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July 30, 2014

Via FedEx

The Honorable Tani Cantil-Sakauye,  
Chief Justice of the California Supreme Court  
And the Honorable Associate Justices of the Court  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: Request for Partial Republication of Court of Appeal Opinion -- *City of Los Angeles et al. v. County of Kern et al.* (Cal. Sup. Ct. Case No. S210150)

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

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 republish the merits portion of the opinion issued on February 13, 2013 in *City of Los Angeles v. Kern County*, (2013) 214 Cal. App. 4<sup>th</sup> 394. Last year, the Court of Appeal directed publication of the opinion in response to requests from NACWA and others. The opinion has provided needed authority on local power over land application of biosolids in California and has provided helpful guidance in other states. The current unpublished status of the opinion is causing uncertainty among stakeholders and we believe that republication is appropriate. The Court's decision earlier this month on an unrelated federal statute of limitations issue has no bearing on the merits portion of the Court of Appeal 2013 opinion and the opinion still meets one or more of the criteria for publication under California Rule of Court 8.1105.

NACWA has an interest in the republication 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 Plaintiffs the City of Los Angeles, Los Angeles County Sanitation Districts, Orange County Sanitation District, and other large and small utilities in California and all fifty states. NACWA members are responsible for managing 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.

Recycling biosolids to farmland as fertilizer and a soil conditioner is an essential function of America's wastewater infrastructure. Most sewage

sludge in the United States is treated to qualify under state and federal regulations as biosolids, which then are applied to farmland in bulk quantities. NACWA members, including some of America's largest cities such as San Francisco, 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 benefit the land, crops, and sustainable biosolids management.

The litigation regarding Kern County's biosolids ban is one of the most important cases in the country concerning biosolids and is viewed by stakeholders on all sides of the local control issue as a bellwether case. NACWA has monitored this litigation closely since it began in 2006 and has filed several amicus curiae briefs in both the federal and state phases of the case. NACWA's briefs have explained the long history and success of biosolids recycling, its close regulation at the federal and state level, and the challenges to wastewater management posed by non-science based bans and local regulations that seek to usurp state authority over biosolids.

The Court of Appeal opinion provides valuable factual and legal guidance for NACWA's members in California and elsewhere as they work with local governments regarding the appropriate regulatory scope of biosolids land application. The opinion explains a "legal issue of continuing public interest" and therefore continues to merit 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. The opinion 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 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 republication. 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 of the regulatory history and framework for land application of biosolids is useful because there are few appellate decisions that have undertaken this important exercise.

The conversion of the opinion from published to unpublished status has raised many questions among NACWA members and stakeholders, particularly because this Court's review of the opinion and decision on July 7 concerned only the unrelated issue of the interpretation of the federal supplemental jurisdiction statute. That discrete issue is entirely severable in substance and form from the rest of the opinion. NACWA requests that the balance of the opinion be republished because of its proven value on major policy and legal issues regarding biosolids.

Sincerely,



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