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13 STATE OF CALIFORNIA
14 STATE WATER RESOURCES CONTROL BOARD

15 In the Matter of the Petition of Los Angeles) PETITION FOR REVIEW OF LOS
16 Waterkeeper for Review of Action by the) ANGELES REGIONAL WATER
17 California Regional Water Quality Control) QUALITY CONTROL BOARD ACTION
18 Board, Los Angeles Region, in Adopting the) ADOPTING ORDER NO. R4-2022-XXXX
19 Waste Discharge Requirements and National) (NPDES PERMIT NO. CA0053953, CI No.
20 Pollutant Discharge Elimination System Permit) 5662)
21 for the City of Los Angeles, Los Angeles-)
22 Glendale Water Reclamation Plant and its)
23 associated wastewater collection system and)
24 outfall, discharge to the Los Angeles River;)
25 Order No. R4-2022-XXXX; NPDES Permit)
26 No. CA0053953; CI No. 5662)
27)
28)

1 In accordance with Section 13320 of the California Water Code and Section 2050 of Title
2 23 of the California Code of Regulations, Los Angeles Waterkeeper (“Petitioner” or “LA
3 Waterkeeper”) hereby petitions the State Water Resources Control Board (“State Board”) to
4 review the final decision of the California Regional Water Quality Control Board for the Los
5 Angeles Region (“Regional Board”) in adopting the Waste Discharge Requirements and
6 National Pollutant Discharge Elimination System Permit for the City of Los Angeles, Los
7 Angeles-Glendale Water Reclamation Plant discharge to the Los Angeles River, Order No. R4-
8 2022-XXXX, CI No. 5662, NPDES Permit No. CA0053953 (“Permit” or “Order”). The
9 Regional Board adopted the final order in this matter on December 8, 2022.

10 This Petition seeks to correct both substantive and procedural flaws in the Regional
11 Board’s December 8 approval of the Permit for the Los Angeles-Glendale Water Reclamation
12 Plant (“LA-Glendale”) in Los Angeles, California. The Regional Board approval was improper
13 because the Regional Board failed to execute its constitutional and statutory duties: (1) to fully
14 analyze whether and/or to what extent authorizing the continued discharge of tertiary treated
15 wastewater from LA-Glendale into the Los Angeles River constitutes a waste and unreasonable
16 use of a water resource in California, and/or (2) to fully analyze whether and/or to what extent
17 that discharge is a reasonable and beneficial use. In addition, despite the recognition that LA-
18 Glendale comprises part of an “integrated network” of publicly-owned treatment works
19 (“POTWs”) in the North Outfall Sewer System, the Regional Board failed to analyze the
20 cumulative impacts of the approval of the LA-Glendale Permit.

21 Further, the Regional Board failed to make findings or provide evidence that the approval
22 of the LA-Glendale Permit is consistent with Article X, section 2 of the California Constitution
23 and the policies contained in Chapter 1 of the California Environmental Quality Act (“CEQA”),
24 despite the Board’s recognition that the Chapter 1 policies fully apply to the approval of the LA-
25 Glendale Permit.

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1 **1. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS (IF**
2 **AVAILABLE) OF THE PETITIONER**

3 Los Angeles Waterkeeper
4 360 E 2nd Street, Suite 105
5 Los Angeles, CA 90012
6 Attention: Benjamin Harris, Staff Attorney (ben@lawaterkeeper.org)
7 Barak Kamelgard, Senior Attorney (barak@lawaterkeeper.org)
8 (310) 394-6162 x102 (Harris), x109 (Kamelgard)

9 **2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH**
10 **THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY**
11 **ORDER OR RESOLUTION OF THE REGIONAL BOARD**

12 Petitioner seeks review of Waste Discharge Requirements (“WDRs”) and National
13 Pollutant Discharge Elimination System (“NPDES”) Permit NO. CA0053953, CI NO.5662, and
14 Order R4-2022-XXXX, a copy of which is attached as Exhibit F.¹

15 **3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO**
16 **ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT**

17 December 8, 2022 (Exhibit F at p. 2).²

18 **4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR**
19 **FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER**

20 In approving the Permit, the Regional Board failed to act in accordance with the
21 California Constitution, relevant governing law, and acted improperly and inappropriately, and
22 arbitrarily and capriciously. Specifically, but without limitation, the Regional Board:

23 A. Failed to consider the reasonableness of the ongoing discharge of tertiary treated
24 wastewater into the Los Angeles River (as required by Article X, Section 2 of the
25 California Constitution and California Water Code Section 100), resulting in a
26 prejudicial abuse of discretion and in violation of law.

27 B. Failed to prevent the ongoing waste of water from LA-Glendale in the form of
28 tertiary treated wastewater being discharged into the Los Angeles River from LA-

¹ Because Petitioner also submitted a similar Petition for the Donald C. Tillman Water Reclamation Plant WDR/NPDES Permit, to avoid having multiple exhibits with the same alphabetic designation in the event the Petitions are consolidated, Petitioner has started Exhibits at F in this Petition. Where Exhibits are referenced that are identical to the Exhibits included in the earlier Tillman Petition (*i.e.*, Exhibits A through E), Petitioner has kept the previous Exhibit designation, so that references to lettered Exhibits refer to the same document across each petition.

² As of the date of this Petition, the Regional Board has not made the final LA-Glendale Permit publicly available. Exhibit F is the Revised Tentative Permit for LA-Glendale adopted by the Regional Board, as modified during the hearing on December 8, 2022.

1 Glendale (as required by Article X, Section 2 of the California Constitution and
2 California Water Code Section 100), resulting in a prejudicial abuse of discretion
3 and in violation of law.

4 C. Failed to adequately respond to factually and legally specific comments from LA
5 Waterkeeper and other public interest organizations, resulting in a prejudicial
6 abuse of discretion and in violation of law.

7 D. Improperly authorized waste and unreasonable use of a water resource in
8 California when it adopted the Permit, resulting in a prejudicial abuse of
9 discretion and in violation of law.

