

SETTLEMENT AGREEMENT
NORTHERN CALIFORNIA RIVER WATCH
vs.
GINA GALLO/ DRY CREEK GENERAL STORE

Recitals

Northern California River Watch, a California nonprofit organization sent to Gina Gallo, individually and owner of Dry Creek General Store, LLC, the owner and operator of the Dry Creek Store, (hereafter, "Gallo" or "Dry Creek Store") a Notice of Violation dated October 23, 2009, regarding alleged violations of the Federal Clean Water Act, 33 U.S.C. § 1365(a), claiming alleged violations and intent to bring an action in the U.S. District Court. On May 10, 2010, River Watch filed a Complaint for Injunctive Relief and Damages in the Northern District of California, Case No. 3:10-CV-01999 SC. Attached hereto as Exhibit A is a true and correct copy of the case filed, which includes a copy of the October 23, 2009 letter, which matters combined involve the action referred to herein. The parties have come to the terms of a complete settlement of all of the claims raised, against Gina Gallo, the Dry Creek General Store, LLC, and any other owner of the Dry Creek Store.

Remedial Measures

Before December 31, 2011, the Dry Creek General Store LLC shall complete the implementation of one of the following three (3) remedial measures:

1. The relocation and/or installation of a new septic system and/or leach lines in compliance with all Sonoma County Regulations, or as approved by the County.
2. The installation of a mound/sand filtration system.
3. The installation of The White Knight Microbial Inoculator Generator (MIG), which provides rehabilitation of failed septic systems using a patented in-tank device and a proprietary blend of organic-consuming bacteria, or a similar treatment system.

Payment of Fees and Costs

Within fifteen (15) days of the effective date of a Settlement Agreement Gallo or the Dry Creek Store shall reimburse Northern California River Watch the sum of \$10,000 for its costs including without limitation expert, paralegal and investigator fees and attorney fees, with the exception of fees incurred to enforce this agreement in court. If either party files a breach of contract action to enforce this agreement, the court shall have the authority to award attorney fees to the prevailing party. To the extent that there are multiple issues with a different party prevailing on one or more issue, the court may take those facts into account in awarding fees and costs.

Settlement and Release of Claims

Upon the effective date of a Settlement Agreement, Northern California River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases and forever discharges Gina Gallo and the Dry Creek General Store, LLC, the property owners, their members, officers, employees, agents, successors and assigns, and any other person acting on Gallo or the Store's behalf, from all claims, liabilities, or causes of action, known or unknown, arising from or connected with the wastewater collection activities referred to, or which could have been referred to, in the Notice of Violations and the Complaint (see, Exhibit A attached hereto), including without limitation, any and all claims for violations of 33 U.S.C. §1365, or of administrative orders or directives of the Regional Water Quality Control Board, the Clean Water Act, the Porter Cologne Act, or any other federal or state law, or of any local law, ordinance or regulation governing such activities, which occurred at any time up to and including the Effective Date of the Settlement Agreement, and that may occur within the period of five (5) years thereafter.

Enforcement

Northern California River Watch agrees that its exclusive remedy for a breach of this Settlement Agreement by Gallo shall be a breach of contract action in which Gallo shall not be liable for consequential or punitive damages.

As a further consideration for the making of said settlement and payment, it is expressly agreed that:

1. All claims, past, present or future, are disputed and this full and final settlement thereof shall never be treated as an admission of liability or responsibility at any time or in any manner whatsoever.
2. This release is expressly intended to cover and include all claims, several or otherwise, past, present or five (5) years in the future,
3. The releases set forth in this Settlement Agreement extend to unknown as well as known claims. Northern California River Watch hereby waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

“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 the settlement with debtor.”

Northern California River Watch further covenants and agrees that, at least sixty (60) days before filing any such action to enforce the Settlement Agreement, it shall notify Gallo in writing of what actions or inactions by Gallo it deems to be in violation of the Settlement Agreement. Thereafter, the parties shall meet and confer in a good faith attempt to resolve their dispute. If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute prior to the filing of any action to enforce the Settlement Agreement.

"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 the settlement with debtor."

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Dismissal of Complaint

Within seven (7) court days of the payment of fees and costs by Gallo, Northern California River Watch shall cause to be dismissed with prejudice, its Complaint filed on May 10, 2010, U.S. District Court Case No. 3:10-CV-01999-SC.

Dated: 8-9-10

Northern California River Watch

By: Margaret Giacigaluzzi, Pres.

