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CWA COMPLAINT

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DEPT OF JUSTICE, ENRD
ENVIRONMENT DIVISION
AUG 28 P4:22

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, an IRC Section 501(c)(3) non-profit, public benefit Corporation, Plaintiff, v. CITY OF WHITTIER, Defendant. _____/	CASE NO: 2:15-cv-06392 ODW (AGRx) **CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE**

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described document(s):

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, AND DECLARATORY RELIEF (Environmental - Clean Water Act - 33 U.S.C. § 1251-et seq.)

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

[ ] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on August 24, 2015 at Santa Rosa, California.

Kayla Brown

ED_001083_00000471-00003

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, an IRC Section 501(c)(3), non-profit, public benefit Corporation, Plaintiff, v. CITY OF WHITTIER, Defendant. _____/	Case No.: 2:15-cv-06392 **COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, AND DECLARATORY RELIEF** (Environmental - Clean Water Act 33 U.S.C. § 1251, *et seq.*)

NOW COMES Plaintiff, CALIFORNIA RIVER WATCH ("RIVER WATCH "), by and through its attorneys, and for its Complaint against Defendant CITY OF WHITTIER ("WHITTIER") states as follows:

I. NATURE OF THE CASE

1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA" or "Act") 33 § U.S.C. §1251 et seq., specifically the citizen's suit provision set forth in CWA §505, 33 U.S.C. §1365 to enforce CWA §301, 33 U.S.C. §1311 and CWA §402, 33 U.S.C. §1342 in order to prevent WHITTIER from repeated and ongoing violations of the CWA. These violations are detailed in the Notice of Violations and Intent to File Suit ("CWA

NOTICE") dated June 8, 2015 made part of this pleading and attached hereto as **EXHIBIT A.**

2. RIVER WATCH alleges WHITTIER is routinely violating the CWA by being in violation of "an effluent standard or limitation under this Act" by discharging a pollutant from a point source to a water of the United States without complying with any other sections of the Act including CWA §402, 33 U.S.C. §1342.

3. Under CWA §101(e), 33 U.S.C. §1251(e) Congress declared its goals and policies with regard to public participation in the enforcement of the CWA. CWA §101(e), 33 U.S.C. §1251(e) provides, in pertinent part:

> Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

The Supreme Court noted in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), that the plaintiff is often Congress' "chosen instrument" to vindicate important federal policy. *Id.* at 421.

4. RIVER WATCH alleges WHITTIER illegally discharges pollutants to waters of the United States which are habitat for threatened or endangered species as that term is defined by the California Environmental Protection Agency ("EPA") and the United States EPA.

5. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for WHITTIER's violations of the CWA as alleged in this Complaint.

II. PARTIES TO THE ACTION

6. RIVER WATCH is an IRC § 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 its oceans, 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.

7. Some members of RIVER WATCH live nearby WHITTIER; others frequent WHITTIER and its environs. Some members of RIVER WATCH visit family members residing near WHITTIER. Said members have interests in the watersheds identified in this Complaint, which interests have, are, and will be adversely affected by WHITTIER's violations of the CWA as alleged herein. Said members use the effected waters and watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks, and the like.

8. RIVER WATCH is informed and believes and on such information and belief alleges that DEFENDANT CITY OF WHITTIER is a Municipality formed under the laws of the State of California, with administrative offices located at 13230 Penn Street, Whittier, California.

III. JURISDICTIONAL ALLEGATIONS

9. Subject matter jurisdiction is conferred upon this Court by CWA §505(a)(1), 33 U.S.C. §1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf against any person . . . .who is alleged to be in violation of (A) an effluent standard or limitation . . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." For purposes of CWA §505(a)(1), 33 U.S.C. §1365(a)(1) the term "citizen" means, "a person or persons having an interest which is or may be adversely affected."

10. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods from, own property near, visit and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the waterways and associated natural resources into which WHITTIER discharges pollutants, or by which WHITTIER's operations adversely affect

said members' interests, in violation of the CWA §§301(a) and 402, 33 U.S.C.§§ 1311(a) and 1342. The health, economic, recreational, aesthetic or environmental interests of RIVER WATCH and its members may be, have been, are being, and will continue to be adversely affected by WHITTIER's unlawful violations as alleged herein. RIVER WATCH and its members contend there exists an injury in fact to them, causation of that injury by WHITTIER's complained of conduct, and a likelihood that the requested relief will redress that injury, and the likelihood of future injury and interference with the interests of said members.

