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9 **STATE OF CALIFORNIA**
10 **STATE WATER RESOURCES CONTROL BOARD**

11 **In the Matter of Review of:**

12 Order No. R4-2015-0175, NPDES Permit No.
13 CAS004001
14

State Water Bd. File Nos. A-2236(a)-(kk)

**JOINT OPPOSITION OF 22 PERMITTEE
PETITIONERS TO SECOND REQUEST
FOR JUDICIAL NOTICE FILED BY
ENVIRONMENTAL PETITIONERS**

15 Date: June 16, 2015
16 Time: 9:00 am
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1 **I. OBJECTIONS TO SECOND REQUEST FOR JUDICIAL NOTICE**

2 The twenty-two Municipal Petitioners listed below¹ object to the request by
3 three environmental groups, Natural Resources Defense Council, Inc., Heal the
4 Bay, and Los Angeles Waterkeeper, (Environmental Petitioners) to augment the
5 record by a second Request for Judicial Notice (2nd Request). The Environmental
6 Petitioners' Request does not conform to the exacting standards set forth in 23 Cal.
7 Code Regulations §2050.6 for introduction of supplemental evidence.

8 Moreover, all of the requested items related to post-Permit submittals (by
9 various watershed groups or individual cities), one set of comments on those
10 submittals, and written responses thereto by the Los Angeles Regional Water
11 Board (Los Angeles Board). The State Board has previously stated as to earlier
12 requests for judicial notice:

13 Among other requests, we are *not* granting the requests to take official notice
14 of or supplement the Administrative Record with the notices of intent,
15 workplans, draft programs, and other documents filed by Permittees toward
16 development of WMPs/EWMPs and associated monitoring programs
17 following adoption of the Los Angeles MS4 Order or comments submitted
18 on those documents. With regard to factual evidence regarding actions
19 taken by the Permittees to comply with the Los Angeles MS4 Order after it
20 was adopted, we believe it appropriate to close the record with the adoption
21 of the Los Angeles MS4 Order.

22 [*State Board Draft Order at p. 7 (4/24/15 revised version, redlining and
23 deletions omitted, emphasis supplied)*].

24 In a gesture of pure obduracy, the Environmental Petitioners ignore this very
25 clear determination and again ask seek judicial notice or supplemental evidence of
26 work plans, drafts, and other documents (and their own comments on three
27
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¹ This joint set of objections is joined by the following twenty-two (22) municipal
Petitioners: City of Agoura Hills, City of Artesia, City of Beverly Hills, , City of
Commerce, City of Covina, City of Culver City, City of Downey, City of Duarte, City of
Hidden Hills, City of Huntington Park, City of Inglewood, City of La Mirada, City of
Manhattan Beach, City of Monrovia, City of Norwalk, City of Rancho Palos Verdes, City
of Redondo Beach, City of San Marino, City of South El Monte, City of Torrance, City of
Vernon, and City of Westlake Village.

1 watershed management plans). The Environmental Petitioners' 2d Request should
2 be rejected on that basis alone.

3 Second, many of the Environmental Petitioners' requests essentially seek
4 review of an entire document, presumably on the basis that something to be found
5 in the document is factually correct and undisputed. For example, the
6 Environmental Petitioners' Request Nos. 1-3 seek admission of two separate letters
7 from the Los Angeles Board's Executive Officer and a submittal by the Revised
8 Alamitos Bay/Los Cerritos Channel Watershed management group to the Los
9 Angeles Board. But, "judicial notice" is limited to the recognition of a document,
10 not for the truth of the facts contained therein.² See *Mangini v. R.J. Reynolds*
11 *Tobacco Co.*, 7 Cal. 4th 1057, 1063 (1994) ("While courts may notice official acts and
12 public records, 'we do not take judicial notice of the truth of all matters stated
13 therein.'"). The objecting Petitioners certainly reject the implicit claim that
14 statements made by the Environmental Petitioners in their comments on three
15 specific Watershed Management Plans (*2d Request*, No. 32) contain undisputed
16 facts which might be subject of judicial notice.

17 Finally, the Municipal Petitioners object to the request for official notice on
18 the grounds that the Environmental Petitioners fail to explain its relevance to the
19 issues at hand, other than to argue they do not like the way the process is working.
20 (See *Environmental Petitioners' Letter* dated June 2, 2015, p. 2 ["In fact, the recent
21 'conditional' approvals of nine deficient Watershed Management Programs
22 ("WMPs"), which were illegally issued by the Regional Board's Executive Officer,
23 demonstrate that the Permit's alternative compliance approach is already failing to
24 ensure compliance with Receiving Water Limitations ('RWLs')."].) The issuance of
25

26 ² This is but one example to illustrate the larger point. The Environmental Petitioners seek
27 judicial notice of similar submittals and Los Angeles Board Executive Officer letters for
28 some nine different watershed groups that have already submitted Watershed
Management Plans. (*2d Request* at Request Nos. 4-31).

1 a "conditional" approval by the Regional Board is anything but evidence that the
2 process is "failing to ensure compliance" with RWLs. To the contrary, it is
3 evidence the parties are actually working through the WMP process to attempt to
4 meet the RWLs.

5 The Environmental Petitioners request for official notice does not seek to
6 offer any evidence that is relevant to their argument, and on this basis as well
7 should be denied.

8 **II. CONCLUSION**

9 For these reasons, the 22 Municipal Petitioners submit that the State Board
10 should reject the Second Request in its entirety.

11 Dated: June 5, 2015

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