

# **EXHIBIT “1”**



THE CITIES OF ARCADIA, BELLFLOWER  
CARSON, CERRITOS, CLAREMONT,  
COMMERCE, DOWNEY, DUARTE, GARDENA,  
GLENDDORA, HAWAIIAN GARDENS, IRWINDALE,  
LAWNDALE, MONTEREY PARK, PARAMOUNT,  
SANTE FE SPRINGS, SIGNAL HILL, VERNON,  
WALNUT, WEST COVINA, and WHITTIER,  
municipal corporations, and BUILDING  
INDUSTRY LEGAL DEFENSE  
FOUNDATION, a non-profit corporation,  
Petitioner Plaintiffs

vs.

THE STATE WATER RESOURCES  
CONTROL BOARD; and THE CALIFORNIA  
REGIONAL WATER QUALITY CONTROL  
BOARD, LOS ANGELES REGION, etc.,  
*et alia*,  
Respondent Defendants

ORANGE COUNTY SUPERIOR COURT CASE NO. 06CC02974

**NOTICE OF RULING/DECISION**

The Court has before it the Petition by multiple government entity Petitioners ["Cities" or "Petitioners"] for a Writ of Mandate and for Declaratory Relief as against the State Water Resources Control Board and the California Regional Water Quality Control Board, Los Angeles Region ["Boards"] which has been extensively briefed and argued at a full day hearing on 27 February 2008. What follows is the ruling and decision by the Court on this complex and serious matter.

**I. The Basic Controversy:**

A. Petitioners contend that Respondents never considered Water Quality Standards ["Standards"] in relation to how the Standards apply to storm water [i.e. storm waters and urban runoff].

They urge the court to consider that pursuant to Water Code § 13000 et seq. and specifically Water C. § 13241 [“13241/13000”] the Respondents must consider several factors including, but not limited to, probable future beneficial uses of water, environmental characteristics of the water, water quality conditions that could be reasonably be achieved through the coordinated control of all factors which might affect the quality of water, economic considerations, and the need for developing housing within the region. See Water C. § 13241 (a) – (e).

B. Respondents argue that they did consider these 13241/13000 Standards originally in 1975 and in later reviews and that any challenge to those considerations and reviews has long since passed by way of expiration of the statute of limitations.

C. Petitioners counter that the record of events shows, and Respondents admit, that they never actually considered 13241/13000 requirements for storm water at any time, that the appropriate time to do so only became ripe at the time of the 2004 Triennial Review, and that Respondents abused their discretion by not appropriately considering the 13241/13000 factors in the 2004 Triennial Review. They want the court to order the Respondents inter alia to go back and redo the 2004 Triennial Review [“2004 TR”] and, in conformance with law, properly consider the 13241/13000 factors in relation to storm water.

## **II. The Decision:**

### **A. Standard of Review**

The standard of review in this matter under C.C.P. § 1085 is whether the action by a respondent was arbitrary or capricious or totally lacking in evidentiary support [i.e., substantial evidence] or whether the agency in question failed to follow the required procedure and act according to the law. *City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229; *Corrales v. Bradstreet* (2007) 153 Cal. App. 4th 33, 47.

### **B. Specific Issues**

1. As argued by the Respondents, is it too late pursuant to limitations periods to consider 13241/13000 in relation to storm water?

It is not.

(a) The 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> causes of action are not barred by the statute of limitations. The 5<sup>th</sup> cause of action challenges the 2004 TR, clearly within the four year statute of C.C.P. § 343. The 6<sup>th</sup> cause of action is for declaratory relief regarding future Basin Plan amendments, Total Maximum Daily Loads of pollutants [“TMDLs”], National Pollution Discharge Eliminations System [“NPDES”] permits, and

Triennial Reviews. On its face it is not affected by the statute of limitations. Likewise is the case with the 8<sup>th</sup> cause of action.