10 E. Improperly asserted that the Regional Board has no obligations under Article X,
11 Section 2 of the California Constitution and/or California Water Code Section 100
12 to consider the reasonableness or wastefulness of ongoing discharge of tertiary
13 treated wastewater from LA-Glendale into the Los Angeles River, and making no
14 findings regarding this issue, resulting in a prejudicial abuse of discretion and in
15 violation of law.

16 F. Improperly failed to make findings regarding cumulative impacts and the policies
17 contained in Chapter 1 of CEQA, resulting in a prejudicial abuse of discretion and
18 in violation of law.

19 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

20 Petitioner is a non-profit, environmental organization that has a direct interest in
21 protecting the quality of Los Angeles County’s aquatic resources, including the Los Angeles
22 River, as well as the health of the public making beneficial use of the river. Petitioner is
23 dedicated to the preservation, protection, and defense of the coastal and inland surface and
24 ground waters of Los Angeles County from all sources of pollution and degradation, and
25 advocates that the Los Angeles area eventually wean itself completely from economically and
26 environmentally costly water imported and pumped over long distances, used once, treated, then
27 discharged into receiving waters (an outdated “pump and dump” approach to water
28 management). Petitioner represents members who live, consume water, and/or recreate in and

1 around the Los Angeles area, including the area around the Los Angeles River and Santa Monica
2 Bay.

3 Petitioner’s members and staff recreate in and around the waters to which the Permit
4 regulates discharges of treated wastewater. They are impacted by pollution in the wastewater
5 discharge and its resulting health impacts and by associated restrictions that prevent Petitioner
6 and other members of the public from fully enjoying the beneficial uses of the Los Angeles River
7 and Santa Monica Bay. In addition, Petitioner’s members and staff are negatively impacted by
8 California’s current economically and environmentally inefficient “pump and dump” approach to
9 water supply, of which LA-Glendale and other POTWs in the North Outfall Sewer System are a
10 significant part.

11 Furthermore, Petitioner’s members and staff directly benefit from Los Angeles County
12 waters in the form of recreational swimming, surfing, diving, photography, birdwatching,
13 fishing, boating, and existence value, and would directly benefit from economically and
14 environmentally more sustainable locally developed water supplies. Petitioner’s members and
15 staff are aggrieved by the Regional Board’s action to approve the Permit because such action
16 likely authorizes the waste and unreasonable use of a water resource—perpetuating
17 unsustainable use of California water supplies. In addition, Petitioner’s members and staff are
18 aggrieved by the Regional Board’s action because the Regional Board has failed to comply with
19 its constitutional and statutory duties to consider whether the ongoing discharge of treated
20 wastewater from LA-Glendale constitutes reasonable and beneficial use of a water resource; to
21 consider the cumulative impacts resulting from those ongoing discharges; and to consider
22 whether feasible mitigation or feasible alternatives exist that could substantially lessen the
23 environmental impact of those discharges. Though Petitioner submitted legally and factually
24 specific written and oral comments on these issues to the Regional Board, the Regional Board
25 failed to adequately respond to these comments, further harming Petitioner’s members and staff.

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1 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
2 **PETITIONER REQUESTS**

3 Pursuant to Section 2050.6(b) of Title 23 of the California Code of Regulations,
4 Petitioner requests that the State Board conduct a hearing to consider testimony, other evidence,
5 and/or argument on the issues raised in this Petition. The contentions to be addressed at the
6 requested hearing are:

- 7 A. The California Constitution and the Water Code each impose a mandatory duty on
8 the Regional Board and/or the State Board to prevent the unreasonable use and
9 waste of the treated wastewater discharging from LA-Glendale into the Los Angeles
10 River and ultimately into the Pacific Ocean, and to consider whether that water
11 resource is put to reasonable and beneficial use.
- 12 B. The Regional Board failed to execute its constitutional and statutory mandatory
13 duties when it authorized the ongoing discharge of tertiary treated wastewater from
14 LA-Glendale into the Los Angeles River and ultimately into the Pacific Ocean,
15 without consideration of whether such discharge is a waste and unreasonable use of
16 a water resource in California.
- 17 C. The Regional Board failed to execute its statutory duties when it failed to consider
18 cumulative impacts of the ongoing discharge of treated wastewater directly or
19 indirectly into the ocean authorized in two recently approved WDRs and NPDES
20 permits for POTWs that are part of the North Outfall Sewer System, an integrated
21 network of Los Angeles area POTWs, and failed to consider whether approval of
22 the Permit was consistent with Chapter 1 of CEQA, especially whether feasible
23 mitigation or feasible alternatives exist that could substantially lessen the significant
24 environmental impacts of the approval of one or both of the two permits.
- 25 D. The State Board must execute the constitutional and statutory mandatory duties
26 described above to the extent the Permit is not remanded to the Regional Board for
27 that purpose.

28 The requested hearing is necessary because these contentions have not been adequately
considered by the Regional Board, as described in Section 7 below.

1 Pursuant to Section 2052(a)(2) of the Title 23 of the California Code of Regulations,
2 Petitioner also seeks an order by the State Board that:

3 A. Invalidates the Regional Board’s approval of the Order and the Permit and remands
4 the matter to the Regional Board with instructions to amend the Permit to include
5 analysis and findings whether the continued discharge of tertiary treated wastewater
6 from LA-Glendale to the Los Angeles River and ultimately the Pacific Ocean
7 constitutes a waste and unreasonable use of water and/or whether that water
8 resource is being put to reasonable and beneficial use, after notice of public
9 comment on this issue.

10 B. Invalidates the Regional Board’s approval of the Order and the Permit and remands
11 the matter to the Regional Board with instructions to amend the Permit to include
12 analysis and findings regarding the cumulative impacts of the North Outfall Sewer
13 System, an integrated network comprised of LA-Glendale, the two other POTWs
14 discharging into the Los Angeles River Watershed—the Burbank Water
15 Reclamation Plant (“Burbank”) and the Donald C. Tillman Water Reclamation
16 Plant (“Tillman”)—and the Hyperion Water Reclamation Plant (“Hyperion”) which
17 discharges directly into the Pacific Ocean.

