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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 21, 2015

David Guhin - Director of Utilities
Department of Utilities
City of Santa Rosa
69 Stony Circle
Santa Rosa, CA 95401

Michael Prinz - Deputy Director
Subregional Operations
Laguna Wastewater Treatment Plant
4300 Llano Road
Santa Rosa, CA 95407

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

Dear Mr. Guhin, Mr. Prinz or Head of Agencies:

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 believes are occurring throughout the Subregional Facilities of the City of Santa, consisting for the purposes of this Notice, of the Laguna Wastewater Treatment Plant and its associated collection system and the Reclamation System and hereafter referred to collectively as "the Facilities". River Watch hereby places the City of Santa Rosa and its Utilities Department ("the City") as owner and operator of the Facilities, 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 pursuant to CWA § 301(a), and the North Coast Regional Water Quality Control Board, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations of permit conditions or limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit.

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River Watch takes this action to ensure compliance with the CWA which regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, 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 permit limit place a polluter 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* 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 ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the North Coast Regional Water Quality Control Board ("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 City with its NPDES permit.

NOTICE REQUIREMENTS

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 specific standards and limitations of RWQCB Order No. R1-2006-0045, NPDES No. CA0022764 (Waste Discharge Requirements and Master Reclamation Permit for the Santa Rosa Subregional Water Reclamation System, Sonoma County), as amended by Order No. R1-2008-0091, and replaced by Order No. R1-2013-0001, as being violated. A violation of the NPDES permit is a violation of the CWA.

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2. *The activity alleged to constitute a violation.*

Most often, the City's NPDES Permit standards and limitations being violated are self-explanatory and an examination of the language of the Permit itself is sufficient to inform the City of its failure to fully comply with the permit requirements. This is especially so since the City is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch, however, sets forth the following narratives in this Notice describing with particularity the activities it alleges as violations. River Watch does so following a review of public records (e.g. the City's Self Monitoring Reports ("SMRs")) relating to the City's operations at the Facilities. Additional records and other public documents in the City's possession or otherwise available to the City regarding its NPDES Permit (all of which are hereby incorporated by reference) may, upon discovery, reveal additional violations.

River Watch contends that from January 1, 2010 through January 1, 2015, the City violated the following identified requirements of its NPDES Permit, the Basin Plan and the Code of Federal Regulations, as those requirements are referenced in the NPDES permit, with respect to the Facilities:

A. Exceeding Effluent Limitations for Total Coliform

20 Effluent Discharges Exceeding the Permit Limit for Total Coliform [1] in violation of the following permit conditions:

- Order No. R1-2006-0045, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations, b. Disinfection

- Order No. R1-2013-0001, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 1. Final Effluent Limitations - Technology-Based Effluent Limitations, b. Disinfection

B. Exceeding Effluent Limitations for Total Nitrogen

260 Violations of Effluent Limitations for Total Nitrogen

The Laguna de Santa Rosa is CWA § 303(d) listed as impaired for nutrients including nitrate. The City of Santa Rosa is the single, largest contributing source of nitrate to the

[1] The SWRCB issued Administrative Civil Liability Order No. R1-2010-0075 on October 28, 2010 resolving ACL Complaint No. R1-2010-0057 issued on May 26, 2010 regarding violations which include total coliform exceedances on January 15, 2010 and January 22, 2010.

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Laguna de Santa Rosa. By discharging a prohibited quantity of nitrate, the City is causing contamination and a nuisance as defined by Section 13050 of the California Water Code.

Beneficial uses of the Laguna de Santa Rosa as defined by the Basin Plan and the City's NPDES Permit include water contact recreation, warm and cold freshwater habitat, subsistence fishing, commercial and sport fishing, preservation of rare, threatened or endangered species, migration of aquatic organisms, spawning, reproduction, and/or early development, and wetland habitat. Nitrate is a biostimulant, and the nitrate discharged by the City causes a nutrient load which exceeds the budget for the Laguna de Santa Rosa. This eutrophication results in algal blooms and the proliferation of surface plants. The algae and surface plants reduce, and in some cases destroy, the quality of the habitat for salmonids. The surface plants are known to harbor mosquitos, including species which carry disease. One of the problems with nitrates is that they accumulate in the bottom deposits, thus when the bottom deposits are disturbed it causes prohibited amounts of nitrate to be discharged into the Laguna de Santa Rosa. In some case the discharges by the City actually cause resuspension of nitrate. Each and every day the City discharges, these discharges violate the following provisions of the Permits:

- Order No. R1-2006-0045, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by CWC Section 13050 is prohibited."

