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Via Certified Mail
Return Receipt Requested

February 15, 2016

Member of the Board of Directors
Napa Sanitation District
1515 Soscol Ferry Road
Napa, CA 94558

Napa Sanitation District
Treatment Plant
Attn: Plant Manager and Operations Supervisor
1515 Soscol Ferry Road
Napa, CA 94558

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

Dear Members of the Board of Directors, Owners and Managing Agents:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with 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 Soscol Water Recycling Facility/Treatment Plant ("Plant") including its associated sewage collection system.

River Watch hereby places the Napa Sanitation District ("the District"), as owner and operator of the Plant, on notice that following the expiration of 60 days from the date of this Notice by the District, 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 District 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

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Control Board, San Francisco Bay Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations in the District'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 District's operations at the Plant in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

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 District 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 District's alleged violations of permit conditions or limitations specifically set forth in RWQCB Order No. R2-2011-0007, NPDES No. CA0037575 (*Waste Discharge and Producer/User Water Recycling Requirements for the Napa Sanitation District*), as being violated. A violation of an NPDES permit is a violation of the CWA. The District 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.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from February 1, 2011 through February 1, 2016, the District 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 underground discharges, in which untreated sewage is discharged from the collection system prior to reaching the Plant, are alleged to have occurred throughout the period February 1, 2011 through February 1, 2016. Discharges are alleged to have occurred from sewer lines in the collection system located within 200 feet of a surface water, and identified in the District's Capital Improvement Plan(s) as requiring structural repair or replacement; whenever pressure in said sewer lines was sufficient to cause discharges through structural defects in the lines.

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.

River Watch sets forth the following narratives following a review of public records, including the District's Self Monitoring Reports, regulatory enforcement orders relating to the operations at the Plant, studies prepared for the District, and the District's Sewer System Overflow Reports relating to the Plant and its associated sewage collection system. Additional records and other public documents in the District's possession or otherwise available to the District regarding its NPDES Permit (all of which are hereby incorporated by reference) may, upon discovery, reveal additional violations.

During the course of discovery River Watch will test surface waters adjacent to sewer lines in the District's collection system located within 200 feet of a surface water, and identified in the District's Capital Improvement Plan(s) as requiring structural repair or replacement, to determine the location and extent of exfiltration. Evidence of exfiltration can also be supported by reviewing mass balance data and "inflow and infiltration" ("I/I") data. Said discharges were in violation of the following NPDES Permit Prohibitions:

- Order No. R2-2011-0007, Discharge Prohibition III.D: Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

b. <u>Pond Discharges to the Napa River During Non-Discharge Season Caused by Underground Exfiltration</u>

During the wet season, November 1 through April 30, the District's treatment processes consist of headworks, primary clarification, secondary treatment through activated sludge systems and/or the oxidation pond system, secondary clarification, and disinfection. Following primary clarification, a diversion structure splits the flow; up to 8 mgd of wastewater can be treated by the activated sludge system followed by secondary clarification. The remaining flow is directed to the oxidation pond system which consists of 4 oxidation ponds over 340 acres, followed by flocculation for algae removal and clarification. The oxidation ponds also serve as flow equalization ponds for peak wet season influent flows. The oxidation ponds are lined with Bay Mud, instead of an impermeable liner.

Ponds number 3 and 4 are immediately adjacent to the Napa River. River Watch contends that wastewater stored in the ponds leaks into soil and ground water and migrates to discharge into the Napa River in violation of the District's Permit prohibiting the discharge of wastewater to the Napa River during the non-discharge season. These violations occur every day during the non-discharge season – May 1 through October 31. The sole ground

water monitoring well is located at Pond number 1, a further distance from the Napa River. Therefore, there is no representative sampling to determine the presence of wastewater from the ponds in the ground water between the ponds and the River.

- Order No. R2-2011-0007, Discharge Prohibition III A.: Discharge of treated wastewater at a location or in a manner different from that described in this Order is prohibited.

- Order No. R2-2011-0007, Discharge Prohibition III E.: Discharge to the Napa River is prohibited during the dry weather period of May 1 through October 31, except for emergencies and only when authorized by the Executive Officer after the Discharger satisfies the conditions specified in the emergency discharge request procedure contained in Provision VI.C.6.c of this Order.

c. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage was discharged above ground from the collection system prior to reaching the Plant, are alleged to have occurred between February 10, 2011 to December 28, 2015, both on the dates identified in the California Integrated Water Quality System's ("CIWQS") Public SSO Reports (**18 separate violations**) and on dates when no reports were filed by the District. These violations are reported by the RWQCB and evidenced in the CIWQS SSO Reports database records. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

Releases Reported. As recorded in CIWQS Public SSO Reports, the District has experienced at least 525 SSOs between February 10, 2011 and December 28, 2015 with a combined volume estimated at 92,592 gallons – 75,210 of which were reported as having reached surface waters. As an example, on December 11, 2014 a spill occurred from a gravity main located at Solano at Dunhill in Napa County (CIWQS Event ID # 811493). The SSO Report lists the total estimated spill volume as 19,497 gallons, all of which was reported as reaching a separate storm drain which flows to a surface water body identified as Salvador Channel.

- Order No. R2-2011-0007, Discharge Prohibition III .D: Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

Mitigating Impacts. River Watch contends the District 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 District's SSOs. There is no record of the District 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.