18 C. Invalidates the Regional Board’s approval of the Order and the Permit and remands
19 the matter to the Regional Board with instructions to amend the Permit to include
20 findings supported by substantial evidence regarding Chapter 1 of CEQA, including
21 the policies set forth in Public Resources Code Section 21002 that projects should
22 not be approved if feasible alternatives or feasible mitigation measures that would
23 substantially lessen the significant environmental effects resulting from the ongoing
24 discharge of treated wastewater from an integrated network of POTWs exist; or,
25 alternatively,

26 D. Vacates, amends, and/or replaces the Order and modifies the Permit to include
27 analysis and findings whether the continued discharge of tertiary treated wastewater
28 from LA-Glendale to the Los Angeles River and ultimately the Pacific Ocean

1 constitutes a waste and unreasonable use of water and/or whether that water
2 resource is being put to reasonable and beneficial use based on an analysis
3 conducted by the State Board, after notice and public comment on this issue. (*See*
4 23 C.C.R. § 2052(a)(2)(B) (providing that in acting on a petition the State Board
5 may set aside or modify the regional board order).)

6 E. Vacates, amends, and/or replaces the Order and modifies the Permit to include
7 analysis and findings regarding the cumulative impacts of the integrated North
8 Outfall Sewer System network comprised of LA-Glendale, Hyperion, Tillman, and
9 Burbank.

10 F. Vacates, amends, and/or replaces the Order and modifies the Permit to include
11 findings supported by evidence regarding Chapter 1 of CEQA, including the
12 policies set forth in Public Resources Code Section 21002 that projects should not
13 be approved if feasible alternatives or feasible mitigation measures exist that would
14 substantially lessen the significant environmental effects resulting from the ongoing
15 discharge of treated wastewater from the integrated network of POTWs and/or from
16 individual facilities.

17 **7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
18 **ISSUES RAISED IN THE PETITION**

19 **A. Factual and Procedural Background**

20 The City of Los Angeles (“City”) is the owner and operator of LA-Glendale, with the
21 City of Glendale (“Glendale”) recognized as a joint and equal owner of the plant and its effluent,
22 pursuant to a Joint Powers Agreement dating from the 1960s. (Exhibit F at p. F-4.) LA-Glendale
23 is a POTW that discharges treated wastewater into the Los Angeles River, which ultimately
24 flows to the Pacific Ocean. (Exhibit F at p. F-4.) LA-Glendale has the capacity to handle
25 wastewater inflow of 20 million gallons per day (“MGD”), and serves a population of
26 approximately 434,000 people in several cities, as well as the Los Angeles Zoo. (Exhibit F at pp.
27 F-4–F-5.) LA-Glendale is part of an integrated network of Los Angeles area POTWs called the
28 North Outfall Sewer System, which includes Hyperion, Tillman, and Burbank. (*See* Exhibit F at

1 p. F-5.) This network of treatment plants discharges treated wastewater into the Los Angeles
2 River watershed, contributing the vast majority of dry season flows to the river. (See Exhibit F at
3 pp. F-5–F-6.)

4 In 2016, the City filed a change petition pursuant to Water Code Section 1211, requesting
5 authorization to reduce the discharge of treated effluent up to 3,700 acres feet per year (“AFY”)
6 from LA-Glendale to the Los Angeles River. On March 13, 2019, the State Board approved
7 Wastewater Petition WW0097 to reduce discharge from LA-Glendale to the Los Angeles River
8 by 3,500 AFY by 2023 according to an implementation schedule. (See Exhibit G, Order
9 Approving Change in Discharge.) This reduced flow would be directed to miscellaneous
10 irrigation and industrial projects within the cities of Pasadena, San Marino, Los Angeles, La
11 Cañada-Flintridge, and unincorporated Los Angeles County. (See Exhibit H, Responses to
12 Comments, at p. 48.) Currently, LA-Glendale generates approximately 13.6 MGD of tertiary
13 treated domestic and industrial wastewater, of which about 9.1 MGD is into the Los Angeles
14 River and about 4.5 MGD is recycled for non-potable uses. (Exhibit F at p. F-15.)

15 On March 2, 2017, over LA Waterkeeper’s objections, the Regional Board adopted a
16 prior version of the WDR/NPDES permit for LA-Glendale without analyzing whether the
17 continued discharge of tertiary treated wastewater from LA-Glendale to the Los Angeles River
18 and ultimately the Pacific Ocean constitutes a waste and unreasonable use of water and/or
19 whether that water resource is being put to reasonable and beneficial use. (Exhibit I, 2017 LA-
20 Glendale NPDES Permit.)

21 On March 30, 2017, LA Waterkeeper petitioned the State Board to vacate, amend, and or
22 replace the Regional Board’s Order approving the prior WDR/NPDES permit for LA-Glendale
23 and modify the Permit to include analysis and findings whether the continued discharge of
24 tertiary treated wastewater from LA-Glendale to the Los Angeles River and ultimately the
25 Pacific Ocean constitutes a waste and unreasonable use of water and/or whether that water
26 resource is being put to reasonable and beneficial use. (See LA Waterkeeper, Petition for Review
27 of Los Angeles Regional Water Quality Control Board Action Adopting Order No. R4-2017-
28 0063 (NPDES Permit No. CA0053953) (Mar. 30, 2017).) The State Board took no action on the

1 LA-Glendale petition, and the petition was dismissed by operation of law pursuant to section
2 2050.5(e) of Title 23 of the California Code of Regulations on August 28, 2017.

