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Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. LAKE OROVILLE MARINA, LLC, BIDWELL CANYON MARINA, FOREVER RESORTS, LLC, BILL HARPER and REX MAUGHAN, Defendants.	Case No. 2:16-cv-01595 MCE-EFB **[PROPOSED] CONSENT AGREEMENT (Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)**

WHEREAS, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA") is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California's waters;

WHEREAS, Defendants Lake Oroville Marina, LLC, Bidwell Canyon Marina, Forever Resorts, LLC, Bill Harper and Rex Maughan (hereinafter "BCM" or "Defendants") do not own but lease and/or operate an approximately 4-acre facility at 801 Bidwell Canyon Road, in Oroville, California which includes a marina, a boat repair and maintenance shop, and equipment storage yard (collectively, the "Facility");

WHEREAS, CSPA and Defendants collectively shall be referred to as the "Parties";

WHEREAS, Plaintiff alleges that the Facility collects and discharges storm water from the Facility into Lake Oroville (a map of the Facility is attached hereto as **Exhibit A** and incorporated herein by reference);

WHEREAS, storm water discharges associated with industrial activity are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001, State Water Resources Control Board ("State Board") Water Quality Order No. 14-57-DWQ, issued pursuant to Section 402(p) of the Clean Water Act ("Act"), 33 U.S.C. section 1342(p), (hereinafter "General Permit") and, prior to July 1, 2015, were regulated by Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order 92-12-DWQ and 97-03-DWQ;

WHEREAS, on or about May 11, 2016, Plaintiff provided notice of Defendants' violations of the Act ("Clean Water Act Notice Letter"), and of its intention to file suit against Defendants to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of the State Board; the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. section 1365(b)(1)(A) (a true and correct copy of CSPA's Clean Water Act Notice Letter is attached as **Exhibit B** and incorporated herein by reference);

WHEREAS, on or about May 27, 2016, Plaintiff provided notice of Lake Oroville Marina, LLC and Forever Resorts, LLC's alleged violations of California Health & Safety Code section 25249.5 *et seq*. (referred to as "Proposition 65") ("Proposition 65 Notice Letter"), and of its intent to file suit to the Proposition 65 Enforcement Reporting section of the office of the California Attorney General ("California Attorney General"); the District Attorney of each California county containing sources of drinking water potentially impacted by such violations of Proposition 65 as described in the Proposition 65 Notice Letter; and, to Lake Oroville Marina, LLC and Forever Resorts, LLC, as required by California Health & Safety Code section 25249.5, *et seq.* (a true and correct copy of CSPA's "Proposition 65 Notice Of

Violations Letter" is attached as **Exhibit C** and incorporated herein by reference);

WHEREAS, Defendants deny the occurrence of the violations alleged in the Clean Water Act Notice Letter and maintain that BCM has complied at all times with the provisions of the General Permit and the Clean Water Act or, alternatively, that there are no "ongoing and continuous" violations of the General Permit or the Act;

WHEREAS, Defendants deny the occurrence of the violations alleged in the Proposition 65 Notice Letter and maintain that BCM has complied at all times with the provisions of Proposition 65;

WHEREAS, the Parties agree that it is in their mutual interest to resolve this matter as to all entities and persons named in the Notice Letters without litigation and enter into this Consent Agreement ("Agreement");

WHEREAS, on or about July 11, 2016, CSPA filed a complaint against Defendants in the United States District Court, Eastern District of California, (this matter hereinafter referred to as "the Action");

WHEREAS, on or about August 5, 2016, CSPA filed a first amended complaint ("First Amended Complaint");

WHEREAS, for purposes of this Agreement only, the Parties stipulate that venue is proper in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to dismiss this matter with prejudice under the terms of this Agreement;

WHEREAS, within five (5) calendar days of mutual execution, this Agreement shall be submitted to the United States Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C. section 1365(c);

WHEREAS, at the time the Agreement is submitted for approval to the United States District Court, CSPA shall submit a Notice of Settlement in the District Court and inform the Court of the expected dismissal date following the expiration of the statutory review period identified above;

AND WHEREAS, within ten (10) calendar days of expiration of the statutory review

period, or the earlier receipt of non-objection from the United States Department of Justice, the Parties shall file with the Court a Stipulation and Order that shall provide that the Complaint and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) concurrently with the District Court's retention of jurisdiction for the enforcement of this Agreement as provided herein (the date of entry of the Order to dismiss shall be referred to herein as the "Court Approval Date").

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES AS FOLLOWS:

I. COMMITMENTS OF DEFENDANTS

1. Compliance with General Permit, the Clean Water Act and Proposition 65. Throughout the term of this Agreement, BCM shall continue implementing all measures needed to operate the Facility in compliance with the requirements of the General Permit, the Clean Water Act and Proposition 65, subject to any defenses available under the law.

2. Implementation of Specific Storm Water Best Management Practices. Unless otherwise indicated below, on or before **November 1, 2016**, BCM shall complete the implementation and incorporation into the Facility's Storm Water Pollution Prevention Plan ("SWPPP") of the following storm water source control measures/best management practices ("BMPs") at the Facility:

(a) *Mandatory Minimum Best Management Practices*. BCM shall implement all mandatory minimum BMPs set forth in Section X.H of the General Permit;

(b) *Reconstruction of Sampling Point No. 1 ("SP-1") northeast of the Boat Shop Maintenance Building as identified in the annotated map attached as* ***Exhibit A***. BCM shall reconstruct the Boat Shop Area's northeast discharge point to channel all flows to the sediment catchment system drawn in **Exhibit D**, and shall include UltraTech International, Inc.'s *Ultra-Gutter Guard Plus* or the functional equivalent[1] and a metal-absorbing filtration

[1] As used in this Agreement, "functionally equivalent" shall mean that, in the event that BCM elects to use any alternative products not specified herein, it shall confer with Plaintiff in good faith to obtain Plaintiff's prior written agreement.

sock functionally equivalent to UltraTech's *Ultra-Filter Sock*, with heavy metal removal media, such that all flows pass through these media prior to flowing to the sediment catchment basin;[2]

(c) *Construction of Southeast Discharge Point ("SP-2") in Southeast Bone Yard Area.* BCM shall construct a grassy swale and concrete discharge point at the southeast corner of the Boat Shop Area (hereafter, the "Southeast Bone Yard Area"), providing ample space for filtration media (functionally equivalent to UltraTech's *Ultra-Filter Sock)* and sample collection (see Schematic Drawings attached as **Exhibit E**);

(d) *Re-Routing of Storm Water Flows in the Southwest Bone Yard Area.* All storm water flows in the Southwest Bone Yard Area shall be routed to SP-2 through a series of berms, wattles and pipes; (see Facility map attached as **Exhibit A**);

(e) *Elimination of Non-Storm Water Discharges from Repair Shop Subdrain.* BCM shall eliminate and/or otherwise decommission (e.g., plug) the subdrain within the Repair Shop to eliminate all discharges of non-storm water from the Repair Shop. In addition, BCM shall install a "speedbump" type berm to prevent the flow of storm water into the shop maintenance area (as depicted in the Facility map attached as **Exhibits A**);