(b) The law is clear that no statute of limitations applies to a “continuing violation of an ongoing duty.” See *California Trout, Inc. v. State Board* (1989) 207 Cal. App. 3d, 585, 628. Here periodic triennial reviews were required under Water C. § 13143 and the federal Clean Water Act [“CWA”] section 1313(c) (1) as well as the duty required by Boards to consider the “discharger’s cost of compliance” when the 13241/13000 factors are applicable. *City of Burbank v. State Water Resources Control Bd.* 35 Cal.4th 613, 625. Respondents had a duty to at a minimum to appropriately consider the Standards when they were presented with evidence of the deficiencies during the 2004 TR. [See below].

The case of *Howard Jarvis Taxpayers Assn. v. City of la Habra* (2001) 25 Cal.4th 809 is also instructive here. While the *Jarvis* decision was limited to tax assessments, the same reasoning applies here, that is, a new cause of action applies every time the regulation is applied to the Petitioner. Here, the Boards are applying what are purported to be defective Standards to Petitioners on a continuing and ongoing basis. The Petitioners are seeking prospective relief regarding application of the Standards until the correct 13241/13000 analysis has been performed. Each TMDL has been based upon alleged defective standards, and the relief requested involves continuing and ongoing violations of the law.

Respondents’ arguments imply that Petitioners failed to challenge an invalid regulation upon its adoption, even if it did not apply to Petitioners when adopted [i.e. storm water]. They further argue that Petitioners have no right to later challenge the regulation once it is applied to them. These arguments are not supported by appropriate authority. The authority offered by Petitioners is persuasive. (See *Solid Waste Agency, Inc. v. United States Army Corps of Eng’rs* (7<sup>th</sup> Cir. 1999) 191 F. 3d 845,853 [“we doubt that a party must (or even may) bring an action [challenging an environmental regulation] before it knows that a regulation may injure it or even be applied to it”]).

## 2. Do the doctrines of Res Judicata or Collateral Estoppel apply here?

The Petitioners have never challenged the Standards in the Basin Plan before this challenge and the doctrines of res judicata and collateral estoppel are not applicable. Some of the Petitioners previously sued the Boards based upon other matters such as purported unlawful adoption of an NPDES Permit or unlawful adoption of trash or metal TMDLs. Those lawsuits challenged particular decisions of the Boards concerning the adoption of permits and TMDLs. They did not challenge the legality of applying Standards to storm water without the Boards first appropriately considering the 13241/13000 factors. The 2004 TR process was never previously challenged. Those previous lawsuits involved entirely different

decisions of the Boards and completely different administrative records. They concerned completely separate primary rights. These were not identical issues, previously decided between the same parties or parties in privity. Res judicata and collateral estoppel do not apply here.

3. The Petitioners were not required to challenge the 1990 or 1996 NDPES permits. Respondents claim that Petitioners cannot challenge the Standards since they did not exhaust administrative remedies by filing a challenge to the NDPES permits issued by the Regional Board in 1990 and 1996 pursuant to the process described in Water C. sections 13320 and 13330. Those sections do not apply to this challenge made by Petitioners. It is not the adoption of an NPDES permit that triggered the application of the Standards which Petitioners challenge. It is rather the adoption of TMDLs followed by their incorporation into the NPDES permit that triggers the application of the Standards. *City of Arcadia v. State Board* (2006) 135 Cal. App. 4th 1392, 1404; *City of Arcadia v. US EPA* (9<sup>th</sup> Cir. 2005) 411 F.3d 1103, 1105.

The Boards in this record aptly explained the process whereby the imposition of TMDLs trigger the injury or wrong claimed here:

“we use water quality standards to determine which water bodies are impaired and, thus, to identify water bodies for which we must develop total maximum daily loads (TMDLs). These standards translate into the numeric targets in a TMDL.” (AR 2002 BAC 6.)

It would not have been timely or ripe for the Petitioners to challenge the Standards by challenging the 1990 or 1996 NDPES permits.

4. Does Water C. § 13241 require consideration by the Boards of “probable” not “potential” future uses?

This portion of the Petitioners’ challenge was not argued orally to any great extent, but it was briefed at some length in the Petition, Opposition and Reply.