3 On September 26, 2017, LA Waterkeeper filed a petition for writ of mandate in Los
4 Angeles Superior Court seeking to compel the Regional Board and/or the State Board to vacate,
5 amend, and or replace the Regional Board’s Order approving the prior WDR/NPDES permit for
6 LA-Glendale and modify the Permit to include analysis and findings whether the continued
7 discharge of tertiary treated wastewater from LA-Glendale to the Los Angeles River and
8 ultimately the Pacific Ocean constitutes a waste and unreasonable use of water and/or whether
9 that water resource is being put to reasonable and beneficial use. (*See Los Angeles Waterkeeper*
10 *v. State Water Resources Control Board, et al.*, No. BS171010, Superior Court of California,
11 Verified Petition for Writ of Mandate (Sept. 26, 2017).) The Court consolidated the LA-Glendale
12 petition with three other petitions filed by LA Waterkeeper regarding the other three POTWs in
13 the North Outfall Sewer System.

14 On August 4, 2020, the Los Angeles Superior Court held a trial and granted LA
15 Waterkeeper’s petition for writ of mandate against the State Board. The Court found that the
16 State Board has a mandatory constitutional and statutory duty to determine whether wastewater
17 discharges from publicly-owned treatment plants in the North Outfall Sewer System result in
18 waste and unreasonable use of water, pursuant to California Constitution Article X, Section 2
19 and Water Code section 100. (*Los Angeles Waterkeeper v. State Water Resources Control Board,*
20 *et al.*, No. BS171009, Superior Court of California, Decision on Petition for Writ of Mandate
21 (Aug. 4, 2020) (“Superior Court Writ Order”).)³

22 On October 14, 2022, the Regional Board released its Notice of Public Hearing on the
23 draft of the Permit notifying Petitioner (and the general public) that the public comment period
24 was open. On November 9, 2022, LA Waterkeeper and Heal the Bay submitted joint written
25 comments to the Regional Board explaining that if the Permit were adopted without
26 consideration of whether the current discharges from LA-Glendale were a reasonable and
27 beneficial use of a water resource in California, or adopted without conditions requiring

28 ³ The State Board has appealed the Court’s decision, and the appeal is pending as of the date of this Petition.

1 additional recycling, the Permit likely would allow a waste and unreasonable use of a water
2 resource. (*See* Exhibit D, Joint Comment Letter.) LA Waterkeeper also submitted a separate
3 comment letter on November 9, 2022, explaining that cumulative impacts needed to be analyzed,
4 and findings included for those portions of CEQA that are applicable to NPDES permits.
5 (Exhibit E, CEQA Comment Letter, at pp. 2-3.)

6 On December 1, 2022, the Regional Board responded: “The question of what the water
7 boards ‘must’ do with respect to waste and unreasonable use is the subject of ongoing litigation.”
8 (Exhibit H at p. 47.) The Regional Board asserted that it “strongly encourages water recycling,
9 water conservation, and use of stormwater and dry-weather urban runoff” consistent with State
10 Board and Regional Board policies. (Exhibit H at pp. 47-48.) Without conducting a formal
11 analysis, the Regional Board concluded:

12 [T]he treated wastewater discharged from the LAGWRP provides habitat along the Los
13 Angeles River and maintains flow in the river to support other beneficial uses. So,
14 although the effluent is discharged to the Los Angeles River, the discharge is not
15 considered a waste and unreasonable use of water since it is providing a benefit to the
16 environment and neighboring communities.

16 (Exhibit H at pp. 48-49.)

17 During a hearing on the Permit held on December 8, 2022, Petitioner testified before the
18 Regional Board and again objected to the lack of an analysis of waste and unreasonable use and
19 cumulative impacts in the Permit, replying to the staff response to its comments. The Regional
20 Board declined to discuss the matter publicly during the hearing due to pending litigation and
21 adopted the Permit on December 8, without making revisions to the Permit to address
22 Petitioner’s comments.⁴

23 **B. The Regional Board Prejudicially Abused Its Discretion by Adopting the**
24 **Permit Without Preventing and/or Considering Whether the Use of Treated**
25 **Wastewater at LA-Glendale Is Wasteful and Unreasonable and Without**
26 **Considering Cumulative Impacts Associated with the City’s Integrated**
27 **Network of Treatment Plants**

26 The ongoing, unconsidered discharge of tertiary treated wastewater from LA-Glendale to
27

28 ⁴ On December 8, 2022, the Regional Board also adopted a WDR/NPDES permit for the Los Angeles-Glendale Water Reclamation Plant.

1 the Los Angeles River and ultimately the Pacific Ocean, above the level necessary to support the
2 beneficial uses of the river,⁵ is an unconstitutional waste and unreasonable use of a water
3 resource in California. The Regional Board and/or the State Board have mandatory duties to
4 analyze whether the continued discharge of treated wastewater from LA-Glendale is reasonable
5 and beneficial and not wasteful, and if waste and unreasonable use is found, to prevent such
6 waste. The Regional Board’s failure to execute those mandatory duties before adopting the
7 Permit is a prejudicial abuse of discretion.

8 **i. All Water, Including Treated Wastewater from LA-Glendale, Must**
9 **Not Be Wasted and Must Be Put to Reasonable and Beneficial Use**

10 As enshrined in the California Constitution and Water Code, *all* water in California must
11 not be wasted and must be put to reasonable and beneficial use. This reasonable and beneficial
12 use requirement applies to treated wastewater from LA-Glendale just as it does surface and
13 ground water.