11. Pursuant to CWA §505(b)(1)(A), 33 U.S.C.§1365(b)(1)(A) notice of the CWA violations alleged in this Complaint was given more than sixty (60) days prior to commencement of this lawsuit, to: (a) WHITTIER, (b) the United States EPA, Federal and Regional, and (c) the State of California Water Resources Control Board.

12. Pursuant to CWA §505(c)(3), 33 U.S.C. §1365(c)(3) a copy of this Complaint has been served on the United States Attorney General and the Administrator of the Federal EPA.

13. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1) venue lies in this District as the wastewater collection facilities under WHITTIER's operation and/or control which facilities are the subject of this action, and the sites where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

IV. GENERAL ALLEGATIONS

14. RIVER WATCH incorporates by reference all the foregoing including EXHIBIT A as though the same were separately set forth herein. 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 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 National Pollutant Discharge Elimination System ("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 places a discharger in violation of the CWA.

15. The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the 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 ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating WHITTIER's operations in the region at issue in this Complaint is the Regional Water Quality Control Board, Los Angeles Region ("RWQCB-LA").

16. While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of permitting requirements under the statute 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* CWA §505, 33 U.S.C. §1365). RIVER WATCH is exercising such citizen enforcement to enforce compliance by WHITTIER with the CWA.

17. RIVER WATCH has identified discharges of sewage from WHITTIER's sewage collection system to waters of the United States in violation of CWA §301(a), 33 U.S.C. §1311(a) which states in relevant part, "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

18. RIVER WATCH contends that for the period June 1, 2010 to August 20, 2015 WHITTIER has violated the Act as described herein by discharging pollutants from a point source to a water of the United States without complying with other enumerated

sections of the Act. RIVER WATCH contends these violations are continuing in nature and have a likelihood of occurring in the future.

19. Sanitary sewer overflows ("SSOs") during which untreated sewage is discharged from WHITTIER's collection system prior to reaching the Los Coyotes Water Reclamation Plant, are alleged to have occurred both on the dates identified in the California Integrated Water Quality System ("CIWQS") web based reporting Interactive Public SSO Reports (136 separate violations) and on dates when no reports were filed by WHITTIER, all in violation of the MS4 NPDES Permit and the CWA.

20. All discharges identified by WHITTIER under oath in its submittals to CIWQS Public SSO Reports in which WHITTIER reported the discharge reached a surface water, or the discharge entered a conveyance, such as the storm drain that leads to a water of the United States but was not fully recovered, are violations of CWA §301(a), 33 U.S.C. §1311(a).

21. WHITTIER's aging collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains connected to adjacent surface waters including Coyote Creek, Leffingwell Creek, La Mirada Creek, and the San Gabriel River, all waters of the United States.

22. As recorded in CIWQS Public SSO Reports, WHITTIER has reported 248 SSOs. Thirty-seven percent of those SSOs were reported to have reached surface waters. In the last 12 months WHITTIER has reported 48 SSOs – 35 of which were reported as reaching surface waters.

23. RIVER WATCH contends that many of the SSOs reported by WHITTIER as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that many of WHITTIER's SSO Reports state the estimated start time of the SSO as the time

when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. WHITTIER reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

24. Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. In an identified spill of 1,500 gallons on June 7, 2014 (CIWQS Event ID #806906) WHITTIER's SSO report lists the estimated spill start time as 10:00, and the agency notification time as 7 minutes before the spill start time – 09:53. The operator arrival time is reported as 10:00, and the spill end time as 10:15 For CIWQS Event ID #811286, a December 6, 2014 spill of 2,750 gallons, the estimated spill start time is reported as 9:45, the same as the agency notification time. The operator arrival time is listed as 10:30, and the spill end time just 10 minutes later, at 10:40. Many of WHITTIER's SSO reports list the same times for spill start and agency notification, and very short intervals, often less than 10 minutes, between operator arrival time and spill end time. It is highly unlikely these times are accurate. RIVER WATCH contends that WHITTIER is grossly underestimating the incidence and volume of SSOs that reach surface waters.