Responding Parties characterize this as a side battle over semantics (page 34 opposition Brief).

In the Prayer for Relief of the Petition, Moving Parties ask for specific exclusion of “potential” use designations in the 2004 Triennial Review as opposed to “probable” use designations. Since it is integral to the relief requested it requires examination and analysis.

Petitioners argue that 13241(a) specifies “probable future beneficial uses of water” rather than “potential” uses. By using a vague “potential uses” objective the Boards are not in compliance with the mandate of the statute, and are using improperly designated uses which will lead to improper Standards. These in turn will lead to unreasonable and unachievable TMDLs. (Page 32 of Petitioners’ Brief.)

Respondents argue that the Boards designation of “potential uses” is well founded in both state and federal law.

Section 13241 does not use the word “potential” anywhere in the statute. It does describe the factors previously discussed and specifically states that a factor “to be considered” is “Past, present, and probable future beneficial uses of water.” Water C. § 13241 (a).

The Boards argue that the statutory wording “factors to be considered in establishing water quality objectives shall include, but not necessarily be limited to ...” (Water C. § 13241 emphasis added.) *authorizes* the Boards to consider other factors such as potential uses. When terms are not clearly defined in statutes, interpreting such terms is a matter “within a regional board’s discretion” and worthy due deference. (Citing *City of Arcadia v. State Water Resources Control Bd.* 135 Cal. App. 4th 1392, 1415 [Jan. 2006].) They argue further that the potential label is really the Board’s nomenclature for “probable future beneficial uses”. (Opposition page 30, citing AR 2004 TR 1348).

As pointed out by Petitioners, however, “the text of the Basin Plan itself shows that the difference between the terms “probable future beneficial uses” and “potential uses” is not merely semantics. According to the Basin Plan, “potential” beneficial uses can be designated for water bodies for any of five reasons, including: (1) implementation of the State Board’s policy entitled “Sources of Drinking Water Policy”; (2) plans to put the water to such future use; (3) **“potential to put the water to such future use”**; (4) designation of a use by the Regional Board **“as a regional water quality goal,”** or (5) **“public desire”** to put the water to such future use. (AR 1994 AMD 2731; emphasis added.)” Petitioners argue persuasively that the third reason above, that there is some undefined “potential to put the water to such future use” is remarkably vague.

The real problem is that basing Standards on “potential” uses is inconsistent with the clear and specific requirement in the law that Boards consider “probable future” uses. It is also inconsistent with section 13000 which requires that the Boards consider the “demands being made and to be made” on state waters. (Water C. § 13000 emphasis added.) The factors listed by the Legislature in 13241 were chosen for a reason. *Bonnell v. Medical Bd. of California* (2003) 31 Cal. App. 4<sup>th</sup> 1255, 1265 [courts will “not accord deference” to an interpretation which “is incorrect in light of the unambiguous language of the statute”]. Respondents have acted contrary to the law by applying the vague “potential” use designations to storm water.

5. The Standards cannot be applied to storm water without appropriate consideration of the 13241/13000 factors. There is no substantial evidence showing that the Boards considered the 13241/13000 factors before applying the Standards

to storm water in the 1975 Plan Adoption, the 1994 Amendment, or the 2002 Bacteria Objectives. In *City of Burbank, supra*, the California Supreme Court held that if NDPEs permit conditions were not compelled by federal law, the Boards were required to consider economic impacts including the “discharger’s cost of compliance.” (Id. at 618.) The Court interpreted the need to consider economics as requiring a consideration of the cost of compliance on the cities. (Id. at 625.) So, under *Burbank*, the 13241 factors cannot be evaluated in a vacuum. They must be considered in light of the impacts on the “dischargers” themselves. The evidence before the court shows that the Board did not intend that the Basin Plan of 1975 was to be applied to storm waters when it originally was adopted. The Respondents admit this. “[T]he regional board considered storm water to be essentially uncontrollable in 1975”. (Opposition at page 23:24-25.)