(f) *Elimination of Facility Run-on in Boat Shop Maintenance Building area.* BCM shall construct an eight-inch berm on the Western Facility boundary as set forth in **Exhibits A and E** to prevent storm water from running on to the Facility;

(g) *Elimination of Discharge Point on Eastern Boundary in the Storage Area.* BCM shall install a two foot high gravel berm, together with a wattle on the upgradient side, along the Eastern and Southern property boundary (as depicted in **Exhibit A**) to prevent the discharge of storm water in this Facility area;

(h) *Removal of All Materials in the Southwest Boneyard Area.* BCM shall

[2] All storm water BMPs called for in this Agreement shall be used in accordance with the manufacturer's directions, and cleaned and inspected on a monthly basis during the Wet Season. All such cleaning and inspections shall be logged with the date and the name of the individual undertaking the cleaning or inspections; the logs shall be incorporated into and stored with the SWPPP.

either remove the materials in the Southwest Boneyard Area and construct wattles and piping to direct the water to Drainage Area 2 as depicted in **Exhibit A**;

(i) *Improved Tarping, Coverage and Pallets.* Unless actively under repair(s), BCM shall use tarps or overhead coverage to cover any open storage bins, unused or under-repair equipment or unused or under-repair vehicles at the Facility at all times during the Wet Season (October 1 – May 31);

(j) *Improved Spill Response.* BCM shall promptly address all oil and grease spills by cleaning them up as soon as they are discovered, and logging them in the SWPPP. BCM shall place spill kits at the north and south ends of the Maintenance Area, and also within ten feet of any above ground storage tanks and in any areas used for re-fueling at the Facility (as depicted in **Exhibit A)**;

(k) *Painting Repair Shop Roof.* On or before February 1, 2017, BCM shall paint the roof of the maintenance shop with an enamel or other zinc-abatement paint in order to reduce the amount of galvanized metal surfaces exposed to storm water at the Facility;

(l) *Waste Transfer Procedures Incorporated in Revised Storm Water Pollution Prevention Plan.* BCM shall transfer wastes from watercraft by and through the policies and procedures already in existence as well as maintain the waste transfer facility in good working condition. In brief, BCM shall ensure that only trained employees operate the pumping station and related operations, monitor the hose(s) and holding tank(s) to ensure no leakage or overfilling occurs, and shall use appropriate health and safety techniques, including through the use of retention buckets, to ensure that no discharges occur. BCM shall revise the Facility SWPPP to incorporate all Best Management Practices implemented at the Facility to prevent the discharge of wastes transferred from boats and other watercraft using the Bidwell Canyon Marina to the marina's waste collection system.

(m) *Increased Training.* BCM shall increase training for BCM's Storm Water Pollution Prevention Team ("SWPPT"), including holding one training meeting prior to October 1, 2016. BCM will incorporate the holding of bi-annual meetings in its new SWPPP.

BCM, when setting these bi-annual meetings of the SWPPT, shall consider dates near September 15th and January 15th, which CSPA considers times most effective in ensuring the capture of the Wet Season's "First Flush" event, typically occurring in the fourth quarter, and the second storm event, which often happens in the first (and sometimes the fourth) quarters of the year. BCM shall target training on tracking what storm events qualify for sampling purposes, and taking monthly Wet Season visual monitoring, logging and properly reporting data in the Facility's Annual Report. As will be described in the revised SWPPP, BCM shall log these meetings with the date, materials covered, written agenda, and a list of attendees for each, and shall retain these logs with the SWPPP. BCM shall have at least one member of the SWPPT, that meets the certification qualifications, be formally certified as a Qualified Industrial Storm Water Practitioner ("QISP");

(n) *Public Rain Data.* Unless BCM installs and maintains a fully automated rain gauge at the Facility, the Parties shall use publicly-available rain data to resolve any disputes under this Consent Agreement.

3. SWPPP Amendments. On or before November 1, 2016 Defendants shall amend the Facility SWPPP to incorporate all of the relevant requirements of this Agreement and the Revised General Permit, as well as revise the Facility map associated with the SWPPP. These revisions shall reflect all current site conditions and practices and identify potential Contaminants of Concern ("COC"), identify the location of all pervious and impervious areas, drop inlets, BMPs, and storm water flow vectors. These revisions shall also provide for weekly monitoring and maintenance of all Facility collection and discharge points; and bi-annual storm water management training for Facility employees.

4. Sampling Frequency. For the second half of the 2016-2017 reporting year, both halves of the 2017-2018 reporting year, and the first half of the 2018-2019 reporting year, Defendants shall collect and analyze samples from three (3) Qualifying Storm Events[3]

[3] A Qualifying Storm Event (QSE) is defined in the Revised General Permit as a precipitation event that: (a) Produces a discharge for at least one drainage area; and (b) is preceded by 48 hours with no discharge from any drainage area. *See* Revised General Permit Section XI(b)(1).

("QSEs"). The storm water sample results shall be compared with the values set forth in **Exhibit F**, attached hereto, and incorporated herein by reference. If the results of any such samples exceed the parameter values set forth in **Exhibit F**, Defendants shall comply with the "Action Memorandum" requirements set forth below. In the event that Defendants' sample analyses for PCBs or magnesium result in four consecutive "non-detects" for that parameter at a given discharge point, then Defendants shall be entitled, upon Plaintiff's written confirmation, to discontinue analyses for that parameter at that discharge point for the remainder of the term of this Consent Agreement. This exception shall only apply where Defendants have complied with all monitoring requirements, including the taking of all samples required, the taking of samples during QSEs, and the use of proper lab methods and sample collection techniques.

5. Sampling Parameters. All six (6) samples in each reporting year shall be analyzed for each of the constituents listed in **Exhibit F**, including TMDLs, as applicable, by a laboratory accredited by the State of California. All samples collected from the Facility shall be delivered to the laboratory as soon as possible to ensure that sample "hold time" is not exceeded. Analytical methods used by the laboratory shall comply with General Permit Requirements in regards to both test method and detection limit. See Revised General Permit, Table 2, at 43. Sampling results shall be provided to CSPA within seven (7) business days of Defendants' receipt of the laboratory report from each sampling event, pursuant to the Notice provisions below.

6. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-and-Confer. If any sample taken during the two (2) reporting years referenced in Paragraph 4 above exceeds the evaluation levels set forth in **Exhibit F**, or if Defendants fail to collect and analyze samples from six (6) QSEs, for any reason(s) excepting the failure to collect and analyze samples due to inadequate rainfall, then Defendants shall prepare a written statement discussing the exceedance(s) and/or failure to collect and analyze samples from six (6) storm events, the possible cause and/or source of the exceedance(s), and

additional measures that will be taken to address and eliminate future exceedances and/or failures to collect required samples ("Action Memorandum"). The Action Memorandum shall be provided to CSPA not later than July 15 following the conclusion of each reporting year, on July 15, 2017 and July 15, 2018. Such additional measures may include, but are not limited to, further material improvements to the storm water collection and discharge system, changing the type and frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than sixty (60) days after the due date of the Action Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA, Defendants agree to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

7. **Inspections During The Term Of This Agreement.** In addition to any site inspections conducted as part of the settlement process and the meet-and-confer process concerning an Action Memorandum as set forth above, Defendants shall permit representatives of CSPA to perform up to four (4) physical inspections of the Facility during the term of this Agreement. These inspections shall be performed by CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping and CSPA shall provide Defendants with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical inspection, except that Defendants shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any party/attorney, or the safety of individuals. In such case, Defendants shall specify at least

three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. Defendants shall not make any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

8. Communications To/From Regional and State Water Boards. During the term of this Agreement, BCM shall provide CSPA with copies of all documents submitted to, or received from, the Regional Water Board or the State Water Board concerning storm water discharges from the Facility, including, but not limited to, all documents and reports submitted to the Regional Water Board and/or State Water Board as required by the current General Permit. Such documents and reports shall be provided to CSPA pursuant to the Notice provisions set forth below and contemporaneously with BCM's submission(s) to, or, receipt from, such agencies.

