

**EXHIBIT “5”**

Case No. G041545

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**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE**

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THE CITIES OF ARCADIA, et al.,  
*Plaintiffs and Appellants,*

v.

STATE WATER RESOURCES CONTROL BOARD; et al.,  
*Defendants and Appellants,*

and

NATURAL RESOURCES DEFENSE COUNCIL, et al.  
*Intervenors and Appellants.*

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Appeal from the Superior Court of Orange County  
Honorable Thierry Patrick Colaw, Judge Presiding  
Superior Court Case No. 06CC02974

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**APPELLANT WATER BOARDS' OPENING BRIEF ON APPEAL**

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(*Pronsolino, supra*, 291 F.3d at p. 1127.) Thus, water quality standards protect water bodies, regardless of whether the pollution comes from a “point” or “non-point” source.<sup>4</sup> For purposes of the Act, water quality standards do not depend on whether the source of pollution is diffuse or difficult to regulate. The standards look to the overall condition of the water itself. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 620 (*Burbank*); see also 33 U.S.C. § 1313.) Separate statutory provisions address the technological feasibility of each source’s pollution control requirements. (See, e.g., 33 U.S.C. § 1311(b)(1)(A), (b)(1)(B), (b)(2), (b)(3), & § 1342(p)(3)(B)(iii).)

To achieve water quality standards, the Act prohibits discharges of pollutants from point sources to waters of the United States unless they meet federal requirements. (33 U.S.C. § 1311; *Burbank, supra*, 35 Cal.4th at p. 620.) Two such types of discharges are industrial and municipal urban storm water run-off,<sup>5</sup> one of the most significant sources of water pollution in the nation. (*Environmental Defense Center, Inc. v. EPA* (9th Cir. 2003) 344 F.3d 832, 840-841.)

Congress amended the Act in 1987 to require NPDES permits for urban run-off. (See 33 U.S.C. § 1342(p)(3)(B).) The 1987 changes did not affect any designated uses, other components of the water quality standards, or the need to protect water quality. Neither Congress nor U.S. EPA required states to revise their water quality standards in response to the

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<sup>4</sup> Point sources of pollution come from a discrete conveyance, such as a pipe. Nonpoint sources are non-discrete sources, such as sediment run-off. (*Pronsolino, supra*, at p. 1125; 33 U.S.C. § 1362(14).)

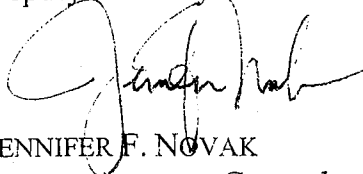
<sup>5</sup> “Storm water,” when discharged from a conveyance or pipe (such as a sewer system) is a “point source” discharge, but storm water emanates from diffuse sources, including surface run-off following rain events (hence, “storm water”) and urban run-off.

**CONCLUSION**

Appellant Water Boards request that this court overturn the judgment, vacate the writ of mandate and enter judgment in their favor.

Dated: June 11, 2009

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Case No. G041545

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**COURT OF APPEAL  
STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE**

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THE CITIES OF ARCADIA et al.,  
*Plaintiffs, Petitioners, and Cross-Appellants,*

v.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
LOS ANGELES REGION et al.,  
*Defendants, Respondents, and Appellants,*

and

NATURAL RESOURCES DEFENSE COUNCIL et al.,  
*Intervenors, Respondents, and Appellants.*

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From the Judgment of the Orange County Superior Court,  
The Hon. Thierry Patrick Colaw, Presiding,  
Superior Court Case No. 06CC02794

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**Intervenors, Respondents, and Appellants' Opening Brief**

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Sometimes the EPA establishes and issues water quality criteria. For instance, EPA set criteria for toxic pollutants for the State called the California Toxics Rule (“CTR”). The CTR regulates 126 pollutants, including arsenic, lead, mercury, cyanide, asbestos, benzene, dioxin, and PCBs. (40 C.F.R. § 131.36.) Aside from some specified instances, the CTR applies “without exception” to “[a]ll waters assigned any aquatic life or human health use classifications . . . .” (40 C.F.R. § 131.36(d)(10)(i).) Sometimes the Regional Board establishes and issues water quality criteria to meet the purposes of the Clean Water Act. As the California Supreme Court recognized, “EPA provides States with substantial guidance in the drafting of water quality standards.” (*Burbank*, 35 Cal.4th at 621.) For instance, the Clean Water Act requires a set of baseline pathogen standards in coastal recreation waters, such as Santa Monica Bay. (33 U.S.C. § 1313(i)(1)(A).) Accordingly, the Regional Board established limits for enterococci in coastal recreation marine waters and E.coli in freshwater recreation waters that match the federally-required criteria. (Compare 40 C.F.R. § 131.41(c)(1)-(2), with AR 2002 BAC 236.)

Water bodies that do not meet water quality standards cause, among other things, documented public health impacts. For example, in 2000, swimming in water contaminated with pathogens caused beachgoers between 627,800 and 1,479,200 excess gastrointestinal illnesses in Los Angeles and Orange Counties alone. (8 AA 1719.) One of the largest sources of pollution contributing to these health impairments is urban runoff.<sup>3</sup> (8 AA 1729; AR 2004 TR 6161.) Urban runoff is a two-part

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<sup>3</sup> For ease of reference, throughout this brief the terms “urban runoff” and “stormwater” are used interchangeably to refer generally to the discharges from the municipal Dischargers’ storm sewer systems. The definition of stormwater includes “storm water runoff, snow melt runoff, and surface runoff and drainage.” (40 C.F.R. § 122.26(b)(13).)

Water Act. (See *Abreu v. Svenhard's Swedish Bakery* (1989) 208 Cal.App.3d 1446, 1456 (court refused to apply a state law that would toll the statute of limitations, because doing so would "inevitably frustrate" federal national labor-management policy).)

**Conclusion**

For the foregoing reasons, the Environmental Groups respectively request that this Court reverse the trial court's judgment.

DATED: June 5, 2009

Respectfully submitted,

NATURAL RESOURCES DEFENSE  
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