This was confirmed by the State Board in a 1991 Order when it stated:

**“The Basin Plan specified requirements and controls for “traditional” point sources, but storm water discharges were not covered... The Regional Board has not amended the portions of its Basin Plan relating to storm water and urban runoff since 1975. Therefore, we conclude that the Basin Plan does not address controls on such discharges, except for the few practices listed above. Clearly, the effluent limitations listed for other point sources are not meant to apply.”** (Second RJN, Ex. “A”, p.6; emphasis added.)

There is no substantial evidence in the record to show that the Boards have ever analyzed the 13241/13000 factors as they relate to storm water.

### C. The 2004 Triennial Review

The 2004 TR was the appropriate vehicle at the appropriate time for the Board to consider the 13000 factors. Even Respondents agree with this. As they state in the opposition:

“If petitioners are truly interested in a new 13241 analysis related to existing objectives, and believe the analysis to date has been inadequate, they plainly have recourse. Petitioners may submit specific evidence during the triennial review process demonstrating why any specific objective is not currently appropriate. The triennial review hearing (the first phase of the review process) is the proper and legally contemplated time and place to consider such evidence.” (Opposition page 28-29.)

This is precisely what Petitioners did do when they submitted extensive comments along with a Basin Plan Review Report (AR 2004 TR177 *et seq.*) to the Regional Board. Those comments and the suggestions in the Basin Plan Review Report [“Review Report”] were rejected out of hand by the Board as being “legally

deficient” and “beyond the scope of the triennial review.” This was an abuse of discretion. Both sides agreed in oral argument that the court could look to AR 2004 TR 1342 *et seq.*, and from reading the comments and responses determine whether or not the Board abused their discretion. The Board and staff may have read portions or even all of the comments and Review Report, but it is clear that they did not consider it or, more to the point, conduct the analysis of the Standards required under 13241/13000.

To quote from the response to comments:

“The staff does agree that economic considerations and housing (along with the other factors identified in Water Code section 13241) are to be addressed when establishing a water quality objective or amending an existing water quality objective.”

“The plain language of the Porter-Cologne Act only requires consideration of economics, housing, and other factors **when establishing the water quality objectives in the first instance. Moreover, the Water Code does not contemplate a continual reassessment of those considerations, which is what the commentator desires.** The section 13241 considerations do not become a part of the Basin Plan and hence are not part of regular review.

For the forgoing reasons and as discussed with more specificity in Response to comments 26.4-26.8, the **commentators objection is legally incorrect and beyond the scope of the Triennial Review.**” (AR 2004 TR 1342-1343, *emph. added*; also similar comments at 1344, 1346 [“The commentator’s economic contentions are noted, but they are beyond the scope of this triennial review.”], 1347 [“commentator’s procedural objections ... (are) beyond the scope of the triennial review.”], and 1352 [“... is beyond the scope of triennial review.”]).

To argue that the Petitioners should have attacked the Standards back in 1975, 1990, or 1994 when they had no reason to and were not harmed thereby, to suggest that the triennial review is the proper time and place to urge changes and then to fail to conduct the triennial review as suggested by the Boards themselves and as required by law is precisely the type of behavior that was so bitterly criticized in a concurring opinion of *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 632-633.

The Board should not have brushed off the Petitioners’ comments and urgings to perform the 13241/13000 analysis at the 2004 TR. Had they included the petitioners in the process, studied, considered, and weighed their suggestions in light of 13241 factors, and then decided to make no changes, then this court would have deferred to their properly exercised discretion. Here they abused their discretion, did not proceed as the law required, and the writ should therefore issue.

The Legislature's finding in Water C. § 13000 of the people's primary interest in clean water and in the "conservation, control, and utilization of the water resources of the state" is the law of the land. Everyone wants the highest water quality "which is reasonable, considering all demands being made and to be made on those waters". (Id.) That legislative mandate as set forth in sections 13000 and 13241 including the requirements of reasonable consideration of "probable future beneficial uses of water" and "economic considerations" must be followed in compliance with the law.

