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July 20, 2016

California Water Commission  
P.O. Box 942836  
Sacramento, California 94236-0001

*Via U.S. Mail and Email*

*RE: City of La Habra's Objections to DWR's Denial of the City's Request to Modify the Boundaries of Basin 8-1*

Dear Commissioners:

Kidman Law LLP represents the City of La Habra ("City") in regard to its compliance with the Sustainable Groundwater Management Act ("SGMA"). The City submitted a timely request to DWR to modify the basin boundaries of Basin 8-1 in order to re-establish the La Habra Basin as separate and apart from the balance of Basin 8-1. Before Bulletin 118 (Bulletin Nos. 45 and 53), DWR had distinguished La Habra Basin as a separate hydrogeologic unit. DWR denied the City's request on procedural grounds (i.e. it determined the City's request to be "incomplete").

The City objects to DWR's processing of its request for the reasons stated in this letter and the City's attached letter dated May 18, 2016 ("**Exhibit 1**"). The City requests that this letter be considered as a public comment, to be included as part of the Commissions' record at its July meeting.

The City respectfully disagrees with DWR's position that the City must obtain written support from three-quarters of the affected local agencies in Basin 8-1. To the contrary, and according to SGMA, the City must have "consulted with interested local agencies and public water systems" in Basin 8-1, which the City did as stated in Sections H and F of the City's request. [Water Code §10722.2(a)(3).] This consultation included OCWD, which is the "exclusive" local agency that has sole responsibility to comply with SGMA within its jurisdictional boundaries – boundaries that comprise 89% of Basin 8-1. [Water Code §10723(c).]

In direct contradiction of this clear statutory definition, DWR has improperly directed that the City must obtain the written support of 75% of all local agencies within Basin 8-1, including those within the jurisdictional boundaries of OCWD. DWR ignored the City's reasoned assertion, based upon the plain language of SGMA that only four local agencies (La

Habra, Brea, Fullerton, and OCWD) are interested in, much less are “affected” by, the City’s basin boundary modification request.

In order to address DWR’s requirement for formal written support, the City requested OCWD to provide a resolution of support for the City’s Basin Boundary Modification request. OCWD Water Issues Committee has since endorsed such a resolution and this resolution is expected to be adopted by the full OCWD Board this evening, July 20, 2016. A copy of the proposed Resolution is attached for your review (“**Exhibit 2**”). This Resolution should satisfy any perceived deficiencies with the City’s request. OCWD has submitted its own request to DWR to modify the boundaries of Basin 8-1. These two requests are consistent with each other and should be considered together in accordance with Section 343.6 of the California Code of Regulations.

From the City’s point of view the DWR processing of its Basin Boundary Request was flawed. It seems that DWR is more concerned with preserving the integrity of Bulletin 118 than concerned with carrying out its mandate under SGMA to facilitate sustainable groundwater management at the local level. Further, the City believes that DWR was not forthcoming with its reasons for determining the City’s request to be “incomplete” and, in fact, informally stated different reasons at different times (see Exhibit 1). DWR failed to adequately communicate its reasons and did not engage in any collaborative exchange to advance the intents and purposes of SGMA. DWR’s processing of the City’s Basin Boundary Modification request did not facilitate the City’s compliance with SGMA and seems to have deliberately obstructed the City’s efforts to protect its local water supply as authorized by SGMA.

DWR’s wrongful refusal to recognize the La Habra Basin as a separate basin, apart from the balance of Basin 8-1, also has interfered with OCWD’s efforts to establish its “alternative submittal” over the portion of Basin 8-1 within OCWD’s boundaries.

The City has managed the La Habra Basin for decades and separating it from the balance of Basin 8-1 will further promote SGMA’s intent to enhance local management of the State’s groundwater basins. [Water Code §10720.1.] In handling the City’s request, DWR has failed in its duty to carry out the intent of SGMA.

Thank you for your time and consideration of this important matter. Please feel free to contact me with any comments, questions, or concerns.

Very truly yours,  
KIDMAN LAW LLP



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# **EXHIBIT 1**

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May 18, 2016

Mr. Spencer Kenner  
Chief Counsel  
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P.O. Box 942836  
Sacramento, CA 94236

*Via U.S. Mail and Email*  
Spencer.Kenner@water.ca.gov

*RE: City of La Habra, Bulletin 118, Basin 8-1 Boundary Modification*

Dear Mr. Kenner:

Kidman Law LLP represents the City of La Habra ("City") in regard to compliance with the Sustainable Groundwater Management Act ("SGMA"). The City is a local agency which has requested modification of Basin 8-1. The Department of Water Resources ("DWR"), without officially stating its reasons, has not processed the City's request. In the meantime, DWR is currently processing a different request by Orange County Water District ("OCWD") to modify Basin 8-1 boundaries.

