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save our wetlands

VIA CERTIFIED MAIL—
RETURN RECEIPT REQUESTED

April 16, 2015

Celeste Cantú, General Manager
Santa Ana Watershed Project Authority
11615 Sterling Avenue
Riverside, California 92503

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

Dear Ms. Cantú or Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act;" 33 U.S.C. § 1251 *et seq.*) that River Watch believes are occurring through the wastewater collection system owned and operated by the Santa Ana Watershed Project Authority. River Watch hereby places the Santa Ana Watershed Project Authority, (hereinafter,"SAWPA") on notice, that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against SAWPA for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402 pursuant to CWA § 301(a), and the Santa Ana Regional Water Quality Control Board, Water Quality Control Plan commonly known as the "Basin Plan", as exemplified by the illegal discharges of untreated sewage from SAWPA's collection system to United States waters absent compliance with CWA § 402.

River Watch takes this action to ensure compliance with the CWA, which regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that discharges of pollutants are prohibited with the exception of enumerated statutory provisions. 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 National Pollutant Discharge

Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of the CWA. Currently, SAWPA is not in possession of a 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, SAWPA 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 ("SWRCB") 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 Santa Ana Regional Water Quality Control Board ("RWQCB"). While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the Act can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by SAWPA with the CWA.

NOTICE REQUIREMENTS

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

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

River Watch has identified discharges from SAWPA'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, brines and other pollutants in the untreated wastewater conveyed through SAWPA's sewer lines to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the SWRCB's California Integrated Water Quality System ("CIWQS") SSO Public Reports and other public documents in SAWPA's possession or otherwise available to SAWPA. Additional records may, upon discovery, reveal additional

violations.

River Watch contends that from April 15, 2010 through April 15, 2015, SAWPA violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States from its collection system without a NPDES permit. Said violations are evidenced by the CIWQS SSO Reporting Program Database Records. Furthermore, River Watch contends these violations are continuing.

A. Collection System Subsurface Discharges Caused By Underground Exfiltration

Underground discharges in which untreated sewage is discharged from SAWPA's collection system prior to reaching wastewater treatment facilities are alleged to have occurred throughout the period of April 15, 2010 through April 15, 2015, every day that a defect in an aging, damaged, structurally defective sewer line in SAWPA's collection system located adjacent to surface waters allows exfiltration into groundwater hydrologically connected to the adjacent surface waters,[1] in violation of the CWA provisions that prohibit discharge of wastes to United States waters without a NPDES permit.

Exfiltration caused by pipeline cracks and other structural defects in the collection system, result in discharges to adjacent surface waters via underground hydrological connections. SAWPA's internal reports indicate discharges to surface waters not reported to the CIWQS. Because the entire system has not been adequately inspected by means of closed circuit television ("CCTV"), SAWPA has insufficient information as to the condition or extent of exfiltration for a significant portion of the collection system. These sections of the system are old and in need of repair. Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into groundwater that is hydrologically connected to surface waters. Evidence indicates extensive exfiltration from lines within 200 feet of a surface water.

In this case, the surface waters include the Santa Ana River and its tributaries. Surface waters and groundwater become contaminated with fecal coliform and other toxic substances, exposing people to pathogens. SAWPA's chronic collection system failures pose a substantial threat to public health. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent water with untreated sewage.[2]

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[1] See *San Francisco Baykeeper v. Tosco Corp.*, 309 F.3d 1153, 1158-59.

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

Evidence to support the allegation of underground discharge of wastewater exists in SAWPA'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 Orange County Sanitation District reported in SAWPA's records, and video inspection of sewer lines adjacent to surface waters. Evidence of exfiltration can also be found in "inflow and infiltration" ("I/I") data, video inspection, and testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine.

B. Collection System Surface Discharges To Surface Waters Caused By Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs") during which untreated sewage is discharged above ground from the collection system prior to reaching wastewater treatment facilities are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports (36 separate violations), and on dates when no reports were filed with CIWQS by SAWPA.