The Statewide WDR requires the District 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. River Watch contends the District is not conducting sampling on most SSOs. For example, in the SSO Report of the spill referenced at CIWQS Event ID # 811493, the spill response was described as "Cleaned-Up; Mitigated Effects of Spill", with no further detail provided. No visual inspection results were reported, and no water quality samples taken.

- NPDES No. CA0037575, Section C.5.c.: "Implementation of the General Collection System WDRs requirements for proper operation and maintenance and mitigation of spills will satisfy the corresponding federal NPDES requirements specified in Attachment D (as supplemented by Attachment G) of this Order." At page 23.

This provision of the District's Permit effectively incorporates the referenced provisions of the Statewide WDR into the Permit, such that the Statewide WDR provisions are enforceable as part of the Permit.

d. Failure to Monitor Compliance with Receiving Water Limitations

A review of the District's Self Monitoring Reports provides no evidence the District is conducting the observations required to confirm compliance with the below-identified narrative standards:

- Order No. R2-2011-0007, V. RECEIVING WATER LIMITATIONS, A. Surface Water Limitations: The discharges shall not cause the following in the receiving water:
  1. The discharge of waste shall not cause the following conditions to exist in waters of the State at any place:
  a. Floating, suspended, or deposited macroscopic particulate matter or foams;
  b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
  c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
  d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and
  e. Toxic or other deleterious substances to be present in concentrations or quantities that cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or that render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the Napa Sanitation District as owner and operator of the Plant and its associated collection system, as well as its employees responsible for compliance with the District'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 District which relate to the Plant and related activities as described in this Notice.

The District owns and operates the Plant located at 1515 Soscol Ferry Road, adjacent to the Napa River. The Plant provides secondary treatment of domestic, commercial, and industrial wastewater. During the wet season, November 1 through April 30, treatment processes consist of headworks, primary clarification, secondary treatment through activated sludge systems and/or the oxidationpond system, secondary clarification, and disinfection. Following primary clarification, a diversion structure splits the flow; up to 8 mgd of wastewater can be treated by the activated sludge system, which is followed by secondary clarification. The remaining flow is directed to the oxidation pond system, which consists of 4 oxidation ponds over 340 acres, followed by flocculation for algae removal and clarification. The oxidation ponds also serve as flow equalization ponds for peak wet season influent flows. After secondary treatment, oxidation pond system effluent is commingled with activated sludge effluent, and chlorinated and dechlorinated prior to discharge to the Napa River.

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 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 District which occur during and after this period. Some violations are continuous, 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 Plant and the surrounding watershed have a vital interest in bringing the District's operations at the Plant 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:

Jack Silver, Esq.
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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 two hundred (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 District staff to tailor remedial measures to the specific operation of the District's Plant 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 District'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 five (5) 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 five (5) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment the District 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 District'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 not more than every five (5) years to ascertain the condition of the sewer line segment. If the District determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the District 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 District 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 two (2) years of the rating determination.

5. Provision in the District'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. <u>SSO Reporting and Response</u>

1. 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 District 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 District 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.

2. Within one (1) year, the District will contract with a registered Environmental Health Specialist or biologist to develop a protocol to be implemented as part of the District's Sewage System Management Plan's defined SSO remediation procedures for any SSO releases to surface waters that are one thousand (1,000) gallons or more. The District will submit the protocol to River Watch for review and comment prior to implementation as part of the Sewage System Management Plan.

3. Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the District's website to the CIWQS SSO Public Reports. Notification to be given by the District 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, the Napa River and wetlands in areas adjacent to sewer lines, to test for sewage contamination by exfiltration from sewer lines identified in the District's Capital Improvement Plan(s) as requiring structural repair or replacement.

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 twenty (20) 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 non-residential 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 $50,000.00 or more; or

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

D. Inflow and Infiltration (I/I) Reduction Program

1. Within one (1) year the District shall submit to River Watch a status report on the I/I reduction projects recommended in the District's Collection System Master Plan dated October, 2007 (CSMP TS-11), including the following:

i. Completion of construction of I/I reduction projects currently designed for Basin E;

ii. Elimination of known illicit connections in Basins P and I, J;

iii. Lining of pipes and street laterals to address high priority deficiencies noted in the condition assessment;

iv. Completion of I/I reduction study in Basins L and I, J;

v. Completion of projects for I/I reduction in Basins L and I, J;

vi. Lining of pipes and street laterals to address deficiencies noted in the condition assessment in Critical Areas (after confirmation by CCTV inspection); and,

vii. Updating of the Master Plan and determination as to whether I/I reduction is achievable and more cost effective than capacity upgrades.

E. Pond Leakage Monitoring Program

Within one (1) year, the District shall design a system of ground water monitoring wells located between the oxidation ponds and the Napa River at locations most likely to disclose impacts of discharges from the ponds to ground water, and to assess the likelihood of discharges of wastewater from the ponds to the Napa River via underground migration. The District shall submit its proposed system of ground water monitoring wells for review and comment to the RWQCB and to River Watch.

F. Emergency Discharge Monitoring

Within six (6) months, the District shall provide to River Watch a record of each incident, for the period February 1, 2011 through February 1, 2016, when the District invoked the Emergency Discharge Procedure under Section VI.C.6.c. of the District's NPDES Permit, for discharge to the Napa River during the non-discharge season.

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 District'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 District to contact counsel for 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 District 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,

Jerry Bernhaut

JB:lhm

Service List

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Administrator
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Executive Director
State Water Resources Control Board
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