25. RIVER WATCH contends WHITTIER also fails to adequately mitigate the impacts of SSOs. WHITTIER is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. 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 WHITTIER's SSOs. There is no record of WHITTIER performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any record of evaluations of the measures

needed to restore water bodies designated as critical habitat from the impacts of SSOs.

26. The Statewide WDR requires WHITTIER to take all feasible steps and to 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 WHITTIER is severely underestimating SSOs which reach surface waters, WHITTIER is also not conducting sampling on most SSOs.

27. The San Gabriel River and its tributaries have many beneficial uses as defined in the RWQCB-LA's Basin Plan. WHITTIER's SSOs reaching the San Gabriel River or its tributaries cause prohibited pollution by unreasonably affecting the beneficial uses of these waters.

28. WHITTIER owns 1,290 acres within the Puente Hills Landfill Native Habitat Preservation, currently within a proposed Los Angeles County Significant Ecological Area. It is WHITTIER's responsibility to oversee and preserve biological diversity within its jurisdiction. Insufficient studies exist regarding the impact of WHITTIER's SSOs on this habitat. Some of the species within the Preservation include the endangered California gnatcatcher, deer, bobcats, grey fox, and many flora such as the Coastal Sage Scrub. RIVER WATCH is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around tributary waters of the San Gabriel River which runs to the Pacific Ocean.

29. The location or locations of the various violations are identified in records created and/or maintained by or for WHITTIER which relate to its sewage collection system as further described in this Complaint.

30. WHITTIER is located in Los Angeles County, about 20 miles northwest of Anaheim and about 12 miles southeast of Los Angeles. WHITTIER encompasses

approximately 14.7 square miles and has a population estimated at 83,680 based on a 2010 census.

31. The primary land use in WHITTIER's sewer service area is residential with local and regional commercial centers located on Whittier Boulevard. WHITTIER is home to Whittier College and the Southern California University of Health Sciences, as well as a variety of tourist-related landmarks such as The Governor Pio Pico Historical State Park, El Camino Real, Mt. Olive, Broadway Cemeteries, and the Whittier Historical Society Museum. Other attractions and recreational parks include Sycamore Park, Hellman Wilderness Park, and Arroyo Pescadero Trail, all tributaries of Turnbull Canyon, and the previously identified Puente Hills Landfill Native Habitat Preservation. Public facilities within the city limits include the Friendly Hills Country Club, 3 public libraries, 4 fire department stations, Whittier Station Shopping Center, Village Square Shopping Center, The Quad at Whittier Shopping Center, Model Plaza Shopping Center, AMF Friendly Hills Lanes, and 9 hotels and motels. Coyote Creek, Bacon Arroyo San Miguel, Arroyo Salinas, Arroyo Pescadero, Arroyo Jalisco, Worsham Creek, Tacobi Creek, Savage Creek, and La Mirada Creek are all located within WHITTIER's jurisdiction. WHITTIER is home to 19 parks including the Memorial Stadium, Broadway Park, Central Park, Friends Park, Jackson Park, Kennedy Park, Michigan Park, Palm Park, and William Penn Park. The acreage of the Puente Hills Landfill Native Habitat Preservation owned by WHITTIER extends to La Habra Heights and through the unincorporated communities of Rowland Heights and Hacienda Heights.

32. WHITTIER's collection system consists of approximately 194 miles of sewer mains, including 6.4 miles along State Highway 72, and 5,028 manholes which rely solely on WHITTIER's gravity sewer system. The system has no lift stations or force mains. WHITTIER's Street Division is responsible for the maintenance and repair of all sewer mains. Nearly 7 miles of private sewer mains and 14 miles of Los Angeles County Sanitation District ("LACSD") trunk sewers within WHITTIER are not owned nor maintained by WHITTIER. Sewer mains range in size from 4 to 15 inches in diameter.

Some sewer lines date back as far as 1917, and most were installed between 1950 and 1960. WHITTIER's main lines consist of primarily vitrified clay pipe which are adjacent to mature trees with deep roots – a major cause of SSO's.

