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CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES

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Attorneys for Intervenor-Plaintiff  
National Association of Clean Water Agencies

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE  
COUNCIL,

Plaintiff,

vs.

STEPHEN L. JOHNSON,  
ADMINISTRATOR, UNITED  
STATES ENVIRONMENTAL  
PROTECTION AGENCY, and  
UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY,

Defendants.

Case No. 2:06-cv-04843-<sup>PSG</sup>~~DSG~~ (JTLx)

Hon. Phillip S. Gutierrez

**SEPARATE STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF MOTION BY  
NATIONAL ASSOCIATION OF  
CLEAN WATER AGENCIES FOR  
PARTIAL SUMMARY JUDGMENT;**

**DECLARATION of MICHAEL T.  
PURLESKI IN SUPPORT**

**CLEAN WATER ACT CASE**

**Hearing date: February 11, 2008  
[Per order of Court]**

1  
2 **AND RELATED CLAIMS IN  
INTERVENTION**

3 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

4 Pursuant to Local Rule 56-1, Intervenor-Plaintiff  
5 National Association of Clean Water Agencies ("NACWA") submits the following  
6 Separate Statement of Uncontroverted Facts and Conclusions of Law and attached  
7 Declaration of Michael T. Purleski in Support of Motion by NACWA for Partial  
8 Summary Judgment against Defendants Stephen L. Johnson, Administrator for U.S.  
9 Environmental Protection Agency and the United States Environmental Protection  
10 Agency ("Defendants").  
11

12 **NACWA'S PROPOSED UNDISPUTED MATERIAL FACTS**

13 1. The Beaches Environmental Assessment and Coastal Health Act of 2000  
14 ("BEACH Act"), Pub. L. 106-284, Oct. 10, 2000 (amending the Federal Water  
15 Pollution Control Act ("Clean Water Act"), 33 U.S.C. §§ 1251 *et seq.*, requires the  
16 Environmental Protection Agency ("EPA") "after consultation and in cooperation  
17 with appropriate Federal, State, Tribal and local officials (including local health  
18 officials)," to conduct studies on the health effects of pathogens in coastal  
19 recreational waters to form the basis for updating public health standards and  
20 methods for detecting pathogens. H.R. Rep. No. 106-98, at 5 (2000).

21 2. The BEACH Act requires that EPA "shall initiate" the required studies not  
22 later than 18 months after the date of enactment of the BEACH Act (i.e., by April  
23 2002) and "shall complete" these studies not later than 3 years after the date of  
24 enactment of the BEACH Act (i.e., by October 2003). *Id.* § 1254.

25 3. The BEACH Act further requires that EPA "shall publish," not later than 5  
26 years after the date of enactment of BEACH Act (i.e., by October 10, 2005), "new  
27 or revised water quality criteria for pathogens and pathogen indicators (including a  
28

1 revised list of testing methods, as appropriate), based on the results of the studies  
2 conducted under section 104(a), for the purpose of protecting human health in  
3 coastal recreation waters.” 33 U.S.C. § 1314(a)(9)(A).

4 4. In sum, the BEACH Act requires that EPA “shall initiate” the required  
5 studies by April 2002, and “shall complete” these studies by October 2003. The  
6 BEACH Act further requires EPA to publish new or revised water quality criteria  
7 based on those studies by October 10, 2005.

8 5. EPA has not initiated or completed all studies required by the BEACH Act at  
9 33 U.S.C. 1254(v).

10 [See Declaration of Michael T. Purleski (“Purleski Decl.”), ¶ 2, Exh. A:  
11 Defs’ Responses to Plaintiff NRDC’s First Set of Requests for Admissions, at  
12 p. 1]

13 6. EPA has not published new or revised water quality criteria for pathogens or  
14 pathogen indicators and has not published a revised list of testing methods by the  
15 statutory deadline [October 10, 2005] contained in 33 U.S.C. § 1314(a)(9).

16 [See Purleski Decl., ¶3, Exh. B: Defs’ Responses to Plaintiff-Intervenor  
17 County of Los Angeles’s First Set of Requests for Admission, at pp. 1-2.]  
18

### 19 NACWA’S PROPOSED CONCLUSIONS OF LAW

20 7. The Federal Rules of Civil Procedure authorize summary judgment if “the  
21 pleadings, depositions, answers to interrogatories, and admissions on file, together  
22 with the affidavits, if any, show that there is no genuine issue as to any material fact  
23 and the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P.  
24 56(c).

25 8. Summary disposition is favored “to secure the just, speedy and inexpensive  
26 determination of every action.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

27 9. If the evidence offered by the moving party establishes each essential element  
28 of its claim, it is unnecessary for the moving party to negate or disprove any matter

1 for which the non-moving party has the burden of proof at trial. *Id.* at 323.