- Order No. R1-2006-0045, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, f. Effluent Limitations for Protection of Human Health, Table 8, Average Monthly concentration of Nitrate not to exceed 10 mg/L.

- Order No. R1-2006-0045, V. Receiving Water Limitations, A. Surface Water Limitations, 1. "The discharge shall not cause the dissolved oxygen concentration of the receiving waters to be depressed below 7.0 mg/l. In the event that the receiving waters are determined to have dissolved oxygen concentration of less than 7.0 mg/l, the discharge shall not depress the dissolved oxygen concentration below the existing level."

- Order No. R1-2006-0045, V. Receiving Water Limitations, A. Surface Water Limitations, 7. "The discharge shall not cause bottom deposits in the receiving waters to the extent that such deposits cause nuisance or adversely affect beneficial uses."

- Order No. R1-2006-0045, V. Receiving Water Limitations, A. Surface Water Limitations, 8. "The discharge shall not cause or contribute to receiving water concentrations of biostimulants that promote objectionable aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses of the receiving waters."

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- Order No. R1-2013-0001, Discharge Prohibition III. B: "Creation of pollution, contamination, or nuisance, as defined by section 13050 of the California Water Code (Water Code) is prohibited."

- Order No. R1-2013-0001, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations, 2. Final Effluent Limitations - Water Quality-Based Effluent Limitations, b.ii, Effluent Limitation for Total Nitrogen., "The average monthly concentration of total nitrogen shall not exceed 10.6 mg/L."

- Order No. R1-2013-0001, V. Receiving Water Limitations, A. Surface Water Limitations, 1. "The discharge shall not cause the dissolved oxygen concentration of receiving waters to be depressed below 7.0 mg/L. Additionally, the discharge shall not cause the dissolved oxygen content of receiving waters to fall below 10.0 mg/L more than 50 percent of the time, or below 7.5 mg/L more than 10 percent of the time in a calendar year. In the event that the receiving waters are determined to have a dissolved oxygen concentration of less than 7.0 mg/L, the discharge shall not depress the dissolved oxygen concentration below the existing level."

- Order No. R1-2013-0001, V. Receiving Water Limitations, A. Surface Water Limitations, 8. "The discharge shall not cause bottom deposits in receiving waters to the extent that such deposits cause nuisance or adversely affect beneficial uses."

- Order No. R1-2013-0001, V. Receiving Water Limitations, A. Surface Water Limitations, 9. "The discharge shall not cause receiving waters to contain concentrations of biostimulatory substances that promote objectionable aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses. Compliance with water quality based effluent limitations for total phosphorus and total nitrogen established in section IV.A.2.b of this Order will satisfy this requirement."

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

155 Discharges of Waste To Receiving Waters During The Non-Discharge Season [2]

The City owns and operates numerous ponds in which it stores and releases treated wastewater. Mass balance analyses reveal these ponds are not integral and leak into the surrounding ground, groundwater and adjacent waters, including the Laguna de Santa Rosa. Leaking ponds are not described nor regulated in the City's Permit. Leaking ponds create

[2] The SWRCB is currently assessing ACL Complaint No. R1-2014-0024 issued on March 24, 2014, regarding violations which include recycled water discharge violations of September 26, 2012 and September 3, 2013.

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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 maintains an extensive water reuse program which includes approximately 6,236 acres of urban and agricultural land which is irrigated with treated wastewater. Much of this land lies adjacent to waters of the United States, including the Laguna de Santa Rosa. 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 in the California Integrated Water Quality System's ("CIWQS") Public Self Monitoring reports, on July 23, 2013, a recycled water line split, discharging approximately 17,000 gallons of recycled wastewater into Santa Rosa Creek. On July 8, 2013, over-irrigation at the Christiansen South property resulted in the discharge of approximately 18,000 gallons of recycled wastewater into Irwin Creek, a tributary of the Laguna de Santa Rosa.

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

- Order No. R1-2006-0045, 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. R1-2006-0045, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by CWC Section 13050 is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. I: "The discharge of wastewater effluent from the WWTF to the Russian River or its tributaries is prohibited during the period (of) May 15 through September 30 of each year."

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 2. "The use of recycled water shall not create a condition of pollution or nuisance as defined in CWC Section 13050(m)."

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 6. "Recycled water shall not be allowed to escape the recycled use area(s) in the form of surface runoff. [CCR Title 22, Section 60310(e)]"

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 16. "The use of recycled water shall not cause degradation of any water supply."