14 “*It is hereby declared that because of the conditions prevailing in this State the general*
15 *welfare requires that **the water resources** of the State be put to beneficial use to the fullest extent*
16 *of which they are capable, and that the waste or unreasonable use or unreasonable method of use*
17 *of water be prevented.” (Cal. Const., Art. X, § 2 (emphasis added); see also Cal. Water Code*
18 *§ 100.) This constitutional rule of reasonable and beneficial use applies to all types of water*
19 *resources. (See, e.g., *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal.2d 132, 138; see also*
20 *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383; *Light v. State Water Res. Control Bd.*
21 *(2014) 226 Cal.App.4th 1463, 1479.) Because of the conditions prevailing in California, and*
22 *specifically in Los Angeles, application of the constitutional requirement to all types of water*
23 *resources is sound policy. (See *Joslin*, 67 Cal.2d at 140-41; see also Exhibit D at pp. 1, 15.) In*
24 *fact, the California Supreme Court has determined that Article X, Section 2 applies to*
25 *wastewater reclamation and that the Water Code imposes a duty on the State Board to regulate*
26 *POTW discharges. (See *Environmental Defense Fund v. East Bay Municipal Utility District**

27 _____
28 ⁵ Beneficial uses of the Los Angeles River include habitat for aquatic life and vegetation adapted to, and perhaps even reliant on, seasonal periods of very low flow.

1 (1977) 20 Cal.3d 327, 343-44, *vacated on other grounds.*)

2 “It is hereby declared that the people of the state have a primary interest in the
3 development of facilities to recycle water containing waste to supplement existing surface and
4 underground water supplies and to assist in meeting the future water requirements of the state.”
5 (Cal. Water Code § 13510.) Recycled water “suitable for a direct beneficial use or a controlled
6 use that would otherwise not occur...is considered a valuable resource.” (Cal. Water Code
7 § 13050(n).) The Legislature recognized the broad applicability of the constitutional and
8 statutory mandates by declaring that under certain circumstances a failure to use available
9 recycled water—*i.e.*, reclaimed wastewater—is a waste and unreasonable use. (Cal. Water Code
10 § 13551 (“A person or public agency, including a state agency, city, county, city and county,
11 district, or any other political subdivision of the state, shall not use water from any source of
12 quality suitable for potable domestic use for nonpotable uses, including cemeteries, golf courses,
13 parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is
14 available as provided in Section 13550”).) And in 1991 the state set a water-recycling goal “to
15 recycle a total of 700,000 acre-feet of water per year by the year 2000 and 1,000,000 acre-feet of
16 water per year by the year 2010.” (Cal. Water Code § 13577.) As of 2022 that goal has not been
17 met.

18 The State Board’s Water Quality Control Policy for Recycled Water acknowledges that
19 the constitutional and statutory reasonable and beneficial use requirements apply to wastewater.⁶
20 And with respect to the management of wastewater—which originates from surface and/or
21 ground waters—it is state policy to have integrated management of water resources. (Cal. Water
22 Code § 174(b).) This integrated management depends on the coordination of water quality and
23 water supply analyses. (Cal. Water Code § 174(b).)

24 The California Constitution, Water Code, case law, and water management policy make
25 no distinction between the types of water resources in California that are subject to the rule of
26 reasonable and beneficial use. The treated wastewater discharged from LA-Glendale is a “water

27 _____
28 ⁶ See State Water Resources Control Board, Water Quality Control Policy for Recycled Water (eff. Apr. 8, 2019),
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf, at p. 4.

1 resource” in California. As a water resource, treated wastewater from LA-Glendale must not be
2 wasted and must be put to reasonable and beneficial use.

3 **ii. The California Constitution and the Water Code Each Impose a**
4 **Mandatory Duty on the Regional Board and/or the State Board to**
5 **Prevent Waste and Unreasonable Use of California’s Water**
6 **Resources**

7 The California Constitution and Water Code impose mandatory duties on the Regional
8 Board and/or the State Board to prevent the unreasonable use and waste of the treated
9 wastewater discharging from LA-Glendale into the Los Angeles River and to consider whether
10 that water resource is put to reasonable and beneficial use.

11 In relevant part, Article X, Section 2 of the California Constitution requires that: “the
12 waste or unreasonable use or unreasonable method of use of water be prevented.” Article X,
13 Section 2 is self-executing. (Cal. Const., Art. X, § 2; *see also Env’t Def. Fund, Inc. v. E. Bay*
14 *Mun. Util. Dist.* (1977) 20 Cal.3d 327, 341.) The plain language of this constitutional provision
15 creates a mandatory duty to prevent unreasonable use and waste. The word “prevented,” a verb
16 meaning “to stop (something) from happening or existing,” requires action. (Merriam-Webster
17 Dictionary (2016).) The cases construing Article X, Section 2 refer to this constitutional
18 provision as a “mandate.” (*See, e.g., City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th
19 1224, 1236; *Env’t Def. Fund, Inc.*, 20 Cal.3d at 341; *see also Elmore v. Imperial Irrigation Dist.*
20 (1984) 159 Cal.App.3d 185, 193–97 (citing Cal. Const. Art. X, § 2 as imposing mandatory
21 duties); *Imperial Irrigation Dist. v. State Water Res. Control Bd.* (1986) 186 Cal.App.3d 1160,
22 1170–71.) As applied in *Elmore*, the court held that petitioner had stated a cause of action to
23 compel the respondent irrigation district to prevent an ongoing waste of water because Article X,
24 Section 2 imposed a mandatory duty upon it to do so. (*Elmore*, 159 Cal.App.3d at 193–97.) As
25 such, *Elmore* holds that a responsible agency can be compelled to act to prevent a waste of water
26 pursuant to the duty established by Article X, Section 2. The constitutional mandate that
27 unreasonable use and waste be prevented is codified at Section 100 of the Water Code.

28 In addition, the Regional Board was required to fulfill the constitutional mandate against
waste of water pursuant to its duties under Section 13263 of the Water Code. When issuing

1 waste discharge requirements—as the Regional Board did here—the Regional Board:

2 shall implement any relevant water quality control plans that have been adopted, and
3 shall take into consideration the beneficial uses to be protected, the water quality
4 objectives reasonably required for that purpose, other waste discharges, the need to
prevent nuisance, and the provisions of Section 13241. (Cal. Water Code § 13263(a).)