It is estimated by the EPA and private studies, that for every SSO reported there are at least three that go unreported. In some cases the overflows occur during storm events or due to stoppages, and there is no incident report made due to lack of any observation of the event. In other cases SSO events are reported, but by the time personnel arrive at the site, the overflows have ceased and no follow-up is done. In some cases the incident is reported and observed by staff, but a formal report is not made to the State, in violation of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR"), governing the operation of sanitary sewer systems, under which SAWPA is a permittee.

Releases Reported. SAWPA's aging collection system has historically experienced I/I during wet weather and flooding. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters, such as La Sierra Channel, Arlington Channel, Temescal Creek (aka Temescal Wash), and the Santa Ana River, all waters of the United States.

As recorded in CIWQS Public SSO Reports, SAWPA's collection system has experienced at least thirty six (36) SSOs between May 27, 2010 and January 6, 2015, with a combined volume of at least 1,023,155 gallons – 223,833 gallons of which were reported as reaching surface waters. For example, on October 18, 2011, a spill occurred at the intersection of Temescal Canyon Road and Cabot Drive in the City of Corona caused by a pipe joint displacement, with a reported volume of 310,000 gallons – 196,800 gallons of which reached Temescal Wash and Hahn Lake. On May 15, 2012, at Temescal Canyon

Road in Corona, a SAWPA contractor hit the Inland Empire Brine Line while excavating a test pit, causing a rupture. The total reported spill volume was estimated at 196,913 gallons – 17,031 gallons of which was reported as entering a storm drain 570 feet south of the spill location, and traveling through the storm drain where it entered Temescal Wash. On April 6, 2013 a spill occurred at Sampson Avenue in Corona approximately 1,000 feet northeast of the intersection of Sampson Avenue and McKinley Street due to a pipe obstruction. The spill was reported as 9,000 gallons, none of which was recovered. The spill flowed onto the street, then down a storm drain and into Arlington Channel which flows into Temescal Creek, and from there into the Santa Ana River and the Pacific Ocean.

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by SAWPA as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching surface waters did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of SAWPA's SSO Reports state the estimated start time of the SSO as the time when the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. SAWPA reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume of the spill. For example, in reporting the spill which occurred at the Arlington Channel Access Road, approximately 500 feet northeast of Pierce Street in the city of Riverside on June 1, 2012, the report of spill filed by SAWPA indicates the estimated spill start time, time the agency was notified of the spill, and the time of operator arrival all as 11:55:00. These equivalencies are highly unlikely and result in an underestimation of the duration of the spill.

In reporting the spill at Corona Lake on October 31, 2012, SAWPA reported that only 50 gallons of brine spilled into Corona Lake, from a SSO estimated at 1,197 gallons. The spill is said to have begun at 22:10 on October 31, 2012, and wasn't discovered until the next morning at 05:54 when SAWPA was notified and the operator arrived. The notification and arrival times are both listed as 05:54, yet SAWPA estimated the spill end time as identical to the spill's start time, (22:10) indicating that the spill lasted only seconds. River Watch contends that SAWPA's common practice of underestimating the duration of spills leads to underestimating the volume of spills and the amount which reaches surface waters.

Estimating Volume. River Watch's expert has also determined that SAWPA's method for estimating flow rate also underestimates the volume of a SSO. Furthermore, a review of the service records calls into question SAWPA's methodologies for determining the volume of SSOs captured. SAWPA is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS and include in that reporting an estimate

of the volume of any spill, the volume recovered and the volume which reached a surface water. SAWPA's field reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that SAWPA is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends SAWPA also fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's 'Report to Congress on the Impacts of SSOs' identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of SAWPA's SSOs. The neighboring waterways include ecological reserves, coastal wetlands and State wilderness areas. There is no record of SAWPA 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.

The Statewide WDR requires SAWPA to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As SAWPA is severely underestimating SSOs which reach surface waters, River Watch contends SAWPA also fails to conduct sampling on most SSOs.

C. Nuisance; Impacts to Beneficial Uses

River Watch contends the discharges by SAWPA as described herein also constitute a nuisance. The term "nuisance" is defined in California Water Code § 13050(m) as anything which meets all of the following requirements: 1) "is injurious to health, or is indecent or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property"; 2) "affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal"; and, 3) "occurs during, or as a result of, the treatment or disposal of wastes."

