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COUNTY OF ORANGE AND
ORANGE COUNTY FLOOD CONTROL DISTRICT

10 *Exempt From Filing Fees Pursuant To Gov't Code § 6103*

11
12 STATE OF CALIFORNIA
13 STATE WATER RESOURCES CONTROL BOARD
14

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16 In the Matter of the Petition of:) No. _____
17 COUNTY OF ORANGE AND ORANGE)
COUNTY FLOOD CONTROL DISTRICT FOR) **PETITION FOR REVIEW**
18 REVIEW OF ACTION BY THE CALIFORNIA) [Water Code § 13320(a)]
REGIONAL WATER QUALITY CONTROL)
19 BOARD, SANTA ANA REGION, IN)
20 ADOPTING ORDER NO. R8-2009-0030,
NPDES PERMIT NO. CAS618030)
21)
22)

23 This Petition for Review is submitted on behalf of the County of Orange and the Orange County
24 Flood Control District (collectively "Petitioners") pursuant to California Water Code Section 13320 and
25 California Code of Regulations ("CCR") Title 23, Section 2050, for review of Order No. R8-2009-0030,
26 NPDES Permit No. CAS618030, which was adopted by the California Regional Water Quality Control
27 Board, Santa Ana Region (the "Regional Board") on May 22, 2009.
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I. NAME, ADDRESS AND TELEPHONE NUMBERS OF PETITIONERS

Petitioners are the County of Orange (the "County") and the Orange County Flood Control District (the "District"). All written correspondence and other communications regarding this matter should be addressed as follows:

1) Mary Anne Skorpanich, Director
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With a copy to Petitioners' counsel:

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1 **II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH**
2 **REVIEW IS SOUGHT**

3 Petitioners request the State Water Resources Control Board (“State Board”) to review
4 the Regional Board’s Order No. R8-2009-0030, reissuing NPDES Permit No. CAS618030 (hereafter,
5 the “Permit.”) A copy of the Permit is attached hereto as Exhibit A.

6 **III. DATE OF REGIONAL BOARD’S ACTION**

7 The Regional Board adopted the Permit on May 22, 2009.

8 **IV. STATEMENT OF REASONS THE ACTION WAS INAPPROPRIATE OR**
9 **IMPROPER**

10 Petitioners believe the Permit adopted by the Regional Board generally embodies an
11 appropriate approach to improving water quality in the County while reflecting the work the Permittees
12 have initiated during the prior permit terms and the work they have committed to perform in the future.
13 However, several provisions of the Permit – including the Low Impact Development (“LID”) and Total
14 Maximum Daily Load (“TMDL”) provisions – are inappropriate or improper in that, among other
15 things, they impose obligations on Petitioners that are not mandated or supported by the Clean Water
16 Act (“CWA”) and/or Porter-Cologne Water Quality Control Act (“Porter-Cologne” or “Water Code”)
17 and violate provisions of Porter-Cologne. A more detailed discussion of these issues is provided in
18 Section VI below.¹ Petitioners have previously raised these and other issues, verbally and in writing, to
19 the Regional Board. Copies of all of Petitioners’ written comments on drafts of the Permit are attached
20 hereto as Exhibit B.

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27 ¹ Petitioners may provide the State Board with additional reasons why the Permit is inappropriate and/or improper. Any
28 such additional reasons will be submitted to the State Board as an amendment to this Petition. Petitioners also may dispute
certain findings that form the basis of the Permit, which similarly will be detailed in any amendment to this Petition.

1 **V. HOW THE PETITIONERS ARE AGGRIEVED**

2 Petitioners are Permittees under the Permit. They, along with the other Permittees, are
3 responsible for compliance with the Permit. Failure to comply with the Permit exposes Petitioners to
4 liability under the CWA and Porter-Cologne, and subjects them to potential lawsuits by government
5 regulators and/or third parties. To the extent that certain provisions in the Permit are improper or
6 inappropriate, Petitioners should not be subject to such actions.²

7 **VI. ACTION PETITIONERS REQUEST THE STATE WATER BOARD TO**
8 **TAKE**

9 The issues raised in this Petition may be resolved or rendered moot by Regional Board
10 staff actions. Accordingly, Petitioners request the State Board hold this Petition in abeyance at this time.
11 Depending on the outcome of the Regional Board actions, Petitioners will, if necessary, request the State
12 Board to consider the Petition and schedule a hearing.

13 **VII. POINTS AND AUTHORITIES**

14 The following is a brief discussion of the issues Petitioners raise in this Petition. To the
15 extent not addressed by the Regional Board, Petitioners also seek review of the Permit on the grounds
16 raised in Petitioners' previous written comments, copies of which are attached hereto as Exhibit B.
17 Petitioners will submit to the State Board a complete statement of points and authorities in support of
18 this Petition, as necessary, if and when Petitioners request the State Board to consider the Petition.

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27 ² Petitioners may provide the State Board with additional information concerning the manner in which they have been
28 aggrieved by the Regional Board's action in adopting the Permit. Any such additional information will be submitted to the
State Board as an amendment to this Petition.

1 **A. The Permit’s LID Provisions Violate Water Code Section 13360(a) by**
2 **Dictating How Permittees Are to Comply With the Permit and Are**
3 **Otherwise Unreasonable, Arbitrary, and Not Supported by Evidence.**

4 **1. The Regional Board Can Establish Permit Conditions But**
5 **Cannot Tell Permittees How to Comply With the Conditions.**

6 Under the CWA, municipal separate storm sewer system (“MS4”) permits must require
7 controls to reduce the discharge of pollutants to the maximum extent practicable (the so-called MEP
8 standard). According to the Permit, the Regional Board has determined that the Permit requirements are
9 consistent with the MEP standard. It is appropriate and proper for the Regional Board to require
10 Permittees to comply with the MEP standard. It is a violation of Porter-Cologne for the Regional Board
11 to tell Permittees *how* to comply with the MEP standard.

12 Section 13360(a) of the Water Code prohibits the Regional Board from specifying a
13 particular manner of complying with permit requirements. However, in Section XII.C of the Permit (as
14 well as other sections) that is precisely what the Regional Board has done. Section XII.C very
15 specifically requires that Permittees address storm water quality in a certain manner, namely by on-site
16 infiltration, harvest and reuse, or evapotranspiration. Only where these LID methods are infeasible may
17 Permittees allow the use of on-site bio-treatment or other regional LID methods. Even more
18 prescriptive, Permittees may not address storm water quality with proven effective structural treatment
19 controls unless they issue the project proponent a waiver.

20 Accordingly, the State Board should remand the Permit to the Regional Board to revise
21 Section XII.C to allow Permittees the flexibility to choose the best control measures to meet the MEP
22 standard.

23 **2. Without a Sufficient Factual Basis, the LID Requirements Are**
24 **Unreasonable and Arbitrary.**

25 In addition to being prescriptive, the Permit’s LID provisions also are unreasonable,
26 arbitrary and not supported by evidence. In spite of evidence that the prescribed subset of on-site LID
27 methods the Permit requires are not always the best means of addressing storm water quality, the Permit
28 requires that these methods generally be used. While the parties agree that LID methods generally can