5 Section 13241 requires the Regional Board to consider, among other things: “Water quality
6 conditions that could reasonably be achieved through the coordinated control of all factors which
7 affect water quality in the area,” and “[t]he need to develop and use recycled water.” (Cal. Water
8 Code §§ 13241(c), 13241(f).) As such, Water Code Sections 13263 and 13241 together required
9 the Regional Board to consider the need to develop and use recycled water. These sections of the
10 Water Code also required the Regional Board to consider matters of water supply, given that
11 water quality and water quantity issues are integrated in California and water quantity is a factor
12 that affects water quality. (*See* Cal. Water Code § 174(b); *see also PUD No. 1 v. Wash. Dept. of*
13 *Ecology* (1994) 511 U.S. 700, 719–20.) The Regional Board failed to consider these required
14 elements before it adopted the Permit and Order, however, thus violating the Water Code.

15 The Regional Board and/or State Board have mandatory duties to ensure treated
16 wastewater from LA-Glendale is not wasted and to consider whether it is being put to reasonable
17 and beneficial use.

18 **iii. A Recent Superior Court Decision Confirms the Water Boards’ Duty**

19 In Petitioner’s legal challenge over the 2017 permits for the POTWs in the North Outfall
20 Sewer System, the Los Angeles Superior Court held that Article X, Section 2 and the Water
21 Code impose mandatory duties on the Regional Board and/or the State Board to prevent waste
22 and unreasonable use as part of the WDR/NPDES permits. (*Los Angeles Waterkeeper v. State*
23 *Water Resources Control Board, et al.*, No. BS171009, Superior Court of California, Decision
24 on Petition for Writ of Mandate (Aug. 4, 2020) (“Superior Court Writ Order”).) The Court found
25 that Article X, Section 2 applies to wastewater reclamation and imposes a duty on the State
26 Board to prevent waste and unreasonable use in POTW discharges. (*See* Superior Court Writ
27 Order at pp. 17-18 (citing *Environmental Defense Fund*, 20 Cal.3d 327 at 343-44); *id.* at p. 35.)
28

1 Based on the scale of the discharges from the North Outfall Sewer System, the Court found that
2 the Regional Board’s issuance of permits for the POTWs triggered the State Board’s affirmative
3 duty to prevent waste. (*See* Superior Court Writ Order at pp. 37-38.) Therefore, the Court
4 compelled the State Board to analyze whether those POTW discharges are wasteful and
5 unreasonable, and if so, exercise its discretion to prevent waste and unreasonable use. (*See*
6 Superior Court Writ Order at pp. 22-23, 39-41.)⁷

7 The Court’s reasoning applies equally to both the Regional Board and/or the State Board,
8 as each is a regulatory agency with authority over the Permit and Order. (*See* Cal. Water Code
9 §§ 13263(a), 13263(f).)⁸ The Court found that the Regional Board has the same constitutional
10 and statutory duties to prevent waste as the State Board. (*Los Angeles Waterkeeper v. State*
11 *Water Resources Control Board, et al.*, No. BS171009, Superior Court of California, Decision
12 on Petition for Writ of Mandate (Sept. 6, 2019), at p. 31.) In other words, while the State Board
13 is the state agency in charge of the comprehensive planning and allocation of water statewide
14 and shares a role in fulfilling the constitutional mandate (*Ibid.*; *see also* Cal. Water Code
15 §§ 174(a), 179), the Regional Board may not avoid its mandatory duties by pointing to the State
16 Board. In fact, Section 13225(a) of the California Water Code contemplates that the Regional
17 Board will work with the State Board when necessary. Nor may the State Board abdicate its
18 mandatory duties triggered by the adoption of the Permit by pointing to the Regional Board. (*See*
19 Water Code §§ 174(b), 13528.5 (providing that the State Board “may carry out the duties and
20 authority granted” to the Regional Board over recycled water); *see also Env’t Defense Fund,*
21 *Inc.*, 20 Cal.3d at 343-44 (describing the administrative agency responsibility over reclaimed
22 wastewater).) How the State Board and/or the Regional Board must implement their joint
23 mandatory duties is a question for the agencies to decide together. (*American Federation of*
24 *State, County & Municipal Employees v. Metropolitan Water District* (2005) 126 Cal.App.4th
25 247, 261; *Los Angeles County Employees Association, Local 660 v. County of Los Angeles*
26 (1973) 33 Cal.App.3d 1, 8.)

27 ⁷ The State Board has appealed the Court’s decision, and the appeal is pending as of the date of this Petition.

28 ⁸ Petitioner has appealed the Court’s decision to dismiss the Regional Board as a party, and the appeal is pending as of the date of this Petition.

1 **iv. The Regional Board Failed to Execute Its Constitutional and**
2 **Statutory Mandatory Duties When It Authorized the Ongoing**
3 **Discharge of Treated Wastewater from LA-Glendale**

4 When the Regional Board adopted the Permit, the Regional Board authorized the ongoing
5 discharge of tertiary treated wastewater from LA-Glendale into the Los Angeles River. That
6 authorization triggered the Regional Board’s Constitutional and statutory duties to prevent waste
7 and unreasonable use of that wastewater and/or consider whether the continued discharge of
8 tertiary treated wastewater from LA-Glendale to the Los Angeles River and ultimately the
9 Pacific Ocean is a reasonable and beneficial use of a water resource. The Regional Board entirely
10 failed to execute those duties prior to adopting the Permit, however, violating the Superior Court
11 Writ Order. And the Regional Board’s refusal to review the loss of reusable water via continued
12 discharges from LA-Glendale represents an ongoing failure by the Board to integrate its
13 regulation of wastewater discharges and recycled water in the Los Angeles area.