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- Order No. R1-2013-0001, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. B: "Creation of pollution, contamination, or nuisance, as defined by section 13050 of the California Water Code (Water Code) is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. I: "The discharge of wastewater effluent from the Subregional System to the Russian River or its tributaries is prohibited during the period from May 15 through September 30 of each year."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 2. "The use of recycled water shall not create a condition of pollution or nuisance as defined in Water Code section 13050(m)."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 11. "Recycled water shall not be allowed to escape the recycled use area(s) in the form of surface runoff. [CCR Title 22, Section 60310(e)] However, incidental runoff of recycled water, such as unintended, minimal over-spray from sprinklers that escapes the recycled water use area, or accidental breakage of a sprinkler head on a properly maintained irrigation system, is not a violation of this Order."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 21. "The use of recycled water shall not cause degradation of any water supply, except in conformance with the State Antidegradation Policy."

D. <u>Discharges in Excess of 5% of the Flow of the Russian River</u>

100 Discharges in Excess of 5% of the Flow of the Russian River [3]

In addition to recycled water runoff, during the discharge season (October 1 through May 14) on each day it is estimated that the ponds leak sufficiently to cause the City to exceed its 5% limit when the estimated leakage is added to the discharge figures, the City is violating the following limitations in its Permit:

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[3] The SWRCB is currently assessing Administrative Civil Liability Complaint No. R1-2014-0024, issued on March 24, 2014, regarding violations which include recycled water discharge violations of January 20, 2012, and a leak at Kelly Pond between April 14, 2012 and April 23, 2012.

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- Order No. R1-2006-0045, 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. R1-2006-0045, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by CWC Section 13050 is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. J: "During the period from October 1 through May 14, (discharge season), discharges of recycled water shall not exceed five percent of the flow of the Russian River as measured at Hacienda Bridge (USGS gauge No. 11-4670.00)."

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 2. "The use of recycled water shall not create a condition of pollution or nuisance as defined in CWC Section 13050(m)."

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 6. "Recycled water shall not be allowed to escape the recycled use area(s) in the form of surface runoff. [CCR Title 22, Section 60310(e)]"

- Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 16. "The use of recycled water shall not cause degradation of any water supply."

- Order No. R1-2013-0001, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. B: "Creation of pollution, contamination, or nuisance, as defined by section 13050 of the California Water Code (Water Code) is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. J: "During the period from October 1 through May 14 (discharge season), discharges of advanced treated wastewater to the unnamed ditch, the Laguna de Santa Rosa or Santa Rosa Creek, tributaries to the Russian River, shall not exceed five percent of the flow of the Russian River, as measured at the Hacienda Bridge (USGS Gage No. 11467000)."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 2. "The use of recycled water shall not create a condition of pollution or nuisance as defined in Water Code section

13050(m)."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 11. "Recycled water shall not be allowed to escape the recycled use area(s) in the form of surface runoff. [CCR Title 22, Section 60310(e)] However, incidental runoff of recycled water, such as unintended, minimal over-spray from sprinklers that escapes the recycled water use area, or accidental breakage of a sprinkler head on a properly maintained irrigation system, is not a violation of this Order."

- Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and Provisions, B. Water Reclamation Requirements, 21. "The use of recycled water shall not cause degradation of any water supply, except in conformance with the State Antidegradation Policy."

E. Violations of Receiving Water Limitations

1300 Violations of Receiving Water Limitations

The majority of the City's discharges to surface waters occur from its various ponds. In comparison to the waters into which they discharge, the ponds are relatively stagnate, lower in dissolved oxygen ("DO") higher in temperature, and varying in pH and turbidity. The RWQCB does not allow for mixing zones, therefore the discharges must not lower the DO, raise the temperature or turbidity, or alter the pH of the receiving waters more than a specified amount at the point of discharge.

