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save our wetlands

Via Certified Mail –
Return Receipt Requested

August 21, 2014

Paul J. Bushee, General Manager
Board of Directors
Leucadia Wastewater District
1960 La Costa Avenue
Carlsbad, CA 92009

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

Dear Mr. Bushee and Members of the Board:

NOTICE

The Clean Water Act ("CWA" or "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.

California River Watch ("River Watch") hereby places the Leucadia Wastewater District, hereinafter referred to as "the District," on notice, that following the expiration of 60 days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the District for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under the CWA, in particular, but not limited to CWA §505(a)(1), and consistent with the Code of Federal Regulations, and the Regional Water Quality Control Board, San Diego Region, Water Quality Control Plan ("Basin Plan"), as exemplified by the illegal discharges of untreated sewage from the District's collection system to United States waters without a National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that discharge of pollutants is prohibited with the exception of enumerated statutory exceptions, CWA § 301(a), 33 U.S.C.§ 1311(a). One such exception authorizes a polluter, which 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 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1365, which authorizes citizen enforcement of violations of effluent standards or limitation, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). Currently, the District has no NPDES permit allowing it to discharge pollutants to waters of the United States. Therefore, by virtue of its discharge of untreated sewage to United States waters without a NPDES permit, the District has been and continues to be in violation of CWA § 301(a), 33 U.S.C.§ 1311(a).

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 Notice is the Regional Water Quality Control Board, San Diego Region ("RWQCB").

BACKGROUND

The District is a special district situated approximately 15 miles north of San Diego and 95 miles south of Los Angeles. The District provides wastewater collection for some 60,000 residents and businesses in a 16-square mail boundary that includes Leucadia, northern Encinitas and the Le Costa area of Carlsbad. Approximately 4.5 million gallons of wastewater is collected from the District each day, conveyed to the Encina Water Pollution Control Facility for treatment, and then disposal through the ocean outfall or delivery to the adjacent Carlsbad Water Recycling Facility for re-use. The District's collection system consists of approximately 200 miles of gravity sewer pipeline, 5,000 manholes, 10 pump stations and 16 miles of pressurized pipelines.

The Encina Water Pollution Control Facility is owned and operated by Encina Wastewater Authority, a public agency located in Carlsbad. Encina Water Authority provides wastewater treatment service to approximately 300,000 residents in northwestern San Diego County. On July 31, 1961, the city of Carlsbad and the Vista Sanitation District entered into

an agreement to create a joint powers authority for the purpose of acquiring and constructing a joint sewer system. Encina Water Authority is now owned by 6 public agencies in the Joint Powers Authority. Under this agreement, these agencies share in the costs and management of Encina Wastewater Authority in order to obtain more economical and high-tech facilities than could be obtained on their own. The 6 owners are Carlsbad, Vista, Encinitas, Vallecitos Water District, Buena Sanitation District and Leucadia County Water District – now known as the Leucadia Wastewater District which became a member in August of 1971.

The District has a history of sewer system overflows (SSOs) from its aging sewer lines. Structural defects in the collection system, which allow inflow and infiltration (I/I) of rainwater and groundwater into the sewer lines, result in a buildup of pressure, which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Batiquitos Lagoon, San Marcos Creek and the Pacific Ocean – all waters of the United States.

As recorded in the California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the District's collection system has experienced 10 SSOs between August 17, 2009 and July 31, 2014, with a combined volume of 109,505 gallons 75,630 of which reached surface waters. As an example, on February 2, 013 a spill of 22,000 gallons of untreated wastewater from a District-owned sewer main at 6500 Ponto Drive in Carlsbad was reported, 19,200 gallons of which discharged to a nearby surface water. The Batiquitos Pump Station on North Coast Highway in Carlsbad has experienced 3 SSOs between May of 2010 and April of 2011 totaling more than 80,000 gallons – 74,000 of which reached a surface water.

The District has a history of non-compliance with the SSO reporting requirements mandated by the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems ("Statewide WDR"). The Statewide WDR requires the reports of SSOs to the CIWQS. The SSO reporting system shall include an estimate of the volume of any spill, the volume recovered, and the volume which reached a surface water. The District's field reports regularly indicate the SSO start time as the same time or within a few minutes of the time the District was notified of the SSO. Of the 7 SSOs occurring between November 3, 2009 and February 1, 2013, 4 reported the agency's arrival at the site of the spill within 6 minutes of notification. In reporting the spill at 6500 Ponto Drive on February 1, 2013, the District's field report indicates the estimated spill start time as 05:35:00, the time the sanitary sewer agency was notified as 05:39:00 (4 minutes later), and the agency's arrival time as 05:37:00 (2 minutes prior to being notified). These equivalencies are highly unlikely and result in an underestimation of the duration of the spill.

The District's common practice of underestimating the duration of spills leads to underestimating the volume of spills. In the report referenced above, the spill volume is listed as 22,000 gallons - 2,800 of which were reported as recovered. However only 800 gallons were reported as reached a surface water, leaving 18,400 gallons unaccounted for. The report describes the final spill destination as "Dirt Storm Channel that runs along railroad tracks", and provides no explanation of the basis for the estimate that only 800 gallons reached a surface water.