33. On or about July 31, 2007, WHITTIER entered into an agreement with the Los Angeles County Consolidated Sewer Maintenance District to allow raw sewage generated from the Senior/Community Center in Parnell Park to enter WHITTIER's collection system via an 8-inch diameter sewer pipe owned by the County of Los Angeles. A small quantity of wastewater from 315 dwelling units within La Habra Heights, Pico Rivera, and La Mirada is also allowed to enter WHITTIER's collection system. These agencies have no agreements with WHITTIER due to the adequate capacity to convey minor flows. However, these agencies must comply with LACSD's discharge prohibitions. WHITTIER owns, operates, and maintains the wastewater collection system that serves the City of Whittier. Wastewater generated in the City of Whittier is collected by trunk sewers owned, operated, and maintained by LACSD, and transported to the Los Coyotes Water Reclamation Plant for treatment.

V. STATUTORY AND REGULATORY BACKGROUND

34. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the EPA or a State with respect to such a standard or limitation including a NPDES permit issued pursuant to CWA §402, 33 U.S.C. §1342. Additional sets of regulations are set forth in the Basin Plan, California Toxics Rule, the Code of Federal Regulations and other regulations promulgated by the EPA and the SWRCB. Sewage is specifically identified in the CWA as a pollutant. The sewer lines and storm water system owned by WHITTIER are point sources under the CWA.

35. The affected waterways detailed in this Complaint and in the CWA NOTICE are navigable waters of the United States within the meaning of CWA §502(7), 33 U.S.C. §1362(7).

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36. The Administrator of the EPA has authorized the Regional Water Quality Control Board to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA §402, 33 U.S.C. §1342.

37. WHITTIER is not in possession of any NPDES Permit authorizing it to discharge pollutants into navigable waters of the United States within the meaning of the CWA.

38. Code of Federal Regulations Title 40 §122.41 (40 CFR § 122.41) includes conditions or provisions that apply to all NPDES permits. Additional provisions applicable to NPDES permits are found in 40 CFR §122.42. WHITTIER must comply with all provisions. Pursuant to 40 CFR §122.41 any permit non-compliance constitutes a violation of the CWA.

VI. VIOLATIONS

39. WHITTIER's unpermitted discharges of untreated sewage from its wastewater collection system, as detailed herein and in the CWA NOTICE are violations of CWA §301(a), CWA, 33 U.S.C. §1311(a). The violations are established in RWQCB-LA files for WHITTIER's sewage collection facility as well as in studies conducted by WHITTIER in compliance with orders from regulatory agencies.

40. The enumerated violations are detailed in the CWA NOTICE, incorporated herein by reference, and below, designating the section of the CWA violated by the described activity.

VII. CLAIM FOR RELIEF

Pursuant to CWA § 505(a)(1)(A), 33 U.S.C. § 1365(a)(1)(A) Violation of CWA § 301(a), 33 U.S.C. § 1311(a) – Discharge of a Pollutant from a Point Source to a Water of the United States Without Complying with Any Other Section of the Act.

41. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 40, including EXHIBIT A as though fully set forth herein.

42. WHITTIER has violated and continues to violate the CWA as evidenced by the discharges of pollutants (raw sewage) from a point source (the sewer lines and storm

water collection system) to waters of the United States in violation of CWA §301(a), CWA, 33 U.S.C. §1311(a).

43. WHITTIER has self-reported and certified under oath as to SSOs reaching a water of the United States, as evidenced in CIWQS and WHITTIER's own records. As listed in CIWQS, the event ID numbers of those violations are identified herein and in the CWA NOTICE.

44. All discharges identified herein are violations of CWA §301(a), 33 U.S.C. §1311(a) in that they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

45. The violations of WHITTIER as set forth herein are ongoing in nature and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by WHITTIER to the RWQCB-LA. Each of WHITTIER's violations is a separate violation of the CWA.

46. RIVER WATCH avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, WHITTIER will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges and releases. RIVER WATCH avers and believes and on such belief alleges that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect their interests which are or may be adversely affected by WHITTIER's violations of the CWA, as well as other State and Federal standards.

VIII. RELIEF REQUESTED

WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

47. Declare WHITTIER to have violated and to be in violation of the CWA.

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48. Issue an injunction ordering WHITTIER to immediately operate its sewage collection system in compliance with the CWA.

49. Order WHITTIER to perform remedial measures to correct deficiencies in its management, maintenance, and reporting regarding discharges from its sewage and stormwater collection systems.

