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CWA COMPLAINT

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CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, a 501(c)(3) nonprofit, public benefit Corporation,

Plaintiff,

v.

CITY OF LAGUNA BEACH,

Defendant.

_____/

CASE NO: 8:14-cv-01659-DOC-JCG

CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
14 OCT 20 P2:39

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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, DECLARATORY RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION (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:

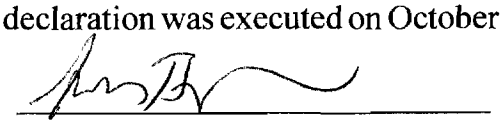
Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

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 October 15, 2014 at Santa Rosa, California.



Kayla Brown

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, a 501(c)(3) non-profit, public benefit Corporation, Plaintiff, v. CITY OF LAGUNA BEACH, Defendant. _____/	CASE NO. 8:14-cv-01659 **COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION [Environmental - Clean Water Act 33 U.S.C. § 1251 *et seq.*]**

NOW COMES plaintiff CALIFORNIA RIVER WATCH a 501(c)(3) nonprofit, public benefit corporation ("RIVER WATCH") by and through its attorneys, and for its Complaint against Defendant CITY OF LAGUNA BEACH ("LAGUNA BEACH") states as follows:

I. NATURE OF THE CASE

1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, specifically CWA § 505, 33 U.S.C. § 1365, CWA § 301, 33 U.S.C. § 1311 to prevent LAGUNA BEACH from repeated and ongoing violations of the CWA. These violations are detailed in the Notice of Violations and Intent to File Suit dated June 10, 2014 ("CWA NOTICE") made part of this pleading and attached hereto as EXHIBIT A.

2. RIVER WATCH contends LAGUNA BEACH is routinely violating the CWA by discharging a pollutant from a point source, its wastewater collection system pipelines, without

a National Pollution Discharge Elimination System ("NPDES") Permit, in violation of CWA § 301(a), 33 U.S.C. § 1311(a).

3. RIVER WATCH contends LAGUNA BEACH is also routinely violating the Regional Water Quality Control Board, San Diego Region, Water Quality Control Plan ("Basin Plan"), Environmental Protection Agency ("EPA") regulations codified in the Code of Federal Regulations, and toxics standards promulgated by the State Water Resources Control Board, as exemplified by the incidents of unpermitted discharges from its wastewater collection system, as described in the CWA NOTICE.

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

5. RIVER WATCH contends LAGUNA BEACH illegally discharges to waters which are habitat for threatened or endangered species as that term is defined by the California EPA and the United States EPA.

6. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for LAGUNA BEACH's violations of CWA § 301, (a) 33 U.S.C. § 1311(a).

II. PARTIES TO THE ACTION

7. Plaintiff RIVER WATCH is, and at all times relevant to this Complaint was, an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California, with headquarters and main office located in Sebastopol, California and mailing address of 290 S. Main Street, #817, Sebastopol, California. 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.

8. Members of RIVER WATCH live nearby to waters affected by LAGUNA BEACH's illegal discharges as alleged in this Complaint. Said members have interests in the watersheds identified in this Complaint, which interests are or may be adversely affected by LAGUNA BEACH's violations. Said members use the effected waters and effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks, spiritual practices, and the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

9. RIVER WATCH is informed and believes and on such information and belief alleges that Defendant LAGUNA BEACH is, and at all times relevant to this Complaint was, a municipality formed under the laws of the State of California, with administrative offices located at 505 Forest Avenue in the City of Laguna Beach, California.

III. JURISDICTIONAL ALLEGATIONS

10. Subject matter jurisdiction is conferred upon this Court by Section 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, "the term 'citizen' means a person or persons having an interest which is or may be adversely affected."

11. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the waterways and associated natural resources into which LAGUNA BEACH discharges pollutants, or by which LAGUNA BEACH's operations adversely affect their interests, in violation of CWA § 301(a), 33 U.S.C.§1311(a). The health, economic, recreational, aesthetic and environmental interests of RIVER WATCH and its members may be, have been, are being, and will continue to be adversely affected by LAGUNA BEACH's unlawful violations of the CWA as alleged in this Complaint. RIVER WATCH and its members contend there exists an injury in fact to them, causation of that injury by LAGUNA BEACH's complained of conduct, and a likelihood that the requested relief will redress that injury.

12. 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) LAGUNA BEACH, (b) the United States EPA, Federal and Regional, and (c) the State of California Water Resources Control Board.

13. 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.

14. Pursuant to CWA § 505(c)(1, 33 U.S.C. § 1365(c)(1), venue lies in this District as the wastewater collection facilities under LAGUNA BEACH's operation and/or control, 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

15. RIVER WATCH incorporates by reference all the foregoing including the CWA NOTICE as though the same were separately set forth herein.

16. LAGUNA BEACH owns and operates a wastewater collection system consisting of approximately 95 miles of pipes, 2674 manholes, and 25 wastewater lift stations which serve to pump wastewater into either the Laguna South Orange County Wastewater Authority or Bluebird South Orange County Wastewater Authority lift stations. The network of sewer pipes and manholes has been built over the course of approximately 90 years. The wastewater collection system serves a population of approximately 22,700, with approximately 3 million visitors annually.

17. RIVER WATCH alleges LAGUNA BEACH has a history of sewer system overflows ("SSOs") from its aging sewer lines. As recorded in Public SSO Reports on file with the California Integrated Water Quality System ("CIWQS"), the wastewater collection system has experienced 43 SSOs between June 10, 2009 and June 10, 2014, with a combined volume of 71,209 gallons. Ninety one percent of that volume – 64,848 gallons – was discharged to surface waters. Structural defects in the collection system, which allow inflow and infiltration ("I/I ") of rain water and ground water 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,

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canals, and storm drains which are connected to adjacent surface waters such as Aliso Creek and the Pacific Ocean, both waters of the United States. For example, a SSO from LAGUNA BEACH's collection system occurred on December 29, 2013 at Crestview place. The reported volume was 250 gallons, 220 gallons of which were reported as reaching a surface water.

18. In addition to SSOs which discharge over land into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects in the collection system result in discharges to adjacent surface waters via underground hydrological connections. RIVER WATCH alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the collection system are located adjacent to surface waters, including Aliso Creek and the Pacific Ocean. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. These chronic collection system failures pose a substantial threat to public health.

19. RIVER WATCH alleges that both surface and underground SSOs have ongoing harmful effects on critical habitat in and around the Pacific Ocean and Aliso Creek.

20. All illegal discharges and activities complained of in this Complaint occur in the waterways named in the CWA NOTICE and in this Complaint, which are navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7); and, at the locations identified in detail in the CWA NOTICE.

21. The Regional Water Quality Control Board has determined that the watershed areas and affected waterways identified in the CWA NOTICE and this Complaint are beneficially used for water contact recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

V. STATUTORY AND REGULATORY BACKGROUND

22. 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 State Water Resources Control Board. The wastewater collection system including its sewer lines, owned and operated by LAGUNA BEACH are point sources under the CWA.

23. 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.

24. RIVER WATCH contends LAGUNA BEACH has no NPDES Permit authorizing it to discharge pollutants into navigable waters of the United States within the meaning of the CWA.

VI. VIOLATIONS

25. RIVER WATCH alleged that unpermitted discharges of untreated sewage from LAGUNA BEACH's 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 Regional Water Quality Control Board files for the wastewater collection facilities, as well as in studies conducted by LAGUNA BEACH in compliance with orders from regulatory agencies, and enumerated in the CWA NOTICE, designating the section of the CWA violated by the described activity.

26. The location of the discharges are the discharges points as described herein and in the CWA NOTICE.

VII. CLAIM FOR RELIEF

Discharges of A Pollutant From a Point Source to Navigable Waters of the United States Within the Meaning of the CWA Pursuant to CWA § 505(a), 33 U.S.C. § 1365(a), CWA § 301(a), 33 U.S.C. § 1311(a).

27. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 26, including the CWA NOTICE as though fully set forth herein.

28. LAGUNA BEACH has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source, namely the sewer lines in LAGUNA BEACH's collection system, to waters of the United States including but not limited to Aliso Creek and the

Pacific Ocean, in violation of CWA § 301(a), CWA, 33 U.S.C. § 1311(a).

29. Violations of the CWA by LAGUNA BEACH are ongoing 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 LAGUNA BEACH to the Regional Water Quality Control Board or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary to address any violations which may occur after the filing of this Complaint. Each violation is a separate violation of the CWA.

30. 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, LAGUNA BEACH will continue to violate the CWA as well as State and Federal standards with respect to the discharges and releases enumerated in the CWA NOTICE and herein; and, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect said members' interests which are or may be adversely affected by LAGUNA BEACH's violations of the CWA, as well as other State and Federal standards.

VIII. RELIEF REQUESTED

31. Declare LAGUNA BEACH to have violated and to be in violation of the CWA;

32. Issue an injunction ordering LAGUNA BEACH to immediately operate its wastewater collection system in compliance with the CWA;

33. Order LAGUNA BEACH to perform the following remedial measures

a. Repair or replace, within two (2) years, all sewer lines in LAGUNA BEACH's wastewater collection system located within two hundred (200) feet from surface waters, which have been inspected by closed circuit television ("CCTV") within the past five (5) years and were rated as significantly defective (having a rating of 5) under the Pipeline Assessment and Certification Program rating system;

b. Complete a Surface Water Condition Assessment, by CCTV, within two (2) years, of sewer lines in LAGUNA BEACH's wastewater collection system located within two

hundred (200) feet of surface waters, which have not been CCTV'd within the past five (5) years.

c. Within two (2) years after completion of the Surface Water Condition Assessment, repair and/or replace all sewer lines in LAGUNA BEACH's wastewater collection system found to be Significantly Defective under the PACP rating system;

d. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, commencement of a Full Condition Assessment by way of CCTV inspection, of all sewer lines in LAGUNA BEACH's wastewater collection system not within two hundred (200) feet of a surface water, said assessment to be completed within seven (7) years. Any sewer pipe segment found to be Significantly Defective under the PACP rating system to be repaired or replaced within two (2) years of the rating determination.

e. Modification of LAGUNA BEACH's Backup and SSO Response Plan to include the method or calculations used for estimating total SSO spill volume, spill volume that reached surface waters and estimating spill volume recovered. 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; and 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;

f. Water quality sampling and testing whenever it is estimated that fifty (50) gallons or more of untreated or partially treated wastewater from a SSO enters surface waters. Constituents tested for to include: ammonia, fecal coliform, E. coli and a CAM-17 toxic metal analysis. LAGUNA BEACH 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, LAGUNA

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BEACH shall determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (1) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (2) 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 non-structural defect;

g. Creation of web site capacity to track information regarding SSOs; or, in the alternative, creation of a link from LAGUNA BEACH's website to the CIWQS SSO Public Reports. Notification 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;

h. Performance of human marker sampling on creeks, rivers, and wetlands adjacent to Significantly Defective sewer lines to test for sewage contamination from exfiltration.

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

1. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer;
2. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
3. 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;
4. Upon replacement or repair of any part of the sewer lateral;
5. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,
6. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

j. If a mandatory private sewer lateral inspection and repair program is not approved by the

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City Council of LAGUNE BEACH, the implementation of an alternative program which is likely to result in a comparable number of inspections and repairs of privately owned sewer laterals, including but not limited to 1) setting up a grant and/or revolving loan program to provide partial loans for the replacement or repair of private sewer laterals, including installation of a property line cleanout, or 2) negotiating group discount rates for the inspection and repair or replacement of private laterals with the contractor employed to replace the main line to which a group of laterals are attached.

34. Order LAGUNA BEACH to pay civil penalties of $37,500.00 per violation per day for its violations of the CWA;

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

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

DATED: October 10, 2014

LAW OFFICE OF JACK SILVER

JACK SILVER
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

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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 Mail –
Return Receipt Requested

June 10, 2014

David Shissler, Director of Water Quality
Water Quality Division
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92651

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

Dear Mr. Shissler:

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 through the operation of the City of Laguna Beach's wastewater collection system River Watch is sending you this letter to preserve its rights under the Clean Water Act, but we would welcome the opportunity to resolve these issues out of court.

The CWA requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

California River Watch hereby places the City of Laguna Beach, hereinafter referred to as "the City", on notice, that following the expiration of 60 days from the date of this Notice, River Watch will be entitled to bring suit in the United States 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 Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1),33 U.S.C. § 1365(a)(1), and consistent with the Code of Federal Regulations, and the Regional Water Quality Control Board, San Diego Region, Water

Quality Control Plan ("Basin Plan"), as exemplified by the incidents of non-compliance with the CWA by the City in the operation of its wastewater collection system, identified and outlined below.

INTRODUCTION

The City of Laguna Beach is a seaside resort and artists' community located in Southern Orange County, California, approximately 19 miles southeast of Santa Ana. Laguna Beach measures 9.8 square miles, with 7 miles of coastline. It is bordered by the Pacific Ocean on the southwest, Crystal Cove State Park on the northwest, Laguna Woods on the northeast, Aliso Viejo and Laguna Niguel on the east and Dana Point on the southeast. The population is approximately 22,700, with around 3 million visitors annually. The City's wastewater collection system consists of approximately 95 miles of pipes and 2674 manholes. The network of sewer pipes and manholes have been built over the course of approximately 90 years. The City operates and maintains 25 wastewater lift stations which serve to pump wastewater into either the Laguna South Orange County Wastewater Authority (SOCWA), or Bluebird SOCWA lift stations. The Bluebird SOCWA lift station is the City's largest lift station, pumping approximately 2.4 million gallons of wastewater each day to the South Orange County Wastewater Authority's Coastal Treatment Plant in Aliso Canyon.

The City's collection system operations are currently regulated under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-003-DWQ ("Statewide WDR") adopted on May 2, 2006 governing the operation of sanitary sewer systems.

The City has a history of sewer system overflows (SSOs) from its aging sewer lines. As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the City's wastewater collection system has experienced 43 SSOs between June 10, 2009 and June 10, 2014, with a combined volume of 71,209 gallons. Ninety one percent of that volume – 64,848 gallons – was discharged to surface waters.

Structural defects in the City's collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater 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 Aliso Creek and the Pacific Ocean, both waters of the United States. In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections.

The results of studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, verify contamination of the adjacent water with untreated sewage. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the City's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The City's chronic collection system failures pose a substantial threat to public health.

Any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards at a minimum; and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the San Diego Region, Regional Water Quality Control Board ("RWQCB") contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

Discharges by the City as described herein also constitute a nuisance. These discharges are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal or treatment of wastes.

The illegal discharge of untreated wastewater from the City's collection system is a significant contribution to the degradation of the Pacific Ocean and tributary waters such as Aliso Creek, with serious adverse effects on the beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the City's operation of its collection system into compliance 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 specified standard, limitation, or order alleged to have been violated.

River Watch has identified discharges of raw sewage from the City's collection system to surface waters in violation of the Statewide WDR and prohibitions of the CWA with regard to discharging a pollutant from a point source to waters of the United States, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. The activity alleged to constitute a violation.

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the CIWQS SSO Public Reports and other public documents in the City's possession or otherwise available to the City, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

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

The entity responsible for the alleged violations is the Water Quality Division of the City of Laguna Beach, identified throughout this Notice as "the City", and those of its employees responsible for compliance with the Statewide WDR.

4. The location of the alleged violation.

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

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 RWQCB as to Laguna Beach's collection system for the period from June 10, 2009 to June 10, 2014. The range of dates covered by this Notice is June 10, 2009 to June 10, 2014. River Watch will from time to time update this Notice to include all violations which occur 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 throughout this notice as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the waters of California including, but not limited to, its rivers, creeks, streams, tributaries, wetlands, vernal pools, and groundwater. River Watch's southern California mailing address is 3655 Westwood Blvd., #17, Los Angeles, CA 90034. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

VIOLATIONS

River Watch contends that from June 10, 2009 to June 10, 2014, the City has violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States from its collection system in violation of the provisions of the Statewide WDR and the CWA. The below-listed violations are reported by the RWQCB, and evidenced by the CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

Violations	Description
1825	Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the collection system prior to reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5 year period from June 10, 2009 to June 10, 2014. Evidence to support the allegation of underground discharge of raw sewage exists in the City's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the SOCWA Coastal Treatment Plant reported in the City's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.
43	SSOs, as evidenced in the CIWQS Interactive Public SSO Reports including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

REMEDIAL MEASURES REQUESTED

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 two hundred (200) feet of surface waters.

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

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

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

2. 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 non-compliance with the CWA:

a. Sewage Collection System Investigation and Repair

i. 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 five (5) years and were rated as Significantly Defective.

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

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

- Repair or replace all sewer lines 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 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;

- Sewer pipe segments that 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 shall be re-CCTV'd 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.

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

b. SSO Reporting and Response

i. Modification of the City'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.

ii. For Category I Spills, creation of 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.

iv. Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: ammonia, Fecal Coliform, E. coli and a CAM-17 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 non-structural defect.

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

vi. Performance of human marker sampling on creeks, rivers, wetlands and areas of Aliso Creek 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;

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

- 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;

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

CONTACT INFORMATION

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

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CONCLUSION

The violations as set forth in the Notice effect the health and enjoyment of members of River Watch who reside and recreate in the community of Laguna Beach. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, SCUBA diving, surfing, tide pool exploring, picnicking, wedding ceremonies, hiking, photography, painting, nature walks and the like. The members' health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth herein.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against the City for the violations of the CWA identified in this Notice.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations noted. If the City wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions are continuing when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Administrator
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