9. SWPPP Amendments. Pursuant to the Notice provisions set forth below, Defendants shall provide CSPA with a copy of any amendments to the Facility SWPPP made during the term of the Agreement within fourteen (14) days of such amendment.

II. STIPULATED PENALTIES; MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

1. Stipulated Civil Penalties For Future Violations of Proposition 65. Proposition 65 provides for civil penalties of up to $2,500 per violation per day, pursuant to California Health & Safety Code section 25249.7. In the event that Defendants discharge lead from the Facility during the term of this Consent Agreement in a concentration greater than 0.5 micrograms/liter, the Parties stipulate that Defendants shall be liable for a stipulated civil penalty in the amount $2,500 per discharge measured and found to exceed this concentration

level. Plaintiff shall remit 75% of this amount to the State of California pursuant to Health & Safety Code section 25249.12(c)(1).

2. **Mitigation Payment In Lieu Of Civil Penalties Under the Clean Water Act.** As mitigation to address any potential harms from the Clean Water Act violations alleged in CSPA's First Amended Complaint, Defendants agree to pay the sum of $35,000 to the Rose Foundation for Communities and the Environment ("Rose Foundation") for projects to improve water quality in Lake Oroville, the Feather River or the Sacramento-San Joaquin Delta. Such mitigation payment shall be remitted directly to the Rose Foundation at: Rose Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, CA 94612 within ten (10) days of the Court Approval Date.

3. **Civil Penalty Under Proposition 65**. Defendants agree to pay the sum of $20,000 as a civil penalty pursuant to Health & Safety Code section 25249.7(b) to Plaintiff's counsel at the Notice address within ten (10) days of the Court Approval Date. Such payment shall be made to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account." Plaintiff shall promptly remit 75% of this amount to the State of California pursuant to Health & Safety Code section 25192.

4. **Additional Settlement Payment Under Proposition 65**. As an offset to the civil penalties assessed in the preceding paragraph, and consistent with the California Attorney General's Proposition 65 settlement guidelines at 11 CCR 3203(d), Defendants agree to pay the additional sum of $15,000 in lieu of further civil penalties under Proposition 65. Such payment shall be remitted to Plaintiff's counsel within ten (10) days of the Court Approval Date at Plaintiff's counsel's Notice address and made out to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account." These additional funds shall be used by CSPA, a tax-exempt organization operating under section 501(c)(3) of the Internal Revenue Code, to prevent, reduce or eliminate discharges of Proposition 65-listed substances to sources of drinking water, with priority given to Lake Oroville, the Feather River, or other California waters flowing to the Sacramento-San Joaquin Delta consistent with the statutory goals of

Proposition 65. CSPA's Statement of Accountability under 11 CCR 3204(b)(3) shall be included in the papers supporting the Motion for Approval & Entry of this Consent Judgment. (See Paragraph IV.21 – IV.24, below.) CSPA shall obtain and maintain adequate records to document that the funds paid as an Additional Settlement Payment are spent on the activities described above, and CSPA shall provide to the California Attorney General, within thirty (30) days of any request, copies of all documentation demonstrating how such funds have been spent, as required by 11 CCR 3204(b)(5). No party to the settlement or counsel of record, or spouse or dependent child thereof, has an economic interest in CSPA, besides itself. 11 CCR 3204(b)(6)(B).

5. **Compliance Monitoring Funding.** To defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance with this Agreement, Defendants agree to contribute $6,250 for each of the two Wet Seasons covered by this Agreement ($12,500 total for the life of the Agreement), to a compliance monitoring fund maintained by counsel for CSPA as described below. Payment shall be made payable to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and remitted to Plaintiff's counsel within ten (10) days of the Court Approval Date. Compliance monitoring activities may include, but shall not be limited to, site inspections, review of water quality sampling reports, review of annual reports, discussions with Defendants concerning the Action Memoranda referenced above, and potential changes to compliance requirements herein.

6. **Reimbursement of Fees & Costs.** Defendants agree to reimburse CSPA in the amount of $67,500 to defray CSPA's reasonable investigative, expert, consultant, and attorneys' fees and costs, and all other costs incurred as a result of investigating the activities at the Facility, bringing the action, and negotiating a resolution of this action in the public interest.[4] Such payment shall be made payable to the "Law Offices of Andrew L. Packard

[4] These fees and costs will be broken down and described more fully in Plaintiff's Motion to Approve and Enter this Agreement, to be filed pursuant to the California Safe Drinking Water & Toxic Enforcement Act, Health & Safety Code section 25249.7(f)(4). (See Title 11, Cal. Code of Regs. § 3000, *et seq.*; see

Attorney Client Trust Account" and remitted to the firm within ten (10) days after the Court Approval Date.

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

7. With the exception of the timelines set forth above for addressing exceedances of values specified in **Exhibit F** and the Action Memoranda, if a dispute under this Agreement arises, or either Party believes that a breach of this Agreement has occurred, the Parties shall meet and confer within seven (7) business days of receiving written notification from the other Party of a request for a meeting to determine whether a breach has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) business days have passed after the meet-and-confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of California, Eastern District, which shall retain jurisdiction over the Action until the Termination Date for the limited purposes of enforcement of the terms of this Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in the then-applicable federal Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure, and applicable case law interpreting such provision.

8. CSPA's Waiver and Release. Upon the Court Approval Date of this Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Defendants and its officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of its predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other representatives (each a "Released Defendant Party") from,

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also Paragraphs 21-24, below.)

and waives all claims which arise from or pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of Defendants to comply with the Clean Water Act or Proposition 65 at the Facility, up to the Court Approval Date.

9. Defendants' Waiver and Release. Defendants, on their own behalf and on behalf of any Released Defendant Party under its control, release CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to the Action.

10. The Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

While CSPA asserts that California Civil Code section 1542 applies to general releases only, and that the release in Paragraph 15 above is a limited release, the Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the Notice Letter and/or the Complaint, up to and including the Court Approval Date of this Agreement.

IV. MISCELLANEOUS PROVISIONS

11. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission

by Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

12. The Agreement shall be effective upon mutual execution by all Parties. The Agreement shall terminate on the "Termination Date," which shall be July 31, 2019.

13. The Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document. An executed copy of this Agreement shall be valid as an original.

14. In the event that any one of the provisions of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15. The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning. This Agreement shall be construed pursuant to California law, without regarding to conflict of law principles.

16. The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood and agreed to be bound by all of the terms and conditions of this Agreement.

17. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein. This Agreement and its attachments are made for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise expressly provided for therein.

18. **Notices.** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CSPA pursuant to this Agreement shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

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Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
(209) 464-5067

With copies sent to:

Andrew L. Packard
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, California 94952
Tel: (707) 763-7227
E-mail: Andrew@packardlawoffices.com

Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to Defendant pursuant to this Agreement shall be sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

Bill Harper, General Manager
Bidwell Canyon Marina
801 Bidwell Canyon Road
Oroville, California 95966

John Schoppmann, Executive Vice President
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

Darin P. Reber
7501 E. McCormick Parkway
Scottsdale, Arizona 8525888
Tel: (480) 998-8888 (4120)
E-mail: dreber@foreverliving.com

With copies sent to:

Michael E. Vinding
BRADY & VINDING
400 Capitol Mall, Ste 2640
Sacramento, California 95814
Tel: (916) 273-1734
E-mail: mvinding@bradyvinding.com

Each Party shall promptly notify the other of any change in the above-listed contact information.

19. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

20. No Party shall be considered to be in default in the performance of any of its

obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the Party's control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.

21. Motion to Approve and Enter This Agreement. Under Proposition 65, settlement agreements require Court approval. Health and Safety Code section 25249.7(f)(4). Upon execution of this Agreement by all Parties, Plaintiff shall notice a Motion for Approval & Entry pursuant to Title 11, Cal. Code of Regs. section 3000, *et seq*. This Motion shall be served upon all of the Parties to the Action and upon the California Attorney General's Office.

22. Nullification. In the event that the Court fails to approve and order entry of this Agreement, the Agreement shall become null and void upon the election of any Party as to them and upon written notice to all of the Parties to the Action pursuant to the notice provisions herein.

23. Attorney General Oversight. The Parties shall use best efforts to support entry of this Agreement in the form submitted to the Office of the Attorney General. If the Attorney General objects in writing to any term in this Agreement, the Parties shall use best efforts to resolve the concern in a timely manner and prior to the hearing on the motion to approve this Agreement. If the Parties cannot resolve an objection of the Attorney General, then the Parties shall proceed with seeking entry of an order by the court approving this Agreement in the form originally submitted to the Office of the Attorney General, or in such other form as the Parties shall mutually agree upon after consideration of any comments of the Attorney General. If the Attorney General elects to file a notice or motion with the Court stating that the People shall appear at the hearing for entry of this Agreement so as to oppose entry, then a party may

withdraw from this Agreement prior to the date of the hearing, with notice to all parties and the Attorney General, and upon such notice this Agreement shall be null and void and any sums paid hereunder shall be returned to Defendants within fifteen (15) days of written notice to Plaintiff.

24. If for any reason the Court should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Agreement in a mutually acceptable manner, this Agreement shall become null and void.

25. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Settling Party on the ground that any such party drafted it.

26. This Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement. This Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives.

The Parties hereto enter into this Agreement and respectfully submit it to the Court for its approval and entry.

Dated: November 1, 2016

California Sportfishing Protection Alliance

By: Bill Jennings

Bill Jennings, Executive Director

Dated: November ___, 2016

Lake Oroville Marina, L.L.C.
dba Bidwell Canyon Marina

By: _____

Rex Maughan, President

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Dated: November ___, 2016

California Sportfishing Protection Alliance

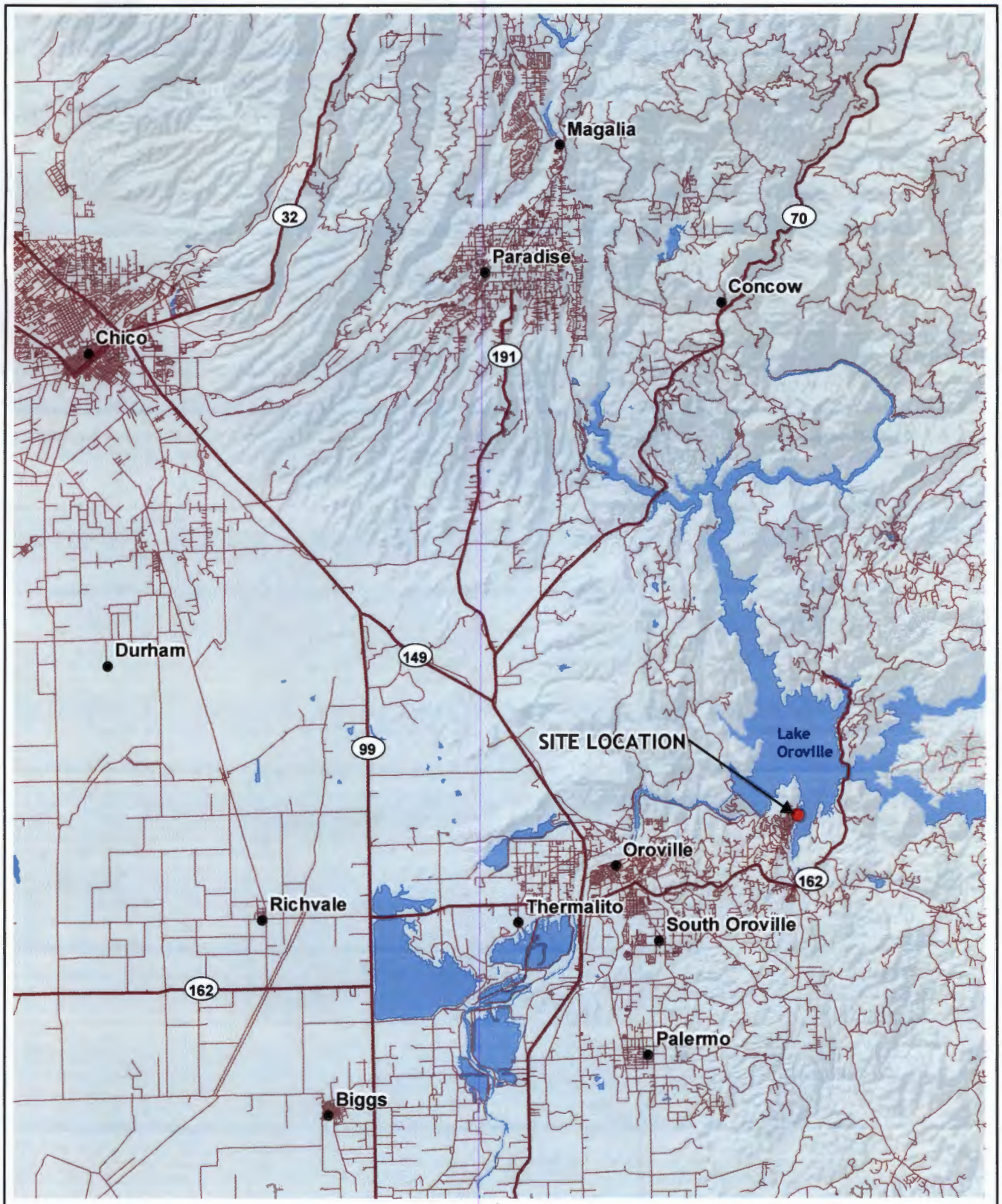
By: _____
Bill Jennings, Executive Director