In addition to specific numeric limitations, the City's Permit contains narrative standards (see Section V. Receiving Water Limitations, A.4 - 10). By law it is the City's burden to prove it is in compliance with the conditions of its Permit. Therefore, each day the City discharges it must have the data to prove it is in compliance with the requirements of its Permit. To the extent that the City fails to possess such data, it is in violation of the CWA for failure to monitor and/or report. In an examination of the City's public records, River Watch could not find any evidence of compliance with Receiving Water Limitations A. 4 - 10, nor with numeric limitations for a majority of the ponds from which the City discharges to receiving waters. In addition to violations for failure to monitor and/or report, each day the City discharges from its ponds, is a violation of the CWA. These discharges violate the following permit conditions:

- Order No. R1-2006-0045, V. Receiving Water Limitations, A. Surface Water Limitations, A.1 - A.14

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- Order No. R1-2013-0001, V. Receiving Water Limitations, A. Surface Water Limitations, A.1 - A.17

F. Collection System Subsurface Discharges Caused by Underground Exfiltration

1825 Collection System Subsurface Discharges Caused by Underground Exfiltration

Underground discharges in which untreated sewage is discharged from the City's collection system prior to reaching the Laguna Wastewater Treatment Plant are alleged to have been continuous throughout the period from January 1, 2010 through January 1, 2015, in violation of the following NPDES permit prohibitions:

- Order No. R1-2006-0045, 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. R1-2006-0045, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by CWC Section 13050 is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. D: "The discharge or reclamation of untreated or partially treated waste (receiving a lower level of treatment than described in Section II. A of the Fact Sheet) from anywhere within the collection, treatment, or disposal facility is prohibited, except as provided for in Prohibition III. E and in Attachment D, Standard Provision G (Bypass Provision)."

- Order No. R1-2006-0045, Discharge Prohibition III. E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a pollution, contamination, or nuisance as defined in CWC section 13050(m) is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. G: "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 permit is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. B: "Creation of pollution, contamination, or nuisance, as defined by section 13050 of the California Water Code (Water Code) is prohibited."

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- Order No. R1-2013-0001, Discharge Prohibition III. D: "The discharge or reclamation use of untreated or partially treated waste (receiving a lower level of treatment than described in section II. A of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in section IV.C.2 (Reclamation Specifications) and in Attachment D, Standard Provisions G (Bypass) and H (Upset)."

- Order No. R1-2013-0001, Discharge Prohibition III. E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State or (b) land that creates pollution, contamination, or nuisance, as defined in Water Code section 13050(m) is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. G: "The discharge of waste at any point not described in Finding II. B of the Fact Sheet or authorized by a permit issued by the State Water Resources Control Board (State Water Board) or another Regional Water Board is prohibited, except for use for fire suppression."

Exfiltration caused by pipeline cracks and other structural defects in the collection system result in discharges to adjacent surface waters via underground hydrological connections. The City's internal reports indicate discharges to surface waters not reported to the CIWQS. Because the entire system has not been adequately inspected by means of closed circuit television ("CCTV"), the City has insufficient information concerning the condition of a significant portion of the collection system and the extent of exfiltration. Some sections of the system are old and in need of repair. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into ground water hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines within 200 feet of a surface water.

River Watch alleges that such discharges are continuous wherever aging, damaged, and/or structurally defective sewer lines in the City's collection system are located adjacent to surface waters, including Santa Rosa Creek and the Laguna de Santa Rosa, tributaries of the Russian River – all waters of the United States under the CWA. Surface waters and ground water become contaminated with fecal coliform, exposing people to pathogens. Chronic failures in the City's 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 the adjacent waters with untreated sewage. [4]

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[4] *See* the Report of Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

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Evidence of exfiltration can be found in mass balance data, "inflow and infiltration" ("I/I") data, video inspection, and tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Exfiltration from the City's collection system is a daily occurrence and a violation of the City's NPDES Permit and the CWA.

G. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

17 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 Laguna Wastewater Treatment Plant are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports and on dates when no reports were filed by the City – all in violation of the following NPDES permit prohibitions:

- Order No. R1-2006-0045, 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. R1-2006-0045, Discharge Prohibition III. B: "Creation of (a) pollution, contamination, or nuisance, as defined by CWC Section 13050 is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. D: "The discharge or reclamation of untreated or partially treated waste (receiving a lower level of treatment than described in Section II. A of the Fact Sheet) from anywhere within the collection, treatment, or disposal facility is prohibited, except as provided for in Prohibition III. E and in Attachment D, Standard Provision G (Bypass Provision)."

- Order No. R1-2006-0045, Discharge Prohibition III. E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a pollution, contamination, or nuisance as defined in CWC section 13050(m) is prohibited."

- Order No. R1-2006-0045, Discharge Prohibition III. G: "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 permit is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. A: "The discharge of any waste not disclosed by the Permittee or not within the reasonable contemplation of the Regional Water Board is prohibited."

