CS

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Via Certified Mail -
Return Receipt Requested

February 3, 2016

Mr. Regan M. Candelario
City Manager
City of Fortuna
621 11th St.
Fortuna, CA 95540

Mr. Dennis Ryan
Director of Public Works
City of Fortuna
180 Dinsmore Dr.
Fortuna, CA 95540

Members of the City Council
City of Fortuna
621 11th St.
Fortuna, CA 95540

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Calendario, Mr. Ryan, and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq*., that River Watch alleges are occurring as a result of operations at the City of Fortuna's Wastewater Treatment Plant ("Facility") including its associated sewage collection system.

River Watch hereby places the City of Fortuna ("the City), as owner and operator of the Facility, on notice that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, North

Coast Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations set forth in the City's National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions (*see* CWA § 301(a), 33 U.S.C. § 1311(a)). One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a discharger in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations at the Facility in the region at issue in this Notice is the North Coast Regional Water Quality Control Board ("RWQCB-R1").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated

River Watch identifies in this Notice the City's alleged violations of permit conditions or limitations set forth in RWQCB-R1 Order No. R1-2007-0007, amended in January of 2011 by Order No. R1-2011-0004, NPDES No. CA0022730 (*Waste Discharge Requirements for the City of Fortuna Municipal Wastewater Treatment Plant, Humboldt County*), as being

violated. A violation of the NPDES permit is a violation of the CWA. The City is also a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. Failure to comply with the Statewide WDR is a major cause of sewage system overflows ("SSOs"). The Statewide WDR is fully incorporated in Order No. R1-2011-0004.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from February 1, 2011through February 1, 2016, the City violated the Act and the following identified requirements of its Permit with respect to its sewage collection system. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

a. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections.

River Watch contends untreated sewage is discharged from cracks, displaced joints eroded segments, etc., of the City's collection system into groundwater hydrologically connected to surface waters, including Strongs Creek, a tributary to the Eel River, and other tributaries of the Eel River – all waters of the United States. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of adjacent to defective sewer lines in other systems have verified the contamination of adjacent water with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, "inflow and infiltration" ("I/I") data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens, and other human markers such as caffeine. Any exfiltration found from the City's collection system is a violation of the City's NPDES permit and thus the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the City's collection system to determine the location and extent of exfiltration.

b. *Collection System Surface Discharges Caused by Sanitary Sewer Overflows*

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching the Facility, are alleged to have occurred both on the dates identified in the California Integrated Water Quality System's ("CIWQS") Public SSO Reports (15 separate violations) and on dates when no reports were filed by the City. The below-listed violations are reported by the RWQCB-R1 and evidenced in the CIWQS SSO Reporting Database Records. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

15 SSOs which were reported as reaching a water of the United States, as evidenced in CIWQS and the records of the City:

Releases Reported. As recorded in CIWQS Public SSO Reports, the City has experienced at least 15 SSOs with a combined volume of at least 507,500 gallons. Of the total volume, 205,170 gallons were reported as having reached surface waters, and 2,160 gallons were unaccounted for or discharged to other than a surface water.

Discharges to Surface Waters. River Watch alleges that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching surface waters did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the City's SSO reports state the estimated start time of the SSO as later than the time when the reporting party first noticed the SSO. Studies demonstrate that most SSOs are noticed significantly after they have begun. The City reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

The Statewide WDR requires that sewer system operators report SSOs to the CIWQS and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The City's reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is not conducting sampling on most SSOs.

The following are examples of the City's failure to comply fully with these requirements.

- On January 3, 2011, a spill occurred at 180 Dinsmore Drive in Fortuna (CIWQS Event ID # 760180). The SSO report lists the total spill volume as 67,000 gallons, with 65,000 gallons reaching Strongs Creek and the Eel River, and 2,000 gallons unaccounted for. The report indicates the spill beginning at 19:29 pm on January 3, 2011 and the agency notification at 08:45 am on the following day. According to the report, the operator arrived at 08:40 am, 5 minutes before the spill was reported, and the spill end time was the same as the operator arrival time. This incident was noticed and responded to approximately 18 hours and 16 minutes after the spill occurred. Item No. "44 – Explanation of Volume estimation method used" on the CIWQS report was "null."

