ylwd.com
RWeston@ylwd.com

City Attorney
City of Barstow
222 E. Mountain View Street
Barstow, CA 92311

City Attorney
City of Claremont
P. O. Box 880
Claremont, CA 91711

City Attorney
City of Cypress
5275 Orange Avenue
Cypress, CA 90630

City of El Monte
11333 Valley Blvd.
El Monte, CA 91731
jmussenden@ci.el-monte.ca.us

City Attorney
City of La Palma
7822 Walker Street
La Palma, CA 90680

City of San Dimas
245 E. Bonita Avenue
San Dimas, CA 91773

**City of Upland
Water Department**
460 N. Euclid Street
Upland, CA 91786
RHoerning@ci.upland.ca.us
JRobles@ci.upland.ca.us
MMadriz@ci.upland.ca.us

City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683
smiller@westminster-ca.gov

City Attorney
City of Arcadia
240 West Huntington Drive
Arcadia, CA 91006
cityattorneygeneralmailbox@ci.arcadia.ca.us

City Attorney
**Oswalt & Associates
Mr. William (Bill) Smerdon**
P O Box 607
Imperial, CA 92251

City Attorney
City of Covina
125 E. College Street
Covina, CA 91723

City Attorney
City of Duarte
1600 Huntington Drive
Duarte, CA 91010
jmelching@rutan.com

City Attorney
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

City Attorney
City of La Verne
3660 'D' Street
La Verne, CA 91750

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

Administrative Services Director

City of Los Alamitos

3191 Katella Avenue
Los Alamitos, CA 90720

EHendrickson@cityoflosalamitos.org

City Attorney

City of Montclair

5111 Benito Avenue
Montclair, CA 91763

Der_robbinsholdaway@verizon.net

City Attorney

City of Orange

300 E. Chapman Avenue
Orange, CA 92666

wwinthers@cityoforange.org

City of Pomona

505 S. Garey Avenue
Pomona, CA 91766

Rozaluia_outley@ci.pomona.ca.us

City Attorney, Bonifacio Garcia

City of Rosemead

8838 E. Valley Blvd.
Rosemead, CA 91770

City Attorney

City of San Gabriel

425 S. Mission Drive
San Gabriel, CA 91776

City Attorney

City of Stanton

7800 Katella Avenue
Stanton, CA 90680

City Manager

City of Yorba Linda

4845 Casa Loma Avenue
Yorba Linda, CA 92886-3364

City Clerk

City of Barstow

222 E. Mountain View St – Suite A
Barstow, CA 92311

City Attorney

City of Monrovia

415 South Ivy Avenue
Monrovia, CA 91016

csteele@rwglaw.com

City Attorney, Karl H. Berger

City of Monterey Park

2600 W. Olive Avenue, Suite 500
Burbank, CA 91505

kberger@hensleylawgroup.com

City Attorney

City of Placentia

401 E. Chapman Avenue
Placentia, CA 92870

Water/Wastewater Operations Manager

City of Pomona

505 S. Garey Avenue
Pomona, CA 91766

Robert_DeLoach@ci.pomona.ca.us

Chris-Diggs@ci.pomona.ca.us

Gary_Matthews@ci.pomona.ca.us

Assistant City Manager

City of San Dimas

245 E. Bonita Avenue
San Dimas, CA 91773

kduran@ci.san-dimas.ca.us

City Attorney

City of Seal Beach

211 8th Street
Seal Beach, CA 90740

gbarrow@rwglaw.com

City Attorney

City of Temple City

9701 Las Tunas Drive
Temple City, CA 91780

City Council

City of Calipatria

125 North Park Avenue
Calipatria, CA 92233

City Clerk

City of Claremont

P.O. Box 880
Claremont, CA 91711

sdesautels@ci.claremont.ca.us

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

Community Services Director
City of Claremont
1616 Monte Vista Avenue
Claremont, CA 91711

City Clerk
City of Cypress
5275 Orange Avenue
Cypress, CA 90630
adm@cypress.ca.us

City Clerk
City of El Monte
11333 Valley Blvd.
El Monte, CA 91731

City Clerk
City of La Palma
7822 Walker Street
La Palma, CA 90680

City Clerk
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720
WQintanar@cityoflosalamitos.org

City Clerk
City of Montclair
5111 Benito Avenue
Montclair, CA 91763
aphillips@cityofmontclair.org

City Clerk
City of Placentia
401 E. Chapman Avenue
Placentia, CA 92870

City Clerk's Department
City of San Gabriel
425 S. Mission Drive
San Gabriel, CA 91776
CityClerk@sgch.org

City Clerk, Patricia Vazquez
City of Stanton
7800 Katella Avenue
Stanton, CA 90680
pvazquez@ci.stanton.ca.us

City Clerk
City of Covina
125 E. College Street
Covina, CA 91723

Deputy City Clerk
City of Duarte
1600 Huntington Drive
Duarte, CA 91010
herrerakaren@accessduarte.com

City Clerk
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706
LindaK@ci.irwindale.ca.us

City Clerk
City of La Verne
3660 'D' Street
La Verne, CA 91750

City Clerk
City of Monrovia
415 S. Ivy Avenue
Monrovia, CA 91016

City Clerk
City of Orange
300 E. Chapman Avenue
Chapman, CA 92666

City of Rosemead
8838 Valley Blvd.
Rosemead, CA 91770
EHernandez@CityofRosemead.org
NHaworth@CityofRosemead.org