In accordance with Section 343.6 of the California Code of Regulations, the City requests that DWR process both the La Habra and OCWD basin boundary modification requests together because: (1) the City's request and the request of OCWD both relate to Basin 8-1, and (2) the City believes there is no statutory basis for the Department to delay processing the City's requests for basin boundary modification.

**I. THE LA HABRA GROUNDWATER BASIN**

The City is a local agency authorized to comply with and to implement SGMA (WC §10721(n)). The City overlays a groundwater unit known as the La Habra Basin. According to DWR Bulletin 118, La Habra Basin is part of the "Orange County Coastal Basin" ("Basin 8-1"). However, since long before Bulletin 118, and to this day, La Habra Basin has been recognized as a separate hydrogeologic unit, apart from the balance of Basin 8-1.

Moreover, the great bulk of Basin 8-1 is within the jurisdictional boundaries of OCWD, but the La Habra Basin is completely outside the jurisdictional boundaries of OCWD and receives no benefits from the facilities, programs, and activities of OCWD. Moreover the City does not extract, and has no plans to extract, groundwater from the portion of Basin 8-1 that is within the boundaries of OCWD.

## II. THE CITY'S REQUEST FOR MODIFICATION OF BASIN 8-1 BOUNDARIES

The City timely submitted a basin boundary modification request to DWR on March 10, 2016. La Habra's boundary modification request meticulously complied with the requirements of DWR's basin boundary modification regulations. The request is based on two separate, but independently sufficient grounds: (1) La Habra Basin is hydrogeologically distinct from Basin 8-1, and (2) La Habra Basin is entirely outside the jurisdictional boundaries of OCWD, which overlays most of Basin 8-1.

## III. DWR HAS DECLINED TO PROCESS THE CITY'S REQUEST

DWR has designated the City's request for boundary modification as "not complete" and has declined to process the request further. DWR has not provided official notice or rationale for its refusal to process the City's request. The City does not know if DWR's refusal to accept its request as complete is due to mistaken interpretation of SGMA or policy direction (e.g. to avoid the proliferation of new basin designations). In either case, DWR's refusal to process the City's request appears to be outside of DWR's statutory authority under SGMA.

Informally, DWR representatives have suggested three grounds for not processing the City's request:

- (A) The City's basin boundary modification request cannot be processed until the City's separate Groundwater Sustainability Agency ("GSA") designation is deemed "complete".
- (B) The City's jurisdictional basin boundary modification request is insufficient because the City has not obtained concurrence from three-quarters of the local agencies affected by the request. (This purported reason for not processing the City's "jurisdictional" boundary modification request has no application to the City's separate, concurrent request for a "scientific" basin boundary modification.)
- (C) The City's basin boundary modification request is unnecessary because the City can operate as a GSA without modification of Basin 8-1 boundaries.

Each of these reasons, if indeed they represent DWR's official position, is outside of DWR's authority under SGMA. Moreover, these reasons do not gain gravitas cumulatively.

### A. BASIN BOUNDARY MODIFICATION MAY BE REQUESTED BY ANY LOCAL AGENCY, REGARDLESS OF GSA STATUS

SGMA does not require a local agency to first become a GSA as a predicate to submitting a request for basin boundary modification. To the contrary, SGMA allows a basin boundary modification request to be submitted by any "local agency," without regard to the agency's status as a GSA.

WC §10722.2 provides that a basin boundary modification can be requested by any "local agency": "A local agency...may request that the department revise the boundaries of a basin...."

In contrast, the definition of GSA in WC §10721(j) is a wholly included sub-category of local agency.

Had the legislature intended to limit authorization to request basin boundary modification to GSAs, it could have done so. The express statutory authorization for “local agencies” to request basin boundary modification under SGMA, excludes the alternative interpretation that basin boundary modification can only be requested by GSAs.

It is noted that the DWR SGMA website shows that OCWD’s request for modification of Basin 8-1 boundaries was submitted 19 days after the City’s request and has been accepted as “complete” by DWR, *but OCWD has not been established as a GSA*. Like the City, at this point, OCWD is a “local agency” for purposes of SGMA (WC §10723(c)(1)).

