Christopher A. Sproul (Bar No. 126398)
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376
Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com

Attorney for Petitioners
Ecological Rights Foundation and Humboldt Waterkeeper

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of the Petition of: ECOLOGICAL RIGHTS FOUNDATION AND HUMBOLDT WATERKEEPER FOR REVIEW OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, NORTH COAST REGION'S ORDER ISSUING RENEWAL OF THE CITY OF EUREKA'S NATIONAL PERMIT DISCHARGE ELIMINATION SYSTEM PERMIT APPLICATION	Petition for Review California Water Code § 13320

As further described below, Petitioners Ecological Rights Foundation ("EcoRights") and Humboldt Waterkeeper (collectively, "Petitioners") file this petition seeking California State Water Resources Control Board ("State Board") review of the California Regional Water Quality Control Board, North Coast Region ("the Regional Board")'s October 5, 2023 decision adopting Water Quality Order R1-2023-0016 which issued a renewal Waste Discharge Requirement and National Pollutant Discharge Elimination System ("NPDES") Permit, WDID No. 1B83147OHUM, NPDES Permit No. CA0024449 ("the Permit"), to the City of Eureka ("the City"). As discussed further below, the Regional Board's Permit decision is flawed in various respects. The State Board should exercise its appellate authority to modify the Permit to better comport with the law and environmental protection concerns.

I. Name, Address, Telephone Number and E-Mail Address of the Petitioners

The names, addresses, and telephone numbers of the petitioners is as follows:

Ecological Rights Foundation, Attn: Linda Sherby
867 "B" Redwood Drive
Garberville, California 95542
Telephone: (707) 923-4372
Email: lssherby@gmail.com

Humboldt Waterkeeper, Attn: Jennifer Kalt
600 F Street Suite 3 #810
Arcata, California 95521
Telephone: (707) 499-3678
Email: jkalt@humboldtwaterkeeper.org

II. The Action of the Regional Water Board Being Petitioned

As noted above, Petitioners are challenging the Regional Board's issuance of Water Quality Order R1-2023-0016 issuing renewal of NPDES Permit No. CA0024449 to the City. A copy of this Order and Permit are attached as Exhibit 1 to this Petition.

III. The Date the Regional Water Board Acted

The Regional Board issued Water Quality Order R1-2023-0016 on October 5, 2023.

IV. Statement of the Reasons the Action Was Inappropriate Or Improper

1. History of Permit Renewal Action

The Permit at issue addresses discharges of treated domestic sewage from the City's Elk River Wastewater Treatment Plant ("Elk River WWTP" or "the WWTP"), a publicly owned treatment works.

The Regional Board's prior NPDES permit to the City for the WWTP expired on July 31, 2021. The Regional Board's approach to regulation of the WWTP and timely consideration of the Permit has been characterized by significant delay and inattention. Notably, the City submitted applications to the Regional Board for renewal of its expiring NPDES permit well in advance of this expiration date, but the Regional Board significantly delayed acting upon the City's long pending permit renewal application. EcoRights and the City both wrote to the Regional Board in November 2022 urging the Regional Board to take action on the City's permit renewal application. As we pointed out, the absence of a new permit decision from the Regional Board was continuing to create regulatory and legal uncertainty as to what the City must do in the long term to comply with the federal Clean Water Act ("CWA"). This uncertainty was harmful to the City, the rate paying public that is served by the sewage collection and treatment services provided by the City, and the citizenry that uses the Humboldt Bay waters into which the WWTP discharges, which includes many of Petitioners' members. We pointed out that the City legitimately needed to know what are the permit requirements that the Regional Board will impose so that it can begin to make investment decisions related to an improved sewage collection and treatment system. We pointed out that any further prolonged delay from the Regional Board in issuing its NPDES permit renewal decision will hamper the City in making these decisions. This would potentially add to the CWA compliance costs that the rate paying public will ultimately bear while prolonging the environmental harms/risks associated with the current status of the City's WWTP discharges.

When EcoRights and the City did not receive a prompt response from the Regional Board indicating that the Regional Board was proceeding forthwith to finally act on the City's pending permit renewal application, EcoRights and the City both filed petitions with the State Board complaining of the Regional Board's failure to act on the City's permit renewal application (EcoRights filed its State Board petition on March 9, 2023). EcoRights and the City urged the State Board to compel the Regional Board to comply with its mandatory duties under both federal and state law and to promptly make a determination on the City's permit application. EcoRights and the City's petitions apparently had salutary effect as the Regional Board finally issued a draft of the Permit to the City on March 10, 2023, the day after EcoRights filed its State Board petition. The Regional Board further finally held a hearing

on the Permit at the Regional Board's October 5, 2023 meeting and issued its final decision on the pending Permit application at that time.

Petitioners point out this history and attendant concerns to urge that the State Board should promptly act on this Petition to foreclose further delay in issuance of a final, environmentally appropriate NPDES permit to the City.

2. Compliance with the State Board's Water Quality Control Policy for Enclosed Bays and Estuaries

In Water Quality Order R1-2023-0016, the Regional Board included Discharge Prohibition 3.1 in the Permit, which provides: "The discharge of waste to Humboldt Bay is prohibited unless it complies with the State Water Board, Water Quality Control Policy for the Enclosed Bays and Estuaries of California (1974, 1995)." The Petitioners support inclusion of this prohibition in the Permit as it is mandated by the State Board's Water Quality Control Policy for Enclosed Bays and Estuaries ("Bays and Estuaries Policy"), which provides that "New discharges of municipal wastewaters and industrial process waters (exclusive of cooling water discharges) to enclosed bays and estuaries, other than the San Francisco Bay-Delta system, which are not consistently treated and discharged in a manner that would enhance the quality of receiving waters above that which would occur in the absence of the discharge, shall be prohibited." The Petitioners further agree with the Regional Board's Fact Sheet analysis that the Elk River WWTP discharge: (1) is a new discharge within the meaning of the Bays and Estuaries Policy given that it postdates the Policy's adoption in 1974, (2) is to Humboldt Bay, as the discharge point is plainly in Humboldt Bay, and (3) does not comply with the Bays and Estuaries Policy as the discharge itself does not enhance the water quality of Humboldt Bay. Under these circumstances, there can be no doubt that the City must be required to study and eventually implement a means to cease the Elk River WWTP's unlawful discharge of wastewater to Humboldt Bay.