Dated: November ___, 2016

Lake Oroville Marina, L.L.C.
dba Bidwell Canyon Marina

By: _____
Rex Maughan, President

EXHIBIT A – Facility Site Map



VESTRA

Miles
0 1.25 2.5 5

FIGURE 1
GENERAL SITE LOCATION
BIDWELL CANYON MARINA
BUTTE COUNTY, CALIFORNIA

P:\GIS\71533\71533_GeneralSiteLocation.mxd

Facility Boundary

Industrial Activity Area Subject to IGP Coverage

VESTRA

0 125 250 500 Feet

SOURCE: USDA NAIP 2014 AERIAL PHOTOGRAPH

FIGURE 2A
GENERAL SITE LAYOUT
BIDWELL CANYON MARINA
BUTTE COUNTY, CALIFORNIA

P:\GIS\71533\71533_GeneralSiteLayoutA.mxd

Spill Kit

Fenceline

Hazmat Storage Area

Pervious Area (All Other Areas Imperious - Roofed or Paved)

Area Where Materials Exposed to Stormwater

Facility Boundary

VESTRA

0 50 100 200 Feet

N

SOURCE: USDA NAIP 2014 AERIAL PHOTOGRAPH

FIGURE 2B
GENERAL SITE LAYOUT
BIDWELL CANYON MARINA
BUTTE COUNTY, CALIFORNIA

P:\GIS\71533\71533_GeneralSiteLayoutB.mxd

Drop Inlet
Sampling Point
Flow Direction
Asphalt/Concrete Berm/Curb
Earthen Berm
Piping
Underground Piping
Wattle
Facility Boundary
Area Subject to Soil Erosion
Drainage Area 1
Drainage Area 2
Drainage Area 3

VESTRA

0 50 100 200 Feet

FIGURE 3
BMPs
BIDWELL CANYON MARINA
BUTTE COUNTY, CALIFORNIA

SOURCE: USDA NAIP 2014 AERIAL PHOTOGRAPH

P:\GIS\71533\71533_BMPs.mxd

EXHIBIT B – CWA Notice of Violation and Intent to Sue Letter

LAW OFFICES OF
ANDREW L. PACKARD
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

May 11, 2016

VIA CERTIFIED MAIL

Bill Harper, General Manager
Lake Oroville Marina, LLC
801 Bidwell Canyon Road
Oroville, California 95966

Bill Harper, General Manager
Bidwell Canyon Marina
801 Bidwell Canyon Road
Oroville, California 95966

Matt Harvey, Agent for Service of Process
Lake Oroville Marina, LLC
7501 E. McCormick Parkway #1100LL
Scottsdale, Arizona 85258

Rex Maughan, President
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT") (33 U.S.C. §§ 1251 *et seq.*)

Dear Mr. Harper and Mr. Maughan:

This firm represents the California Sportfishing Protection Alliance ("CSPA"), a California non-profit association, in regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at Bidwell Canyon Marina ("BCM"), located at 801 Bidwell Canyon Road, in Oroville, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Mr. Harper, Mr. Maughan, Bidwell Canyon Marina, and Lake Oroville Marina, LLC shall hereinafter be collectively referred to as "BCM." CSPA is dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which BCM discharges polluted storm water.

BCM is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.* and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("General Permit"), Water Quality Order No. 97-03-DWQ ("1997 General Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 General Permit").[1]

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[1] BCM submitted a Notice of Intent (NOI) to comply with the General Permit for the Facility on or about January 26, 2015.

On July 1, 2015, the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Bidwell Canyon Marina to a penalty of up to $37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against BCM for violations of the Act and the Permit.

I. Background.

A. The Clean Water Act.

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of an NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing

California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA.

The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

C. BCM's Lake Oroville Facility

BCM's approximately 4-acre Facility is operated as a marina as well as a boat and maintenance shop. The industrial activities at the Facility fall under Standard Industrial Classification ("SIC") Code 4493 ("Marinas")

BCM collects and discharges storm water associated with industrial activities at the Facility through at least two (2) discharge points into Lake Oroville. Lake Oroville is a water of the United States within the meaning of the Clean Water Act.

The General Permit requires BCM to analyze storm water samples for Total Suspended Solids ("TSS"), pH, and Oil and Grease ("O&G"). 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 4493 must also analyze storm water

samples for Aluminum ("Al"), Iron ("Fe"), Lead ("Pb"), and Zinc ("Zn"). 1997 General Permit, Tables 1-2; 2015 General Permit, Tables 1-2.

II. BCM's Violations of the Act and Permit.

Based on its review of available public documents, CSPA is informed and believes that BCM is in ongoing violation of both the substantive and procedural requirements of the CWA and the Permit. BCM's violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, BCM is subject to penalties for violations of the Act since May 11, 2011.

A. BCM Discharges Storm Water Containing Pollutants in Violation of the Permit's Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

BCM's storm water sampling results provide conclusive evidence of BCM's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1., C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v.*

Chico Scrap Metal, Inc., 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for at least two of the pollutants discharged by BCM: Zinc – 0.12 mg/L (maximum concentration) and Lead – 0.065 mg/L (maximum concentration).

The *Water Quality Control Plan, Fourth Edition (Revised August 2006), for the Sacramento and San Joaquin River Basins* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to BCM's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Sacramento River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by BCM: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L; Aluminum – 0.75 mg/L; Chemical Oxygen Demand – 120 mg/L; Iron – 1.0 mg/L; Magnesium – 0.0636 mg/L; Lead – 0.0816 mg/L; and Oil & Grease – 15.0 mg/L.

3. Bidwell Canyon Marina's Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/3/2015	South Runoff	TSS	106	100
4/5/2015	North Runoff	TSS	128	100
4/5/2015	South Runoff	TSS	491	100
1/29/2014	South Runoff	TSS	444	100
10/05/2011	Shop	TSS	344	100

b. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
3/20/16	South Runoff	Zn	0.148	0.117	0.12
3/10/2016	South Runoff	Zn	0.163	0.117	0.12
12/3/2015	South Runoff	Zn	0.179	0.117	0.12
4/5/2015	South Runoff	Zn	0.69	0.117	0.12
3/26/2014	South Runoff	Zn	0.36	0.117	0.12
1/29/2014	South Runoff	Zn	1.42	0.117	0.12
2/19/2013	North Runoff	Zn	0.27	0.117	0.12
1/19/2012	Shop Runoff	Zn	1.51	0.117	0.12
1/19/2012	South Runoff	Zn	0.20	0.117	0.12
10/05/2011	Shop	Zn	1.02	0.117	0.12

c. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/2016	South Runoff	Al	2.87	0.75
3/10/2016	South Runoff	Al	1.46	0.75
12/9/2015	South Runoff	Al	1.68	0.75
12/3/2015	South Runoff	Al	2.25	0.75
4/5/2015	North Runoff	Al	1.2	0.75
4/5/2015	South Runoff	Al	8.7	0.75
3/26/2014	North Runoff	Al	1.1	0.75
3/26/2014	South Runoff	Al	6.1	0.75
1/29/2014	North Runoff	Al	1.6	0.75
1/29/2014	South Runoff	Al	11.3	0.75
2/19/2013	North Runoff	Al	2.1	0.75
1/19/2012	Shop Runoff	Al	3.9	0.75