City Clerk
City of Seal Beach
211 8th Street
Seal Beach, CA 90740
PGallegos@sealbeachca.gov
TKelsey@sealbeachca.gov

City Manager
City of Temple City
9701 Las Tunas Drive
Temple City, CA 91780

GOLDEN STATE WATER COMPANY
REGION 1, 2 & 3 – SERVICE LIST

County Counsel
County of San Bernardino
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0140

Chamber President
Niland Chamber of Commerce
P. O. Box 97
Niland, CA 92257

County Counsel
County of Los Angeles
500 W. Temple Street – 5th Floor
Los Angeles, CA 90012

Scott Blaising
Braun Blaising McLaughlin & Smith PC
915 L Street, Suite 1270
Sacramento, CA 95814
blaising@braunlegal.com

Naval Facilities Engineering Command
Rea D. Estrella
Southwest Division
1220 Pacific Highway
San Diego, CA 92132
Rea.estrella@navy.mil

Liberty Utilities (California)
9750 Washburn Road
Downey, CA 90241
AdviceLetterService@LibertyUtilities.com

City Clerk
City of Yorba Linda
4845 Casa Loma Avenue
Yorba Linda, CA 92686

County of San Bernardino
Water & Sanitation Area
P.O. Box 5004
Victorville, CA 92393-5004

Michael Kent
Contra Costa Health Services
597 Center Avenue, Suite 320
Martinez, CA 94553-4635

Fred G. Yanney
Yanney Law Office
17409 Marquardt Ave., Unit C-4
Cerritos, CA 90703
FredYanney@gmail.com

Megan Somogyi
Goodin, MacBride, Squeri & Day, LLP
505 Sansome Street, Suite 900
San Francisco, CA 94111
MSomogyi@goodinmacbride.com

SUBURBAN WATER SYSTEMS
Distribution List

Attachment A

Page 1 of 3

Director Of Public Works
City of Whittier
13230 E. Penn Street
Whittier, CA 90602

Victor Chan
Office of Ratepayer Advocates
320 West 4th Street, Room 500
Los Angeles, CA 90013

City Attorney
City of Whittier
13230 E. Penn Street
Whittier, CA 90602

City Clerk
City of La Mirada
P.O. Box 828
La Mirada, CA 90638

Michael Gualtieri
La Habra Heights County Water District
P.O. Box 628
La Habra, CA 90633-0628

City Attorney
City of Baldwin Park
14406 E. Pacific Ave.
Baldwin Park, CA 91706

City Clerk
City of Industry
P.O. Box 3366
Industry, CA 91744

County Clerk
Orange County
10 Civic Center Plaza, 3rd. Floor
Santa Ana, CA 92701

City Clerk
City of Covina
125 East College Blvd.
Covina, CA 91723

City Attorney
City of Covina
125 East College Blvd.
Covina, CA 91723

Director of Public Works
City of Buena Park
6650 Beach Blvd.
Buena Park, CA 90621

City of Santa Fe Springs
Department of Public Works
11710 E. Telegraph Road
Santa Fe Springs, CA 90670

Bill Robinson
Upper San Gabriel Valley M.W.D.
1146 East Louisa Avenue
West Covina, CA 91790-1346

Orchard Dale County Water District
13819 East Telegraph Road
Whittier, CA 90604

City Attorney
City of West Covina
P.O. Box 1440
West Covina, CA 91793

City Attorney
City of La Habra
P.O. Box 337
La Habra, CA 90633

The Prinden Corporation
P.O. Box 712
Park Ridge, NJ 07656-0712

City Clerk
City of Baldwin Park
14406 E. Pacific Ave.
Baldwin Park, CA 91706

SUBURBAN WATER SYSTEMS
Distribution List

Page 2 of 3

City Attorney
City of La Mirada
P.O. Box 828
La Mirada, CA 90638

County Counsel
Orange County
10 Civic Center Plaza, 3rd. Floor
Santa Ana, CA 92701

City Clerk
City of Glendora
116 East Foothill Blvd.
Glendora, CA 91741

City Clerk
City of Walnut
P.O. Box 682
Walnut, CA 91788-0682

City Clerk
City of West Covina
P.O. Box 1440
West Covina, CA 91793

Jandy Macias, General Manager
Valley County Water District
JMacias@vcwd.org

City Attorney
City of Buena Park
pbobko@rwglaw.com

Rowland Water District
kdeck@rowlandwater.com

California Domestic Water Company
jbyerrum@caldomestic.com

City Clerk
City of La Habra
tmason@lahabracity.com

County Clerk
Los Angeles County
12400 Imperial Hwy, Room 2001
Norwalk, CA 90650

City Clerk
City of La Puente
15900 East Main St.
La Puente, CA 91744

City Attorney
City of Glendora
116 East Foothill Blvd.
Glendora, CA 91741

City Attorney
City of Walnut
P.O. Box 682
Walnut, CA 91788-0682

Ed Jackson
Park Water Company
AdviceLetterService@LibertyUtilities.com

City Attorney
City of Industry
mvadon@bwslaw.com

Valencia Heights Water Co.
dmichalko@vhwc.org

Walnut Valley Water District
gsanchez@wvwd.com

ORA Water Branch
California Public Utilities Commission
DRAWaterAL@cpuc.ca.gov

SUBURBAN WATER SYSTEMS
Distribution List

Page 3 of 3

Chat Anderson
City of Azusa, Water Department
canderson@azusaca.gov

City of Buena Park
Attn: Water Department
mgrisso@buenapark.com

Chris Banner
South Hills Country Club
2655 S. Citrus Street
West Covina, CA 91791
cbanner@southhillscountryclub.org