- The SSO Report for a spill occurring August 31, 2015 (CIWQS Event ID # 817767) lists a start time of 12:30 pm, agency notification time of 12:30 pm, and operator arrival time of 12:40 pm, 10 minutes after notification time. The estimated spill end time is 1:30 pm, one hour after operator arrival time. The SSO report listed the total spill volume as 910 gallons, 900 of which reached Rohner Creek.

- On December 23, 2013, a spill occurred at 195 S. Fortuna Boulevard (CIWQS Event ID # 802343). The SSO report lists the estimated spill start time as 09:30 am, the notification time as 09:35 am, the operator arrival time as 09:45 am, and the spill end time as 09:55 am. The spill end time indicates the spill was contained within 10 minutes after the agency was notified, including operator arrival time. The SSO Report lists the spill volume as 1,500 gallons all of which reached the Eel River.

A careful review of the above indicates that given the unlikely accuracy of the times given on these reports, it is difficult to consider the stated volumes as accurate. As the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration of the spill event, the practice of estimating a later than actual start time results in underestimating both the duration and the volume of a spill.

Estimating Volume. River Watch's expert has also determined that the City's method for estimating flow rate underestimates the volume of a SSO. A review of the service records calls into question the City's methodologies for determining the volume of SSOs captured.

The City's reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the City also fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's *"Report to Congress on the Impacts of SSOs"* identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the City's SSOs. There is no record of the City performing any analysis of the impacts of SSOs on critical habitat of protected species under the federal Endangered Species Act ("ESA") nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

c. Discharges of Waste To Receiving Waters During The Non-Discharge Season

2 Effluent Discharges Violating the Non-Discharge Season: June 22, 2013, August 31, 2015

The City has three ponds in which it stores and releases treated wastewater. Mass balance analysis reveals that these ponds are not integral and leak into the surrounding ground, groundwater and adjacent waters (Strongs Creek and the Eel River). Leaking ponds are neither described nor regulated in the City's permit. Leaking ponds create pollution, as well as contamination or nuisance as defined by California Water Code § 13050. As the ponds leak continually, the City is discharging during the discharge prohibition period of May 15 through September 30. Therefore, the City is violating its permit conditions each and every day during the non-discharge season that the ponds contain wastewater.

The City of Fortuna is located within the Ferndale Hydrologic Sub-Area of the Lower Eel River Hydrologic Area within the Eel River Hydrologic Unit. Main tributaries to the main stem of the Eel River are the South Fork Eel, the Middle Fork Eel, the North Fork Eel, the Van Duzen River, Outlet, Yager, Larabee, Bull and Salmon Creeks. The upper watershed is mountainous and vegetated by Redwood and Douglas Fir interspersed with some hardwoods and meadows. Toward the coast, the river spreads out on a coastal plain where the Salt River joins it in the Eel River estuary. The Eel River is designated as a Critical Coastal Area. The Eel River is CWA §303(d) listed as impaired for sediment and temperature.

The Eel River Watershed management Area (WMA) encompasses roughly 3,684 square miles in highly erodible soils in the steep coastal mountains of the region, supporting

a variety of water uses including municipal and agricultural supply systems, salmonid fisheries, and recreation. The Eel River WMA is a prime recreational area boasting numerous state and private campgrounds along its length with both water contact and non-contact uses such as boating and swimming. The Eel River is the third largest producer of salmon and steelhead in the State of California and supports a large recreational fishing industry. The erodible soils, steep terrain, and other contributing factors evoke a high level of concern for the anadromous fishery resource. Coho salmon, a native species of the Eel River watershed, was listed as endangered under the ESA in 1997.