50. Order WHITTIER to pay civil penalties of $37,500.00 per violation per day for is violations of the CWA.

51. Order WHITTIER to pay reasonable attorneys' fees and costs of RIVER WATCH (including expert witness fees), as provided by CWA § 505(d), 33 U.S.C. § 1365(d).

52. For such other and further relief as the court deems just and proper.

DATED: August 21, 2015

LAW OFFICE OF JACK SILVER

By: _____
JACK SILVER
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net

Via Certified Mailing - Return Receipt Requested

June 8, 2015

David Pelser, Director
Public Works Department
City of Whittier
13230 Penn Street
Whittier, CA 90602

Jeff Collier, City Manager
Members of the City Council
City of Whittier
13230 Penn Street
Whittier, CA 90602

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Pelser, Mr. Collier, and Members of the City Council:

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 believes are occurring through the ownership and/or operation of the City of Whittier's sewage collection system and storm water collection system. River Watch hereby places the City of Whittier (the "City") 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 Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged discharges of sewage from the City's sewer pipelines, to a water of the United States, not in compliance with the Act.

Notice is given as to the City's alleged violations of permit conditions or limitations set forth in Order No. R4-01-182, amended by Order No. R4-2006-0074, NPDES. No. CAS004001, *Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein, Except the City of Long Beach*, of which the City has been a co-permittee; and, alleged violations of Order No. R4-2012-0175 NPDES. No. CAS004001, *Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges Within The Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4*,of which the City is currently a co-permittee. River Watch alleges the City is violating Order No. R4-2012-0175 by discharging sewage from its collection system to the City's Municipal Storm Sewer System ("MS4").

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 places 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 Regional Water Quality Control Board, Los Angeles 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 City with the CWA.

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 has identified discharges of sewage from the City's sewage collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

River Watch has also identified numerous violations of orders issued by the State with respect to a standard or limitation. See CWA § 505(a), 33 U.S.C. § 1365(a). The specific State Orders, identified previously, are Order No. R4-01-182, amended by Order No. R4-2006-0074, NPDES. No. CAS004001, and Order No. R4-2012-0175 NPDES. No. CAS004001. These Orders are collectively referred to hereafter as the "MS4 WDR".

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from June 1, 2010 to June 1, 2015, the City has violated the Act as described herein. Further, that the City has violated the following identified requirements of its MS4 WDR with respect to its sewage collection system and municipal storm sewer system. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. <u>Collection System Subsurface Discharges Caused By Underground Exfiltration</u>

Underground discharges, in which untreated sewage is discharged from the City's collection system prior to reaching the Los Coyotes Water Reclamation Plant, are alleged to have been continuous throughout the period from June 1, 2010 through June 1, 2015 (1825 separate violations) in violation of the CWA and the following prohibitions:

- Order No. R4-01-182, Part 1. Discharge Prohibitions: "The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses [except where exempted or conditionally exempted]".

- Order No. R4-01-182, Part 2. Receiving Water Limitations, 1. "Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited."

- Order No. R4-01-182, Part 2. Receiving Water Limitations, 2. "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance."

- Order No. R4-2012-0175, III. Discharge Prohibitions, A. Prohibitions, Non-Storm Water Discharges, 1. Prohibition of Non-Storm Water Discharges. "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters [except where exempted or conditionally exempted]."

- Order No. R4-2012-0175, V. Receiving Water Limitations, A. Receiving Water Limitations, 1. "Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited."

- Order No. R4-2012-0175, V. Receiving Water Limitations, A. Receiving Water Limitations, 2. "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance."

Exfiltration caused by pipeline cracks and other structural defects in the City's 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 California Integrated Water Quality System ("CIWQS") web based information and data program. Many sections of the City's collection system are quite old and in need of repair. Seventy six percent of the sewer system was constructed prior to 1960, with 21 percent built prior to 1940 and only one percent constructed after the year 2000. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into groundwater hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines located 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, such as Coyote Creek, Leffingwell Creek, La Mirada Creek, and the San Gabriel River. Surface waters and groundwater become contaminated with fecal coliform, exposing people to 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 have verified the contamination of the adjacent waters with untreated sewage.[1]

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 MS4 WDR and the CWA.

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 Los Coyotes Water Reclamation Plant, are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports (136 separate violations) and on dates when no reports were filed by the City, all in violation of the MS4 WDR and the CWA. The below listed violations are reported by the RWQCB, and evidenced by the CIWQS SSO Reporting Program Database Records.