City Clerk
City of La Puente
sgarcia@lapuente.org

Keith Switzer
Golden State Water Company
afjackson@gswater.com

Daniel A. Dell'Osa
San Gabriel Valley Water Company
dadellosa@sgvwater.com

Jeff Boand
O'Donnell Chevrolet - Buick
1312 Golden Vista Drive
West Covina, CA 91791
jboand007@aol.com

Ronald Moore
Golden State Water Company
Regulatory Affairs Department
630 E. Foothill Blvd.
San Dimas, CA 91709
RKMoore@gswater.com

DISTRIBUTION LIST
San Gabriel Valley Water Company
Los Angeles County Division
Advice Letter No. 545

City of Arcadia
240 West Huntington Drive
Arcadia, CA 91006

City Clerk, City of Rosemead
8838 Valley Boulevard
Rosemead, CA 91770

City Clerk, City of Baldwin Park
14403 East Pacific Avenue
Baldwin Park, CA 91706

City Clerk, City of San Gabriel
425 South Mission Drive
San Gabriel, CA 91778

California-American Water Company
655 W. Broadway, Suite 1410
San Diego, CA 92101

San Gabriel County Water District
8366 East Grand Avenue
Rosemead, CA 91770

City of El Monte Water Department
11333 Valley Boulevard
El Monte, CA 91734

City of Santa Fe Springs Water Department
Post Office Box 2120
Santa Fe Springs, CA 90670

Industry Public Utilities
Post Office Box 3165
City of Industry, CA 91744

City Clerk, City of South El Monte
1415 Santa Anita Avenue
South El Monte, CA 91733

City Clerk, City of Irwindale
5050 North Irwindale Avenue
Irwindale, CA 91706

Golden State Water Company
Attn: Ronald Moore, Regulatory Affairs
630 East Foothill Boulevard
San Dimas, CA 91773

City Clerk, City of La Puente
15900 East Main Street
La Puente, CA 91744

Suburban Water Systems
Attn: Bob Kelly
1211 East Center Court Drive
Covina, CA 91724-3603

La Puente Valley County Water District
112 North 1st Street
La Puente, CA 91744

Valley County Water District
14521 East Ramona Boulevard
Baldwin Park, CA 91706

City of Montebello
1600 West Beverly Boulevard
Montebello, CA 90640

City of Whittier Water Department
13230 East Penn Street
Whittier, CA 90602

City of Monterey Park Water Department
320 West Newmark Avenue
Monterey Park, CA 91754

California Public Utilities Commission
Office of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102-4208

City of Pico Rivera Water Department
6615 Parsons Boulevard
Pico Rivera, CA 90660

Kiki Carlson
Suburban Water Systems
kcarlson@swwc.com

Pico Water District
Post Office Box 758
Pico Rivera, CA 90660-0758

City Clerk, City of West Covina
1444 West Garvey Avenue
West Covina, CA 91790

Liberty Utilities (Park Water) Corp.
9750 Washburn Road
Downey, CA 90241
AdviceLetterService@LibertyUtilities.com

DISTRIBUTION LIST
San Gabriel Valley Water Company
Fontana Water Company Division
Advice Letter No. 545

Kendall H. MacVey, Esq.
Best, Best & Krieger, LLP
3390 University Avenue 5th Floor
Riverside, CA 92501

City of Colton Water Department
650 North La Cadena Drive
Colton, CA 92324

Cucamonga Valley Water District
Post Office Box 638
Rancho Cucamonga, CA 91730

Debbie Brazill
Deputy City Manager
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335

Chuck Hays
Public Works Director
City of Fontana Public Service Department
16489 Orange Way
Fontana, CA 92335

Marvin T. Sawyer, District Counsel
Fontana Unified School District
Business Services Office
9680 Citrus Avenue
Fontana, CA 92335

Kathleen Rollings-McDonald, Executive Dir.
Local Agency Formation Commission for
San Bernardino County
215 North D Street, Suite 204
San Bernardino, CA 92415