The Regional Board has included compliance schedule provisions in Section 6.3.6.3. of the Permit. While providing a schedule for the City to come into compliance with the Bays and Estuaries Policy is appropriate, the Regional Board has erred by setting an unduly long compliance schedule that the Regional Board selected arbitrarily without any record support--and that contradicts the time schedule that the Petitioners and the City found mutually acceptable in a January 2023 consent decree

that the City entered into in EcoRights' federal court CWA citizen suit, *Ecological Rights Foundation v. City of Eureka*, No. 4:22-cv-01459-JST (N.D. Cal. January 27, 2023) (Dkt. 40) ("the Consent Decree") (a copy of this consent decree is attached as Exhibit 2). This Consent Decree imposes requirements that parallel the provisions of Permit Section 6.3.6.3. Inimical to environmental protection, the Regional Board arbitrarily and capriciously ignored any attempt to harmonize the provisions in the Permit with the Consent Decree.

Section 6.3.6.3 of the Permit mandates that the City "Develop a scope of work and budget (Planning funds, Alternatives Analysis and Preferred Project) to fund a Feasibility Study to comply with Discharge Prohibition 3.1 of this Order" by April 1, 2024. Consent Decree ¶ 31 has a similar, but significantly more detailed directive to the City for developing a work plan for a study of the feasibility of alternatives to the City's current Humboldt Bay discharge and imposes an earlier deadline of December 31, 2023 for completing this work plan:

> To evaluate and address discharge options consistent with the Enclosed Bays and Estuaries Policy ("EBEP"), Eureka shall, on or before December 31, 2023, prepare and submit to EcoRights for review and comment a Treatment Plant Discharge to Humboldt Bay Study Work Plan ("Discharge Study Work Plan"). The Discharge Study Work Plan will identify required studies sufficient to characterize the technical feasibility of the studied alternatives, the cost of such alternatives, the regulatory authorizations needed to implement the alternatives, and the potential environmental benefits and any adverse impacts associated with the alternatives. The Discharge Study Work Plan shall include a study completion timeline to evaluate discharge options consistent with the EBEP, including eliminating the discharge, modifying the discharge to enhance water quality and constructing a new Treatment Plant ("EBEP Compliance Options"). Studies, such as deep injection, already addressed in other portions of this Consent Decree, shall be completed by the dates otherwise designated but will be incorporated into the Discharge Study Work Plan.

EcoRights urges the State Board to exercise its authority to revise the Permit to add the detail and the earlier completion date for the Feasibility Study scope of work that would mirror the Consent Decree's requirements.

EcoRights further notes that the Consent Decree is considerably more detailed in describing the City's obligations for completing its Feasibility Study of alternatives to its current Humboldt Bay discharge and imposes a July 1, 2026 deadline for completing this study--whereas the Permit gives the City until October 1, 2026. Compared to the approach taken in the Permit, the Consent Decree further imposes more substantive standards on the City in deciding what the City's preferred alternative is to its

present Humboldt Bay discharge and how to implement that preferred alternative. The Consent Decree expressly mandates that the City must study eliminating its Humboldt Bay discharge as one option (and select that as its preferred alternative unless it gets Regional Board or State Board authorization to continue its Humboldt Bay discharge) and not rule out alternatives based solely on a cost-benefit analysis. Specifically, Consent Decree ¶ 31 further provides as follows concerning such requirements:

> Once approved pursuant to paragraph 54, the City shall implement the Discharge Study Work Plan as follows:
>
> a. The Discharge Study Work Plan will require that all studies, including the above deep injection study specified in paragraph 30, be completed by July 1, 2026. Upon completion, studies will be submitted to EcoRights for review and comment. EcoRights' comments will be due to City in 30 days. City will have 30 days to revise studies or respond to EcoRights' comments and finalize studies.
>
> b. Within 90 days of completing all of the final studies specified in the Discharge Study Work Plan, the City shall select its preferred EBEP Compliance Option(s) and submit the preferred EBEP Compliance Option(s) to EcoRights for review and comment. The City may select as one preferred EBEP Compliance Option an approach that maintains the discharge to Humboldt Bay, subject to final regulatory approval from the Regional Board or the State Board, as required. However, the City must select as a preferred EBEP Compliance Option an approach that eliminates discharges of Treatment Plant effluent to Humboldt Bay. Approval for the preferred EBEP Compliance Option(s) shall proceed as described pursuant to paragraph 50. If the City, before or after approval of the preferred EBEP Compliance Option(s), secures final NPDES permit authorization from the Regional Board or State Board to continue Treatment Plant effluent discharges to Humboldt Bay, the City may cease work on the EBEP Compliance Option that eliminates discharges of Treatment Plant effluent to Humboldt Bay. Until such final authorization is obtained, however, the City must continue to process the EBEP Compliance Option that eliminates discharges of Treatment Plant effluent to Humboldt Bay, regardless of its efforts to pursue a separate EBEP Compliance Option that permits the continued discharge to Humboldt Bay.
>
> c. Within 120 days of selecting the preferred EBEP Compliance Option(s), the City shall further develop and submit to EcoRights for review and comment an EBEP Compliance Implementation Work Plan that specifies the steps to be taken to implement the preferred EBEP Compliance Option(s) and a schedule for these steps, including applying for and securing any required regulatory authorization(s) for the preferred EBEP Compliance Option(s) and retaining contractors to construct/implement the preferred EBEP Compliance Option(s). The schedule shall specify submitting regulatory authorizations and implementing the preferred EBEP Compliance Option(s) as soon as is practicable, taking into account the availability of the technology involved in the EBEP Compliance Option(s) and the costs and cost feasibility (taking into account the ability of the City to raise sewer rates, issue bonds, secure grants or loans, or otherwise increase its available revenue) associated with the preferred EBEP Compliance Option(s). However, the City shall not rule out an EBEP Compliance Option based solely on a cost-benefit analysis comparing the costs of the Option to the purported environmental benefits.