1/19/2012	South Runoff	Al	1.1	0.75
10/05/2011	Shop	Al	12.5	0.75
10/05/2011	South Runoff	Al	3.1	0.75

d. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/2016	South Runoff	Fe	4.02	1.0
3/10/2016	South Runoff	Fe	2.16	1.0
12/9/2015	South Runoff	Fe	2.93	1.0
12/3/2015	South Runoff	Fe	3.82	1.0
4/5/2015	North Runoff	Fe	2.27	1.0
4/5/2015	South Runoff	Fe	10.8	1.0
3/26/2014	North Runoff	Fe	1.59	1.0
3/26/2014	South Runoff	Fe	8.76	1.0
1/29/2014	North Runoff	Fe	2.68	1.0
1/29/2014	South Runoff	Fe	14.8	1.0
2/19/2013	North Runoff	Fe	2.27	1.0
1/19/2012	Shop Runoff	Fe	4.39	1.0
1/19/2012	South Runoff	Fe	1.63	1.0
10/05/2011	Shop	Fe	18.4	1.0
10/05/2011	South Runoff	Fe	3.96	1.0

d. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/16	South Runoff	Mg	1.56	0.0636
12/9/2015	South Runoff	Mg	1.3	0.0636
12/3/15	South Runoff	Mg	1.72	0.0636

e. Discharges of Storm Water Exceeding the Basin Plan Standards for pH

Date	Discharge Point	Parameter	Concentration in Discharge (pH units)	Basin Plan (pH units)
4/5/2015	North Runoff	pH	4.7	6.5 – 8.5
4/5/2015	South Runoff	pH	5.7	6.5 – 8.5
3/26/2014	North Runoff	pH	6.1	6.5 – 8.5
1/29/2014	North Runoff	pH	5.8	6.5 – 8.5
1/29/2014	South Runoff	pH	5.7	6.5 – 8.5

2/19/2013	South Runoff	pH	6.3	6.5 – 8.5
1/19/2012	Shop Runoff	pH	6.0	6.5 – 8.5
1/19/2012	South Runoff	pH	5.5	6.5 – 8.5

f. BCM's Sample Results Are Evidence of Violations of the General Permit

BCM's sample results demonstrate violations of the General Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that BCM has known that its storm water contains pollutants at levels exceeding General Permit standards since at least May 9, 2011.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that BCM has discharged storm water containing impermissible levels of TSS, Zn, Al, Fe, and Mg in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

4. BCM Has Failed to Implement BAT and BCT.

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

BCM has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i–x); 2015 General Permit, Sections X.H.1(a–g).

BCM has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit.

Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least May 11, 2011.

5. BCM Has Failed to Implement an Adequate Monitoring Implementation Plan.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids ("TSS") and oil and grease ("O&G"), certain industry-specific parameters set forth in Table 1 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. Permit, Section XI.B.6. The General Permit requires that the Discharger shall ensure that all laboratory analyses are conducted according to test procedures under 40 CFR 136. Permit, Section XI.B.10. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. Section XI.B.11.

BCM has failed to develop and implement an adequate Monitoring Implementation Plan by failing to sample all discharge locations during each qualifying storm event and using incorrect test methods when analyzing certain parameters.

Each day that BCM has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct viollation of the Act and Permit. BCM has been in violation of the Monitoring Implementation Plan requirements every day since at least May 13, 2011.

6. BCM Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that BCM has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. BCM has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day BCM has failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. BCM has been in violation of these requirements at the Facility every day since at least May 11, 2011.

III. Persons Responsible for the Violations.

CSPA puts BCM on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts BCM on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
(209) 464-5067

V. Counsel.

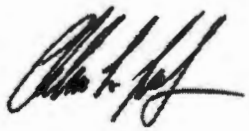
CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Megan E. Truxillo
William N. Carlon
Law Offices Of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
(707) 763-7227
Andrew@PackardLawOffices.com

VI. Conclusion

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against Bidwell Canyon Marina and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for California Sportfishing Protection Alliance

SERVICE LIST

VIA CERTIFIED MAIL

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA, 94105

Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Pamela Creedon, Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

ATTACHMENT A
Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016

May	15	2011	March	18	2012	December	26	2012
May	16	2011	March	19	2012	January	5	2013
May	17	2011	March	25	2012	January	6	2013
May	18	2011	March	26	2012	January	9	2013
May	23	2011	March	28	2012	January	10	2013
May	26	2011	March	30	2012	January	23	2013
May	29	2011	April	1	2012	January	24	2013
June	1	2011	April	4	2012	January	27	2013
June	2	2011	April	11	2012	February	7	2013
June	4	2011	April	12	2012	February	8	2013
June	5	2011	April	13	2012	February	19	2013
June	6	2011	April	14	2012	February	20	2013
June	7	2011	April	26	2012	March	3	2013
June	29	2011	June	5	2012	March	4	2013
October	4	2011	October	22	2012	March	5	2013
October	5	2011	October	23	2012	March	6	2013
October	6	2011	October	24	2012	March	7	2013
October	7	2011	November	1	2012	March	19	2013
October	10	2011	November	17	2012	March	20	2013
October	11	2011	November	18	2012	March	21	2013
November	4	2011	November	20	2012	March	30	2013
November	6	2011	November	21	2012	March	31	2013
November	12	2011	November	28	2012	April	1	2013
November	20	2011	November	29	2012	April	4	2013
November	21	2011	November	30	2012	April	5	2013
November	24	2011	December	1	2012	April	7	2013
November	25	2011	December	2	2012	April	8	2013
December	15	2011	December	3	2012	May	5	2013
January	20	2012	December	4	2012	May	6	2013
January	21	2012	December	5	2012	May	7	2013
January	23	2012	December	6	2012	May	16	2013
January	24	2012	December	11	2012	May	27	2013
January	27	2012	December	12	2012	May	28	2013
February	8	2012	December	13	2012	June	10	2013
February	11	2012	December	16	2012	June	11	2013
February	13	2012	December	17	2012	June	18	2013
February	29	2012	December	20	2012	June	24	2013
March	13	2012	December	21	2012	June	25	2013
March	14	2012	December	22	2012	June	26	2013
March	15	2012	December	23	2012	August	20	2013
March	16	2012	December	24	2012	September	21	2013
March	17	2012	December	25	2012	September	22	2013
September	24	2013	August	5	2014	February	6	2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A
Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016