14 Specifically, LA-Glendale discharges about 9.1 MGD of treated wastewater into the Los
15 Angeles River. (*See* Exhibit F at p. F-15.) Because native flora and fauna are generally adapted
16 to seasonal periods of extremely low flow, maintaining artificially high base flows in the Los
17 Angeles River may actually *obstruct* some of the beneficial uses of the river. In other words,
18 continued discharge of treated wastewater from LA-Glendale at current levels may not be
19 necessary to support some beneficial uses of the river adapted to low flow conditions and may, in
20 fact, be more ecologically harmful than helpful. Thus, discharging millions of gallons of highly
21 treated wastewater every day from LA-Glendale rather than recycling it likely constitutes an
22 unconstitutional waste of water and an unreasonable use of a water resource. (*Joslin.*, 67 Cal.2d
23 at 140–41; *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489,
24 568; *see also Imperial Irrigation Dist. v. State Water Res. Control Bd.* (1990) 225 Cal.App.3d
25 548, 568–69 (affirming that allowing irrigation return flows to discharge into the Salton Sea was
26 an unconstitutional waste of water); *Light v. State Water Res. Control Bd.* (2014) 226
27 Cal.App.4th 1463, 1479–80; Cal. Water Code § 13551.)

28 The State Board has developed several factors relevant to determining whether a water
use is wasteful and/or unreasonable, including: (1) other potential beneficial uses for conserved

1 water, (2) whether the excess water now serves a reasonable and beneficial purpose, (3) the
2 probable benefits of water savings, (4) the amount of water reasonably required for current use,
3 (5) amount and reasonableness of the cost of saving water, (6) whether the required method of
4 saving water are conventional and reasonable rather than extraordinary, and (7) the availability
5 of a physical plan or solution. (*See, e.g.,* Imperial Irrigation Dist., Water Rights Decision 1600,
6 at 23–29 (Cal. State Water Res. Control Bd. June 21, 1984).) Application of the State Board’s
7 own criteria confirms that the ongoing discharge of treated wastewater from LA-Glendale likely
8 constitutes a waste and unreasonable use of that water resource:

- 9 1. Recycling conserved water above levels needed to support beneficial uses in the Los
10 Angeles River (some stretches of which have adapted to seasonal periods of very low
11 flow) is likely to be superior to discharging tertiary treated wastewater into the Los
12 Angeles River and eventually the Pacific Ocean.⁹
- 13 2. The excess water is not currently being put to a reasonable or beneficial use.
- 14 3. There are numerous probable benefits of water savings, including reduced reliance on
15 imported water and reduced energy consumption,¹⁰ and will help the City achieve its
16 laudable goal to increase use of recycled water.¹¹
- 17 4. The need to determine this quantity of water, which has major implications for both
18

19 ⁹ The process of obtaining water rights under Water Code Section 1211, a process overseen by the State Board,
20 could be used to analyze questions regarding what base flow in the river is ecologically optimal and what base flow
21 would allow enjoyment of other designated beneficial uses. The LA-Glendale operators will need to apply for
22 Section 1211 water rights in order to alter their permitted discharge to the Los Angeles River. However, the lack of a
23 Section 1211 analysis at present does not excuse the lack of analysis and/or findings in the WDR/NPDES
24 Permit/Order regarding beneficial uses, waste and unreasonable uses, cumulative impacts, or CEQA policies.

25 ¹⁰ U.C. Davis researchers found that between June 2015 and February 2016, when statewide water conservation
26 measures were in place, California’s water conservation rate of 23.9 percent over 2013 levels resulted in energy
27 savings that translated into a reduction in greenhouse gas emissions of 219,653 metric tons. Tara Lohan, *Water
28 Conservation Saves Energy in California*, KQED SCIENCE (June 9, 2016),
<https://ww2.kqed.org/science/2016/06/09/water-conservation-saves-energy-in-california/>.

¹¹ *See* City of Los Angeles, 2019 Sustainable City pLAN, https://plan.lamayor.org/sites/default/files/pLAN_2019_final.pdf, at pp. 46-47 (identifying a target for Los Angeles
Department of Water and Power to reduce water imports by 50% and to recycle 100% of all wastewater for
beneficial reuse by 2035, “including but not limited to non-potable reuse, groundwater recharge, and supporting
environmental and recreational uses such as those in the L.A. River”); L.A. Dep’t of Water & Power, 2020 Urban
Water Management Plan, <https://www.ladwp.com/cs/groups/ladwp/documents/pdf/mdaw/nzyy/~edisp/opladwpccb762836.pdf>, at pp. 7-1–7-
10 (discussing wastewater recycling efforts and initiatives at Hyperion and other POTWs in the Los Angeles
metropolitan area, including beneficial uses associated with recycled wastewater).

1 preserving and restoring ecological functions of the Los Angeles River and protecting
2 recreational uses of the river, underscores the need to conduct a waste and
3 unreasonable use analysis.

- 4 5. The cost of saving water would likely be lower than the costs of other water supply
5 sources such as desalination and importing water from sources such as the Colorado
6 River, the Bay Delta, and/or the Owens Valley.
- 7 6. The technology to put the treated wastewater LA-Glendale currently discharges to
8 other beneficial uses currently exists, and the City is planning to expand such uses
9 from Tillman and other POTWs in the North Outfall Sewer System, which suggests
10 there is nothing extraordinary about such methods of saving water.
- 11 7. Lastly, a physical plan or solution is available as demonstrated by the fact that
12 Tillman already provides some treated wastewater to several lakes in the Sepulveda
13 Basin and to several other uses, and the City is planning to implement large-scale
14 reclamation projects involving additional large quantities of treated wastewater from
15 Tillman, and LA-Glendale is part of an integrated network with Tillman.

