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February 27, 2013

Via FedEx Next Day

Acting Presiding Justice Rebecca A. Wiseman
Justice Bert Levy
Justice Dennis A. Cornell
California Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, California 93721

Re: *City of Los Angeles v. County of Kern*
Fifth District Court of Appeal, Case No. F063381—Request for
Publication

Dear Justices Wiseman, Levy and Cornell:

I am the General Counsel of Amicus Curiae the National Association of Clean Water Agencies ("NACWA") and am writing on behalf of NACWA to request that the Court publish the opinion issued on February 13 in *Los Angeles v. Kern County*. NACWA believes the opinion is of national importance and that its publication will assist the regulated community and the public in understanding how the land application of biosolids operates within the existing federal and state legal framework and the limits on local regulation of the practice. The opinion appears to meet one or more of the criteria for publication under California Rule of Court 8.1105.

NACWA has an interest in the publication of this opinion because it is a trade association representing nearly 300 of the nation's publicly owned treatment works ("POTWs") and public clean water utilities, including the City of Los Angeles, who are all faced with the responsibility of handling millions of tons of biosolids daily. Collectively, NACWA member agencies serve the majority of the sewered population in the United States and treat and reclaim more than 18 billion gallons of wastewater each day.

Managing the biosolids that result from the treatment process, the majority of which are recycled to farmland as fertilizer and a soil conditioner, is an essential function of America's wastewater infrastructure. NACWA members, including

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some of America's largest cities such as New York, Chicago, Denver, Seattle, Charlotte, Washington, and Philadelphia, land apply biosolids on hundreds of farms across America. NACWA members work with their farm partners and rural communities to recycle biosolids to farm land to benefit the land, crops, and sustainable biosolids management.

NACWA has monitored this litigation closely since its inception in 2006 and has filed multiple amicus curiae briefs in both the federal and state phases of the case. The Court's February 13 opinion will help provide valuable factual and legal guidance for NACWA's members in California and elsewhere as they work with local governments regarding the appropriate scope of regulation of land application of biosolids.

The opinion explains a "legal issue of continuing public interest" and therefore merits publication under the Court's rules. Rule 8.1105(c)(6). NACWA members and their contractors and farmers regularly work with rural communities to develop and implement appropriate science-based regulations governing land application to supplement state and federal regulatory programs. *Los Angeles v. Kern* demonstrates that there are statutory and constitutional limits on local police power to regulate the use of biosolids. The published opinion will be persuasive authority for courts and local lawmakers in other states who grapple with very similar issues regarding limits on the police power to regulate biosolids crossing many county and state lines, as well as the interface between local authority and overlapping state laws governing recycling, solid waste, and biosolids.

The opinion's discussion of the fact finding by the trial court that biosolids do not pose a risk to the environment and that banning land application imposes tremendous burdens on municipalities is also important and supports publication. NACWA and its members spend significant time and resources both within California and nationwide to educate the public and local decision makers regarding the current science on the benefits of recycling biosolids to farmland. Opposing views on the merits of land application are rarely adjudicated, and the opinion provides significant legal precedent in this regard. Finally, the discussion in *Los Angeles v. Kern* of the regulatory history and framework for land application of biosolids is useful to have in print.

Sincerely,



Nathan Gardner-Andrews
General Counsel
Amicus Curiae National Association
of Clean Water Agencies

cc: Counsel of Record