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April 13, 2012

**VIA EMAIL**

State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bashaw, Legal Analyst  
P.O. Box 100  
Sacramento, CA 95812-0100  
E-mail: [jbashaw@waterboards.gov](mailto:jbashaw@waterboards.gov)

Re: San Diego Regional Water Quality Control Board Cleanup and Abatement Order No. R9-2012-0024

Dear Ms. Bashaw:

We submit this protective, short-form petition ("Petition") to the State Water Resources Control Board ("State Board") on behalf of our client, the City of San Diego ("City" or "Petitioner"), pursuant to California Water Code section 13320 and Title 23 of the California Code of Regulations, sections 2050 and 2050.5. The instant Petition concerns the San Diego Regional Water Quality Control Board's ("Regional Board") March 14, 2012 adoption of the above-referenced Cleanup and Abatement Order No. R9-2012-0024 ("Order"), attached hereto as Exhibit 1.

As a public trustee, the City supports the administrative process that generated the Order and the Order itself, and plans to attempt to comply with the Order. But the City understands that certain designated parties to the Regional Board proceeding, including at minimum the San Diego Unified Port District, are appealing the Order. *See, e.g.,* Port Appeals Bay Cleanup Order, *available at* <http://www.utsandiego.com/news/2012/apr/10/port-appeals-bay-cleanup-order/?print&page=all>. Although the City supports the Order, the City wishes to preserve its right to participate in any review by the State Board that results from another party's petition, and is filing this Petition solely for that purpose.

Pursuant to the instructions posted on the State Board's website, petitioners who "plan to attempt to comply with the Regional Water Board's order, or for other reasons do not seek active review of the petition, [may file a protective petition], and include a request that the petition be held in abeyance." *See* State Water Resources Control Board, Instructions for Filing Water Quality Petitions, *available at*: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/wqpetition\\_instr.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml). Because the City files this Petition solely to preserve its right to participate in any future State

Jeannette Bashaw

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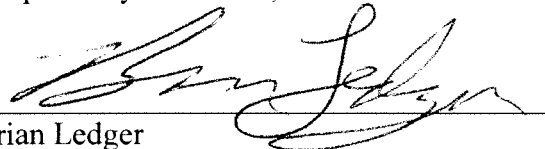
Page 2

Board proceedings related to the Order, it requests that the State Board hold the Petition in abeyance, pursuant to the section 2050.5(d) of Title 23 of the California Code of Regulations, unless and until the State Board decides to review another petition filed in relation to the Order.

The City intends to pursue cleanup, and remains fully engaged in the administrative and mediation processes—including those aimed at facilitating cleanup by obtaining and allocating funding for cleanup. However, the City will be aggrieved if it is unable to fully participate in any future State Board proceedings regarding the Order, that may change the Order or the scope of the required cleanup. There are a number of administrative processes that must occur before cleanup can begin, including the development and approval of a Remedial Action Plan and other pre-remedial plans, and permitting processes. The City remains hopeful that certain dischargers' concerns with the Order can be resolved at the Regional Board level through these administrative processes; however, the City desires a seat at the table in the event that the Order is ultimately reviewed by the State Board. In light of the ongoing administrative processes, the City joins in the requests to stay enforcement of the Order filed by other petitioners.

Copies of this letter have been mailed to the Regional Board and dischargers, in accordance with the attached service list, and Petitioner's concerns regarding this matter have been shared with the Regional Board to the extent feasible. Please contact me if you have any questions, or require any additional information.

Respectfully submitted,



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Jeannette Bashaw  
April 13, 2012  
Page 3

cc: Christian Carrigan, Director, Office of Enforcement, SWRCB  
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James Smith, Assistant Executive Officer, RWQCB

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10 Attorneys for CITY OF SAN DIEGO

11  
12 CALIFORNIA REGIONAL WATER QUALITY BOARD

13 SAN DIEGO REGION

14 IN THE MATTER OF: )  
15 CLEANUP AND ABATEMENT ORDER ) **DECLARATION OF BRIAN LEDGER IN**  
NO. R9-2012-0024 ) **SUPPORT OF THE CITY OF SAN**  
16 ) **DIEGO'S REQUEST TO STAY**  
17 ) **ENFORCEMENT OF CLEANUP AND**  
 ) **ABATEMENT ORDER NO. R9-2012-0024**

18  
19 I, Brian Ledger, declare and state as follows:

20 1. I am counsel for the City of San Diego. I make this declaration based on personal  
21 knowledge and, if called as a witness, I could competently testify thereto.

22 2. Based on my general experience, and my consultation with various experts in  
23 connection with the San Diego Regional Water Quality Control Board's ("Regional Board")  
24 cleanup of the Shipyard Sediment Site ("Site"), I am familiar with the administrative processes  
25 related to the Site.

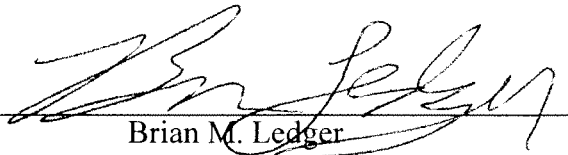
26 3. Based upon this understanding, the City of San Diego would suffer substantial  
27 harm if required to complete the remedial design, permitting, contracting and sediment  
28 remediation within ninety (90) days of the Regional Board's Cleanup and Abatement Order

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1 No. R9-2012-0024 (“Order”), when other dischargers’ petitions to the State Water Resources  
2 Control Board (“State Board”) are pending. The above-described work is very expensive and  
3 highly dependent upon the specific terms of the Order; accordingly, the City, and its public  
4 taxpayers, will be substantially harmed if it is required to spend resources to plan, permit, or  
5 perform remedial work while the final terms of the Order remain subject to change.

6 4. By contrast, if a stay is issued, neither the public interest nor other interested  
7 parties would be substantially harmed to the extent that the appealing parties continue to  
8 voluntarily work with the Regional Board to move forward with the pre-remedial processes.  
9 Current conditions at the Site do not pose an imminent or substantial endangerment to human  
10 health or the environment. However, if a stay is not issued and the Order is litigated, cleanup  
11 potentially could be subject to substantial delay.

12 I declare under penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct and that this declaration was executed this 13th day of April, 2012  
14 at San Diego, California.

15  
16   
17 Brian M. Ledger