16 Moreover, continuing to discharge highly treated wastewater into the Los Angeles River
17 and ultimately the Pacific Ocean—at a discharge point located over a groundwater basin well-
18 suited to serve as a source of local water supply—does nothing to advance California’s goal to
19 increase the amount of water recycled in the state. (*See* Cal. Water Code § 13577.) Indeed,
20 California is far from meeting its previous goal of recycling 1,000,000 AFY by 2010, or the State
21 Board’s goal of 1,500,000 AFY by 2020, with only around 732,000 AFY of water recycled in
22 2021.¹² LA-Glendale and its integrated network of POTWs in the North Outfall Sewer System
23 are part of the “pump and dump” system where large volumes of water are transported from
24 Northern California and the Colorado River watershed, used once, treated, then discharged

26 ¹² *See* State Water Resources Control Board, Water Quality Control Policy for Recycled Water (eff. Apr. 8, 2019),
27 [https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf)
28 [.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf), at p. 2; *see also* State Water Resources Control Board, Volumetric Annual Reporting of Wastewater and
Recycled Water 2021 Calendar Year Results,
[https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-](https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-2021.pdf)
[2021.pdf](https://www.waterboards.ca.gov/water_issues/programs/recycled_water/docs/2022/volumetric-infographic-2021.pdf), at p. 4.

1 directly and indirectly into the Los Angeles River and ultimately the Pacific Ocean. The ongoing
2 loss of this valuable water resource perpetuates California’s current unsustainable water supply
3 management, and contributes to the instability of water supply and water quality issues in the
4 Los Angeles area, an area in dire need of local, reliable, and climate-friendly water sources.

5 Recognizing this need, the City is now taking important steps to plan for a sustainable
6 water supply and address the drought conditions. Both the City and the Regional Board
7 acknowledge that there is additional capacity to reclaim water at Tillman without impacting
8 beneficial uses in the Los Angeles River, along with additional reclamation capacity within the
9 North Outfall Sewer System as a whole (including LA-Glendale), and therefore an opportunity to
10 reduce the cumulative amount discharged into the ocean. Yet the Regional Board refuses to even
11 consider the reasonableness of losing millions of gallons of reusable water to the ocean daily, let
12 alone take steps to abate that waste.

13 The Permit likely authorizes a waste and unreasonable use of a water resource in
14 California. The Regional Board has constitutional and statutory duties to prevent that waste and
15 unreasonable use and/or consider whether, as authorized by the Permit, it is reasonable and
16 beneficial. Because the Regional Board entirely failed to execute these duties during the
17 permitting process, the Regional Board prejudicially abused its discretion.¹³

18 **v. The Regional Board Failed to Execute its Mandatory Duties when It Failed to**
19 **Consider Cumulative Impacts or Make Findings Regarding Chapter 1 of the**
20 **California Environmental Quality Act**

21 There are cumulative impacts resulting from the Board’s approval of the Permit that the
22 Regional Board was required, but failed, to consider. Assessing the North Outfall Sewer System
23 as a whole, there is the potential additional, cumulative reclamation capability of significant
24 quantities of water within the Los Angeles River watershed, while preserving minimum flows for
25 ecological health in the river. (See Exhibit D at pp. 11-12; Exhibit E at pp. 2-3.) Taking full
26 advantage of the reclamation potential from this integrated network of treatment plants, while

27 _____
28 ¹³ Alternatively, the renewal of the Permit triggered the State Board’s duties to prevent the waste and unreasonable
use of a water resource and/or consider whether the use of that water resource authorized by the Permit was
reasonable and beneficial. As such, Petitioner now requests that the State Board take steps to execute these duties.

1 also providing for base flows that protect the beneficial uses of the river, could put the Los
2 Angeles area well along the road to water self-sufficiency. The Regional Board failed to consider
3 these cumulative impacts related to the recently adopted WDRs/NPDES permits for Tillman and
4 LA-Glendale, despite the Regional Board’s recognition that those treatment plants constitute part
5 of an “integrated network.” (Exhibit F at p. F-5.)

6 In addition, the Regional Board failed to make findings that the projects are consistent
7 with the CEQA Chapter 1 policies, even though the Regional Board implicitly recognizes that it
8 must consider those policies notwithstanding the partial exemption in Water Code Section 13389
9 limited to Chapter 3 of CEQA. (Exhibit H at p. 50 (“Under California Water Code section
10 13389, the action to adopt an NPDES permit is exempt from the provisions of Chapter 3 of
11 CEQA . . .”).) The Regional Board’s response to comments failed to adequately address
12 Petitioner’s cumulative impacts comments, as the Regional Board mistook Petitioner’s
13 comments for a request for CEQA *analysis*. Petitioner did not, and does not, ask the Regional
14 Board to conduct a full (or even partial) CEQA analysis. There are other processes the Regional
15 Board can and must use to develop the information necessary to demonstrate the Permit approval
16 meets the requirements of Chapter 1 of CEQA. Accordingly, at a minimum, the Permit approval
17 must include CEQA *findings* supported by substantial evidence in the record regarding the
18 cumulative impacts of the integrated network and feasible alternatives or feasible mitigation
19 measures that would substantially lessen the significant environmental effects resulting from the
20 ongoing discharge of treated wastewater from this integrated network of treatment plants, as well
21 as from individual facilities. (Exhibit E at pp. 4-6.) Those findings are not included in the Permit
22 approved by the Regional Board.

23 **8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
24 **APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGER, IF NOT**
25 **THE PETITIONER**

26 A true and correct copy of this Petition was delivered by electronic mail to the State
27 Board, Regional Board, and the City of Los Angeles Departments of Sanitation and Public
28 Works on January 6, 2023.

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1 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**
2 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**
3 **BOARD, OR AN EXPLANATION OF WHY THE PETITIONER WAS NOT**
4 **REQUIRED OR WAS UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR**
5 **OBJECTIONS BEFORE THE REGIONAL BOARD**

6 All of the substantive issues and objections raised herein were presented to the Regional
7 Board in writing by letters dated November 9, 2022 (*see* Exhibit D and Exhibit E) and in follow-
8 up testimony before the Regional Board on December 8, 2022.

9 Respectfully submitted via electronic mail and U.S. Mail,

10 Dated: January 6, 2023

LOS ANGELES WATERKEEPER

11 

12

Benjamin Harris
13 Attorney for LOS ANGELES WATERKEEPER

14 Dated: January 6, 2023

SYCAMORE LAW, INC.

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Daniel Cooper
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