City of Ontario Water Department
303 East B Street
Ontario, CA 91764

City of Rialto Water Department
150 South Palm Avenue
Rialto, CA 92376

West Valley Water District
Post Office Box 920
Rialto, CA 92377

Kiki Carlson
Suburban Water Systems
kcarlson@swwc.com



Bakersfield District

ADVICE LETTER FILING MAILING LIST

PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService

99 East 700 South
Logan, UT 84321
alaroque@conservice.com

DOUGLAS NUNNELEY
Oildale Mutual Water Company
P.O. Box 5368

Bakersfield, CA 93388
dnunneley@yahoo.com

LUDA FISHMAN, WATER RESOURCES

DEPARTMENT

City of Bakersfield

1000 Buena Vista Rd
Bakersfield, CA 93311
lfishman@bakersfieldcity.us

MICHAEL DAILAK

Casa Loma Water Company

1016 Lomita Drive
Bakersfield, CA 93307
mike11318@aol.com

TIMOTHY RUIZ

East Niles Community Services District

P.O. Box 6038
Bakersfield, CA 93386
truiz@eastnilesd.org

CITY MANAGER'S OFFICE

City of Bakersfield

1600 Truxton Avenue
Bakersfield, CA 93301
admgr@bakersfieldcity.us

Victory Mutual Water Company

P.O. Box 40035
Bakersfield, CA 93304

Krista Mutual Water Company

7025 Cuddy Valley Rd.
Frazier Park, CA 93225

Colin L. Pearce

Jolie-Anne S. Ansley

Duane Morris LLP

One Market Plaza, Spear Tower, Suite
2200

San Francisco, Ca 94105-1127

clpearce@duanemorris.com

jansley@duanemorris.com



Antelope Valley District

ADVICE LETTER FILING MAILING LIST

PER SECTION III (G) OF GENERAL ORDER NO. 96-A

JACK L. CHACANACA

Leona Valley Cherry Growers

Association

26201 Tuolumne St
Mojave, CA 93501

JOSEPH S. LUCIDO

Leona Valley Cherry Growers

Association

26201 Tuolumne St
Mojave, CA 93501

PEGGY FULLER

Leona Valley Town Council

P.O. Box 795

Leona Valley, CA 93551

pfuller@leonavalleytc.org

LAURA FERNANDEZ

Braun Blaising Smith Wynne, P.C.

915 L Street, Suite 1480

Sacramento, CA 95814

femandez@braunlegal.com



Bay Area Region

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A



Bay Area Region

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

CARY DAHL, WATER DIVISION
SUPERVISOR
Town of Hillsborough
1600 Floribunda Ave
Hillsborough, CA 94010
cdahl@hillsborough.net

DIRECTOR OF PUBLIC WORKS
County of Marin
P.O. Box 4186
San Rafael, CA 94913
ctackabery@marincounty.org
esteger@marincounty.org
rojas@marincounty.org

JOSHUA ZIESE
California Department of Public Health
P.O. Box 997377, MS 7418 1616 Capital
Ave
Sacramento, CA 95899

LANCE REESE
California Department of Public Health
P.O. Box 997377, MS 7418 1616 Capital
Ave
Sacramento, CA 95899

MARK DELLINGER
County of Lake Special Districts
230 North Main
Lakeport, CA 95453
mark.dellinger@lakecountyca.gov

REBECCA ANDERSON-POTTS
AMPL, LLC.
5402 Arrowhead Court
Livermore, CA 94550
rebecca.potts@comcast.net

SHARON DEMARTINI, ASSISTANT TO
DIRECTOR OF PUBLIC WORKS
County of Marin
P.O. Box 4186
San Rafael, CA 94913
sdemartini@marincounty.org

Jeffrey Young
473 Woodley Pl
Santa Rosa, CA 95409
jffyng@gmail.com

Marcos Pareas
P.O. Box 152
Dillon Beach, CA 94929
mapreas@gmail.com

ANN LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

ART MORIMOTO, ASSISTANT DIRECTOR
OF PUBLIC WORKS
City of Burlingame
501 Primrose Rd
Burlingame, CA 94010
amorimoto@burlingame.org

DARRYL BARROW, GENERAL MANAGER
Westborough Water District
P.O. Box 2747
South San Francisco, CA 94083
dbarrow@westboroughwater.com

JEFF MONEDA, PUBLIC WORKS
DIRECTOR, CITY ENGINEER
Foster City City Hall
610 Foster City Blvd
Foster City, CA 94404
jmoneda@fostercity.org

JIM BURCH, DEPUTY DIRECTOR OF
MAINTENANCE & OPERATIONS
San Bruno Water Department
567 El Camino Real
San Bruno, CA 94066
jburch@sanbruno.ca.gov

JIMMY TAN, PUBLIC SERVICES
DIRECTOR
San Bruno Water Department
567 El Camino Real
San Bruno, CA 94066
jtan@sanbruno.ca.gov

JUSTIN CHAPEL, WATER UTILITIES
SUPERINTENDENT
City of Redwood City
1400 Broadway
Redwood City, CA 94063
jchapel@redwoodcity.org

LOU DURAN, PUBLIC WORKS
SUPERINTENDENT
City of San Carlos
600 Elm St
San Carlos, CA 94070
lduran@cityofsancarlos.org

MIKE FUTRELL, CITY MANAGER
City of South San Francisco
400 Grand Ave
South San Francisco, CA 94080
mike.futrell@ssf.net

PATRICK SWEETLAND, WATER & WATER
RESOURCES
City of Daly City
153 Lake Merced Blvd
Daly City, CA 94005
psweetland@dalycity.org

PAUL WILLIS, PUBLIC WORKS DIRECTOR,
CITY ENGINEER
Town of Hillsborough
1600 Floribunda Ave
Hillsborough, CA 94010
pwillis@hillsborough.net

PUBLIC WORKS DIRECTOR
City of San Mateo
330 West 20th Ave
San Mateo, CA 94403
publicworks@cityofsanmateo.org

STUART SCHILLINGER, ADMINISTRATIVE
SERVICES DIRECTOR
City of Brisbane
50 Park Place
Brisbane, CA 94005
schillinger@ci.brisbane.ca.us

TAMMY RUDOCK, GENERAL MANAGER
Mid-Peninsula Water District
P.O. Box 129
Belmont, CA 94002
tammyr@midpeninsulawater.org



Chico District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

CHRIS CONSTANTIN, ASSISTANT CITY
MANAGER
City of Chico
P.O. Box 3420
Chico, CA 95927
chris.constantin@chicoca.gov

MARK ORME, CITY MANAGER
City of Chico
P.O. Box 3420
Chico, CA 95927
mark.orme@chicoca.gov