#### D. Judicial Notice

The request by Respondents for Judicial Notice of Exhibits 9, 14 and 15 are denied. Respondents should have sought to augment the Administrative Record for these documents and Nos. 14 and 15 are irrelevant in any event. Exhibit 9 is a trial court opinion concerning the propriety of adopting a TMDL for metals for the Los Angeles River based upon "potential use" designations. It is not proper authority and is irrelevant to this proceeding.

### III. Disposition

A. The Petition for a Writ of Mandate is granted and a Writ shall issue as to the 1<sup>st</sup> through 8<sup>th</sup> Causes of Action as set forth in the prayer at paragraphs (1) – (7) as to water quality Standards and objectives of the Basin Plan as those Standards and objectives affect storm water discharges and urban runoff.

B. The prevailing parties are the Petitioners. They shall prepare the appropriate Writ and any Order for Court review and signature.

C. The Clerk shall give Notice.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

CITY OF ARCADIA, et al.  Plaintiff(s)  v.  STATE WATER RESOURCES CONTROL BOARD, et al.  Defendant(s)	CASE NUMBER: 06CC02974  CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 3-13-08
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I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 3-13-08, I served the Minute Order, dated 3-13-08, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Peter J. Howell, Esq.  
Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626

Richard Montevideo, Esq.  
Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626

Jennifer Novak, Esq.  
State of California, Dept. of Justice  
Office of the Attorney General  
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Los Angeles, CA 90013

Michael W. Hughes, Esq.  
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Los Angeles, CA 90013

Michael J. Levy, Esq.  
State Water Resources Control Board  
Office of Chief Counsel  
1001 I Street  
Sacramento, CA 95814

ALAN SLATER,  
Executive Officer and Clerk of the Superior Court  
In and for the County of Orange

DATED: 3-13-08

By:   
P. Rief, Deputy Clerk

**CERTIFICATE OF SERVICE BY MAIL**



1 RUTAN & TUCKER, LLP  
2 RICHARD MONTEVIDEO (State Bar No. 116051)  
3 PETER J. HOWELL (State Bar No. 227636)  
4 611 Anton Boulevard, Fourteenth Floor  
5 Costa Mesa, California 92626-1950  
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8 Attorneys for Petitioners

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COUNTY OF ORANGE  
CIVIL COMPLEX CENTER  
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ALAN CARLSON, Clerk of the Court

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ALAN CARLSON, Clerk of the Court

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BY P RIEFF

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE , CENTRAL JUSTICE CENTER

11 THE CITIES OF ARCADIA,  
12 BELLFLOWER, CARSON,  
13 CERRITOS, CLAREMONT,  
14 COMMERCE, DOWNEY, DUARTE,  
15 GARDENA, GLENDORA, HAWAIIAN  
16 GARDENS, IRWINDALE,  
17 LAWNSDALE, MONTEREY PARK,  
18 PARAMOUNT, SANTA FE SPRINGS,  
19 SIGNAL HILL, VERNON, WALNUT,  
20 WEST COVINA, and WHITTIER,  
21 municipal corporations, and BUILDING  
22 INDUSTRY LEGAL DEFENSE  
23 FOUNDATION, a non-profit  
24 corporation,

25 Petitioners/Plaintiffs,

26 vs.

27 THE STATE WATER RESOURCES  
28 CONTROL BOARD; and THE  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD, LOS  
ANGELES REGION

Respondents/Defendants.

vs.

NATURAL RESOURCES DEFENSE  
COUNCIL; HEAL THE BAY; and  
SANTA MONICA BAYKEEPER,

Intervenors.