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- Order No. R1-2013-0001, Discharge Prohibition III. B: "Creation of pollution, contamination, or nuisance, as defined by section 13050 of the California Water Code (Water Code) is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. D: "The discharge or reclamation use of untreated or partially treated waste (receiving a lower level of treatment than described in section II. A of the Fact Sheet) from anywhere within the collection, treatment, or disposal systems is prohibited, except as provided for in section IV.C.2 (Reclamation Specifications) and in Attachment D, Standard Provisions G (Bypass) and H (Upset)."

- Order No. R1-2013-0001, Discharge Prohibition III. E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State or (b) land that creates pollution, contamination, or nuisance, as defined in Water Code section 13050(m) is prohibited."

- Order No. R1-2013-0001, Discharge Prohibition III. G: "The discharge of waste at any point not described in Finding II. B of the Fact Sheet or authorized by a permit issued by the State Water Resources Control Board (State Water Board) or another Regional Water Board is prohibited, except for use for fire suppression."

Releases Reported. Santa Rosa's aging collection system has historically experienced high I/I during wet weather. Forty two percent (42%) of the sewer lines were constructed prior to 1979. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters, all of which are waters of the United States.

As recorded in CIWQS Public SSO Reports, the City's collection system has experienced at least 17 SSOs between February 28, 2010 and November 3, 2014, with a combined volume of at least 50,519 gallons – 33,826 gallons of which were reported as having reached surface waters. As an example, on February 1, 2014, a spill occurred at 3540 Unocal Place. The total estimated volume of the spill was 15,580 gallons, of which 15,482 gallons were estimated to have reached surface water impacting Nagasawa Creek which feeds into Piner Creek, a tributary to Santa Rosa Creek. In addition, on October 31, 2012, 13,800 gallons spilled at Summerfield Road and San Antonio Drive, 12,970 gallons of which were not recovered, and Sierra Park Creek, tributary to the Santa Rosa Creek, was impacted. The Unocal Place spill was noticed and responded to 2 days after it began. The Summerfield Road spill was noticed and responded to 1 day after it began. The EPA's "Report to Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances.

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Numerous critical habitat areas exist within the areas of the City's SSOs. Santa Rosa Creek is relied upon by endangered coho salmon and threatened steelhead trout. The Laguna de Santa Rosa is the most biologically diverse part of Sonoma County, and home to a number of rare and endangered species, including the California tiger salamander and California freshwater shrimp, as well as coho salmon and steelhead trout. There is no record of the City performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

H. 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."

Santa Rosa Creek and the Laguna de Santa Rosa, tributaries to the Russian River, have many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching Santa Rosa Creek, the Laguna de Santa Rosa, or their tributaries, 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:

- Waters shall not contain taste or odor producing substances in concentrations that impart undesirable tastes or odors to fish flesh.

- Waters shall not contain floating material in concentrations that cause nuisance or affect beneficial uses.

- The pH shall not change within 0.5 units of the range needed for COLD or WARM beneficial uses, such as cold water habitat for fish.

- The bacteriological quality of waters shall not be degraded beyond natural background levels.

- Natural receiving water temperatures shall not be altered unless allowed by the RWQCB.

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River Watch has found nothing in its review of 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 Santa Rosa Creek and the Laguna de Santa Rosa.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations identified in this Notice is the City of Santa Rosa and its Utilities Department, as the owner and operator of the Subregional Facilities of the City of Santa consisting of, for the purposes of this Notice, the Laguna Wastewater Treatment Plant and its associated collection system, and the Reclamation System, as well as those of the City's employees responsible for compliance with its NPDES permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the City's NPDES Permit and also in records created and/or maintained by or for the City which relate to the Facilities and related activities as further described in this Notice.

The City of Santa Rosa, located 55 miles north of San Francisco in Sonoma County, has a total area of 41.5 square miles and a population (as of 2013) of 171,990. The City owns, maintains, and operates a Subregional Water Use system which includes the Laguna Wastewater Treat Plant, its associated collection system and the Reclamation System. The Laguna Plant is a major discharger as defined by the EPA, and is the largest POTW discharger in the RWQCB's North Coast Region. The Laguna Plant has design treatment capacities of 21.3 MGD average daily dry weather flow, 64 MGD peak weekly wet weather flow, and 47.3 MGD peak monthly wet weather flow, and discharges disinfected tertiary treated municipal wastewater to various discharge points in the Laguna de Santa Rosa, and Santa Rosa Creek during the discharge season. During the discharge prohibition season from May 15 through September 30, the treated wastewater is reclaimed and used for, among other things, electrical energy generation and irrigation for agricultural and urban use.