Approval for the EBEP Compliance Implementation Work Plan shall proceed as described pursuant to paragraph 50.

EcoRights urges the State Board to amend Section 6.3.6.3 of the Permit to adopt an approach to Feasibility Study implementation analogous to that in the Consent Decree as discussed above.

EcoRights further notes that the Permit sets forth a schedule for the City's implementation of its Bays and Estuaries Policy compliance alternative that is dramatically extended beyond the Consent Decree's requirements. The Permit would allow the City nearly 20 years to come into compliance with the Policy, by December 31, 2042. By contrast, the Consent Decree has placed the City under federal court order to implement its preferred alternative by no later than October 1, 2031--more than 11 years earlier. The Consent Decree does provide that the Decree's deadline will be extended if the Regional Board extends the time for the City's Bays and Estuaries Policy compliance. However, and notably, in an arm's-length negotiation, the City and EcoRights found mutually acceptable a federal court deadline that is 11 years less than imposed by the Regional Board in Water Quality Order R1-2023-0016. Furthermore, the Petitioners contended in their comment letters on the draft Permit to the Regional Board that the Regional Board lacked a reasonable basis for finding, coupled with appropriate administrative record support, that the City needs 20 years to come into compliance with the Bays and Estuaries Policy. The Petitioners' comment letters specifically requested that if the Regional Board disagreed with this assertion, that the Regional Board point out the basis for its conclusion that the City needs 20 years to comply with the Bays and Estuaries Policy in the Regional Board's Response to Written Comments Draft Waste Discharge Requirements Order No. R1-2023-0016 National Pollutant Discharge Elimination System (NPDES) For the City of Eureka Elk River Wastewater Treatment Plant ("Response To Comments"). The Regional Board's response to comments (attached as Exhibit 6) identified no such administrative record support and failed to provide any analysis as to why the Regional Board had chosen a 20-year compliance schedule. The Regional Board's Response to Comments' only explanation for rejecting the Petitioners' request that the Permit's deadlines for the City's compliance with the Bays and Estuaries Policy be harmonized with those in the Consent Decree was as follows: "The final compliance date included in the Proposed Order is appropriate considering that a preferred compliance option has not been chosen and that the proposed alternative final compliance date of October 1, 2031 target may not be feasible for the yet to be determined compliance

option. The October 1, 2031 date as provided for in the Consent Decree was not proposed by, nor is it binding on the Regional Water Board because it was not a party to, nor was it consulted on the terms of the Consent Decree." This Regional Board conclusion constitutes a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5 given that the Regional Board has provided no explanation for nor any evidence supporting its conclusion that the October 1, 2031 compliance target in the Consent Decree may not be feasible--even though the City agreed to it in a binding federal court decree. Notably, the Regional Board provided no analysis or record support for any conclusions concerning how long it may take the City to come into compliance with the Bays and Estuaries Policy--without any attempt whatsoever to analyze this issue, the Regional Board cannot simply conclude by fiat that October 1, 2031 is too soon. In sum, extending the City's deadline to come into compliance with the Bays and Estuaries Policy by 11 years renders the Regional Board's Water Quality Order R1-2023-0016 a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5.

Similarly, the Permit's interim deadlines for the City to implement its alternative for complying with the Bays and Estuaries Policy are also dramatically extended beyond the Consent Decree's analogous requirements. The Consent Decree mandates that the City is to devise preliminary design plans and specifications for construction of its preferred alternative by June 30, 2028. By contrast, the Permit does not require the City to even provide a final report outlining its preferred alternative until well more than a year later on October 1, 2029 and further does not require the City to submit even a 10% design of its preferred alternative until three and a half years later on December 1, 2031. The Consent Decree requires the City to have final design plans for its preferred alternative by December 31, 2029. The Permit by contrast does not impose an analogous requirement (and then only to a 90% design plan level, not 100% like the Consent Decree) by December 1, 2036--seven years later. This leisurely pace is not consistent with diligent environmental protection and is at odds with the schedule that the City and the environmental community agreed to during Consent Decree negotiations.

The State Board should reject the Regional Board's arbitrary and capricious selection of deadlines for compliance with the Bays and Estuaries Policy and revise the Permit to set deadlines that are commensurate with those agreed to by the City and the Petitioners in the Consent Decree. Notably,

those deadlines have a reasonable, objective basis: by entering into the Consent Decree, the City has gone on public record that those deadlines are reasonable and that it intended to meet them and the Petitioners have further agreed that they represent a prudent and acceptable compromise approach to environmental protection. This is contrasted to no real reasoning or factual basis by the Regional Board.

3. <u>Compliance with Prohibition on Discharge of Partially/Inadequately-Treated Sewage</u>

The Regional Board's Water Quality Order R1-2023-0016 includes Discharge Prohibition 3.5 in the Permit, which provides that: "The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in section 2.1 of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in Attachment D, Standard Provisions 1.7 (Bypass) and 1.8 (Upset)." It is environmentally appropriate and legally required that the Permit include such a discharge prohibition, which *inter alia*, would have the effect of continuing to prohibit the City from discharging a blend of primary and secondary treated effluent/bypassing secondary treatment as a means of dealing with excess wet weather flows exceeding the Elk River WWTP's secondary treatment capacity. As the Regional Board's discussion in Section 6.3.6.2 of the Permit recognizes, the City's wet weather capacity problem stems in part from excessive rainfall derived infiltration and inflow ("RDI/I") into the City's collection system which in turn is caused by the prevalence of deteriorated, leaking sewer manholes, mainlines, and lateral sewer lines. The City has been implementing a remedial program to address its collection system defects pursuant to Regional Board Cease and Desist Order ("the CDO") No. R1-2016-0012 (revised on June 18, 2020 by Modification Order No. R1-2020-0020). The Permit has rescinded and replaced the CDO with specification in Permit Section 6.3.6.2 that, as "Task 1" of its Permit mandated compliance schedule, the City shall continue to engage in "ongoing" "Implementation of the Wet Weather Improvement Plan, City of Eureka Wastewater Collection and Treatment Systems, CDO Task 1B: Order R1-2016- 0012 submitted by the City on March 31, 2017, and as approved by the Regional Water Board in their letter dated June 29, 2017." Implementation of the City's Wet Weather Improvement Plan is important because the Plan specifies collection system improvements needed to address the City's unlawful present practice of sometimes blending primary and secondary treated effluent before discharge, typically during or after rainfall events.