69 **SSOs** which were reported as reaching a water of the United States, as evidenced in CIWQS and the records of the City. As listed in CIWQS the event IDs of those violations are: 759036, 762675, 763954, 764659, 764681, 765349, 765812, 765815, 784818, 785251, 786215, 787549, 787964, 788295, 788743, 789700, 790266, 791450, 793045, 793392, 793643, 794111, 794542, 796265, 797539, 798229, 800696, 800697, 800755, 801438, 802526, 802556, 802931, 803292, 803440, 803447*, 805471, 805792, 806906, 807203, 808594, 808596, 808720, 808928, 809190, 809522, 809827, 810395, 810503, 810506, 810602, 810759*, 810781, 811102, 811112, 811286, 812242, 812249, 812255, 813260,

[1] See Report of Human Marker Study issued July, 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.

813322*, 813768, 813770, 813958, 814433*. (* = Two spill appearance points, however only one report was filed by the City.) All of these discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

51 Violations of Order No. R4-01-182 as described below:

- Part 1. Discharge Prohibitions: "The Permittees shall effectively prohibit non-storm water discharges into the MS4 and watercourses [except where exempted or conditionally exempted]."

- Part 2. Receiving Water Limitations, 1. "Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited."

- Part 2. Receiving Water Limitations, 2. "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for, shall not cause or contribute to a condition of nuisance."

As listed in CIWQS, the event IDs of those violations are: 754128, 754134, 754287, 754442, 755960, 755963, 758208, 758346, 758476, 758491, 759036, 759195, 762675, 763954, 764659, 764681, 765349, 765812, 765815, 766519, 766549, 766855, 767773, 767910, 767921, 769667, 770318, 771465, 771622, 772149, 773510, 774700, 774799, 775406, 776306, 776855, 778597, 779245, 779850, 780272, 780533, 781666, 782131, 782383, 784818, 785251, 786215, 787549, 787964, 788295, 788743

54 Violations of Order No. R4-2012-0175 as described below:

- III. Discharge Prohibitions, A. Prohibitions – Non-Storm Water Discharges, 1. Prohibition of Non-Storm Water Discharges. "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters [except where exempted or conditionally exempted]."

- V. Receiving Water Limitations, A. Receiving Water Limitations, 1. "Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited."

- V. Receiving Water Limitations, A. Receiving Water Limitations, 2. "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance."

As listed in CIWQS the event IDs of those violations are: 789700, 790266, 791450, 793045, 793392, 793643, 794111, 794542, 796265, 797539, 798229, 800696, 800697, 800755, 801438, 802526, 802556, 802931, 803292, 803440, 803447*, 805471, 805792, 806906, 807203, 808594, 808596, 808720, 808928, 809190, 809522, 809827, 810395, 810503, 810506, 810602, 810759*, 810781, 811102, 811112, 811286, 812242, 812249, 812255, 813260, 813322*, 813768, 813770, 813958, 814433*. (* = Two spill appearance points, however only one report was filed by the City.)

Releases Reported. The City's aging collection system has historically experienced high I/I during wet weather. 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 such as Coyote Creek, Leffingwell Creek, La Mirada Creek, and the San Gabriel River, all waters of the United States.[2]

As recorded in CIWQS Public SSO Reports, the City's collection system has experienced at least 136 SSOs between June 23, 2010 and April 7, 2015, with a combined volume of at least 43,719 gallons – 22,812 gallons of which were reported as having reached surface waters. For example, on December 6, 2014, a spill occurred at 9706 La Serna Drive caused by debris (Event ID #811286). The spill volume was reported by the City as estimated at 2,750 gallons, 2,742 of which reached surface water, impacting Coyote Creek through the North Fork, Storm Drain BI 0532 U2 Line A, which connects Leffingwell Creek