Case No. 06CC02974  
Honorable Thierry Patrick Colaw  
Dept: CX-104

~~Proposed~~ JUDGMENT

Rutan & Tucker, LLP  
Attorneys at Law

227/063121-0072  
971750.01 s11/20/08

1 This matter came on regularly for hearing and trial at 10:00 a.m. on February  
2 27, 2008, in Department CX-104 of the above entitled court, the Honorable Thierry  
3 Patrick Colaw, presiding. Richard Montevideo and Peter J. Howell of Rutan &  
4 Tucker, LLP appeared on behalf of Petitioners and Plaintiffs, the Cities of Arcadia,  
5 Bellflower, Carson, Cerritos, Claremont, Commerce, Downey, Duarte, Glendora,  
6 Hawaiian Gardens, Irwindale, Lawndale, Monterey Park, Paramount, Santa Fe  
7 Springs, Signal Hill, Vernon, and Whittier, and the Building Industry Legal Defense  
8 Foundation (collectively "Petitioners"). Jennifer F. Novak and Michael W. Hughes  
9 of the California Attorney General's Office appeared on behalf of Respondents and  
10 Defendants, the State Water Resources Control Board and the California Regional  
11 Water Quality Control Board, Los Angeles Region (collectively "Respondents").  
12 The Petition/Complaint as filed also included as Petitioners and Plaintiffs the Cities  
13 of Gardena, Walnut and West Covina, but these cities had previously separately  
14 voluntarily dismissed their claims without prejudice. Intervenors, the Natural  
15 Resources Defense Council, Inc. ("NRDC"), Heal the Bay and the Santa Monica  
16 Baykeeper ("Intervenors") represented by David S. Beckman and Michelle S. Mehta  
17 of the NRDC, were permitted to intervene in this action on the side of the  
18 Respondents, by Order of this Court dated May 1, 2008.

19 The matter having been extensively briefed, and the Court having reviewed  
20 the administrative record of Respondents' proceedings in this matter, along with the  
21 pleadings, the briefs submitted by counsel and the judicially noticed materials,  
22 having considered the oral arguments of counsel and having issued its Notice of  
23 Ruling/Decision on March 13, 2008, and with the Court having previously signed  
24 judgments on July 2 and November 10, 2008, which were subsequently vacated,

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

26 1. Judgment is hereby entered in favor of Petitioners and against  
27 Respondents and Intervenors on the Petition for Writ of Mandate and Complaint for  
28 Declaratory and Injunctive Relief.

1           2.     A Peremptory Writ of Mandate shall issue under the seal of this Court  
2 commanding the Respondents, and their board members, officers, agents, attorneys,  
3 employees, and persons and entities acting on behalf of, or through color of the  
4 authority of said Respondents, in accordance with each Respondent's respective  
5 obligations under the law:

6           (a)     to void and set aside Los Angeles Regional Water Quality  
7 Control Board Resolution No. 2005-003, dated March 3, 2005, wherein the  
8 2004 Triennial Review of the Water Quality Control Plan for the Los Angeles  
9 Region ("Basin Plan") was concluded;

10           (b)     during the course of the reopened 2004 Triennial Review, or if  
11 Respondents determine not to reopen the 2004 Triennial Review, then during  
12 the course of the next scheduled triennial review: (i) to review and, where  
13 appropriate, revise the Water Quality Standards ("Standards")<sup>1</sup> in the Basin  
14 Plan, which apply or are to be applied to storm water and urban runoff  
15 (collectively "Stormwater"),<sup>2</sup> in light of the factors and requirements set forth  
16 under Water Code sections 13241 and 13000, including, but not limited to, the  
17 specific factors set forth under Water Code sections 13241(a) – (f), and the  
18 considerations provided under Water Code section 13000; (ii) to revise the  
19 Standards that apply or are to be applied to Stormwater, such that no  
20 "potential" use designations for such Standards remain in the Basin Plan; and  
21 (iii) to revise the Standards, as appropriate, during the Triennial Review  
22 process, after a full and fair public hearing or hearings, and before concluding  
23 the triennial review.

24           3.     The Court hereby finds and declares that it is contrary to law to base  
25

26 <sup>1</sup> As referenced herein, the term "Water Quality Standards" or "Standards" shall  
27 mean the designated beneficial uses of the waters, as well as the water quality  
objectives established to achieve such designated beneficial uses.