Many of the SSOs in SAWPA's jurisdiction occur from the Inland Empire Brine Line ("IEBL") which is used to transport highly salty brine wastes out of the Santa Ana River basin for treatment and disposal to the Pacific Ocean. The IEBL, constructed and owned by SAWPA, consists of approximately 93 miles of 16-inch to 84-inch pipeline connected to the

Orange County Sanitation District treatment facilities. It has a planned capacity of approximately 32.5 million gallons per day.

The IEBL is intended to provide a means of disposal of non-reclaimable wastewater from utilities and industries within the Santa Ana Watershed which use and reuse large amounts of water as part of their operating procedures, such as power plants, computer chip manufacturers, medical supply manufacturing, water purification plants, commercial laundry facilities, and biotech and food processing plants. Much of this water is very high in total dissolved solids (TDS). SSOs and exfiltration from the IEBL can be especially harmful to humans and the ecosystem.[3] Brine often has TDS values 50 times higher than the California Drinking Water Limit. According to the RWQCB's Basin Plan,

> "..the presence of sodium in drinking water may be harmful to persons suffering from cardiac, renal, and circulatory diseases. It can contribute to taste effects…depending on the specific sodium salt. Excess concentrations of sodium in irrigation water reduce soil permeability to water and air. The deterioration of soil quality because of the presence of sodium in irrigation water is cumulative and is accelerated by poor drainage."

Surface water bodies in the Santa Ana River Watershed include the Santa Ana River, San Jacinto River Basin, San Timoteo Creek Basin, Canyon Lake, Lake Elsinore, Lake Evans, Lake Fulmor, Lake Hemet, Lake Mathews, Lake Perris, Lee Lake, and Mockingbird Reservoir. Tributaries to the Santa Ana River include Temescal Creek, Tequesquite Arroyo (Sycamore Creek), Day Creek, and San Sevaine Creek. These water bodies have many beneficial uses as defined in the Basin Plan including municipal and domestic water supply, agricultural supply, industrial service supply, industrial process supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, wildlife habitat, and preservation of rare and endangered species.[4]

This riparian system is rich in biodiversity and is home to over 200 species of birds, 50 species of mammals, 13 species of reptiles and 7 different types of fish including many threatened and endangered species such as the Least Bell's Vireo, and the Santa Ana Sucker fish – placed on the endangered species list in 2004 and existing only in the Santa Ana River. A section of Temescal Creek near the edge of Prado Flood Control Basin is the breeding center of the local Arroyo Chub population, one of only two native fish species still present in the middle river system. SSOs reaching these waters cause prohibited pollution by unreasonably affecting their beneficial uses, and the many species which rely upon them.

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[3] See State Water Resources Control Board Division of Water Quality GAMA Program Groundwater Information Sheet, subject: Salinity, which lists the California Drinking Water TDS Limit as 1,000 mg/L and Brines as >50,000 mg/L.

[4] Santa Ana Basin Plan, 4-10.

The Basin Plan adopted by the RWQCB also contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater. Chapter 5, Section B.1 prohibits the discharge of untreated sewage to any surface water stream, natural or manmade, or to any drainage system intended to convey storm water runoff to surface water streams. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the Santa Ana River and tributary waters.

Any point source discharge of sewage effluent to waters of the United States must comply with technology based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. As such, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA.

SAWPA's ongoing discharges of pollutants to waters of the United States without a NPDES permit pose an immediate treat to public health and the environment, both from surface water impacts of SSOs and underground leakage of brine and untreated sewage, which impacts both surface and groundwater. Furthermore, the illegal discharge of brine and untreated wastes from SAWPA's collection system is a significant contribution to the degradation of the Pacific Ocean, the Santa Ana River, and tributary and nearby waters such as Santiago Creek, Temescal Wash, Lake Elsinore, Lake Matthews, Arlington Channel, La Sierra Channel, Corona Lake, Mockingbird Creek, Chino Creek, Mill Creek, Day Creek and San Timoteo Creek, with serious adverse effects on the many beneficial uses of these waters.