October	27	2013	September	24	2014	February	7	2015
October	28	2013	September	25	2014	February	8	2015
November	19	2013	September	26	2014	February	9	2015
November	20	2013	October	14	2014	February	10	2015
November	21	2013	October	15	2014	February	27	2015
December	6	2013	October	16	2014	February	28	2015
December	7	2013	October	20	2014	March	11	2015
January	29	2014	October	21	2014	March	22	2015
January	30	2014	October	24	2014	March	23	2015
February	5	2014	October	25	2014	April	5	2015
February	6	2014	October	26	2014	April	6	2015
February	7	2014	October	31	2014	April	7	2015
February	8	2014	November	1	2014	April	8	2015
February	9	2014	November	12	2014	April	23	2015
February	10	2014	November	13	2014	April	24	2015
February	16	2014	November	14	2014	April	25	2015
February	26	2014	November	19	2014	June	6	2015
February	27	2014	November	20	2014	June	7	2015
February	28	2014	November	21	2014	July	8	2015
March	1	2014	November	22	2014	July	9	2015
March	2	2014	November	28	2014	September	16	2015
March	3	2014	November	29	2014	September	17	2015
March	4	2014	November	30	2014	October	16	2015
March	5	2014	December	1	2014	October	17	2015
March	6	2014	December	2	2014	November	2	2015
March	9	2014	December	3	2014	November	3	2015
March	10	2014	December	4	2014	November	9	2015
March	25	2014	December	5	2014	November	10	2015
March	26	2014	December	6	2014	November	14	2015
March	27	2014	December	10	2014	November	15	2015
March	28	2014	December	11	2014	November	16	2015
March	29	2014	December	12	2014	November	25	2015
March	30	2014	December	13	2014	December	3	2015
March	31	2014	December	14	2014	December	4	2015
April	1	2014	December	15	2014	December	5	2015
April	5	2014	December	16	2014	December	6	2015
April	25	2014	December	17	2014	December	9	2015
April	26	2014	December	18	2014	December	10	2015
May	5	2014	December	19	2014	December	11	2015
May	6	2014	December	20	2014	December	13	2015
August	4	2014	December	21	2014	December	14	2015
December	19	2015	March	21	2016	December	21	2015
December	20	2015	March	22	2016	December	22	2015

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A
Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016

January	4	2016	April	23	2016
January	5	2016			
January	6	2016			
January	7	2016			
January	8	2016			
January	9	2016			
January	10	2016			
January	12	2016			
January	13	2016			
January	14	2016			
January	15	2016			
January	16	2016			
January	17	2016			
January	18	2016			
January	19	2016			
January	20	2016			
January	22	2016			
January	23	2016			
January	28	2016			
January	29	2016			
January	30	2016			
February	2	2016			
February	17	2016			
February	18	2016			
February	19	2016			
February	20	2016			
March	3	2016			
March	4	2016			
March	5	2016			
March	6	2016			
March	7	2016			
March	8	2016			
March	10	2016			
March	11	2016			
March	12	2016			
March	13	2016			
March	14	2016			
March	20	2016			
April	14	2016			
April	22	2016			

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

EXHIBIT C – Proposition 65 Notice of Violation

LAW OFFICES OF
ANDREW L. PACKARD
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

May 27, 2016

VIA CERTIFIED MAIL

Public Enforcement Agencies
(See attached Certificate of Service)

Bill Harper, General Manager
Lake Oroville Marina, LLC
Bidwell Canyon Marina
801 Bidwell Canyon Road
Oroville, California 95966

Matt Harvey, Agent for Service of Process
Lake Oroville Marina, LLC
7501 E. McCormick Parkway #1100LL
Scottsdale, Arizona 85258

Rex Maughan, President
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

Darin Reber, Agent for Service of Process
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER HEALTH & SAFETY CODE § 25249.5 *et seq.* (California Safe Drinking Water and Toxic Enforcement Act, a.k.a. "Proposition 65")

Dear Public Enforcement Agencies, Mr. Harper and Mr. Maughan:

This office represents the California Sportfishing Protection Alliance ("CSPA"), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to safeguarding the public from health hazards, reducing the use and misuse of toxic substances, encouraging corporate responsibility, and ensuring safe drinking water for consumers. CSPA brings this action in the public interest, pursuant to Health & Safety Code § 25249.7(d). Unless otherwise noted, Lake Oroville Marina, LLC shall hereinafter be referred to as the "Violator."

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code § 25249.5 *et seq*. (also commonly referred to as "Proposition 65" or "Prop. 65"). This letter serves to provide the public prosecutors and the Violator with CSPA's notification of these violations and intent to sue.

Pursuant to Health & Safety Code § 25249.7(d), CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public prosecutors commence and diligently prosecute an action against the Violator for the same alleged violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Identity of Chemicals

The Violator is a "person[s] in the course of doing business" as defined in Health & Safety Code § 25249.11, that discharges, deposits, or releases Proposition 65-listed chemicals into existing sources of drinking water not designated as exempt by the Safe Drinking Water Act of 1974 (42 U.S.C. § 300(f) *et seq.*).

These violations involve the discharge and/or release of lead and lead compounds to sources of drinking water. Lead and lead compounds have been on the Proposition 65 list for more that the twenty months grace period provided under Health & Safety Code § 25249.9(a). These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from the Bidwell Canyon Marina facility located at 801 Bidwell Canyon Road Oroville, California 95965 ("Facility").

Sources of Drinking Water

The Violator is discharging lead and lead compounds from the Facility to designated sources of drinking water in violation of Proposition 65. A "source of drinking water" means either a present source of drinking water or water which is identified or designated in a Water Quality Control Plan adopted by a Regional Water Quality Control Board as being suitable for domestic or municipal uses. Health & Safety Code § 25249.11(d).

The Violator is allowing storm water contaminated with lead and lead compounds to discharge and/or release from the Facility into Lake Oroville. Lake Oroville is designated as an existing source of municipal and domestic drinking water in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the "Basin Plan." Basin Plan, II-6.00.

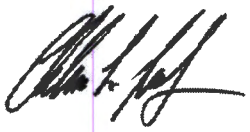
Approximate Time Period of Violations

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2011. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. However, CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard
Megan E. Truxillo
William N. Carlon
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Andrew@PackardLawOffices.com

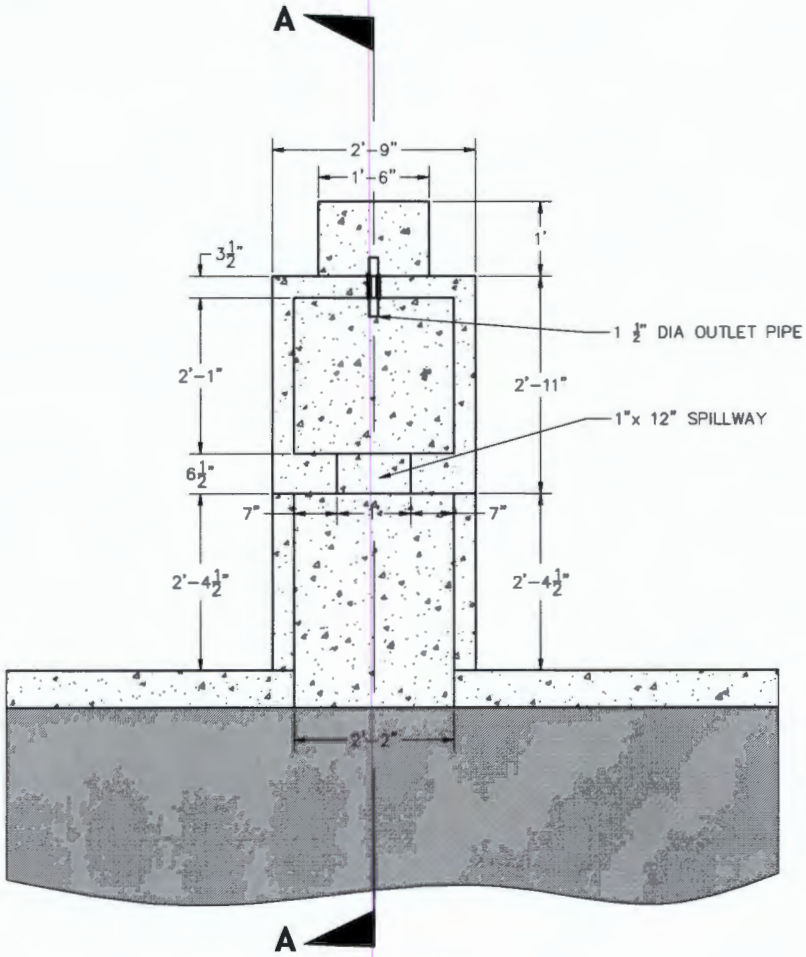
Sincerely,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