[2] Leffingwell Creek, La Mirada Creek, and Coyote Creek have all been turned into concrete lined channels similar to the Los Angeles River. See "Concrete lined Channels" Pictures on Reference Book./ or https://www.google.com/maps/place/Whittier,+CA/@33.9405575,-118.028567,2314m/data=!3m1!1e3!4m2!3m1!1s0x80c2d386557a87f7:0x27a87d47c140245a

and Coyote Creek. On November 26, 2014, a spill took place at 8315 California Avenue also caused by debris (Event ID# 811102). The spill was reported as 1,500 gallons, 1,460 of which reached surface water, impacting Coyote Creek through Storm Drain BI 0017 U2 Michigan Avenue. Also, on June 7, 2014 (Event ID #806906,) a spill occurred at 6556 Painter Avenue caused by root intrusion. The spill volume was reported by the City as 1,500 gallons, 1,437 of which reached surface water, impacting Coyote Creek, North Fork, through storm drain BI 8501 U2 Line E.[3]

This Notice also includes multiple violations that may have occurred on the same day but were reported to CIWQS as a single violation.

Discharges to Surface Waters. River Watch's expert believes 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 a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that many of SSO Reports filed by the City state the estimated start time of the SSO as the time when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The City's Reports indicate that some of the discharges reach a storm drain, but fail to determine the accurate amounts which reach a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. In the previously mentioned spill, Event ID #806906, on June 7, 2014 of 1,500 gallons, the City's SSO report lists the estimated spill start time as 10:00, and the agency notification time as 09:53 – 7 minutes before the spill start time. The operator arrival time is reported as 10:00, and the spill end time as 10:15. For Event ID #811286, the December 6, 2014 spill of 2,750 gallons, the estimated spill start time is reported as 9:45, the same as the agency notification time. The operator arrival time is listed as10:30, and the spill end time just 10 minutes later, at 10:40. Many of the City's SSO reports list the same times for spill start and agency notification, and very short intervals, often less than 10 minutes, between operator arrival time and spill end time. It is highly unlikely these times are accurate. River Watch contends the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

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[3] See printed SSO details in Event ID#811286, 811102, 806906 on Reference Book.

Mitigating Impacts. River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. 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 impact 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.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of an 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, the City is also not conducting sampling on most SSOs.

C. Nuisance; Impacts to Beneficial Uses

The City's MS4 WDR prohibits the discharge of wastes that lead to the creation of a "nuisance." 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."

The San Gabriel River and its tributaries have many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching the San Gabriel River or its tributaries cause prohibited pollution by unreasonably affecting the beneficial uses of these waters.

The City owns 1,290 acres within the Puente Hills Landfill Native Habitat Preservation, currently within a proposed Los Angeles County Significant Ecological Area. There have been insufficient studies regarding the impact of the City's SSOs on this habitat. Some of the species living in the Preservation include the endangered California gnatcatcher, deer, bobcats, grey fox, and many flora such as the Coastal Sage Scrub.[4] It is the City's responsibility to oversee and preserve biological diversity within its jurisdiction.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around tributary waters of the San Gabriel River, which runs to the Pacific Ocean.

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 Whittier and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violations.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewage collection system as further described in this Notice.

The City of Whittier is located in Los Angeles County, about 20 miles northwest of Anaheim and about 12 miles southeast of Los Angeles. The City encompasses approximately 14.7 square miles and has a population estimated at 83,680 based on a 2010 census.

The primary land use in the City's sewer service area is residential, with local and regional commercial centers located on Whittier Boulevard. The City is home to Whittier College and the Southern California University of Health Sciences, as well as a variety of tourist-related landmarks such as Governor Pio Pico Historical State Park, El Camino Real, Mt. Olive, Broadway Cemeteries, and the Whittier Historical Society Museum. Other attractions and recreational parks include Sycamore Park, Hellman Wilderness Park, and

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[4] See Comments on Whittier Main Oil Field Development, by Sierra Club Environmental Group http://whittierhillsoilwatch.org/resources/Sierra%20Club%20Comments%20Whittier%20Oil%20DEIR.pdf

Arroyo Pescadero Trail, all tributaries of Turnbull Canyon and the Puente Hills Landfill Native Habitat Preservation Authority. Public facilities within the City include the Friendly Hills Country Club, 3 public libraries, 4 fire department stations, Whittier Station Shopping Center, Village Square Shopping Center, The Quad at Whittier Shopping Center, Model Plaza Shopping Center, AMF Friendly Hills Lanes, and 9 hotels and motels.