2 10. If no material question of fact is in dispute, or it is shown that the non-  
3 movant cannot prevail on its version of the facts, summary judgment is appropriate.  
4 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986); *Matsushita Elec.*  
5 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *see also Harper v.*  
6 *Wallingford*, 877 F.2d 728, 731 (9th Cir. 1989); *California Architectural Bldg.*  
7 *Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987).

8  
9 Dated: October 23, 2007

Respectfully submitted,

10 SQUIRE, SANDERS & DEMPSEY L.L.P.

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12 

13 David W. Burchmore  
Michael T. Purleski

14 Attorneys for Intervenor-Plaintiff National  
15 Association of Clean Water Agencies  
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# DECLARATION

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# EXHIBIT A

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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE  
COUNCIL,

Plaintiff,

COUNTY OF LOS ANGELES, and,  
LOS ANGELES COUNTY FLOOD  
CONTROL DISTRICT,

Plaintiffs-Intervenors

NATIONAL ASSOCIATION OF CLEAN  
WATER AGENCIES,

Plaintiff-Intervenor

v.

STEPHEN L. JOHNSON,  
Administrator, United States  
Environmental Protection  
Agency, and UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY,

Defendants.

No. CV06-4843 PSG (JTLx)  
Hon. Philip S. Gutierrez

DEFENDANTS' RESPONSE TO  
PLAINTIFF NRDC'S FIRST SET OF  
REQUESTS FOR ADMISSIONS



1 Pursuant to Rules 26 and 36 of the Federal Rules of Civil  
2 Procedure, Defendants U.S. Environmental Protection Agency and  
3 Stephen L. Johnson, Administrator (collectively "EPA"), hereby  
4 serves their Responses to Plaintiff's First Set of Request for  
5 Admissions.

6 RESPONSE TO REQUESTS FOR ADMISSION

7 REQUEST FOR ADMISSION NO. 1:

8 EPA has not initiated all studies required by 33 U.S.C.  
9 § 1254(v).

10 RESPONSE TO REQUEST FOR ADMISSION NO. 1:

11 Admit.

12 REQUEST FOR ADMISSION NO. 2:

13 EPA has not completed all studies required by 33 U.S.C.  
14 § 1254(v).

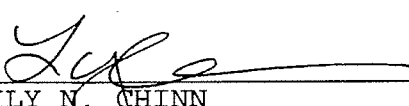
15 RESPONSE TO REQUEST FOR ADMISSION NO. 2:

16 Admit.

17  
18 Respectfully Submitted,

19 MATTHEW J. MCKEOWN  
20 Acting Assistant Attorney General  
21 Environment & Natural Resources  
22 Division

23 Date: April 25, 2007

24   
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CERTIFICATE OF SERVICE

On April 25, 2007, I caused a true and correct copy of the foregoing document to be served on counsel for the Plaintiff by electronic mail and first class mail at the following address:

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# EXHIBIT B

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15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 NATURAL RESOURCES DEFENSE )  
18 COUNCIL, )

19 Plaintiff, )

20 COUNTY OF LOS ANGELES, and, )  
LOS ANGELES COUNTY FLOOD )  
21 CONTROL DISTRICT, )  
Plaintiffs-Intervenors )

22 v. )

23 STEPHEN L. JOHNSON, )  
Administrator, United States )  
24 Environmental Protection )  
Agency, and UNITED STATES )  
25 ENVIRONMENTAL PROTECTION )  
AGENCY, )

26 Defendants. )  
27  
28

No. CV06-4843 PSG (JTLx)  
Hon. Philip S. Gutierrez

DEFENDANTS' RESPONSE TO  
PLAINTIFF-INTERVENORS FIRST  
SET OF REQUESTS FOR ADMISSIONS

1 Pursuant to Rules 26 and 36 of the Federal Rules of Civil  
2 Procedure, Defendants U.S. Environmental Protection Agency and  
3 Stephen L. Johnson, Administrator (collectively "EPA"), hereby  
4 serves their Responses to Plaintiffs-Intervenors First Set of  
5 Request for Admissions.

6 **RESPONSE TO REQUESTS FOR ADMISSION**

7 **REQUEST FOR ADMISSION NO. 1:**

8 33 U.S.C. § 1314(a)(9)(A) required the EPA Administrator to  
9 publish, not later than five years after October 10, 2000, new or  
10 revised water quality criteria for pathogens and pathogen  
11 indicators.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

13 Admit. EPA avers that 33 U.S.C. § 1314(a)(9)(A) provides in  
14 full that EPA "shall publish new or revised water quality  
15 criteria for pathogens and pathogen indicators (including a  
16 revised list of testing methods, as appropriate), based on the  
17 results of the studies conducted under section 1254(v) of this  
18 title, for the purpose of protecting human health in coastal  
19 recreation waters" by October 10, 2005.