The City has a history of discharges of wastewater from its reclamation sites during the discharge prohibition period of May 15 through September 30. For example, as reported to CIWQS, on August 31, 2015, a debris-clogged gravity mainline discharged approximately 900 gallons of raw sewage into Rohner Creek, tributary of the Eel River. On June 22, 2013, grease deposition at a mainline, 2947 Cheryl Lane, resulted in the discharge of approximately 250 gallons of raw sewage into an open field that is part of the Eel River Groundwater Management Area. A review of the spill amount on CIWQS, however, states "null" as the "Explanation of volume estimation method used."

The City's unpermitted discharges during the non-discharge season violate the following permit conditions:

- Order No. R1-2007-0007, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Discharger or not within the reasonable contemplation of the Regional Water Board is prohibited."

- Order No. R1-2007-0007, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by Water Code section 13050 is prohibited."

- Order No. R1-2007-0007, Discharge Prohibition III. C: "The discharge of sludge or digester supernatant is prohibited, except as authorized under Section VI.C.5.d. Solids Disposal and handling Requirements."

- Order No. R1-2007-0007, Discharge Prohibition III. E: "Discharges of waste to the Eel River or its tributaries are prohibited during the period May 15 through September 30 each year."

- Order No. R1-2007-0007, Discharge Prohibition III. I: "The discharge of waste at any point not described in Finding II.B. or authorized by any State Water Board or other Regional Water Board or other Regional Water Board permit is prohibited."

- Order No. R1-2007-0007, Receiving Water Limitations V. Groundwater Limitations B. 1: "The collection, storage, use, and disposal of wastewater or recycled water shall not cause or contribute to a statistically significant degradation of groundwater quality."

- Order No. R1-2007-0007, Receiving Water Limitations V. A.11: "The discharge shall not cause the receiving waters to contain toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life."

- Order No. R1-2011-0004, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Discharger or not within the reasonable contemplation of the Regional Water Board is prohibited."

- Order No. R1-2011-0004, Discharge Prohibition III.B: "Creation of pollution, contamination, or nuisance, as defined by Water Code section 13050 is prohibited."

- Order No. R1-2011-0004, Discharge Prohibition III.C: "The discharge of sludge or digester supernatant is prohibited, except as authorized under Section VI.C.5.d. Solids Disposal and Handling Requirements."

- Order No. R1-2011-0004, Discharge Prohibition III. E: "Discharges of waste to the Eel River or its tributaries are prohibited during the period May 15 through September 30 each year."

- Order No. R1-2011-0004, Discharge Prohibition III. I: "The discharge of waste at any point not described in Finding II.B. or authorized by any State Water Board or other Regional Water Board or other Regional Water Board permit is prohibited."

- Order No. R1-2011-0004, Receiving Water Limitations V. Groundwater Limitations B. 1: "The collection, storage, use, and disposal of wastewater or recycled water shall not cause or contribute to a statistically significant degradation of groundwater quality."

- Order No. R1-2011-0004, Receiving Water Limitations V. A.11: "The discharge shall not cause the receiving waters to contain toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life."

d. Violation of Effluent Limitations

The City's SMRs identify the following violations of effluent limitations imposed under its NPDES permit:

59 Effluent discharges exceeding the Permit limit for chlorine (*Total min. Residual limit of 1.5 mg/L)* - in violation of Order No. R1-2011-0004, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Effluent Limitations, Table 6, Effluent Limitations, and Order No. R1 2011-0004, IV. Effluent Limitation and Discharge Specifications, VI. Provisions A.2.A., on the following dates:

January 5, 2015, April 12, 2015, May 19, 2015, May 20, 2015, June 2, 2015, July 1,2015, July 9, 2015, September 6, 2015, September 7, 2015, September 8, 2015, September 10, 2015, September 11, 2015, October 26, 2015, February 5, 2014, February 15, 2014, July 8, 2014, , July 9, 2014, September 3, 2014, September 4, 2014, September 8, 2014,September 20, 2014, September 21, 2014, October 7, 2014, December 19, 2014, February 2, 2013, March 4, 2013, March 26, 2013, May 5, 2013, May 21, 2013, June 2, 2013, August 7, 2013, August 8, 2013, August 24, 2013, September 10, 2013, September 26, 2013, October 1, 2013, October 3, 2013, December 10, 2013, January 1, 2012, January 1, 2012, January 17, 2012, January 18, 2012, January 23, 2012, January 30, 2012, February 28, 2012, March 22, 2012, April 22, 2012, April 23, 2012, May 9, 2012, May 22, 2012, June 1, 2012, July 19, 2012, August 6, 2012, September 10, 2012, September 25, 2012, October 20, 2012, October 22, 2012, November 3, 2011, and December 28, 2011.