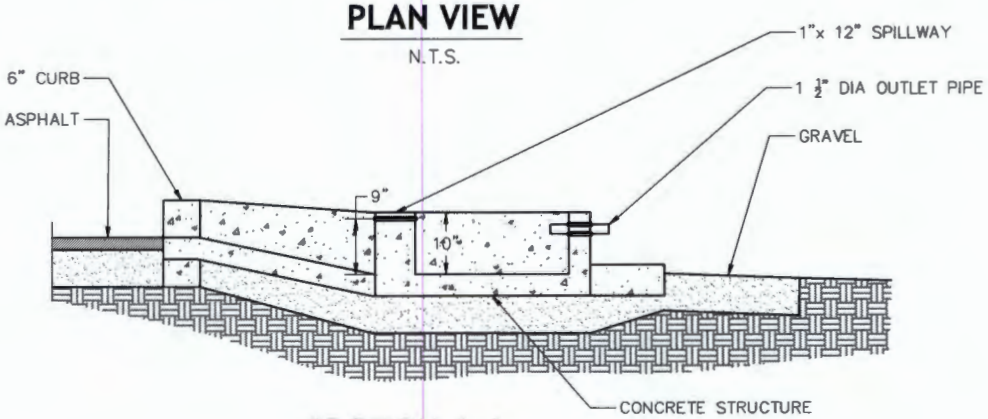
cc: Certificate of Service

EXHIBIT D – Schematic Showing Site Improvements at SP-1



PLAN VIEW

N.T.S.



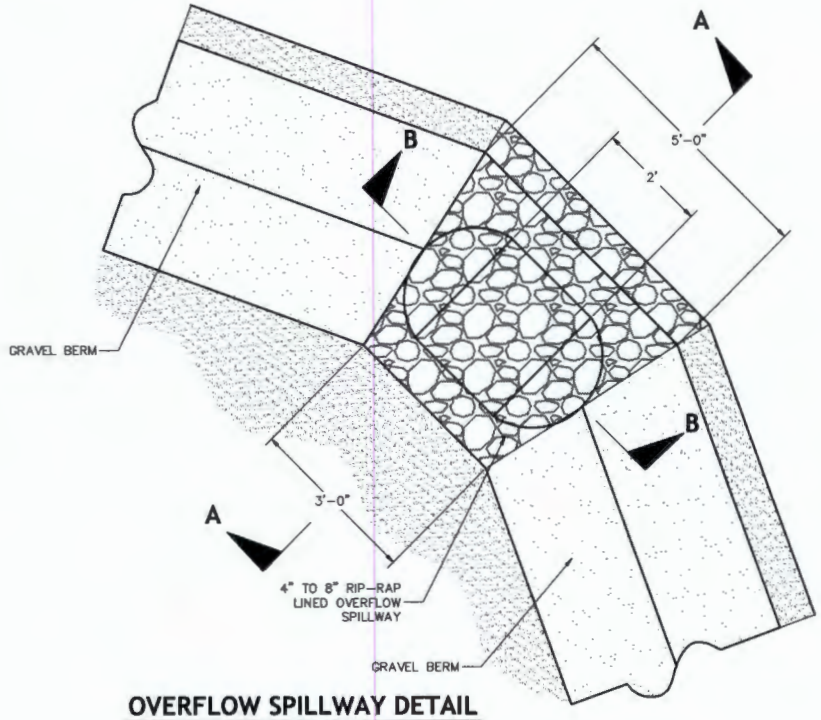
SECTION A-A

N.T.S.

VESTRA

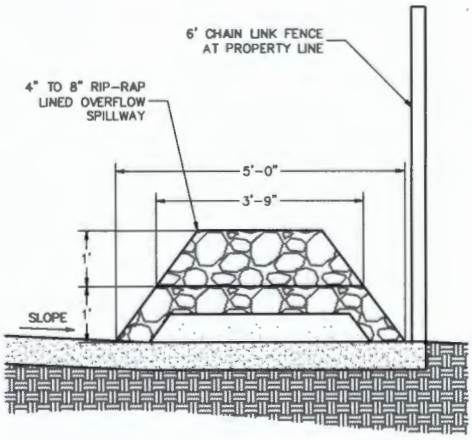
NORTH DISCHARGE LOCATION
(SP-1) DETAIL

EXHIBIT E – Schematic Showing Site Improvements at SP-2



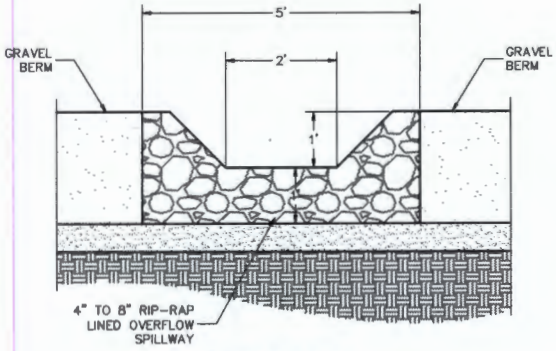
OVERFLOW SPILLWAY DETAIL

N.T.S.



SECTION A-A

N.T.S.



SECTION B-B

N.T.S.

VESTRA

SOUTHEAST BONEYARD
DISCHARGE LOCATION (SP-2)

EXHIBIT F

Parameter	Value
pH (Field test)	6.0 – 9.0 s.u.
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Aluminum	0.75 mg/L
Iron	1.0 mg/L
Lead	0.069 mg/L*
Magnesium	0.064 mg/L
Zinc	0.11 mg/L*
Polychlorinated biphenols ("PCBs")	0.000014 mg/L

*Assuming a hardness value of 75-100 mg/L. Defendant may concurrently sample for hardness and determine the benchmark value based on actual hardness as set forth below:

All Units mg/L	Benchmark Values (mg/L, total)	
	Lead	Zinc
0-25 mg/L	0.014	0.04
25-50 mg/L	0.023	0.05
50-75 mg/L	0.045	0.08
75-100 mg/L	0.069	0.11
100-125 mg/L	0.095	0.13
125-150 mg/L	0.122	0.16
150-175 mg/L	0.151	0.18
175-200 mg/L	0.182	0.20
200-225 mg/L	0.213	0.23
225-250 mg/L	0.246	0.25
250+ mg/L	0.262	0.26