By permit, the City is allowed to discharge treated sewage to tributaries of the Russian River equal to 5% of the Russian River's daily flow. These discharges often make up more than 50% percent of the actual receiving waters, such as the Laguna de Santa Rosa – listed by the EPA as impaired for sediment and nutrients including nitrogen and phosphorus. Nutrients, among them nitrogen and phosphorus, are discharged from the City's various ponds and irrigation systems, and sediment is released during reclamation operations.

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The City's collection system consists of 582 miles of gravity sewers ranging in size from 4 to 66 inches, 6.3 miles of pressure sewers, and 17 pumping stations, serving a population of approximately 213,223. The City provides wastewater treatment and disposal services for residences, businesses, and industries within the City of Santa Rosa area, as well as to the communities of Cotati, Rohnert Park, Sebastopol, and the unincorporated South Park County Sanitation District. The Subregional System also accepts leachate from the Sonoma County Central Landfill, septage from commercial septage haulers, and discharges from groundwater cleanup sites.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB files and the City's public records with respect to the Facilities for the period from January 1, 2010 through January 1, 2015, therefore the range of dates covered by this Notice is from January 1, 2010 through January 1, 2015. 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 the range of dates currently covered. 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 this Notice is California River Watch, referred to herein as "River Watch." River Watch is a 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 protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

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

River Watch may be contacted via email: US@ncriverwatch.org or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed as follows:

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RECOMMENDED REMEDIAL MEASURES

1. 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

2. COLLECTION SYSTEM REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the City into compliance with its NPDES Permit and the Basin Plan, and reflect the biological impacts of the City's ongoing non-compliance with the CWA:

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A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

- The repair or replacement, within two (2) years, of all sewer lines in the City's sewage collection system located within 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.

- 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.

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

  » Repair or replace all sewer lines which have been found to be Significantly Defective;

  » 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 the City determines such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; and,

  » Ensure that sewer pipe segments that contain defects with a rating of 3 based on the PACP rating system that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are re-CCTV'd not more than every five (5) years to ascertain the condition of the sewer line segment. If the City determines that 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.

- 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.

- Implementation in the City's Capital Improvements Plan of a program to provide a 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

- Modification of Santa Rosa's Backup and "SSO Response Plan" to include the method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

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- For Category I Spills, creation of a listing of nearby residents 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 the SSO began).

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

- Conduction of water quality sampling and testing whenever it is estimated that 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 3 locations - the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of these constituents are found at higher levels in the point of discharge sample or at 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:

  » if the SSO is caused by a structural defect, immediately spot repair the defect or replace the entire line; or,

  » if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, perform additional maintenance or cleaning and any other appropriate measure to fix the non-structural defect.

- Creation of website capacity to track information regarding SSOs; or, in the alternative, 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.

- Completion of human marker sampling on creeks, rivers, wetlands and areas of Santa Rosa Creek, the Laguna de Santa Rosa, and their tributaries adjacent to sewer lines, to test for sewage contamination from exfiltration.

C. LATERAL INSPECTION/REPAIR PROGRAM

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

  » Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer;

  » Two (2) or more SSOs caused by the private sewer lateral within two (2) years;

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» A change in the use of the structure: (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, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

» Upon replacement or repair of any part of the sewer lateral;

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

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

3. RECLAMATION SYSTEM REMEDIAL MEASURES

- Soil holding capacity and agronomic studies are to be conducted on all lands used by the City for the disposal of treated or partially treated wastewater, to ensure there will not be any runoff of either wastewater or nutrients during use of reclaimed water for irrigation.

- The City shall provide, for each site with which the City has an agreement to provide reclamation water, site specific information which confirms that reclamation water is applied at hydraulic and agronomic capacity rates.

- The City shall provide records of inspections of reclamation sites in its monthly self-monitoring reports.

4. MONITORING FOR GROUND WATER IMPACTS OF STORAGE PONDS

For each pond located within two hundred (200) feet of a surface water (measured from the closest portion of that pond to the surface water), the City shall install a minimum of three (3) monitoring wells between the pond and that adjacent surface water. The wells shall be sampled quarterly for fecal coliform, total nitrogen and phosphate.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the Russian River watershed area. Members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The affected watershed is the major source of drinking water in many of the members' homes. Their health, use and enjoyment of this natural resource is 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)

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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 the 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 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 City is in compliance with the strict terms and conditions of its NPDES permit, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jerry Bernhaut

Jerry Bernhaut
Attorney for California River Watch

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