SCOTT DOWELL
City of Chico
P.O. Box 3420
Chico, CA 95927
scott.dowell@chicoca.gov



Bear Gulch District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

AZALEA MITCH, CITY ENGINEER
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025
aamitch@menlopark.org

DONG NGUYEN, DEPUTY TOWN
ENGINEER
Town of Woodside
P.O. Box 620005
Woodside, CA 94062
dnguyen@woodsidetown.org

DUNCAN JONES
Town of Atherton
91 Ashfield Rd
Atherton, CA 94027
djones@ci.atherton.ca.us

ERIK KENISTON
City of Palo Alto
250 Hamilton Ave
Palo Alto, CA 94301
erik.keniston@cityofpaloalto.org

JOE LOCOCO, DEPUTY DIRECTOR OF
ROADS DIVISION
Los Trancos Water District
1263 Los Trancos Rd
Portola Valley, CA 94025
jlococo@smcgov.org

KEVIN BRYANT, TOWN MANAGER
Town of Woodside
P.O. Box 620005
Woodside, CA 94062
kbryant@woodsidetown.org

PAM LOWE, SENIOR CIVIL ENGINEER
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025
phlowe@menlopark.org

PUBLIC WORKS DIRECTOR
Town of Portola Valley
765 Portola Rd
Portola Valley, CA 94028
hyoung@portolavalley.net

PUBLIC WORKS DIRECTOR
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025
pwsupportstaff@menlopark.org
nmmeigar@menlopark.org

WATER DEPARTMENT
City of Menlo Park
701 Laurel St
Menlo Park, CA 94025
jpmcgirr@menlopark.org

WATER DEPARTMENT
Redwood City
P.O. Box 391
Redwood City, CA 94064
revenueservices@redwoodcity.org



Dominguez District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ALAN BERNDT

City of Torrance Public Works

20500 Madrona Ave
Torrance, CA 90630
aberndt@torranceca.gov

AUDREY JACKSON, REGULATORY
AFFAIRS

Golden State Water Company

630 East Foodhill Blvd
San Dimas, CA 91733
afjackson@gswater.com

GEORGE CHEN, RATES MANAGER

**City of Los Angeles, Department of
Water & Power**

P.O. Box 51111 Room 956
Los Angeles, CA 90051
ZhengGeorge.Chen@ladwp.com

MICHAEL HARVEY, OPERATIONS
MANAGER

City of Compton Water Utility Division

205 S Willowbrook Ave
Compton, CA 90220
mhharvey@comptoncity.org

RONALD MOORE, REGULATORY
AFFAIRS

Golden State Water Company

630 East Foodhill Blvd
San Dimas, CA 91733
rkmoore@gswater.com

PAUL FUJITA, WATER DEPARTMENT

City of Long Beach

1800 East Wardlow Rd
Long Beach, CA 90807
paul.fujita@lbwater.org

Park Water Company

P.O. Box 7002
Downey, CA 90241
regulatoryaffairs@parkwater.com



Dixon District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

FINANCE DEPARTMENT

City of Dixon

600 East A St
Dixon, CA 95620

GENERAL MANAGER

Solano Irrigation District

508 Elmira Rd
Vacaville, CA 95687
admin@sidwater.org



Grand Oaks District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

JON CURRY, PUBLIC WORKS DIRECTOR
City of Tehachapi
115 S. Robinson St
Tehachapi, CA 93561
jcurry@tehachapipw.com

MIKE SIDES, ASSISTANT GENERAL MANAGER
Golden Hills Community Services District
P.O. Box 637
Tehachapi, CA 93581
msides@ghcsd.com



East Los Angeles District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService
99 East 700th
Logan, UT 84321
alaroque@conservice.com

DANIEL A DELL'OSA
San Gabriel Valley Water Company
11142 Garvey Ave
El Monte, CA 91733
dadelloa@sgwater.com

FRANK HELDMAN
City of Monterey Park
320 W Newmark Ave
Monterey Park, CA 91754
fheldman@montereypark.ca.gov

KENNETH S BRADBURY
Montebello Land & Water Company
344 E Madison Ave
Montebello, CA 90640
ken@mtblw.com

MARIKO MARIANES, RATES MANAGER
City of Los Angeles Department of Water & Power
P.O.Box 51111 Room 956
Los Angeles, CA 90051
mariko.marianes@adwp.com

PUBLIC WORKS & DEVELOPMENT
SERVICES DEPARTMENT
City of Commerce
2535 Commerce Way
Commerce, CA 90040
publicworksdevelopment@ci.commerce.ca.us

ROBERTA LACAYO, ENGINEERING DEPT
City of Montebello
1600 W Beverly Blvd
Montebello, CA 90640
rlacayo@cityofmontebello.com

SCOTT RIGG
City of Vernon
4305 Santa Fe Ave
Vernon, CA 90058
srigg@ci.vernon.ca.us

Park Water Company
P.O.Box 7002
Downey, CA 90241
pwcadviseletterservice@parkwater.com



Kern River Valley District

ADVICE LETTER FILING MAILING LIST

PER SECTION III (G) OF GENERAL ORDER NO. 96-A



Hermosa-Redondo District

ADVICE LETTER FILING MAILING LIST

PER SECTION III (G) OF GENERAL ORDER NO. 96-A

DARLENE STUDDARD, COMMITTEE
MEMBER

Residents Against Water Rates RAW
P.O. Box 3701
Wofford Heights, CA 93285

JEREMY CALLIHAN
**Department of Water Resources Safe
Drinking Water Program**
1416 Ninth St, Rm. 816
Sacramento, CA 95814
jeremy.callihan@water.ca.gov