However, the Regional Board's Permit is poorly drafted in this respect and should be further amended. To begin, by merely specifying that the City has an "ongoing" obligation to implement the Wet Weather Improvement Plan, the Permit improperly fails to specify deadlines for completing any of the various tasks mandated by the Wet Weather Improvement Plan, effectively leaving the City with unbridled discretion as to when to complete these tasks. Additionally, the Permit's Task 1 "Task Description" language does not track well in certain respects with the now rescinded requirements in the CDO, creating ambiguity as to whether the Regional Board is intending/is allowing the City to no longer be required to implement some of the CDO's requirements. The CDO included specificity, requiring the City to: (1) adopt a schedule for repairs to address collection system deficiencies in a manner that would reduce exfiltration and RDI/I, (2) perform a hydraulic analysis of its collection system, identifying where it should implement capital projects to increase sewer mainlines size and/or pumping/pump station capacity and where it should implement repairs and other projects to reduce RDI/I (including actions to reduce RDI/I contribution from private sewer lateral lines), (3) evaluate any changes to the Elk River WWTP needed to address wet weather capacity shortfalls, (4), evaluate the effect of measures 1-3 on wet weather conveyance and treatment capacity, and (5) choose the City's preferred means for eliminating blending, setting a schedule for implementing these preferred means, and specifying how the City will pay for implementing the means. By contrast, the Permit (in its Section 6.3.6.2 description of compliance schedule "Task 2") only specifies that the City "report" on "private sewer lateral programs" and "status of capital improvement projects." While the Permit adds the qualifier that the City's obligation to report includes "but is not limited to" reporting on these two items, the wording of the Permit leaves ambiguous whether the City must report on these specific actions formerly specified in the CDO or even must still implement them. Furthermore, the CDO unequivocally required the City to have a strategy to work with satellite agencies to reduce peak wet weather flows and to establish quantifiable goals for reducing RDI/I. The Permit's Tasks 1 and 2 "Task Description" does not contain an explicit requirement for the City to report on such an effort and instead has language suggesting that reporting on such efforts is optional in merely specifying that the City "shall include information from the satellite agencies to the extent that information is available." This language potentially implies that any effort to work with satellite agencies to reduce RDI/I itself is optional. Again, the State Board should address

these deficiencies by modifying the Permit to include the CDO's important and necessary specific language/requirements in the Permit.

The Consent Decree includes more prescription and detail concerning the City's requirements for action to achieve the ability to treat all effluent discharges to a secondary treatment level than does the Permit. The Consent Decree (¶¶ 23-28, 32-33) includes requirements for the City to develop and implement means to improve its collection system and develop the capacity to treat peak wet weather flows to a secondary level. The Consent Decree also expressly requires the City work with the Humboldt Community Services District ("HCSD"), the satellite agency that discharges to the City's collection system, "to implement those actions required by Task 1B(e) of the CDO" unless the City has otherwise eliminated blending discharges in any storm event not exceeding the City's design storm. These are all reasonable and appropriate requirements that the City and the environmental community found mutually acceptable in the Consent Decree. The Petitioners' public comment letters to the Regional Board requested that the Regional Board modify its draft Permit to include these improvements. The Regional Board's refusal to adopt these requirements in response to the Petitioners' comment letters and failure in its Response To Comments to provide a reasoned explanation for declining to adopt Petitioners' requested Permit changes constitutes a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5 The State Board should amend Section 6.3.6.2. of the Permit to adopt the specificity of the Consent Decree in this respect.

4. <u>Improper Deletion of Sanitary Sewer Overflow Prohibition</u>

The Regional Board's prior NPDES Permit to the Elk River WWTP issued by Order No. R1-2016-0001 ("2016 Permit") included the following prohibition on sanitary sewer overflows:

> III.F. Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the state or (b) land that creates pollution, contamination, or nuisance, as defined in Water Code section 13050 is prohibited.

However, the Regional Board's Water Quality Order R1-2023-0016 impermissibly backslides in violation of CWA sections 402(o) and 303(d)(4), 33 U.S.C. §§ 1342(o), 1313(d)(4), and federal regulations at 40 C.F.R. section 122.44(l) in omitting this important prohibition from the list of Discharge Prohibitions in Section 3 of the Permit. The State Board should revise the Permit to restore

this prohibition in the Permit as sanitary sewer overflows pose significant human health and environmental risks.

5. <u>Improper Acute and Chronic Toxicity Effluent Limitations</u>

Reasonable potential analysis has demonstrated that the Elk River WWTP's effluent discharge has the property of acute and chronic toxicity. Accordingly, EPA NPDES permit regulations require the Permit to impose acute and chronic toxicity effluent limitations. The Permit ostensibly includes acute and chronic toxicity effluent limitations. However, the Compliance Determination provisions in Permit Section 7.9 have the effect of negating these effluent limitations, allowing the City to discharge acutely and chronically toxic effluent without being in violation of the permit--thus rendering the whole effluent toxicity limitations effectively a nullity.

Specifically, Permit Section 7.9.3. provides "Compliance with toxicity routine monitoring, compliance monitoring, and TRE [Toxicity Reduction Evaluation] provisions shall constitute compliance with the toxicity requirements." As Petitioners pointed out in their public comment letters to the Regional Board on the draft Permit, requiring the City to pursue TRE study upon detecting acute and/or chronic toxicity in its effluent discharge to identify means to eliminate this toxicity is a sensible and necessary step. However, the fact will remain that certainly in the early stages and possibly throughout the TRE study process, the City will not have identified means to eliminate whole effluent toxicity, much less devised a plan and implemented measures for eliminating this toxicity. It may well also be that the City's TRE study process, even when completed, does not result in the City actually achieving the goal of eliminating whole effluent toxicity in its discharge. In specifying that the City will be in compliance with whole effluent toxicity effluent limitations merely by engaging in the TRE study process, the Proposed Eureka NPDES Permit sets an unlawful permit condition that would allow the City lawfully to discharge effluent that is causing or contributing to an exceedance of applicable water quality standards governing whole effluent toxicity. Applicable CWA water quality standards are set forth in section 3.3.16 of the Water Quality Control Plan for the North Coast Region ("the Basin Plan") and unequivocally provide: "Waters shall not contain toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." Effluent limitations that effectively allow the City to discharge toxic substances in toxic amounts merely if the

City studies how it might eventually cease doing so contradicts this Basin Plan provision. Accordingly, the Regional Board has proceeded in a manner contrary to law as prohibited by California Code of Civil Procedure § 1094.5 by including Section 7.9.3 in the Permit. The State Board should amend the Permit to delete Section 7.9.3.