It is also noted that Chapter 3 of SGMA, dealing with basin boundaries, is located ahead of Chapter 4 of SGMA, dealing with establishment of GSAs. This suggests a legislative logic that basin boundaries may be a predicate to GSA formation, rather than vice versa.

**B. THREE OUT OF FOUR AFFECTED LOCAL AGENCIES HAVE CONSENTED TO CITY’S “JURISDICTIONAL” BASIN BOUNDARY MODIFICATION; THE FOURTH HAS NOT OBJECTED.**

After consultation, the Cities of La Habra, Brea and Fullerton, all local agencies affected by the City’s jurisdictional basin boundary modification request, have concurred in the City’s request. OCWD has participated in the consultation and neither concurred nor objected to the City’s request.

However, DWR representatives have suggested that three-quarters of all the local agencies overlaying any portion of Basin 8-1, including more than twenty local agencies within the jurisdictional boundaries of OCWD, must concur in the City’s requested jurisdictional boundary change. If this is DWR’s official position, it is not supported by the statutory language of SGMA. SGMA expressly designates OCWD as the “exclusive” local agency within its jurisdictional boundaries for compliance with SGMA. WC §10723(c) provides in pertinent part:

“Except as provided in paragraph (2), the following agencies (including OCWD) created by statute to manage groundwater shall be deemed the *exclusive local agencies within their respective statutory boundaries with authority to comply with this part*<sup>1</sup>.”

The emphasized language clearly excludes other local agencies within OCWD’s boundaries from participating in SGMA and relieves the City from any requirement to receive concurrence from these twenty other agencies in order to comply with SGMA. OCWD overlays 89% of Basin 8-1 and is the only agency, besides the three cities (La Habra, Brea, and Fullerton), which can object to the City’s request for basin boundary modification.

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<sup>1</sup> “This part” means all of SGMA (WC §10720 et seq.) and is not limited to Chapter 4 where WC §10723(c) appears.

**C. THE CITY'S REQUESTED BASIN BOUNDARY MODIFICATION IS CONSISTENT WITH, AND WILL PROMOTE, THE PURPOSES AND INTENT OF SGMA**

A DWR representative has suggested that after the City is recognized as a GSA it will be unnecessary for La Habra Basin to be established as a basin separate and apart from the Basin 8-1. This is not a sufficient reason for DWR to withhold the City's request for a basin boundary modification to separate the La Habra Basin from Basin 8-1. There are substantive and procedural reasons for the City to prefer to be the sole GSA for an entire basin, as opposed to a GSA over 6% of a larger basin, especially since the bulk of the larger basin is both scientifically and jurisdictionally distinct from the La Habra Basin.

SGMA clearly offers alternative approaches to establishing Groundwater Sustainability Plans ("GSP"). The City's request for a basin boundary modification would establish La Habra Basin as a basin separate and apart from the balance of Basin 8-1. The GSP alternative under WC §10727(b)(1) is preferred by the City:

"A single plan covering the entire basin developed and implemented by one groundwater sustainability agency."

DWR's informal refusal to process the City's request for a basin boundary modification to establish La Habra Basin as a separate basin, condemns the City, as a GSA, to participate as a very junior partner within the confines of subsections (b)(2) or (b)(3) of WC §10727.

Unlike Basin 8-1, the La Habra Basin is not in overdraft. La Habra Basin is already sustainably managed by the Cities of La Habra and Brea. The cities have invested heavily in the La Habra Basin as an important, sustainable water resource for their futures.

By way of a Memorandum of Agreement, the Cities of La Habra and Brea have agreed that La Habra shall be the GSA over the La Habra Basin. Each City has adopted a policy to preserve the autonomy of La Habra Basin. This policy objective is recognized by SGMA. No objective of SGMA is promoted by allowing GSAs outside of the La Habra Basin to participate in the sustainable management of the La Habra Basin.

The City acknowledges SGMA's requirement for consultation and coordination between neighboring groundwater basins. As explained above, however, the cities of La Habra and Brea prefer this independent but cooperative relationship versus being forced to develop and share in the cost of a joint GSA or a joint alternative plan as proposed by OCWD.