28 <sup>2</sup> Federal law defines "storm water" to include urban runoff, *i.e.*, "surface runoff  
and drainage." (*See* 40 C.F.R. § 122.26(b)(13).)

1 Water Quality Standards on "potential" beneficial uses, as such a practice is contrary  
2 to the clear and specific requirement set forth in Water Code section 13241(a)  
3 (which requires the consideration of "probable future beneficial uses" when  
4 establishing Standards), and as such practice is inconsistent with Water Code section  
5 13000 (which requires a consideration of the "demands being made and to be made"  
6 on state waters).

7 4. The Court, having reviewed the applicable provisions of State and  
8 federal law governing the triennial review process to be followed when reviewing  
9 and revising Standards (*see* 33 U.S.C. § 1313(c)(1) and Cal. Water Code §§ 13143  
10 and 13240), hereby further declares that a public hearing is to be conducted as a part  
11 of the triennial review process, and that such public hearing is to be conducted for  
12 the express purpose of reviewing and, as appropriate, modifying the Standards or  
13 adopting new Standards. (*See* 33 U.S.C. § 1313(c)(1).) The Court declares that,  
14 under applicable State and federal law, the triennial review process is *not* to be  
15 concluded until such time as the need for appropriate modifications to the Standards  
16 has been considered, and until such time as actual modifications, where appropriate,  
17 have been made to the Standards or determined not to be made.


18 5. Petitioners are awarded their costs of suit incurred.

19  
20 Dated: 26 November, 2008

  
The Honorable Thierry Patrick Colaw  
Judge of the Superior Court of California

21  
22  
23 RESPECTFULLY SUBMITTED BY:

24 RUTAN & TUCKER, LLP

25 By:   
26 Richard Montevideo  
27 Attorney for Petitioners/Plaintiffs  
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**PROOF OF SERVICE BY FIRST CLASS AND ELECTRONIC MAIL**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On November 21, 2008, I served on the interested parties in said action the following documents:

**[Proposed] JUDGMENT**

Jennifer F. Novak, Esq.  
Michael W. Hughes, Esq.  
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Attorney for Intervenors

In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice I deposited such envelope(s) in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelope(s) were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I also served a copy of the above-referenced document on the interested parties by electronic mail at their email address(es) listed below their mailing addresses as stated above. The transmission of the document(s) was reported as complete and without error.

Executed on November 21, 2008, at Costa Mesa, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Cathryn L. Campbell  
(Type or print name)

  
(Signature)



1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 RICHARD MAGASIN,,  
Supervising Deputy Attorney General  
3 JENNIFER F. NOVAK (State Bar No. 183882)  
MICHAEL W. HUGHES, (State Bar No. 242330)  
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7 Attorneys for Respondents/Defendants  
STATE WATER RESOURCES CONTROL BOARD  
8 and CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD. LOS ANGELES REGION  
9

ELECTRONICALLY  
RECEIVED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

Nov 07 2008

ALAN CARLSON, Clerk of the Court

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

12  
13 THE CITIES OF ARCADIA, BELLFLOWER,  
CARSON, CERRITOS, CLAREMONT,  
14 COMMERCE, DOWNEY, DUARTE,  
GARDENA, GLENDORA, HAWAIIAN  
15 GARDENS, IRWINDALE, LAWNSDALE,  
MONTEREY PARK, PARAMOUNT, SANTA  
16 FE SPRINGS, SIGNAL HILL, VERNON,  
WALNUT, WEST COVINA, and WHITTIER,  
17 municipal corporations, and BUILDING  
INDUSTRY LEGAL DEFENSE  
18 FOUNDATION, a non-profit corporation,

19 Petitioners/Plaintiffs,

20 vs.

21 THE STATE WATER RESOURCES  
CONTROL BOARD; and THE CALIFORNIA  
22 REGIONAL WATER QUALITY CONTROL  
BOARD, LOS ANGELES REGION, and DOES  
23 1 through 50, inclusive,

24 Respondents/Defendants.

25 vs.