6. Improper Treatment of Effluent DNQ Results

Sections 7.1.2 and 7.2 of the Permit provide that results of effluent sample analysis that are reported as indicating the pollutant levels in the effluent are "detected but not quantified (DNQ)" shall be treated as zero for certain specified purposes related to calculating the total sum level of a group of chemicals (such as PCBs) or calculating average pollutant to effluent levels from data sets of multiple results. As Petitioners pointed out in their public comment letters to the Regional Board on the draft Permit, this is an erroneous approach inimical to environmental protection. When state certified laboratories report pollutant levels in an effluent as DNQ, laboratories are positively indicating that the pollutant is certainly present in the effluent, just at a level that cannot be quantified to a certain degree of statistical certainty. To automatically and universally conclude that effluent samples shown to have pollutants at a DNQ level are in fact pollutant free is to ignore the pollutant risk associated with that effluent. Instead, the Permit should be amended to specify that sample results reported as DNQ must be deemed to establish that the effluent sample has the pollutant value reported by the lab. EcoRights' view is consistent with guidance provided by the U.S. Environmental Protection Agency ("EPA") and State Board.

The State Board's ND/DNQ Guidance (Attached as Exhibit 3) clearly specifies that pollutant parameter sample analysis results falling above the Method Detection Limit ("MDL") but below the Minimum Level ("ML"), hence properly given the label of DNQ, should be reported as having the numeric value given by the lab. Lab reports may flag the results with a J qualifier, but the numeric value should still be provided. Under this State Board guidance, it is inappropriate to treat DNQ results as the equivalent of zero and to report the level of the pollutant detected in the DNQ range as zero.

EPA has also repeatedly underscored in various guidance documents that it is inappropriate to assume a zero value for pollutants detected in a sample above the test methodology's MDL (sometimes referred to as the "limit of detection" ("LOD")) but below the ML (sometimes referred to as the level of

quantification ("LOQ")). In EPA's view, assigning a zero value to the level of pollutants in a sample when laboratory results show that the sample definitely contains some of the target pollutant, albeit at a level that is below what is assumed as a statistical convention to be the level that can be quantified with acceptable precision, is not environmentally protective. EPA's view is obvious and sound: when a pollutant is definitely present in a sample as demonstrated by reliable laboratory analysis, it is turning a blind eye to potential environmental risk to treat the sample as if the pollutant is not actually present.

In understanding and developing a sound approach to the treatment of DNQ sample results, it is important to recognize and understand what DNQ results signify. Assigning a DNQ, or J flag modifier to a sample result does not mean that the pollutant analyzed is not present, nor that the values so flagged are not reliable as reasonable estimates. DNQ or J flag modifiers are statistical conventions, given by laboratories to results below the ML/LOQ--which is typically assumed, somewhat arbitrarily, to be equal to three to five times the MDL. *See, e.g.*, U.S. Environmental Protection Agency, Region 3, Regional Guidance on Handling Chemical Concentration Data Near the Detection Limit in Risk Assessments (published at https://www.epa.gov/risk/regional-guidance-handling-chemical-concentration-data-near-detection-limit-risk-assessments). Indeed, even values reported as non-detect do not equate to an affirmative assurance that the chemical analyzed is not actually present. Again, the LOD or non-detect level for a methodology is a statistical convention, generally but not universally defined as the concentration corresponding to the mean blank response (that is, the mean response produced by blank samples) plus three standard deviations of the blank response. Put another way, the non-detect or LOD level is that above which a measurement has a 95% probability of being different than zero.[1] The importance of this is that when results are flagged as DNQ, they are by definition above

[1] It should be noted that because sample results below a method's non-detect level or LOD do not show with certainty that the targeted pollutant's level is actually zero, EPA has developed methodologies for calculating assumed less than zero values for even results below a method's non-detect level or LOD—and will in some circumstances apply such calculated values to results reported as below a method's non-detect level or LOD. *See, e.g.*, United States Environmental Protection Agency Office of Environmental Information, Guidance for Data Quality Assessment Practical Methods for Data Analysis, EPA QA/G-9 QA00 UPDATE July, 2000 EPA/600/R-96/084 at 4-43 to 4-51 (published at https://www.epa.gov/sites/production/files/2015-06/documents/g9-final.pdf); Croghan, C and P. Egeghy. Methods Of Dealing With Values Below The Limit Of Detection Using SAS. Presented at

the LOD—meaning *there is a greater than 95% probability that the level of the target pollutant in the sample is greater than zero.* Croghan, C and P. Egeghy. Methods Of Dealing With Values Below The Limit Of Detection Using SAS. Presented at Southeastern SAS User Group, St. Petersburg, FL, September 22-24, 2003. (note: Carry W. Croghan and and Peter P. Egeghy are EPA research scientists assigned, respectively to the following EPA research laboratories: US-EPA, Research Triangle Park Lab, North Carolina and US-EPA Lab, Las Vegas, NV. This research paper was published at https://analytics.ncsu.edu/sesug/2003/SD08-Croghan.pdf and referenced on EPA's website at https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NERL&dirEntryId=64046).

Reflecting this conceptual approach to DNQ values, in its guidance document for assessing the risks of pesticide residues in foods, EPA explained a methodology for assuming a level of pesticides both in samples where laboratory analysis reported "non-detect" for the level of the pesticide as well as detected but not quantifiable levels of pesticides. EPA explained the rationale for assuming values of pesticides in non-detect and detectable but not quantifiable sample analysis results as follows:

> The policy for assigning values to non-detectable residues is intended to avoid underestimating exposure to potentially sensitive or highly exposed groups such as infants and children while attempting to approximate actual residue concentrations as closely as possible. Both biological information and empirical residue measurements support EPA's belief that these science policies are consistent with these goals.