LINDA NG
**Department of Water Resources Safe
Drinking Water Program**
1416 Ninth St, Rm. 816
Sacramento, CA 95814
linda.ng@water.ca.gov

Rob Benson
P.O. Box 1557
Kernville, CA 93238
rcbenson@earthlink.net

ALAN BERNDT
City of Torrance Public Works
20500 Madrona Ave
Torrance, CA 90630
aberndt@torranceca.gov

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

AUDREY JACKSON, REGULATORY
AFFAIRS
Golden State Water Company
630 East Foodhill Blvd
San Dimas, CA 91773
afjackson@gswater.com

FINANCE DIRECTOR
City of Hawthorne
4455 W 126th St
Hawthorne, CA 90250
rmanbahal@cityofhawthorne.org

GEORGE CHEN, RATES MANAGER
**City of Los Angeles, Department of
Water & Power**
P.O. Box 51111 Room 956
Los Angeles, CA 90051
ZhengGeorge.Chen@ladwp.com

GLEN KAU, PUBLIC WORKS DIRECTOR
City of Hermosa Beach
1315 Valley Dr
Hermosa Beach, CA 90254
gkau@hermosabch.org

ROB OSBORNE
**City of Redondo Beach, Public Works
Department**
415 Diamond St
Redondo Beach, CA 90277
rob.osborne@redondo.org

RONALD MOORE, REGULATORY
AFFAIRS
**Golden State Water Company,
Department of Water & Power**
630 East Foodhill Blvd
San Dimas, CA 91773
rkmoore@gswater.com

SHAWN IGOE
City of Manhattan Beach
3621 Bell Ave
Manhattan Beach, CA 90266
sigoe@citymb.info

TINA DAVIS AND VICKY MILLER
Park Billing Company
P.O. Box 910
Dixon, CA 95620
tdavis@parkbilling.com
vmiller@parkbilling.com



Livermore District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ALAMEDA COUNTY FLOOD CONTROL &
WATER CONSERVATION
District Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 94551
tbaptista@zone7water.com

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

ERIK PETERSON, UTILITY BILLING
DIVISION
City of Livermore
1052 S. Livermore Ave
Livermore, CA 94550
etpeterson@ci.livermore.ca.us



King City District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

STEVE ADAMS

King City
212 S. Vanderhurst Ave
King City, Ca 93930
sadams@kingcity.com

TINA DAVIS AND VICKY MILLER
Park Billing Company
P.O.Box 910
Dixon, CA 95620
tdavis@parkbilling.com
vmiller@parkbilling.com

Little Bear Water Company
51201 Pine Canyon Rd, Space #125
King City, CA 93930



Marysville District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

DIANA LANGLEY, PUBLIC WORKS
DIRECTOR/CITY ENGINEER
City of Yuba City
302 Burns Dr
Yuba City, CA 95991
dlangley@yubacity.net

GENERAL MANAGER
Linda County Water District
1280 Scales
Marysville, CA 95901
ebullard@succeed.net

GENERAL MANAGER
Olivehurst Public Utility District
P.O. Box 670
Olivehurst, CA 95961
opudmgr@opud.org

JENNIFER STYCZYNSKI, SENIOR
ACCOUNTANT
City of Marysville
P.O. Box 150
Marysville, CA 95901
jennifers@marysville.ca.us



Los Altos District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

CARL CAHILL
Town of Los Altos Hills
26379 Fremont Road
Los Altos Hills, CA 94022
ccahill@losaltoshills.ca.gov

CATHERINE COX
City of Palo Alto, City Hall
250 Hamilton Ave
Palo Alto, CA 94301
catherine.cox@cityofpaloalto.org

CHRISTOPHER L DE GROOT
**City of Santa Clara, Water Department,
Water & Sewer Utilities**
1500 Warburton Ave
Santa Clara, CA 95050
cdegroot@santacalaraca.gov

DEBORAH PADOVAN
Town of Los Altos Hills
26379 Fremont Road
Los Altos Hills, CA 94022
dpadovan@losaltoshills.ca.gov

PALLE JENSEN
San Jose Water Company
110 W. Taylor Street
San Jose, CA 95110
palle.jensen@sjwater.com

PATRICK D WALTER
Purissima Hills Water District
26375 Fremont Rd
Los Altos Hills, CA 94022
pwalter@purissimawater.org

SHILPA MEHTA
**City of Santa Clara, Water Department,
Water & Sewer Utilities**
1500 Warburton Ave
Santa Clara, CA 95050
smehta@santacalaraca.gov

SUSANNA CHAN
City of Los Altos
1 North San Antonio Rd
Los Altos, CA 94022
schan@losaltosca.gov

TIMM BORDEN
City of Cupertino
10300 Torre Ave
Cupertino, CA 95014
timmb@cupertino.org

VAL CONZET, WATER OPERATIONS
MANAGER
City of Sunnyvale, Water Dept.
P.O. Box 3707
Sunnyvale, CA 94088
vconzet@ci.sunnyvale.ca.us
jperry@ci.sunnyvale.ca.us

Santa Clara Valley, Water District
5750 Almaden Expressway
San Jose, CA 95118
dtaylor@valleywater.org