In addition, the City's SMRs identify numerous intermittent but persistent violations, including exceedances of coliform, dichlorobromethane, and pH, all of which indicate a lack of control of the City's collection system.

e. Nuisance; Impacts to Beneficial Uses

The City's NPDES permit prohibits the discharge of wastes that lead to the creation of a "nuisance" as defined under the California Water Code. The term "nuisance" is defined in California Water Code § 13050(m) as anything which meets all of the following requirements: 1) "is injurious to health, or is indecent or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property", 2) "affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal"; and, 3) "occurs during, or as a result of, the treatment or disposal of wastes."

Strongs Creek, and the Eel River, which flows directly to the Pacific Ocean, have many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching Strongs Creek, and the Eel River cause prohibited pollution by unreasonably affecting the beneficial uses of these waters. The City is also required by its NPDES permit to comply with narrative standards as set forth in the Basin Plan, used when testing by numeric standards would be inadequate or impractical. Narrative standards include:

- The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5.

- The discharge shall not cause the receiving waters to contain floating materials, including, but not limited to, solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

- The discharge shall not cause the receiving waters to contain taste-or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

- The discharge shall not cause coloration of the receiving waters that causes nuisance or adversely affects beneficial uses.

- The discharge shall not alter the natural temperature of the receiving waters.

- The discharge shall not cause the receiving waters to contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance or that otherwise adversely affect beneficial uses.

River Watch has found nothing in the public record to demonstrate that the City has monitored for and complied with these narrative standards. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around Strongs Creek and the Eel River.

3. The Person or Persons Responsible for the Alleged Violations

The entity responsible for the alleged violations identified in this Notice is the City of Fortuna, as owner and operator of the Facility and its associated collection system, as well as City employees responsible for compliance with the City's NPDES Permit and the CWA.

4. The Location of the Alleged Violation

The location or locations of the various violations are identified in records created and/or maintained by or for the City which relate to the Facility and related activities as described in this Notice.

Incorporated in 1906, the City of Fortuna, home to approximately 11, 902 residents, is located eight miles inland from the Pacific Ocean and adjacent to the scenic Eel River in Humboldt County. Covering approximately five square miles, it is bounded by the flood plain of the Eel River to the west, by the bluffs adjacent to the Van Duzen River to the south, and by the foothills of the Coastal Range to the east and north.

The City owns and operates the Facility and its associate collection system and disposal facilities. Approximately 4,747 sewer connections collect sewage in the City's service area from approximately 7,000 residential, commercial, and institutional users in the City, and 4,000 residential users in the Rohnerville-Campton Heights area. The entire system is managed and operated by approximately 72 full time employees. The current wastewater treatment system consists of screening, grit removal, influent pumping, primary sedimentation, activated sludge processes, secondary sedimentation, chlorination and de-chlorination, as well as anaerobic biosolids digestion, de-watering and composting. The Facility is currently designed to treat an average dry-weather flow of 1.5 million gallons per day ("mgd") and reports an influent peak wet weather flow capacity of 7.0 mgd. Peak influent flows over 34 mgd are diverted to three equalization ponds referenced above, and returned for treatment during low flow periods.

From October 1 through May 14 each year, wastewater may be discharged through Discharge Point 001 to Strongs Creek within the Ferndale Hydrologic Sub-Area. From May 15 through September 30, treated wastewater is discharged to the three ponds located adjacent to the Eel River at Discharge Point 003. The solids handling facilities are designed to accommodate the approved General Plan build out with a capacity of 1.9 mgd. Biosolids generated during the treatment process are thickened, anaerobically digested, and de-watered using a belt-filter press. De-watered biosolids are composted to "Exceptional Quality Class" requirements for re-use as a soil amendment in accordance with state and federal requirements.