**IV. DWR HAS A CLEAR MINISTERIAL DUTY UNDER SGMA TO PROCESS THE CITY'S BASIN BOUNDARY MODIFICATION AND TO CONSIDER THE TWO PENDING REQUESTS TO MODIFY BASIN 8-1 BOUNDARIES TOGETHER.**

The reasons why DWR declined to process the City's basin boundary modification request are vague and uncertain to the City. There has been no formal explanation for the delay in, or refusal to process, the City's request. The reasons discussed above have been informally communicated by DWR employees to the City. As discussed, the stated reasons do not appear sufficient under SGMA to justify holding the City's request. DWR's failure to state formal reasons, if any it has, for refusing to process La Habra's basin boundary modification is arbitrary.

DWR should immediately proceed with processing the City's request. In accordance with Section 343.6 of the California Code of Regulations, DWR should hold processing OCWD's request to modify the boundaries of Basin 8-1 until it can be considered alongside the City's request. Section 343.6 states in relevant part that DWR "may require the combination of boundary modification requests to avoid duplicative or conflicting requests, and may consider and adopt all or any proposals contained in a combined boundary modification request."

The City has no objections to OCWD's requested basin boundary modifications for Basin 8-1. OCWD has expressed no objections to the City's request. However, for the sake of efficiency and to avoid potential inconsistency, the two basin boundary modification requests related to Basin 8-1 should be considered together and presented jointly to the California Water Commission.

Thank you for your time and consideration. Please feel free to contact me with any comments, questions, or concerns.

Very truly yours,  
KIDMAN LAW LLP



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# **EXHIBIT 2**

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE ORANGE COUNTY WATER DISTRICT  
STATE OF CALIFORNIA**

**RESOLUTION OF SUPPORT FOR CITY OF LA HABRA'S JURISDICTIONAL MODIFICATION  
TO BULLETIN 118 BASIN BOUNDARY PURSUANT TO EMERGENCY BASIN BOUNDARY  
REGULATIONS**

(CCR, Title 23, Division 2, Chapter 1.5, Subchapter 1)

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, Governor Jerry Brown signed into law Senate Bills 1168 and 1319 and Assembly Bill 1739, collectively comprising the Sustainable Groundwater Management Act (SGMA), which took effect on January 1, 2015; and,

**WHEREAS**, the SGMA required DWR to develop emergency regulations describing the process for requesting changes to Bulletin 118 groundwater basin boundaries; and,

**WHEREAS**, the emergency regulations were adopted and incorporated into the CCR in Title 23, Division 2, Chapter 1.5, Subchapter 1; and,

**WHEREAS**, the Orange County Water District submitted a request for scientific external boundary modifications to DWR's Bulletin 118 Basin 8-1 of the Coastal Plain of Orange County Groundwater Basin (OC Basin or Basin 8-1); and,

**WHEREAS**, the City of La Habra collaborated with, and supported the Orange County Water District on scientific boundary modifications to the OC Basin; and,

**WHEREAS**, the City of La Habra desires to pursue a jurisdictional boundary modification that follows the city limits of La Habra and Brea and is outside of Orange County Water District's jurisdictional boundaries; and,

**WHEREAS**, the City of La Habra has agreed to participate in the Orange County Water District's efforts to comply with SGMA through submission of an Alternative that will cover the entire OC Basin if La Habra's basin modification is not approved by DWR on or before January 1, 2017; and,

**WHEREAS**, La Habra's agreement to participate in an Orange County Water District managed Alternative until such time as the OC Basin is modified will facilitate the District's timely submission of an Alternative to DWR prior to January 1, 2017; and,

**WHEREAS**, the DWR requires support from affected agencies within the same basin or sub-basin for jurisdictional boundary modifications; and,

**WHEREAS**, District staff do not believe that this proposed boundary modification will have any adverse effect on Orange County Water District.

**NOW, THEREFORE**, the Orange County Water District Board of Directors does hereby resolve as follows:

The Orange County Water District supports the City of La Habra's request for an internal jurisdictional boundary modification in the OC Basin that follows the city limits of La Habra and Brea and is outside of Orange County Water District's jurisdictional boundary.

**PASSED, APPROVED, AND ADOPTED** by the Board of Directors of the Orange County Water District, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

**ACCEPTED AND AGREED:**

JANICE DURANT, DISTRICT SECRETARY OF THE ORANGE COUNTY WATER DISTRICT

By:

By:

President Cathy Green, Board of Directors

**APPROVED AS TO FORM:**

JOEL KUPERBERG

GENERAL COUNSEL

By: