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CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, a 501(c)(3) nonprofit, public benefit corporation, Plaintiff, v. CITY OF WILLITS, Defendant. _____/	CASE NO. 2:13-cv-03395 EMC **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, AND REMEDIATION (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 First Amended Complaint against Defendant CITY OF WILLITS ("WILLITS"), 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"), 33 U.S.C. § 1251 *et seq.*, specifically CWA § 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to prevent WILLITS from repeated and ongoing violations of the CWA. These violations are detailed in the Supplemental Notice of Violations and Intent to File Suit dated June 20, 2013 ("CWA NOTICE") made part of this pleading and attached hereto as EXHIBIT A.

2. RIVER WATCH alleges WILLITS is routinely violating the CWA by violating the effluent discharge standards or other limitations set forth in Regional Water Quality Control Board ("RWQCB") Order No. R1-2010-0017, National Pollution Discharge Elimination System

Permit No. CA0023060, adopted by the RWQCB on July 15, 2010 and effective as of September 1, 2010 ("NPDES Permit"). These violations are described in this First Amended Complaint and in the CWA NOTICE. WILLITS owns and operates a wastewater treatment facility and associated collection system which is regulated under this NPDES Permit. The associated collection system, consisting of approximately thirty (30) miles of gravity sewer main, provides sewage collection services for a population of approximately 10,000 residential and commercial customers. The facility provides secondary treatment of wastewater which is collected from its service area and discharged to Outlet Creek, a tributary of the Eel River. In addition, from May 15 to September 30, recycled water is discharged from the facility to land owned by the City of Willits.

3. RIVER WATCH alleges that, in the course of operations of its wastewater treatment facility and associated collection system, WILLITS is also routinely violating the RWQCB's Water Quality Plan known as the "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. These violations are described in this First Amended Complaint and 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 alleges WILLITS illegally discharges pollutants to waters which are habitat for threatened or endangered species as that term is defined by the California EPA and the United States EPA.

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6. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for WILLITS' violations of the terms of the NPDES Permit.

II. PARTIES

7. Plaintiff RIVER WATCH is an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California, located at 290 South Main Street, # 817, Sebastopol, California. The specific purpose of RIVER WATCH is to protect, enhance and help restore surface and ground waters of California limited rivers, creeks, streams, wetlands, vernal pools aquifers an associated environs, biota, flora and fauna, as well as to educate the public concerning environmental issues associated with these environs.

8. Members of RIVER WATCH live nearby to waters affected by WILLITS' illegal discharges as alleged in this First Amended Complaint. Said members have interests in the watershed identified in this First Amended Complaint, which interests are or may be adversely affected by WILLITS' violations. Said members use the effected waters and watershed area 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 to RIVER WATCH, 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 WILLITS is a Municipality formed under the laws of the State of California, with administrative offices located at 111 E. Commercial Street, Willits, California.

III. JURISDICTIONAL ALLEGATIONS

10. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA, 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 Section 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 WILLITS discharge pollutants, or by which WILLITS' operations adversely affect their interests, in violation of CWA § 301(a), 33 U.S.C.§1311(a), CWA § 505(a)(1), 33 U.S.C.§ 1365(a)(1), CWA § 402, 33 U.S.C. § 1342. 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 WILLITS' unlawful violations as alleged in this First Amended Complaint. RIVER WATCH and its members contend there exists an injury in fact to them, causation of that injury by WILLITS' 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 violations alleged in this First Amended Complaint was given more than sixty (60) days prior to commencement of this lawsuit, to: (a) WILLITS, (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 First Amended 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 treatment facility and associated collection system under WILLITS' ownership and operation, and the sites where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

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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. WILLITS owns and operates a wastewater treatment , reclamation and disposal facility and associated collection system which collects and treats sewage from a service area serving a population of approximately 10,000 residences and commercial operations in and around the City of Willits. This facility provides secondary treatment of wastewater collected from its service area and discharges to Outlet Creek, a tributary of the Eel River. In addition, from May 15 to September 30, the recycled water is discharged to land owned by the City of Willits.

17. The collection system has experienced high inflow and infiltration ("I/I") of rain water and ground water under various weather conditions. Structural defects in the collection system which allow I/I into the sewer lines, result in a buildup of pressure which causes sewer system overflows ("SSOs"). Overflows caused by blockages and I/I result in the discharge of raw sewage subsurface, into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States. Despite reports by the public of numerous SSOs, WILLITS has only reported two (2) SSOs to the California Integrated Water Quality System ("CIWQS") Public SSO Reports, occurring between May 10, 2011 and May 11, 2013, with a combined volume of 70 gallons – 65 gallons of which were reported as recovered.

18. RIVER WATCH alleges WILLITS has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ ("Statewide WDRs,") governing the operation of sanitary sewer systems. WILLITS is a permittee under the Statewide WDRs which require that sewer system operators report all SSOs to the CIWQS, and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. WILLITS' field reports regularly indicate the SSO start time at or near the time WILLITS was notified of the SSO. These equivalencies are highly unlikely and result in an under-estimation of the duration of the spill. WILLITS' common practice of

underestimating the duration of the spill leads to underestimating the volume of the spill. WILLITS' SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reached a surface water. RIVER WATCH alleges WILLITS has mistakenly reported SSOs which reached a curb or gutter as not reaching a surface water.

19. RIVER WATCH alleges there were additional, unreported SSOs from WILLITS' collection system which reached surface waters based on eyewitness testimony to a surging of the collection system during a major storm in late 2012, during which waste was seen discharging from the sewer to a storm drain and surface waters; as well as other dates and times over the past five (5) years. No acknowledgment of these multiple SSOs is found in WILLITS' SSO Reports to CIWQS.

20. In addition to SSOs which discharge over land, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects in WILLITS' 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 WILLITS' collection system are located adjacent to surface waters, including Baechtel Creek, Broaddus Creek and Outlet Creek, all tributaries of the Eel River, all waters of the United States. Surface waters and groundwater become contaminated with pollutants include bacteria, nitrite/nitrate, toxic metals and the like, creating a threat to the environment and human health.

21. Section VI(C)(5)(I) of WILLITS' NPDES Permit requires compliance with the entirety of the Statewide WDRs. The Statewide WDRs require WILLITS to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. One of the most important remedial measures is the performance of adequate sampling in order to determine the nature and the impact of the release. There is no evidence of adequate sampling of SSOs found in the public record for WILLITS. RIVER

WATCH alleges WILLITS has failed to perform sampling to determine the impact of SSOs from its collection system as required by the Statewide WDRs.

22. A mass balance analysis recently performed demonstrates that at least 100 million gallons of wastewater annually is lost somewhere between the headworks and the discharge point. WILLITS has provided no explanation for this loss. RIVER WATCH alleges the lost wastewater likely percolated from WILLITS' ponds and recently constructed wetlands. The treated and partially treated sewage is discharging via hydrologically connected groundwater to Broaddus Creek and Baechtel Creek, both waters of the United States.

23. According to its NPDES permit, from May 15 to September 30, WILLITS discharges recycled water to pasture land adjacent to the wastewater treatment facility. There are no indications in the public record of any studies by WILLITS to determine whether recycled water is being applied in a manner which exceeds vegetative demand or field capacity. Numerous overflows of recycled water to surface waters have been observed during these releases of recycled water. RIVER WATCH alleges WILLITS is over-irrigating its land and therefore discharging reclamation wastewater to the adjoining Baechtel Creek and Broaddus Creek without authorization under its NPDES Permit, in therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

24. All illegal discharges and activities complained of in this First Amended Complaint occur in the waterways named in the CWA NOTICE and this First Amended Complaint, all of which are waters of the United States.

25. The RWQCB has determined that the watershed areas and affected waterways identified it this First Amended Complaint and the CWA NOTICE are beneficially used for drinking water, 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.

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V. STATUTORY AND REGULATORY BACKGROUND

26. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point source" into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the EPA and the applicable State regulatory agency. These limits are to be incorporated into a NPDES permit for that point source specifically. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that a violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. 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. Section 301(a) of the CWA 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. The wastewater treatment facility and associated collection system owned and operated by WILLITS are point sources under the CWA. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA § 402, 33 U.S.C. § 1342.

27. The affected waterways detailed in this First Amended 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).

28. RIVER WATCH alleges WILLITS has violated numerous provisions of its NPDES Permit as detailed herein and in the CWA NOTICE. All violations of a duly authorized NPDES permit are a violations of the CWA.

VI. WILLITS' VIOLATIONS

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

29. RIVER WATCH alleges WILLITS' violations of the terms of its NPDES Permit as detailed herein and in the CWA NOTICE are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) The violations are established in RWQCB files for WILLITS' wastewater treatment facility and associated collection system as well as in studies conducted by WILLITS in compliance with orders from regulatory agencies.

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

VII. CAUSE FOR RELIEF

Violation of 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1342 (a) and (b), 33 U.S.C. § 1311 Discharge of Pollutants from Point Sources to United States Waters in Violation of NPDES Permit

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 30, including the CWA NOTICE as though fully set forth herein. RIVER WATCH is informed and believes, and based on such information and belief alleges as follows:

31. WILLITS has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source, (the sewer lines in WILLITS' collection system) to adjacent waters of the United States, in violation of sections III E. and III.B. of WILLITS' NPDES Permit, and thereby in violation of CWA § 301, 33 U.S.C. § 1311.

32. WILLITS has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source, (the discharge points in WILLITS' reclamation system) to adjacent waters of the United States, in violation of sections III A. and III.B. of WILLITS' NPDES Permit, and thereby in violation of CWA § 301, 33 U.S.C. § 1311.

33. WILLITS has violated and continues to violate the CWA as evidenced by the mass balance analysis which demonstrates a loss of at least 100 million gallons of wastewater annually somewhere between the headworks and the discharge point. RIVER WATCH alleges the lost wastewater likely percolated from the unlined or inadequately lined ponds and the constructed wetlands, and is discharging via hydrologically connected groundwater to Broaddus Creek and

Baechtel Creek, both waters of the United States. Said discharges are in violation of Sections III A. and III.B. in WILLITS' NPDES Permit, and thereby in violation of CWA § 301, 33 U.S.C. § 1311.

34. The violations of WILLITS as alleged herein are ongoing and will continue after the filing of this First Amended 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 WILLITS to the RWQCB or to RIVER WATCH prior to the filing of this First Amended Complaint. RIVER WATCH will further amend the pleadings if necessary to address WILLITS' State and Federal violations which may occur after the filing of this First Amended Complaint. Each violation is a separate violation of the CWA.

35. 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, WILLITS will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges and releases. Further, that the relief requested in this First Amended Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect said members' interests in the watersheds identified in this First Amended Complaint and the CWA NOTICE, which interests are or may be adversely affected by WILLITS' violations of the CWA, as well as other State and Federal standards.

VIII. RELIEF REQUESTED

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

36. Declare WILLITS to have violated and to be in violation of the CWA;

37. Issue an injunction ordering WILLITS to immediately operate its wastewater treatment facility and associated collection system in compliance with the CWA;

38. Order WILLITS to perform the following remedial measures:

a) Repair or replacement, within two (2) years, of all sewer lines in WILLITS' sewage collection system located within two hundred (200) feet from surface

waters, which have been inspected by way of closed circuit television ("CCTV") within the past five (5) years and were rated as Significantly Defective under the Pipeline Assessment and Certification Program ("PACP") rating system;

b) A Condition Assessment, by way of CCTV, within two (2) years, of sewer lines in WILLITS' 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 Condition Assessment identified in paragraph (b) above; the repair or replacement of all sewer lines which have been found to be Significantly Defective under the PACP rating system;

d) Beginning no more than one (1) year after completion of the Condition Assessment identified in paragraph (b) above, the commencement of a full Condition Assessment by way of CCTV inspection of all sewer lines in WILLITS' collection system not within 200 feet of a surface water, 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 WILLITS' Backup and SSO response plan to include the method or calculations used for estimating total spill volume, spill volume that reached surface waters and estimating spill volume recovered;

i. 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;

ii. 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.

iii. A requirement for water quality sampling and testing whenever it is estimated that fifty (50) gallons or more of untreated or partially treated waste water from a SSO enters surface waters; constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis; samples to be collected and tested 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, WILLITS shall determine and address the cause of the SSO that enters surface waters, and employ following measures to prevent future overflows;

iv. The creation of web site capacity to track information regarding SSOs; or, in the alternative, the creation of a link from WILLITS' website to the CIWQS SSO Public Reports.

f. Performance of human marker sampling on creeks, rivers, and wetlands adjacent to significantly defective sewer lines to test for sewage contamination from exfiltration;

g. Performance of holding capacity and agronomic studies of sites under ownership or control of WILLITS where reclamation waste water is discharged;

h. Installation of ground water monitoring wells between WILLITS' storage ponds and adjacent surface waters; repair of wastewater storage ponds to eliminate leakage if ground water monitoring discloses contamination by pollutants contained in wastewater.

39. Order WILLITS to pay civil penalties per violation/per day for its violations of the CWA;

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40. Order WILLITS to pay the reasonable attorneys' fees and costs of RIVER WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,

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

DATED: September 3, 2013

/s/ Jerry Bernhaut
JERRY BERNHAUT
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 MAIL
RETURN RECEIPT REQUESTED

June 20, 2013

J.C. England, Plant Supervisor/Chief Operator
City of Willits Wastewater Treatment Facility
300 N. Lenore Street
Willits, CA 95490

Paul Cayler, City Manager
Members of the City Council
City of Willits
111 E. Commercial Street
Willits, CA 95490

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

Dear Head of Agency or Operations and City Council:

The Clean Water Act ("CWA" or the "Act") 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.

This Supplemental Notice is provided on behalf of California River Watch ("River Watch") which hereby places the City of Willits, as owner and operator of the City of Willits Wastewater Treatment Facility (hereafter referred to as "the Discharger") on notice, that following the expiration of sixty (60) days from the date of this Supplemental Notice, River Watch intends to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and consistent with the Code of Federal Regulations, and the Regional Water Quality Control Board, Water

Quality Control Plan ("Basin Plan") as exemplified by violations of permit conditions or limitations specified in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

INTRODUCTION

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. 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. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and those enumerated by 33 U.S.C. § 1365(f).

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* 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Supplemental Notice is the Regional Water Quality Control Board, North Coast Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation 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.*

To comply with this requirement River Watch has identified the Discharger's NPDES Permit, and specifically identified the applicable Permit standard, limitation or condition being violated. A violation of the NPDES Permit is a violation of the CWA.

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

Most often, the NPDES Permit limitations being violated are self-explanatory and an examination of the language of the Permit is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. River Watch has set forth narratives in this Supplemental Notice describing with particularity the activities leading to violations and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

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

The entity responsible for the alleged violations identified in this Supplemental Notice is the City of Willits as owner and operator of the City of Willits Wastewater Treatment Facility and its related collection system, identified in this Supplemental Notice as the Discharger, as well as those of the Discharger's employees responsible for compliance with the Discharger's NPDES Permit.

4. *The location of the alleged violation.*

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

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

River Watch has examined both RWQCB files and the Discharger's records with respect to the City of Willits Wastewater Treatment Facility for the period from May 10, 2011through May 10, 2013. The range of dates covered by this Supplemental Notice is from May 10, 2011 through May 10, 2013. River Watch will from time to time update this Supplemental Notice to include all violations of the CWA by the Discharger which occur after the range of dates covered by this Supplemental Notice. Some of the violations are continuous, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main St., #817, Sebastopol, CA 95472, a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, rivers, creeks, streams, wetlands, vernal pools and tributaries. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

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

Jack Silver, Esq.
Jerry Bernhaut, Esq.
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675
Email: lhm28843@sbcglobal.net

THE DISCHARGER'S OPERATION

The Discharger owns and operates the City of Willits Wastewater Treatment Facility (the "Facility"), and its associated wastewater collection system which provides sewage collection services for a population of over 26,500 residents. The collection system consists of approximately 30 miles of gravity sewer main. Discharges of treated wastewater from the Facility are regulated under RWQCB Order No. R1-2010-0017 (NPDES Permit No. CA0023060) as well as Order No. R1-2011-0006. The Facility has a design treatment capacity of 7 mgd average monthly flow, but is only permitted 4 mgd average monthly flow. The Facility provides secondary treatment of wastewater collected from its service area and discharged to Outlet Creek, a tributary of the Eel River. In addition, from May 15 to September 30, the Facility discharges recycled water to land owned by the City of Willits.

The Discharger's NPDES permit contains several discharge prohibitions related to sewer system overflows ("SSOs"). Discharge Prohibition B prohibits the creation of pollution, contamination, or nuisances as defined by Calif. Water Code § 13050. Discharge Prohibition E prohibits any SSO that results in a discharge of untreated or partially treated wastewater to waters of the State; groundwater; or land that creates a pollution, contamination, or nuisance. Discharge Prohibition G prohibits the discharge of waste to land

that is not owned by or subject to an agreement for use by the Discharger. A SSO can violate several of these prohibitions at once. Violations of the NPDES permit are violations of the CWA.

The Discharger's collection system has experienced high inflow and infiltration (I/I) during wet weather. Structural defects in the collection system which allow I/I into the sewer lines, result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters – all waters of the United States.

As recorded in California Integrated Water Quality System ("CIWQS") Public SSO Reports, the Facility experienced 2 SSOs between May 10, 2011 and May 11, 2013 with a combined volume of 70 gallons – 65 gallons of which were recovered. As indicated below, River Watch has reason to believe there were additional unreported SSOs which reached surface waters.

The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDRs,") governing the operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDRs which require that sewer system operators report SSOs to the CIWQS, and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water.

The Discharger's field reports regularly indicate the SSO start time at or near the time the Discharger was notified of the SSO. These equivalencies are highly unlikely and result in an under-estimation of the duration of the spill. The Discharger's common practice of underestimating the duration of the spill leads to underestimating the volume of the spill. The Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reached a surface water. River Watch alleges that the Discharger has mistakenly reported SSOs which reached a curb or gutter as not reaching a surface water. Additionally, River Watch is aware of eyewitness testimony to a surging of the collection system during a major storm in late 2012, during which waste was seen discharging from the sewer to a storm drain and surface waters. No acknowledgment of these multiple SSOs is found in the Discharger's SSO Reports to CIWQS.

The Discharger's NPDES permit requires compliance with the entirety of the Statewide WDRs. (*See* the Discharger's NPDES Permit, Section VI(C)(5)(I).) The Statewide WDRs require the Discharger 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 system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling in order to determine the nature and the impact of the release. There is no evidence of adequate sampling of SSOs found in the public record for the Discharger.

In addition to SSOs which discharge over land 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. 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] River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters, including Broaddus Creek, Baechtel Creek, and the Eel River. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic collection system failures pose a substantial threat to public health.

As stated previously, Discharge Prohibition B as set forth in the Discharger's NPDES Permit, prohibits the discharge of wastes that lead to the creation of pollution, contamination, or nuisances as those terms are defined by Calif. Water Code § 13050. Contamination means "an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health." Pollution means "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (a) the waters for beneficial uses; or (b) facilities which serve beneficial uses." Nuisance means anything which meets 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"; and 3) "occurs during, or as a result of, the treatment or disposal of wastes." The Eel River and its tributaries have many beneficial uses as defined in the Basin Plan. SSOs reaching the Eel River and its tributaries cause prohibited pollution by unreasonably affecting beneficial uses.

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

The Discharger is also required by its NPDES Permit to comply with narrative standards as set forth in the Basin Plan, used when testing by numeric standards would be inadequate or impractical. Narrative standards include:

1) Waters shall not contain taste or odor producing substances in concentrations that impart undesirable tastes or odors to fish flesh;

2) Waters shall not contain floating material in concentrations that cause nuisance or affect beneficial uses;

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

4) The bacteriological quality of waters shall not be degraded beyond natural background levels; and

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

Nothing found in the public record demonstrates the Discharger has monitored for and complied with these narrative standards.

A mass balance analysis recently performed demonstrates that at least 100 million gallons of wastewater annually are likely lost somewhere between the headworks and the discharge point. The Discharger is unable to account for this loss. River Watch alleges the lost wastewater likely percolated from Delta Pond or the recently constructed wetland ponds, and is discharging via hydrologically-connected groundwater to Broaddus Creek and Baechtel Creek, both waters of the United States.

The Facility is a Reclamation and Disposal facility and as such must with comply with the Water Reclamation Requirements and Provisions set forth in Order No. R1-2011-0006 which include having sufficient land capacity to dispose of reclaimed water. Dischargers with incidental runoff (unintentional runoff not caused by the negligence of the discharger) of recycled water, must include a summary of these events in their quarterly recycled water monitoring report. There is the potential for enforcement action for incidental runoffs if the events are inadequately responded to, repeated, violate water quality objectives, create pollution or nuisance, or reach a surface water. Also, recycled water "shall not be applied in such a manner so as to exceed vegetative demand or field capacity" and "shall not be allowed to escape the recycled use area(s) in the form of surface runoff." Order No. R1-2011-0006, Attachment G. River Watch alleges the Discharger is over-irrigating its land and

therefore discharging reclamation wastewater in violation of the NPDES permit. The discharges described constitute a nuisance as defined by Calif. Water Code § 13050.

The Discharger's illegal discharge of untreated wastewater exceeding Basin Plan standards is a significant contribution to the degradation of the Eel River and its tributaries with adverse effects on beneficial uses of those waters. River Watch members residing in the area have a vital interest in bringing the Discharger's operations of the Facility and associated collection system into compliance with the CWA.

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 the pipe's 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 Discharger into compliance with its NPDES permit and the Basin Plan, and reflect the biological impacts of the Discharger's on-going non-compliance 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 Discharger's sewage collection system located within two hundred (200) feet from 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

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

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

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

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

   c. 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 Discharger determines that the grade-3 sewer pipe segment has

deteriorated and needs to be repaired or replaced, the Discharger 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 Discharger shall commence a Full Condition Assessment to be completed within seven (7) years.

   a. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within two (2) years of the rating determination.

B. SSO REPORTING AND RESPONSE

1. Modification of the Discharger'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.

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

3. 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.

4. A requirement for water quality sampling and testing 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 toxic metal analysis. The Discharger 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 Discharger is to 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.

5. The creation of web site capacity to track information regarding SSOs; or, in the alternative, the creation of a link from the Discharger's website to the CIWQS SSO Public Reports. The Discharger would notify 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.

6. Performance of human marker sampling on creeks, rivers, and wetlands 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:

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;

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

D. RECLAMATION PROGRAM MANAGEMENT

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

VIOLATIONS

River Watch contends that from May 10, 2011 through May 10, 2013, the Discharger has violated the requirements of the Discharger's NPDES Permit, the Basin Plan and the Code of Federal Regulations, as those requirements are referenced in the Discharger's NPDES Permit, with respect to the City of Willits Wastewater Treatment Facility and associated collection system. Said violations are evidenced and reported in the Discharger's Self Monitoring Reports, testing data compiled in compliance with the NPDES Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the Facility. Furthermore, these violations are continuing.

The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, and the CIWQS Public SSO Reporting Program Database records include, but are not limited to, the following categories in the NPDES Permit:

Discharge Prohibitions

Violations	Description
725	**Collection system subsurface discharge caused by underground exfiltration** – an event in which untreated sewage is discharged from the collection system prior to reaching the Facility. Underground discharges are alleged to have been continuous from May 10, 2011 through May 10, 2013. (Order No. R1-2010-0017, Discharge Prohibitions III.G: "The discharge of waste at any point not described in Finding II.B or authorized by a permit issued by the State Water Board or Regional Water Board is prohibited.") (Order No. R1-2010-0017, Discharge Prohibitions III.E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a pollution, contamination, or nuisance . . . is prohibited.")

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger'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 Facility reported in Self Monitoring Reports, video inspection of the Facility, and testing of waterways adjacent to sewer lines, creeks, and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.

10 **SSOs** – as evidenced in the CIWQS Interactive Public SSO Reports, including the inadequate reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

(Order No. R1-2010-0017, Discharge Prohibitions III.G: "The discharge of waste at any point not described in Finding II.B or authorized by a permit issued by the State Water Board or Regional Water Board is prohibited.")

(Order No. R1-2010-0017, Discharge Prohibitions III.E: "Any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a pollution, contamination, or nuisance . . . is prohibited.")

Monitoring Requirements

Violations **Descriptions.**

5 **Failure to monitor, report or adequately describe violations**. The majority of these violations occurred due to failure to report violations of Discharge Prohibitions III.E and III.G of Order No. R1-2010-0017, as well as failure to adequately describe reported violations of said provisions.

CONCLUSION

The violations as set forth in this Supplemental 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 domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Supplemental Notice.

River Watch believes this Supplemental Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Supplemental Notice. During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Supplemental Notice.

Very truly yours,

Jerry Bernhaut

JB:lhm

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