Great Oaks Water Company
15 Great Oaks Blvd #100
San Jose, CA 95119
tguster@greatoakswater.com

**City of Santa Clara, Water Department,
Water & Sewer Utilities**
1500 Warburton Ave
Santa Clara, CA 95050
water@santacalaraca.gov

City of Mountain View, Water Dept.
231 N Whisman Rd
Mt. View, CA 94043
will.medina@mountainview.gov



Palos Verdes District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ALAN BERNDT
City of Torrance Public Works
20500 Madrona Ave
Torrance, CA 90630
aberndt@torranceca.gov

GEORGE CHEN, RATES MANAGER
City of Los Angeles, Department of Water & Power
P.O. Box 51111 Room 956
Los Angeles, CA 90051
ZhengGeorge.Chen@ladwp.com

JANE LIN
City of Rancho Palos Verdes
30940 Hawthorne Blvd
Rancho Palos Verdes, CA 90275
janel@rpvca.gov

KEN RUKAVINA, DIRECTOR OF PUBLIC WORKS, CITY ENGINEER
City of Palos Verdes Estates
340 Palos Verdes Dr West
Palos Verdes Estates, CA 90274
krukavina@pvestates.org

MARK MCAVOY
City of Lomita
P.O. Box 339
Lomita, CA 90717
m.mcavoy@lomitacity.com

MIKE WHITEHEAD
City of Rolling Hills Estates
4045 Palos Verdes Drive North
Rolling Hills Estates, CA 90274

TRANG NGUYEN, DEPUTY DIRECTOR OF FINANCE
City of Rancho Palos Verdes
30940 Hawthorne Blvd
Rancho Palos Verdes, CA 90275
tnguyen@rpvca.gov



Oroville District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

RATH MOSELEY, GENERAL MANAGER
South Feather Water & Power
2310 Oroville Quincy Hwy
Oroville, CA 95966
rmoseley@southfeather.com

RUTH WRIGHT
City of Oroville
1735 Montgomery St
Oroville, CA 95965
wrightr@cityoforoville.org

JAYME BOUCHER
Thermalito Irrigation District
410 Grand Ave
Oroville, CA 95965
jboucher@twisd.info



Selma District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

BUD TICKEL, INTERIM ASSISTANT
DIRECTOR
**City of Fresno, Department of Public
Utilities**
2600 Fresno St, Room 4019
Fresno, CA 93721
bud.tickel@fresno.gov

DAVID WEISSER, PUBLIC WORKS
DIRECTOR
City of Fowler
128 S 5th St
Fowler, CA 93625
dweisser@ci.fowler.ca.us

HENRY PEREA, INTERIM CITY MANAGER
City of Selma, City Hall
1710 Tucker Street
Selma, CA 93662
henryp@cityofselma.com

MAY ALBIANI, EXECUTIVE ASSISTANT
**City of Fresno, Department of Public
Utilities**
2600 Fresno St, Room 4019
Fresno, CA 93721
may.albiani@fresno.gov

THOMAS ESQUEDA, DIRECTOR
**City of Fresno, Department of Public
Utilities**
2600 Fresno St, Room 4019
Fresno, CA 93721
thomas.esqueda@fresno.gov



Salinas District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE
ConService
99 East 700 South
Logan, UT 84321
alaroque@conservice.com

BRIAN FRUS, SENIOR CIVIL ENGINEER
City of Salinas
200 Lincoln Ave
Salinas, CA 93901
brianf@ci.salinas.ca.us

CHRISTOPHER A. CALLIHAN, CITY
ATTORNEY
City of Salinas
200 Lincoln Ave
Salinas, CA 93901
chrisc@ci.salinas.ca.us

TINA DAVIS AND VICKY MILLER
Park Billing Company
P.O. Box 910
Dixon, CA 95620
vmiller@parkbilling.com
tdavis@parkbilling.com

TOM ADCOCK
Alco Water Service
249 Williams Rd
Salinas, CA 93905
andrea@alcowater.com

Gavilan Water Company
644 San Juan Grade Road
Salinas, CA 93906

Monterey County Administration
855 East Laurel Drive, Bldg C
Salinas, CA 93905



Travis District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

KAREN L. REES
City of Fairfield
1000 Webster St
Fairfield, Ca 94533
klrees@fairfield.ca.gov

Rich Seithel
Solano Local Agency Formation Commission
675 Texas St, Suite 6700
Fairfield, Ca 94533
rseithel@solanolafco.com

Michelle McIntyre
Solano Local Agency Formation Commission
675 Texas St, Suite 6700
Fairfield, Ca 94533
mmcintyre@solanolafco.com

Mike Malone
City of Vallejo – Water Department
202 Fleming Hill Road
Vallejo, Ca 94589
mike.malone@cityofvallejo.net

Beth Schoenberger
City of Vallejo – Water Department
202 Fleming Hill Road
Vallejo, Ca 94589
beth.schoenberger@cityofvallejo.net

George Shimboff
City of Fairfield Public Works – Water Division
1000 Webster Street
Fairfield, Ca 94533
gshimboff@fairfield.ca.gov

Paul Fuchslin
Solano Irrigation District (SID)
810 Vaca Valley Pkwy
Vacaville, Ca 95688
fuchslip@sidwater.org

Elizabeth Luna
Suisun City Municipal Utilities
701 Civic Center Blvd.
Suisun City, Ca 94585
eluna@suisun.com

