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ENVIRONMENTAL
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD

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FOR THE STATE OF WASHINGTON

1/28/11

ROSEMERE NEIGHBORHOOD ASSOCIATION,
COLUMBIA RIVERKEEPER, and NORTHWEST)
ENVIRONMENTAL DEFENSE CENTER,)

PCHB NO. 10-103

Appellants,

STIPULATED [~~PROPOSED~~] FINAL
ORDER

vs.

WASHINGTON STATE DEPARTMENT OF
ECOLOGY and CLARK COUNTY,

Respondents.

This case involves an appeal of a formal modification of a National Pollutant Discharge Eliminations System ("NPDES") stormwater general permit. The permit modification formalizes the substance of an Agreed Order between the Washington State Department of Ecology and Clark County governing Clark County's compliance with the terms of the Phase I stormwater general permit. In Rosemere Neighborhood Association, Columbia Riverkeeper, and Northwest Environmental Defense Center v. Washington State Department of Ecology and Clark County (PCHB No. 10-013), a majority of this Board found several reasons to find that the Agreed Order between Clark County and Ecology was unlawful. One board member concurred in part and dissented in part from the majority opinion. The Board reversed and remanded the Agreed Order.

The provisions in the permit modification that are the subject of this appeal are substantively identical to the provisions in the Agreed Order that the same parties appealed in

1 PCHB 10-013. All parties agree that no additional hearing or proceedings are required in this
2 case. Instead, the Board hereby finds that the permit modification is invalid for the same reasons
3 identified in our earlier ruling on the Agreed Order, subject to the same concurrence and dissent.
4 To the extent the permit modification included other provisions unrelated to Clark County's
5 alternative flow control program, those provisions were not challenged by any party and this
6 order does not affect them.

7 Accordingly, for the reasons discussed in our Findings of Fact, Conclusions of Law and
8 Order in PCHB No. 10-013, the permit modification that is the subject of this appeal is
9 REVERSED and REMANDED to Ecology for further actions consistent with that opinion and
10 this Order.

11 SO ORDERED this 1st day of February, 2011.

12 **POLLUTION CONTROL HEARINGS BOARD**

13
14 Andrea M. Doyle
15 ANDREA MCNAMARA DOYLE, Presiding

16 William H. Lynch
17 WILLIAM H. LYNCH, Member

18 Kathleen D. Mix
19 KATHLEEN D. MIX, Member

1 Submitted by:

2 
3 ~~JAN HASSELMAN (WSB #29107)~~

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13 *Association, Columbia Riverkeeper, and Northwest*
14 *Environmental Defense Center*