See U.S. Environmental Protection Agency, Office of Pesticide Programs, Assigning Values To Nondetected/Non-Quantified Pesticide Residues In Human Health Food Exposure Assessments at 7 (published at https://archive.epa.gov/pesticides/trac/web/pdf/trac3b012.pdf).

To avoid the problem of under evaluating environmental risks by ignoring DNQ results, in multiple documents EPA has recommended one of several methodologies be utilized to assign a quantified value to DNQ sample results. One such methodology, which EcoRights urges the State Board to endorse and specify in the Permit, would be this one:

Southeastern SAS User Group, St. Petersburg, FL, September 22-24, 2003 (https://analytics.ncsu.edu/sesug/2003/SD08-Croghan.pdf); US Environmental Protection Agency, Region 3, Regional Guidance on Handling Chemical Concentration Data Near the Detection Limit in Risk Assessments (published at https://www.epa.gov/risk/regional-guidance-handling-chemical-concentration-data-near-detection-limit-risk-assessments).

> Policy When Detectable But Non-quantifiable Residues Are Found. *If a sample contains detectable, yet nonquantifiable residues, i.e., residues falling between the LOD and the LOQ. OPP recommends that such samples typically be represented numerically in the refined exposure assessment as* ½ **LOQ** when assessing both acute and chronic risk. This science policy is consistent with the extensively peer reviewed "OPPTS Test Guidelines Series 875 - Occupational and Residential Exposure" which states that ½ LOQ should be used to represent samples bearing detectable residues between the LOD and LOQ. This is also consistent with the USDA Pesticide Data Program's (PDP) policy for reporting these values: residues detected at >LOD but [less than] LOQ by the PDP program are reported as 1/2 half LOQ.

See https://archive.epa.gov/pesticides/trac/web/pdf/trac3b012.pdf at 12; *see also id.* at 11: ("if both LOD and LOQ are determined and if nonquantifiable residues are detected between the LOQ and LOD, use ½ LOQ for those measurements"). The State Board should amend the Permit to modify Sections 7.1.2 and 7.2 to mandate that effluent monitoring results reported as DNQ will not be assumed to be the equivalent of non-detect results but will instead be assumed to show constituent levels of ½ LOQ. The State Board should reject the Regional Board's non sequitur contention in its Response To Comments that despite the wording of Permit Sections 7.1.2 and 7.2 the Regional Board has retained the discretion to consider DNQ sample results in the context of reasonable potential analyses. The Regional Board does not directly respond to, nor have a reasoned counter, to the bottom line that the Permit as worded will mandate that the City is in compliance with its effluent limitations even if DNQ results would reasonably suggest that the level of pollutants in its effluent discharges do in fact exceed the Permit's effluent limitations.

7. Improper Effluent Limitation Backsliding/Improper Acceptance of Dilution Credits for Cyanide and Alpha-Endosulfan Effluent Limitations

The Regional Board's Water Quality Order R1-2023-0016 granted the City dilution credits assuming a 31:1 dilution of the Elk River WWTP discharge for the Permit's cyanide and alpha-Endosulfan effluent limitations. *See* Fact Sheet at F-29 to F-30 (Attachment F to the Permit). The Regional Board found that the City's effluent discharge is diluted 31:1 within an acceptable zone of initial dilution in receiving waters based on the City's November 1, 2021 a numeric modeling report for ammonia titled, "Enclosed Bays and Estuaries Compliance Feasibility Study: Evaluation of Ammonia Toxicity during Elk River Wastewater Effluent Mixing in Humboldt Bay" ("City Ammonia Report"). The Regional Board noted that the City Ammonia Report was focused on analyzing whether ammonia in the City's discharge created significant receiving water toxicity and concluded that "the proposed

discharge will meet acute and chronic ammonia criteria within less than three feet of the diffuser" at the end of the outfall that the City uses to discharge Elk River WWTP effluent to Humboldt Bay. Fact Sheet at F-30. The Regional Board utilized this conclusion to significantly weaken the City's ammonia effluent limitation in the Permit compared to the ammonia effluent limitation in the City's prior NPDES permit. Fact Sheet at F-30, F-32, F-33, F-49, F-50. The Regional Board further relied on the City Ammonia Report to significantly weaken the City's cyanide effluent limitation compared to the cyanide effluent limitation in the City's prior NPDES permit and to significantly weaken the effluent limitations for cyanide and alpha-Endosulfan that the Regional Board had proposed in its draft NPDES permit for the City that the Regional Board circulated for public comment. However, the Fact Sheet provides scant, inadequate explanation and justification for extending the analysis in the City Ammonia Report on ammonia toxicity in receiving waters to conclude that the City should receive dilution credit for both cyanide and alpha-Endosulfan as well.

In conclusory fashion, the Regional Board Fact Sheet states that "the application of the 31:1 dilution ratio may be further applied to cyanide as cyanide does not bioaccumulate." This conclusory and plainly logically flawed assertion fails to provide a rational basis for concluding that the level of cyanide in the Elk River WWTP discharge can be assumed to be diluted 31:1 in receiving waters. Whether a substance bioaccumulates or not is not rationally related to how concentrated the substance is in receiving waters within a zone of initial dilution--the physical concentration of a substance in the water column at the edge of a zone of initial dilution will be a function of the physical phenomenon of mixing of the substance in *waters*, which will not change depending on whether the substance bioaccumulates in the tissues of organisms that inhabit those waters. Additionally, the City Ammonia Report does not provide an analysis of the dilution expected to be achieved for cyanide molecules in Humboldt Bay receiving waters that could rationally be deemed compliant with the dilution credit approach allowed by the State Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* ("SIP"). The SIP provides for a methodology for determining dilution credits in flowing rivers and streams, which Humboldt Bay obviously is not. Indeed, the Regional Board concedes that the SIP's dilution credit methodology is "not easily translatable to an open-water estuarine environment [such as Humboldt Bay]." The Regional Board

nonetheless failed to heed this problem and instead utilized the "minimum center line dilution under Scenario E of the 2021 [City Ammonia] Report" to calculate a 31:1 Elk River WWTP effluent dilution in receiving waters. The Regional Board's election here is arbitrary and capricious and constitutes a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5 as the Regional Board has failed to explain a rational basis for selecting the minimum center line dilution under Scenario E of the City Ammonia Report and there is no reasonable support in the administrative record for selection of this methodology. In this circumstance, the Regional Board's adoption of the Permit's cyanide limitation constitutes impermissible backsliding in violation of CWA sections 402(o) and 303(d)(4), 33 U.S.C. §§ 1342(o), 1313(d)(4), and federal regulations at 40 C.F.R. section 122.44(l) as there is no administrative record support for substantially weakening the cyanide effluent limitation from the level set forth in the City's prior NPDES permit.

Moreover, the Regional Board's extension of this dilution credit approach to the Permit's alpha-Endosulfan limitation is similarly flawed. The Regional Board Fact Sheet states in conclusory fashion that "the 31:1 dilution rate may also be applied to alpha-Endosulfan as the intermittent discharge performed by the Permittee, during periods of outgoing tide, prevents the presence of alpha-Endosulfan from exceeding the Saltwater Aquatic Life Protection, Continuous Concentration (4-day average) threshold of 0.0087 µg/L." The Regional Board's conclusion in this respect lacks administrative record support, is arbitrary and capricious and hence constitutes a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5. This conclusion is contradicted by the administrative record which well establishes that Elk River WWTP effluent is retained within Humboldt Bay even if the City times its effluent discharge to coincide with periods of outgoing tide (*see* Fact Sheet § 2.3.1 at F-6 to F-7 noting that up to 90% of the Elk River WWTP effluent remains in Humboldt Bay following discharge), which at a minimum would tend to underline the rational basis for concluding that tidal flow effects can be counted on to dilute the Elk River WWTP effluent in receiving waters and how much dilution tidal effects could reasonably be determined to have. And in any case, there is no administrative record support to find that the Regional Board has at its disposal an adequate analysis of what receiving water concentrations of alpha-Endosulfan will actually be as a result of Elk River WWTP discharges. In light of these flaws, the State Board should revise the Permit to specify the

cyanide and alpha-Endosulfan effluent limitations that the Regional Board originally proposed in its March 2023 draft NPDES permit to the City.

An additional flaw with the Regional Board's effluent dilution analysis is its failure to consider and take into account that the Elk River WWTP outfall's initial diffuser is damaged such that it is not achieving the originally designed initial dilution effect. The City hired a consultant, SHN Engineers & Geologists, to evaluate its Elk River WWTP outfall in response to Regional Board Order No. R1-2016-0001. SHN's report concluded "Due to the large number of improperly sealing diffuser flaps, sediment has accumulated inside of the outfall pipe for most of the length of the diffuser section. Several isolated areas of spalling were observed on the diffuser pipe and in one location, rebar was exposed." A copy of this report is attached as Exhibit 7. *See also* June 2021 report *Ocean Outfall Evaluation: Elk River Wastewater Treatment Plant* noting "The City's existing outfall pipeline diffuser has 90, 3-inch-diameter ports, with a port spacing of 4 feet. The originally installed pipe had flaps over the ports. Recent diver inspection (SHN, 2017) determined that the flaps largely have failed." Given that the Elk River WWTP outfall is in substantially deteriorated condition, its diffuser flaps have failed, and a good section of the diffuser has filled up with sand, it is obviously not achieving the designed initial dilution which of course depends on effluent flowing out of each of the multiple ports in the outfall diffuser as modulated by the flaps. The Regional Board's Elk River WWTP discharge initial dilution analysis makes no mention of this problem, thus further rendering the Regional Board's Permit decision a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5 with respect to the Regional Board's adoption of dilution credits.

An additional flaw with the Regional Board's Permit decision with respect to the City's cyanide and alpha-Endosulfan effluent limitations is that the Regional Board did not include its 31:1 effluent dilution analysis in its March 2023 draft permit or draft fact sheet that it circulated for public comment. Accordingly, the Petitioners and all other members of the public were not provided advance notice of this analysis and the fair opportunity to comment upon it. If the State Board simply does not reject the Regional Board's revision and weakening of the City's prior NPDES permit effluent limitation on cyanide and reinstate the prior permit's cyanide effluent limitation, it must remand this portion of the Permit to the Regional Board to re-notice and take public comment on the Regional Board's proposal to

backslide from the prior NPDES permit limitation on cyanide by granting the City a 31:1 dilution credit for its cyanide effluent limitation. The State Board should further require additional public notice and comment opportunity on the Regional Board's application of dilution credits to the Permit's alpha-Endosulfan effluent limitation.

8. Improper Delay in Enterococci Monitoring

In its response to Comment A15, the Regional Board asserts that there are no labs in Humboldt County that can carry out the enterococci testing required by Section 4.1.1.3.2 of the Permit. The Regional Board stated that it would take the City $20,000 and 24 months to acquire the necessary equipment and certification to carry out such testing. As a result, Permit Sections 7.2.1.6 and 7.6.1 do not require enterococci testing for over two years, until December 1, 2025. However, this allowance is arbitrary and capricious because it is based on a false premise. The Humboldt County laboratory is already accredited and equipped to perform enterococci testing. As a result, the City's alleged budgetary and accreditation concerns are specious, and the City should be required to test for enterococci under the Permit immediately. As it stands, the Regional Board's reasoning is in violation of California Code of Civil Procedure § 1094.5.

In addition to the Permit's enterococci testing delay being based on a false premise, this testing delay is also in violation of the CWA. For example, 40 C.F.R. § 122.41(j)(1) requires that samples and measurements of pollutants must be representative of the monitored activity. However, the City cannot be providing representative samples and measurements of enterococci if it is not monitoring for it at all. Further, to the extent that the City, Humboldt County, or California have obtained grants under 33 U.S.C. § 1346 for any affected recreational waters, this failure to require enterococci testing would be in violation of such grant terms because the failure to test prevents provision to EPA of "the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health," "the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events)," and "measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators…" 33 U.S.C.S. § 1346(c)(4), (5). The Permit's enterococci testing delay is thus

in violation of the CWA and its implementing regulations in addition to being devoid of factual support.