The entire treatment plant site slopes to the southwest. Stormwater that falls on the site drains to the equalization ponds. At low flow periods drainage is returned to the wastewater treatment process for treatment before being discharged in accordance with Order No. R1-2011-0004. Storm drains typically flow into creeks that have already passed through a variety of land uses including natural, agricultural, industrial and urban, and often through more than one permit jurisdiction. As an example, a local creek begins in a federally-

administered and protected area, the Headwaters Forest Reserve, now part of the National Landscape Conservation System, then passes through state-owned land, private industrial timberlands and agricultural areas before entering City limits.

Stormwater that runs off the streets contains a broad set of pollutants. The City's stormwater drainage system serves the incorporated City and environs (11,350 acres total). This consists of a downtown system, several peripheral subdivision systems and outlying rural systems. The downtown drainage system is composed primarily of reinforced concrete pipe and corrugated metal pipe with diameters ranging from 8 to 54 inches. Older box culverts and cross drains are found at intersections. The subdivision drainage systems also include polyethylene pipes diameters ranging from 12 to 48-inches. The outlying rural systems are composed largely of roadside ditches and culverts. Storm water runoff from these systems flows by gravity into Rohner Creek, Hillsed Creek, Strongs Creek, Jameson Creek, and Mill Creek before entering the main stem of Strongs Creek and discharging to the Eel River. Except for the lower reaches of Strongs Creek, which is partially channelized, the City's creeks remain in their natural state.

According to the hydraulic analysis provided in the City's Storm Drainage Master Plan (2005), 79 drainage structures within the City are considered deficient (i.e. are undersized for the 25-year design flow and/or back watered pipes which are causing or have the potential to cause flooding problems).

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is from February 1, 2011, to February 1, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving Notice is California River Watch, referred to herein as "River Watch". River Watch is an Internal Revenue Code section 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's Southern California office is 7401 Crenshaw Blvd. # 422, Los Angeles, CA 90043. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks,

streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch members residing and recreating in the area of the Facility and the surrounding watershed have a vital interest in bringing the City's operations at the Facility into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to:

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RECOMMENDED REMEDIAL MEASURES

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the "National Association of Sewer Service Companies." The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage

of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect

II. REMEDIAL MEASURES

River Watch looks forward to meeting with City staff to tailor remedial measures to the specific operation of the City's wastewater treatment and collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan:

A. Sewage Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the City's sewage collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the City will:

   i. Repair or replace all sewer lines found to be Significantly Defective;

   ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;

   iii. Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five

(5) years to ascertain the condition of the sewer line segment. If the City determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within three (3) years of the rating determination.

5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. Said program to begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS Reporting System the following items:

   i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

   ii. For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

   iii. Taking of photographs of the manhole flow at the SSO site using the North Coast Method array, if applicable to the SSO; or other photographic evidence that may aid in establishing the spill volume.

2. Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated wastewater enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. The City shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the

downstream sample than in the upstream sample, the City will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.

3. Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on creeks, rivers, wetlands and areas of the Eel River, Strongs Creek, and other tributaries adjacent to sewer lines, to test for sewage contamination from exfiltration.

C. Lateral Inspection/repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

   i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

   ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

   iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to nonresidential uses where the structure served has been vacant or unoccupied for more than three (3) years;

   iv. Upon replacement or repair of any part of the sewer lateral;

   v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,

vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

D. Narrative Standard Compliance

The City shall develop and implement a means for verifying compliance with the narrative standards in its NPDES permit, specifically Section V. Receiving Water Limitations, and Section A. Surface Water Limitations.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected community. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See* also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day "notice period"** to promote resolution of disputes. River Watch strongly encourages the City to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the City is in compliance with the strict terms and conditions of its Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

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