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September 8, 2006

Office of the Clerk
U.S. Court of Appeals, Ninth Circuit
95 Seventh Street
P. O. Box 193939
San Francisco, CA 94119-3939

Re: *City of Healdsburg v. Northern California River Watch*
U.S. Court of Appeals, Ninth Circuit, Docket No. 04-15442

***Amicus Curiae* California Association of Sanitation Agencies,
Association of California Water Agencies, and National Association of
Clean Water Agencies' Letter of Support For Appellant City of
Healdsburg's Petition For Rehearing**

Dear Clerk:

Amicus Curiae California Association of Sanitation Agencies ("CASA"),
Association of California Water Agencies ("ACWA"), and National Association of
Clean Water Agencies¹ ("NACWA") seeks leave of Court to file this letter in
support of the City of Healdsburg's Petition For Rehearing by the Panel and *en
banc* filed on August 31, 2006. CASA, ACWA, and NACWA jointly filed an
amicus brief in support of Healdsburg's brief on the merits in July, 2004.

¹ *Amicus Curiae* NACWA previously participated in this case as the "Association
of Metropolitan Sewerage Agencies." The Association of Metropolitan Sewerage
Agencies changed its name to the National Association of Clean Water Agencies
in May 2005.

CASA is a California non-profit Public Benefit Corporation created to further the common interests of publicly-owned wastewater collection, treatment, and reclamation agencies located within the State of California in their effort to provide cost-effective treatment, disposal, reclamation, and reuse of wastewater so that sound public health and environmental goals may be achieved. CASA is currently comprised of 110 public agencies in California that operate publicly-owned treatment works (“POTWs”). CASA actively participates in legislative and regulatory advocacy relating to the field of water quality. CASA also conducts ongoing programs to educate its members on recent legislation, regulatory enactments, and developments and innovations in wastewater management and technologies.

ACWA is a voluntary, statewide non-profit, association comprised of 488 public water agencies that was founded in 1910. Together, these agencies are responsible for more than 90% of the water delivered in the state. In addition to public agency members, ACWA also includes mutual water companies and other private, non-profit water related agencies and 302 associate members including firms and corporations in the law and engineering fields with an interest in California water issues. ACWA’s mission is to assist its members in promoting

the development, management and reasonable beneficial use of high quality water at the lowest practical cost in an environmentally balanced manner.

NACWA is a trade association that represents the interests of nearly 300 of the nation's publicly-owned wastewater treatment agencies. NACWA's membership includes 33 California agencies and more than 60 agencies within the jurisdiction of the Ninth Circuit Court of Appeals. A central function of NACWA is to represent the legislative and regulatory interests of its member wastewater treatment agencies. As a result, NACWA actively participates in state and federal court litigation raising important implementation and policy issues that affect its members.

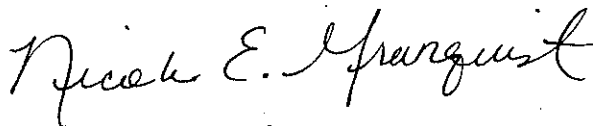
CASA, ACWA, and NACWA are concerned about the impact of the Panel's opinion in this matter on its members. This case concerns extremely important issues regarding the extent of Clean Water Act ("CWA") jurisdiction and addresses additional issues of nationwide importance for the first time. The case is the first court of appeal decision to interpret the U.S. Supreme Court's splintered opinion in *Rapanos v. United States*, 126 S.Ct. 2208 (2006) regarding jurisdiction over adjacent wetlands. The Panel has taken the rule of law of *Rapanos* to be Justice Kennedy's "significant nexus" test. This test, however, was rejected by all other

eight Justices, and results in an outcome (a finding that Basalt Pond is a “waters of the United States”) that would not be endorsed by either the four plurality or the four dissenting justices. *See* City of Healdsburg’s Petition for Panel Rehearing and Rehearing En Banc at pages 7-9.

The case is also the first court of appeal decision to interpret the United States Environmental Protection Agency’s (“EPA”) “waste treatment system” exception. Instead of being casually discarded, the exception should be given proper effect on rehearing. *See* City of Healdsburg’s Petition for Panel Rehearing and Rehearing En Banc at pages 15-18.

For these reasons, CASA, ACWA, and NACWA support the City of Healdsburg’s petition that this matter be granted rehearing.

Respectfully Submitted,



Nicole E. Granquist
Attorney Specially Appearing for
Amicus Curiae CASA, ACWA, and NACWA

cc: *See* Proof of Service

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Circuit Rule 35-4 or 40-1, the foregoing *Amicus Curiae* Letter in Support of Appellant City of Healdsburg's Petition For Rehearing is proportionately spaced, has a typeface of 14 points or more and contains 618 words.



Attorneys Specially Appearing for
Amicus Curiae CASA, ACWA, and
NACWA

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is Downey Brand LLP, 555 Capitol Mall, Tenth Floor,
4 Sacramento, California, 95814-4686. On September 8, 2006, I served the within document(s):

5 **AMICUS CURIAE CALIFORNIA ASSOCIATION OF SANITATION AGENCIES,**
6 **ASSOCIATION OF CALIFORNIA WATER AGENCIES, AND NATIONAL**
7 **ASSOCIATION OF CLEAN WATER AGENCIES' LETTER OF SUPPORT FOR**
8 **APPELLANT CITY OF HEALDSBURG'S PETITION FOR REHEARING**

- 9 **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax
10 number(s) set forth below on this date before 5:00 p.m.
- 11 **BY HAND:** by personally delivering the document(s) listed above to the person(s)
12 at the address(es) set forth below.
- 13 **BY MAIL:** by placing the document(s) listed above in a sealed envelope with
14 postage thereon fully prepaid, in the United States mail at Sacramento, California
15 addressed as set forth below.
- 16 **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an
17 overnight delivery service company for delivery to the addressee(s) on the next
18 business day.
- 19 **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of
20 the document(s) listed above to the person(s) at the address(es) set forth below.

21 **PLEASE SEE ATTACHED SERVICE LIST**

22 I am readily familiar with the firm's practice of collection and processing correspondence
23 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
24 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
25 motion of the party served, service is presumed invalid if postal cancellation date or postage
26 meter date is more than one day after date of deposit for mailing in affidavit.

27 I declare under penalty of perjury under the laws of the State of California that the above
28 is true and correct.

Executed on September 8, 2006, at Sacramento, California.


Becky Brasher

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