V. How the Petitioners Are Aggrieved

EcoRights is a non-profit, public benefit corporation, organized under the laws of the State of California, devoted to furthering the rights of all people to a clean, healthful, and biologically diverse environment. To further its environmental advocacy goals, EcoRights actively seeks federal and state agency implementation of state and federal environmental laws and, as necessary, directly initiates enforcement actions on behalf of itself and its members. EcoRights' members use the Humboldt Bay and the ocean waters adjacent thereto for body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. These EcoRights members are concerned about water quality and are and will continue to be adversely affected by the City's spills of raw sewage to Humboldt Bay and discharge of inadequately treated sewage to the Bay. As noted above, EcoRights invested a significant amount of its own resources bringing a successful CWA citizen suit against the City that resulted in a comprehensive federal court Consent Decree with appropriately stringent and mutually agreed upon conditions. As discussed above, the Regional Board without any well reasoned explanation has issued the Permit with terms that substantially weaken and undermine important components of that Consent Decree. EcoRights and its members will be substantially harmed if the Permit is not modified to restore the full effectiveness of the environmentally protective conditions negotiated with the City in the Consent Decree.

Humboldt Waterkeeper (formerly Humboldt Baykeeper) works to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution. Humboldt Waterkeeper's members also use the Humboldt Bay and the ocean waters adjacent thereto for body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, spiritual contemplation and harvest of shellfish, including commercial oyster farming. These Humboldt Waterkeeper members are also concerned about water quality and are and will continue to be adversely affected by the City's spills of raw sewage to Humboldt Bay and discharge of inadequately treated sewage to the Bay. Like EcoRights and its members, Humboldt Waterkeeper will be substantially harmed if the Permit is not modified to restore the full effectiveness of the environmentally protective conditions negotiated with

the City in EcoRights' Consent Decree.

VI. The Action the Petitioners Request the State Water Board To Take

Petitioners request that the State Board exercise its authority to revise the Permit to: (1) change Permit Section 6.3.6.3 to add the detail, earlier deadlines, and other provisions from Consent Decree ¶ 31; (2) change Permit Section 6.3.6.2 to more clearly require compliance, and dates certain for compliance, with the CDO, Wet Weather Improvement Plan, and Consent Decree regarding reducing RDI/I and related issues and a commensurate level of detail to ensure compliance can be assessed and enforced; (3) include the improperly deleted prohibition on sanitary sewer overflows; (4) remove Permit Section 7.9.3 and provide for effective acute and chronic toxicity effluent limitations that will prevent such toxicity in the City's discharge; (5) modify Sections 7.1.2 and 7.2 to mandate that effluent monitoring results reported as DNQ will not be assumed to be the equivalent of non-detect results but will instead be assumed to show constituent levels of ½ LOQ; and (6) remove the City's 31:1 dilution credits for its cyanide and alpha-Endosulfan effluent limitations.

VII. Points and Authorities for Legal Issues Raised in the Petition

As set forth above, the Regional Board's Permit decision constitutes a prejudicial abuse of discretion within the meaning of California Code of Civil Procedure § 1094.5 as decision is not supported by the Regional Board's findings and/or the findings are not supported by the evidence as discussed above. *W. Chandler Boulevard Neighborhood Ass'n v. City of L.A.*, 130 Cal. Rptr. 3d 360, 369-70 (Cal. Ct. App. 2011). The Permit decision is further not in accordance with law within the meaning of California Code of Civil Procedure § 1094.5 as the Permit's cyanide effluent limitation and omission of a prohibition on sewage spills constitutes impermissible backsliding in violation of CWA sections 402(o) and 303(d)(4), 33 U.S.C. §§ 1342(o), 1313(d)(4), and federal regulations at 40 C.F.R. section 122.44(l). *See, e.g., Schmid v. City & Cty. of S.F.*, 274 Cal. Rptr. 3d 727, 743-44 (Cal. Ct. App. 2021) (assessing violations of federal law as basis for California Code of Civil Procedure § 1094.5 claim); *Natural Resources Defense Council, Inc. v. EPA*, 863 F.2d 1420, 1427, 28 ERC 1609 (9th Cir. 1988) (antibacksliding amendment to the CWA is designed to prevent "backsliding" from limitations in BPJ permits to less stringent limitations which may be established under the forthcoming national effluent limitation guidelines. It prohibits a permit containing effluent limitations issued under a BPJ

determination from being "renewed, reissued, or modified on the basis of effluent guidelines promulgated under [the national rulemaking] . . . subsequent to the original issuance of such permit."); *Citizens for a Better Environment v. Union Oil*, 861 F. Supp. 889, 900, 39 ERC 1393, 1400 (N.D. Cal. 1994) (cease and desist order issued to Unocal did not modify Unocal's permit because, *inter alia*, modification would have violated anti-backsliding provisions of the CWA). Finally, the Permit decision was issued in violation of public comment requirements in that the Regional Board adopted a dilution credit approach that it did not propose in the draft Permit and did not provide the public the opportunity to comment upon before the Regional Board adopted it. This was a violation of California Code of Civil Procedure § 1094.5 and/or California Code of Civil Procedure § 1085. *See, e.g., Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 61 Cal. Rptr. 2d 297, 302-05 (Cal. Ct. App. 1997).

VIII. Statement that Copies of the Petition Have Been Sent to the Regional Water Board and to the Discharger

The Petitioners have emailed copies of this petition to the Regional Board and to the City.

IX. Issues Raised in the Petition Were Presented to the Regional Board Before the Regional Board Acted

As noted above, the Petitioners raised the contentions set forth in this petition in comment letters sent to the Regional Board in May 2023 before the close of the Regional Board's public comment period on the Regional Board's draft renewal Permit to the City. Copies of these comment letters are attached as Exhibits 4 and 5. The Regional Board acknowledged that it received these comment letters in a timely fashion in its response to these comment letters. The latter is attached as Exhibit 6 to this Petition.

Respectfully submitted,

Dated: November 2, 2023

Christopher Sproul
Attorney for Petitioners