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

The entity responsible for the alleged violations is the Santa Ana Watershed Project Authority, identified throughout this Notice as "SAWPA", and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The location of the alleged violation.*

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

The Santa Ana River Watershed is located in southern California, south and east of the City of Los Angeles. It spans 110 miles from crest to coast, drains more than 3,000 sq. miles of mountains, foothills and valleys. It contains 50 tributaries and is home to more than 4.5 million people. The Santa Ana River Watershed is bound on the south by the Santa Margarita Watershed, on the east by the Whitewater Watershed and on the northwest by the San Gabriel River Watershed. The headwaters of the Santa Ana River are in the San

Bernardino Mountains with its major tributary being the San Jacinto River, originating in the San Jacinto Mountains. The San Jacinto River flows through Canyon Lake, Lake Elsinore and Temescal Creek (which carries flows from the Arlington Channel) to confluence with the Santa Ana River in Corona. The Santa Ana River then traverses through Prado Dam before cutting through the Santa Ana Mountains and flowing to the Orange Coastal Plain. Eventually, the River discharges to the Pacific Ocean in Huntington Beach.

SAWPA is a joint powers authority comprised of five member agencies: Eastern Municipal Water District, Inland Empire Utilities Agency, Orange County Water District, San Bernardino Valley Municipal Water District and Western Municipal Water District. Its focus is on water supply and water quality. Its stated mission is to develop and maintain regional plans, programs and projects that will protect the Santa Ana River basin water resources to maximize beneficial uses within the watershed.

Jurisdiction of SAWPA and its member agencies spans much of the Santa Ana Watershed, approximately 2,650 square miles encompassing much of Orange County, a sliver of Los Angeles County, and the major population centers of western Riverside and southwestern San Bernardino Counties. SAWPA acts as an oversight authority for its member agencies which administer local industrial pretreatment activities on direct and indirect industrial dischargers to the IEBL.

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 RWQCB as to SAWPA's collection system for the period from April 15, 2010 through April 15, 2015, therefore the range of dates covered by this Notice is April 15, 2010 through April 15, 2015. River Watch may from time to time update this Notice to include all violations of the CWA by SAWPA which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

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

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code Section 501(c)(3) non-profit, public benefit corporation, organized under the laws of the State of California with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043.

River Watch is dedicated to protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

River Watch members residing and recreating in the Santa Ana River Watershed have a vital interest in bringing SAWPA's operations of its collection system into compliance with the CWA.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed as follows:

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RECOMMENDED REMEDIAL MEASURES

I. DEFINITIONS

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

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

II. REMEDIAL MEASURES

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

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

- The repair or replacement, within 2 years, of all sewer lines in SAWPA'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 in SAWPA's sewage collection system located within two hundred (200) feet of surface waters, which have not been CCTV'd during the past 10 years.

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

  ✓ Repair or replace all sewer lines found to be Significantly Defective;

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

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

- Beginning no more than 1 year after the completion of the Surface Water Condition Assessment, SAWPA 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 to be made in SAWPA's Capital Improvements Plant 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 SAWPA'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 residents or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration and flow rate have not been otherwise reasonably ascertained, (such as from a caller who provides information that brackets a given time that the SSO began).

  - ✓ 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.

  - ✓ Conduction of water quality sampling and testing whenever it is estimated that 50 gallons or more of untreated or partially treated wastewater enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli, TDS and a CAM-17 toxic metal analysis. SAWPA 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 these

constituents are found at higher levels in the point of discharge sample or at the downstream sample than in the upstream sample, SAWPA 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 SAWPA's website to the CIWQS SSO Public Reports. Notification to be given by SAWPA 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 of the Santa Ana River, its tributaries, and other waterways adjacent to sewer lines to test for sewage contamination from exfiltration.

C. LATERAL INSPECTION/REPAIR PROGRAM

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

✓ Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 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 from 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; or,

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

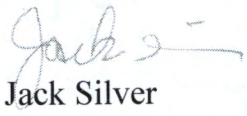
CONCLUSION

The violations as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the communities in and around the Santa Ana River Watershed. Members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, surfing, bird watching, picnicking, hiking, photography, nature walks and the like. Their health, use and enjoyment of these natural resources are specifically impaired by SAWPA's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages SAWPA to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that SAWPA is in compliance with the strict terms and conditions of the CWA, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,



Jack Silver

JS:lhm

cc: Administrator
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