The District's SSO reports in general, do not indicate the method used to estimate the total volume of spills, which calls into question the estimates of volume recovered and volume reaching a surface water. In the above report, the entry for Item 44 – "Explanation of volume estimation method used" is "null". River Watch contends there is a high degree of likelihood that the District regularly underestimates the volume of SSOs as well as the volume which reaching a surface water.

In addition to surface overflows which discharge overland into surface waters, underground leakages (exfiltration) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent water with untreated sewage[1]. River Watch alleges that such discharges are continuous wherever aging, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The chronic defects in the District's collection system pose a substantial threat to public health.

Numerous critical habitat areas are found within areas of these SSOs. Waterways in and adjacent to the District's service area include ecological reserves, tidal wetlands, and marine conservation areas. There is no record of the District performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

Any point source discharge of sewage effluent to waters of the United States must comply with technology based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other

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

requirements. As such, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

River Watch contends that the District's ongoing violations of the CWA – discharging pollutants to waters of the United States without a NPDES Permit – pose an immediate threat to public health and the environment, both from surface water impacts of overflows and from underground leakage of untreated sewage, which impact both surface and groundwater. Furthermore, that the illegal discharge of untreated wastes from the District's collection system is a significant contribution to the degradation of the Pacific Ocean and its tributaries and nearby waters such as Batiquitos Lagoon, and San Marcos Creek, with serious adverse effects on the many beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the District's operation of its collection system into compliance with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

River Watch has identified discharges of raw sewage from the District's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. The activity alleged to constitute a violation.

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

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

The entity responsible for the violations alleged in this Notice are is the Leucadia Wastewater District, hereinafter referred to as "the District," as well as employees of the District responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The location of the alleged violation.

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

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

River Watch has examined records of the SWRCB and the RWQCB relating to the District's collection system for the period from August 17, 2009 to August 17, 2014. The range of dates covered by this Notice is August 17, 2009 to August 17, 2014. River Watch will from time to time update this Notice to include violations which occur after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

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

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the waters of California including, but not limited to, its rivers, creeks, streams, tributaries, wetlands, vernal pools, and groundwater. River Watch's southern California mailing address is 3655 Westwood Blvd., #17, Los Angeles, CA 90034. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

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VIOLATIONS

River Watch contends that for the period from August 17, 2009 to August 17, 2014, the District has violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from its collection system to waters of the United States without a NPDES permit. Said violations are reported by RWQCB staff and evidenced by the State Water Resources Control Board's CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

Violations	Description
1800	Collection system overflows caused by underground exfiltration. – This is an event in which untreated sewage is discharged from the collection system prior to reaching the wastewater treatment plant. Underground discharges are alleged to have been continuous throughout the 5-year period from August 17, 2009 to August 17, 2014. Evidence to support the allegation of underground discharge of raw sewage exists in the District'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 Encina Water Pollution Control Facility reported in the District's records, video inspection of the collection system, and potentially by testing of waterways adjacent to sewer lines, creeks and the Pacific Ocean for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine and human specific intestinal bacteria.
25	SSOs – as evidenced in the SWRCB's CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

REMEDIAL MEASURES REQUESTED

1. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

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

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

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

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

2. REMEDIAL MEASURES

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

A. Sewage Collection System Investigation and Repair

The repair or replacement, within two (2) years, of all sewer lines in the District's sewage collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past 10 years and were rated as Significantly Defective, or given a comparable assessment.

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

Within 2 years after completion of the Surface Water Condition Assessment above, the District will:

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

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

- Sewer pipe segments that contain defects with a rating of 3 that are not repaired or replaced within 5 years after completion of the Surface Water Condition Assessment shall be re-CCTV'd every 5 years to ascertain the condition of the sewer line segment. If the District determines that the grade -3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the District shall complete such repair or replacement within 2 years after the last CCTV cycle;

- Beginning no more than one 1 year after completion of the Surface Water Condition Assessment, the District shall commence a Full Condition Assessment to be completed within 7 years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within 3 years of the rating determination;

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

B. SSO Reporting and Response

Modification of the District's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

- The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

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

- 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.

- Water quality sampling and testing to be required whenever it is estimated that 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 District shall collect and test samples from 3 locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the District will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect

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

- Performance of human marker sampling on creeks, rivers, wetlands and areas adjacent to sewer lines including Batiquitos Lagoon and San Marcos Creek to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

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

- Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 10 years prior to the transfer;

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

- A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;

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

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

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

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the Leucadia Wastewater District service area and waterways effected by unpermitted discharges from the District's sewage collection system. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, surfing, picnicking, wedding ceremonies, hiking, bird watching, photography, painting, nature walks and the like. The members' health, use and enjoyment of these natural resources are specifically impaired by the District's alleged violations of the CWA as set forth herein.

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

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

Very truly yours,

Jerry Bernhaut

Jerry Bernhaut

JB:lhm

cc: Administrator
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