Coyote Creek, Bacon Creek, Arroyo San Miguel, Arroyo Salinas, Arroyo Pescadero, Arroyo Jalisco, Worsham Creek, Tacobi Creek, Savage Creek, and La Mirada Creek are all located within the City's jurisdiction. The City contains 19 parks, including the Memorial Stadium, Broadway Park, Central Park, Friends Park, Jackson Park, Kennedy Park, Michigan Park, Palm Park, and William Penn Park. In addition, the City owns 1,290 acres of the Puente Hills Landfill Native Habitat Preservation located at the eastern edge of Los Angeles County. 3,869 acres of the preserve extend across the City, La Habra Heights and through the unincorporated communities of Rowland Heights and Hacienda Heights. [5]

The collection system within the City consists of approximately 194 miles of sewer mains, including 6.4 miles of State Highway 72, and 5,028 manholes which rely solely on the City's gravity sewer system. The City's system has no lift stations or force mains. The Street Division is responsible for the maintenance and repair of all sewer mains throughout the City including maintaining streetlights, street signs, and sweeping.

Nearly 7 miles of private sewer mains and 14 miles of Los Angeles County Sanitation District ("LACSD") trunk sewers within the City are not owned nor maintained by the City. Sewer mains range in size from 4 to 15 inches in diameter. Some sewer lines date as far back as 1917. Most were installed between 1950 and 1960.[6] Whittier's main lines consist of primarily vitrified clay pipe lying adjacent to mature trees with deep roots, a major cause of the City's SSO's.

On or about July 31, 2007, the City entered into an agreement with the Los Angeles County Consolidated Sewer Maintenance District to allow raw sewage generated from the Senior/Community Center in Parnell Park to enter the City's collection system via an 8-inch diameter sewer pipe, owned by the County of Los Angeles. A small quantity of wastewater,

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[5] http://www.cityofwhittier.org/about/default.asp; http://wwwCity-data.com

[6] City's SSMP pg 5, pg 21(Figure 4-1); Printout on Reference Book - http://www.cityofwhittier.org/civicax/filebank/blobdload.aspx?blobid=10446;

from 315 dwelling units located in La Habra Heights, Pico Rivera, and La Mirada, is also allowed to enter the City's collection system. These cities, however, have no agreements with the City due to the adequate capacity to convey minor flows. However, these cities must comply with LACSD's discharge prohibitions.[7]

The City owns, operates, and maintains the wastewater collection system that serves the City. Wastewater generated in the City is collected by trunk sewers owned, operated, and maintained by LACSD, and transported to the Los Coyotes Water Reclamation Plant for treatment.

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

River Watch has examined records of the SWRCB and the RWQCB with respect to the City's collection system for the period from June 01, 2010 to June 01, 2015. The range of dates covered by this Notice is June 01, 2010 to June 01, 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 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 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 to educate the public concerning environmental issues associated with these environs.

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[7]City's SSMP pg 5 –System Overview; pg 18 – 3.3 Agreements with other Agencies 3.3.1 –County Sanitation Districts of Los Angeles - http://www.cityofwhittier.org/civicax/filebank/blobdload.aspx?blobid=10446;

CONTACT INFORMATION

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 raised in this Notice. All communications should be directed as follows:

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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.[8]

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

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[8]City's SSMP pg-20 Section 4.3 Preventive Maintenance. - http://www.cityofwhittier.org/civicax/filebank/blobdload.aspx?blobid=10446

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[9].

II. REMEDIAL MEASURES

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

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.

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[9] City's SSMP- Pg 24 Section 4.4 Rehabilitation/Replacement Program in response to section "D:Significantly Defective" - http://www.cityofwhittier.org/civicax/filebank/blobdload.aspx?blobid=10446

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. <u>SSO Reporting and Response</u>

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State 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.[10]

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 San Diego 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.[11] Notification to be given by the City to all customers and

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[10] City's SSMP pg 56 – Appendix 6-D – Methods for estimating spill Volume - http://www.cityofwhittier.org/civicax/filebank/blobdload.aspx?blobid=10446

[11] The City does not currently have a link to CIWQS SSO Public Reports on its website. http://www.cityofwhittier.org/depts/pw/sewermaint.asp

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 Coyote Creek, Leffingwell Creek, and La Mirada Creek 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 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 $25,000.00 or more; and,

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

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch

use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. 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) 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 MS4 WDR and the CWA, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Administrator
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