20 **REQUEST FOR ADMISSION NO. 2:**

21 The EPA Administrator has not published new or revised water  
22 quality criteria for pathogens and pathogen indicators as  
23 required by 33 U.S.C. § 1314(a)(9)(A).

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

25 Admit.

26 **REQUEST FOR ADMISSION NO. 3:**

27 33 U.S.C. § 1314(a)(9)(A) required the EPA Administrator to  
28 publish, not later than five years after October 10, 2000, a

1 revised list of testing methods, as appropriate, for pathogens  
2 and pathogen indicators.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

4 Admit. EPA avers that 33 U.S.C. § 1314(a)(9)(A) states that  
5 the EPA "shall publish new or revised water quality criteria for  
6 pathogens and pathogen indicators (including a revised list of  
7 testing methods, as appropriate), based on the results of the  
8 studies conducted under section 1254(v) of this title, for the  
9 purpose of protecting human health in coastal recreation waters"

10 **REQUEST FOR ADMISSION NO. 4:**

11 The EPA Administrator has not published a revised list of  
12 testing methods as required by 33 U.S.C. § 1314(a)(9)(A).

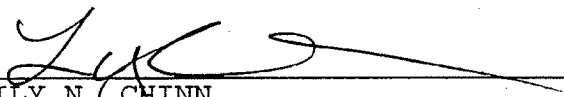
13 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

14 Admit. EPA avers that 33 U.S.C. § 1314(a)(9)(A) only  
15 requires publication of a revised list of testing methods if  
16 deemed appropriate by the Administrator.

17  
18 Respectfully Submitted,

19 MATTHEW J. MCKEOWN  
20 Acting Assistant Attorney General  
21 Environment & Natural Resources  
22 Division

22 Date: March 21, 2007

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CERTIFICATE OF SERVICE

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1 **PROOF OF SERVICE**

2 The undersigned certifies and declares as follows:

3 I am a resident of the State of California and over 18 years of age and am not  
4 a party to this action. My business address is 555 South Flower Street, Suite 3100  
5 Los Angeles, California 90071-2300, which is located in the county where any  
non-personal service described below took place.

6 On October 23, 2007, I served a copy of the following document(s):

7 **STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF**  
8 **LAW IN SUPPORT OF MOTION BY NATIONAL ASSOCIATION OF**  
9 **CLEAN WATER AGENCIES FOR SUMMARY JUDGMENT**

on the persons identified on the attached service list:

10 Service was accomplished as follows.

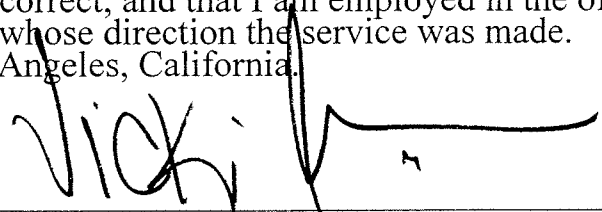
11 ☒ **By U.S. Mail, According to Normal Business Practice.** On this date,  
12 I sealed the above document(s) in an envelope addressed to the above, and I placed  
13 that sealed envelope for collection and mailing following ordinary business  
14 practices, for deposit with the U.S. Postal Service. I am readily familiar with the  
15 business practice at my place of business for the collection and processing of  
correspondence for mailing with the U.S. Postal Service. Correspondence so  
collected and processed is deposited the U.S. Postal Service the same day in the  
ordinary course of business, postage fully prepaid.

16 ☐ **By Personal Delivery by Beverly Hills Express Attorney Services** of  
the document(s) listed above to the person(s) at the address(es) set forth below.

17 ☐ **By Federal Express Service Carrier.** On this date, I sealed the above  
18 document(s) in an envelope or package designated by Federal Express, an express  
19 service carrier, addressed to the above, and I deposited that sealed envelope or  
20 package in a box or other facility regularly maintained by the express service  
carrier, or delivered that envelope to an authorized courier or driver authorized by  
the express service carrier to receive documents, located in Los Angeles, California  
with delivery fees paid or otherwise provided for.

21 ☐ **By Electronic Mail Transmission With Attachment.** On this date, I  
22 transmitted the above-mentioned document(s) by electronic mail transmission with  
attachment to the parties at the electronic mail transmission number set forth below.

23 I declare under penalty of perjury under the laws of the United States of  
24 America that the foregoing is true and correct, and that I am employed in the office  
of a member of the bar of this court at whose direction the service was made.  
Executed on October 23, 2007, at Los Angeles, California.

25   
26 \_\_\_\_\_  
27 Vicki Scott  
28

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