Cary Keaten
Suisun-Solano Water Authority
810 Vaca Valley Pkwy
Vacaville, Ca 95688
ckeaten@sidwater.org

Mindy Boele
City of Vacaville - Utilities Department
650 Merchant Street
Vacaville, Ca 95688
Mindy.Boele@cityofvacaville.com

Justen Cole
City of Vacaville - Utilities Department
650 Merchant Street
Vacaville, Ca 95688
Justen.Cole@cityofvacaville.com

Aisha Robbins
Air Force Civil Engineer Center
3515 South General McMullen Drive
Joint Base San Antonio, Tx 78225
aisha.robbins@us.af.mil

Carl Silverstone
Defense Logistics Agency Energy
8725 John J. Kingman Road STP 10400
Fort Belvoir, Va 22060-6222
Carl.Silverstone@dla.mil

Raymond Lin
Travis Air Force Base
241 V St, Bldg 877
Travis AFB, Ca 94535
raymond.lin.1@us.af.mil



Stockton District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

BOARD OF SUPERVISORS
San Joaquin County
44 N San Joaquin St, 6th Floor, Suite
627
Stockton, CA 95202
mdzenski@sjgov.org

TINA DAVIS AND VICKY MILLER
Park Billing Company
P.O.Box 910
Dixon, CA 95620
vmiller@parkbilling.com
tdavis@parkbilling.com

DIRECTOR OF PUBLIC WORKS
County of San Joaquin
1810 East Hazelton Ave
Stockton, CA 95205
vaguiar@sjgov.org

JOHN ABREW, MUNICIPAL UTILITIES
DEPARTMENT DIRECTOR
City of Stockton
425 N El Dorado St
Stockton, CA 95202
mud@stocktonca.gov

KURT O. WILSON, CITY MANAGER
City of Stockton
425 N El Dorado St
Stockton, CA 95202
city.manager@stocktonca.gov

MICHAEL D. TUBBS, MAYOR
City of Stockton
425 N El Dorado St
Stockton, CA 95202
mayor@stocktonca.gov

MUNICIPAL UTILITY DEPARTMENT
City of Stockton
2500 Navy Dr
Stockton, CA 95206
mud@stocktonca.gov

SCOT A. MOODY, GENERAL MANAGER
Stockton-East Water District
6767 East Main Street
Stockton, CA 95215
sewd@sewd.net



Visalia District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

ANNA LAROQUE

ConService

99 East 700 South
Logan, UT 84321
alaroque@conservice.com

GLEN LUBLIN

Bedel Mutual Water Company

2536 E College Ave
Visalia, CA 93292

LESLIE CAVIGLIA, ASSISTANT CITY

MANAGER

City of Visalia

Visalia, CA 93291
lcaviglia@ci.visalia.ca.us

OSA WOLFF

Shute, Mihaly & Weinberger LLP

396 Hayes Street
San Francisco, CA 94102
wolff@smwlaw.com

RANDY GROOM, CITY MANAGER

City of Visalia

220 N. Santa Fe St
Visalia, CA 93291
randy.groom@visalia.city



Travis District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

Randall Stutzman

Air Force Civil Engineer Center
AFIMSC Det 9; 709 Ward Ave; (T-1990, Rm 248)
Scott AFB, IL 62255-5022
randall.stutzman.1.ctr@us.af.mil

Nikki Rooksby

Defense Logistics Agency Energy
8725 John J. Kingman Road STP 10400
Fort Belvoir, Va 22060-6222
Nikki.Rooksby@dla.mil

Chasio McDaniels

Defense Logistics Agency Energy
8725 John J. Kingman Road STP 10400
Fort Belvoir, Va 22060-6222
Chasio.McDaniels@dla.mil

Kevin Brown

City of Vallejo – Water Department
202 Fleming Hill Road
Vallejo, Ca 94589
kevin.brown2@cityofvallejo.net

Joe Abitong

City of Vallejo – Water Department
202 Fleming Hill Road
Vallejo, Ca 94589
joe.abitong@cityofvallejo.net

Dawn G. Abrahamson

City of Vallejo
555 Santa Clara Street
Vallejo, Ca 94590
dawn.abrahamson@cityofvallejo.net

County Administrator's Office

675 Texas St
Fairfield, Ca 94533
cao-clerk@solanocounty.com



Willows District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

WAYNE PEABODY, INTERIM CITY
MANAGER
City of Willows Civic Center
201 N Lassen St
Willows, CA 95988
wpeabody@cityofwillows.org



Westlake District

ADVICE LETTER FILING MAILING LIST
PER SECTION III (G) OF GENERAL ORDER NO. 96-A

CAROL PALMA
Las Virgenes Municipal Water District
4232 Las Virgenes Road
Calabasas, CA 91302
cpalma@lvwmwd.com

GEORGE CHEN, RATES MANAGER
**City of Los Angeles, Department of
Water & Power**
P.O. Box 51111 Room 956
Los Angeles, CA 90051
ZhengGeorge.Chen@ladwp.com

JAY SPURGIN, PUBLIC WORKS DIRECTOR
City of Thousand Oaks
2100 Thousand Oaks Blvd
Thousand Oaks, CA 91362
jspurgin@toaks.org

JOCELYN BLYSMA
Ventura Regional Sanitation District
1001 Partridge Dr Suite 150
Ventura, CA 93003
jocelynbylsma@vrisd.com

California-American Water Company
4701 Beloit Dr
Sacramento, CA 95838
ca.rates@amwater.com