26 NATURAL RESOURCES DEFENSE COUNCIL,  
INC.; HEAL THE BAY; and SANTA MONICA  
27 BAYKEEPER

28 Intervenors.

Case No. 06CC02974  
Honorable Thierry Patrick Colaw  
Dept: CX-104

*TC*  
[Proposed] PEREMPTORY  
WRIT OF MANDATE

1 TO RESPONDENTS STATE WATER RESOURCES CONTROL BOARD  
2 AND THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
3 LOS ANGELES REGION, AND TO THEIR BOARD MEMBERS, OFFICERS,  
4 AGENTS, ATTORNEYS, EMPLOYEES, AND TO ALL PERSONS ACTING ON  
5 THEIR BEHALF, OR THROUGH OR UNDER COLOR OF THEIR  
6 AUTHORITY:

7 Judgment having been entered in this action, ordering that a peremptory writ  
8 of mandate be issued from this Court,

9 YOU ARE HEREBY DIRECTED AND COMMANDED, UPON RECEIPT  
10 OF THIS WRIT, IN ACCORDANCE WITH YOUR RESPECTIVE  
11 OBLIGATIONS UNDER THE LAW:

12 (1) To void and set aside Los Angeles Regional Water Quality Control  
13 Board Resolution No. 2005-003, dated March 3, 2005, wherein the 2004 Triennial  
14 Review of the Water Quality Control Plan for the Los Angeles Region (“Basin  
15 Plan”) was concluded;

16 (2) During the course of reopened 2004 Triennial Review, or if  
17 Respondents determine not to reopen the 2004 Triennial Review, then during the  
18 course of the next scheduled triennial review of the Water Quality Standards  
19 (“Standards”)<sup>1</sup> in the Basin Plan:

20 (a) to review and, where appropriate, revise the Standards which  
21 apply or are to be applied to storm water and urban runoff (collectively  
22 “Stormwater”),<sup>2</sup> in light of the factors and requirements set forth under Water  
23 Code sections 13241 and 13000, including, but not limited to, the specific  
24 factors set forth under Water Code sections 13241(a) – (f), and the

25  
26 <sup>1</sup> As referenced herein, the term “Water Quality Standards” or “Standards” shall  
27 mean the designated beneficial uses of the waters, as well as the water quality  
objectives established to achieve such designated beneficial uses.

28 <sup>2</sup> Federal law defines “storm water” to include urban runoff, *i.e.*, “surface runoff  
and drainage.” (See 40 C.F.R. § 122.26(b)(13).)

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considerations provided under Water Code section 13000;

(b) to revise the Standards that apply or are to be applied to Stormwater, such that no "potential" use designations for such Standards remain in the Basin Plan; and

(c) to revise the Standards, as appropriate, during said triennial review process, consistent with subsections (a) and (b) above and State and federal law, after a full and fair public hearing or hearings, and before concluding the triennial review.

(3) To make and file a Return to this Writ within ninety (90) days from the date Respondents have taken all action necessary to comply with paragraphs (1) & (2), above.

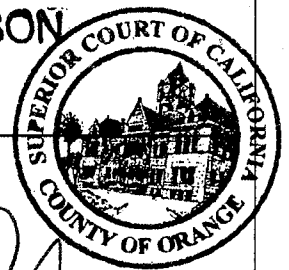
WITNESS the Honorable Thierry Patrick Colaw, Judge of the Superior Court.

ATTEST my hand and the seal of this Court, this 10 day of NOVEMBER

2008.

ORANGE COUNTY SUPERIOR COURT  
CLERK

**ALAN CARLSON**



Dated: 11/10/08

By: [Signature]

LET THE FOREGOING WRIT ISSUE.

Dated: 10 NOVEMBER  
2008

[Signature]  
The Honorable Thierry Patrick Colaw  
Judge of the Superior Court of California

RESPECTFULLY SUBMITTED BY:

By: \_\_\_\_\_

JENNIFER F. NOVAK  
Attorney for Respondents/Defendants