Dated: 8-19-10

Dry Creek General Store, LLC

By: [Signature]

Dated: 8-19-10

[Signature]
Gina Gallo

APPROVED AS TO FORM:

Dated:

[Signature]
Jerry Bernhaut
Attorney for Northern California River Watch

Dated: 8-16-10

[Signature]
Timothy Byrd
Attorney for Gina Gallo and Dry Creek General Store, LLC

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Dated:

Dry Creek General Store, LLC

By: _____

Dated:

Gina Gallo

APPROVED AS TO FORM:

Dated: 8/9/10

Jerry Bernhaut

Jerry Bernhaut
Attorney for Northern California River Watch

Dated: 5/16/11

Timothy Byrd

Timothy Byrd
Attorney for Gina Gallo and Dry Creek General Store, LLC

EXHIBIT A

1 Jack Silver, Esq. SBN #160575
Law Office of Jack Silver
2 Jerry Bernhaut, Esq. SBN #206264
Post Office Box 5469
3 Santa Rosa, CA 95402-5469
Tel.(707) 528-8175
4 Fax.(707) 528-8675
lhm28843@sbcglobal.net

5 Attorneys for Plaintiff
6 NORTHERN CALIFORNIA RIVER WATCH

ORIGINAL
FILED
2010 MAY 10 P 1:12
RICHARD W. BIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

SC

10
11 NORTHERN CALIFORNIA RIVER WATCH, a non-profit corporation,
12
13 **CV 10 1999** CASE NO.:

14 Plaintiff,

15 v.

16 GINA GALLO, DRY CREEK
GENERAL STORE, LLC and DOES 1
through 10, Inclusive,

17 Defendants.

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, RESTITUTION AND
REMEDIAION
(Environmental - Clean Water Act -
33 U.S.C. §1251 et seq)**

18
19 NOW COMES PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH a non-profit
20 corporation, (hereafter, "RIVER WATCH") by and through its attorneys, and for its Complaint
21 against Defendants GINA GALLO, DRY CREEK GENERAL STORE, LLC and DOES 1
22 through 10, Inclusive, (hereafter, "DEFENDANTS"), states as follows:

23
24 **I. NATURE OF THE CASE**

25 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water
26 Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. § 1251
27 et seq., specifically Section 505, 33 U.S.C. §1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to
28 stop DEFENDANTS from repeated and ongoing violations of the CWA. These violations are

1 detailed in the Notice of Violations and Intent to File Suit dated October 23, 2009 (hereafter,
2 “CWA NOTICE”) made part of this pleading and attached hereto as Exhibit A.

3 2. RIVER WATCH alleges DEFENDANTS are routinely violating the CWA by violating
4 the prohibition against discharging pollutants to a Water of the United States without a NPDES
5 permit, 33 U.S.C. § 1311(a), CWA §301(a).

6 3. DEFENDANTS own and/or operate the Dry Creek General Store (hereafter, “the Store”),
7 located at 3495 Dry Creek Road, Healdsburg California. The Store’s septic system leach lines
8 are located 23 feet from Dry Creek at their closest point, in violation of Sonoma County
9 regulations. When the current owner, Defendant Gina Gallo, purchased the Store in 2002, it was
10 disclosed by the seller that the leach lines were failing. No action has been taken by
11 DEFENDANTS from time of purchase to the present to repair or relocate the damaged leach
12 lines. During the year 2009 it was determined by the Sonoma County Permit and Resources
13 Management Department (hereinafter, “PRMD”), that DEFENDANTS’ failing septic system
14 was the source of sewage discovered on the ground on the neighboring property at 3475 Dry
15 Creek Road. The Store’s defective leach lines have been an ongoing source of discharge of
16 sewage into Dry Creek, both from the runoff of surface discharges and from underground
17 sewage discharges into the Dry Creek via groundwater, since at least 2002. Since the time the
18 determination was made that the Store’s septic system is the source of the sewage discharge,
19 DEFENDANTS have been pumping the Store’s septic tank on a daily or alternate daily basis to
20 stop the sewage discharge onto the surface of the ground. This is merely an interim solution.
21 Without a viable long term solution there is the highest degree of likelihood that ongoing
22 discharges will resume. DEFENDANTS’ pumping operation creates a nuisance in the form of
23 odors and noise.

24 4. RIVER WATCH alleges DEFENDANTS are also routinely violating the Basin Plan,
25 Environmental Protection Agency (hereafter, “EPA”) regulations codified in the Code of
26 Federal Regulations, and toxics standards promulgated by the State Water Resources Control
27 Board in the course of DEFENDANTS’ operation of their septic system, as described in the
28 CWA NOTICE.

1 5. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public
2 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

3 *Public participation in the development, revision, and enforcement of any regulation,*
4 *standard, effluent limitation, plan or program established by the Administrator or any State*
5 *under this chapter shall be provided for, encouraged, and assisted by the Administrator and the*
6 *States.*

7 6. RIVER WATCH alleges DEFENDANTS illegally discharge to waters which are habitat
8 for threatened or endangered species as that term is defined by the California EPA and the
9 United States EPA.

10 7. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
11 the imposition of civil penalties, and other relief for DEFENDANTS' violations of 33 U.S.C.
12 § 1311(a), CWA §301(a).

13

14 **II. PARTIES**

15 8. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit
16 public benefit corporation duly organized under the laws of the State of California, with
17 headquarters and main office located at 500 North main Street, Suite 110, Sebastopol, California.
18 PLAINTIFF is dedicated to protect, enhance and help restore the surface and subsurface waters
19 of Northern California. Its members live in Northern California including the City of
20 Healdsburg, where the Store is located.

21 9. Members of RIVER WATCH live nearby to waters affected by DEFENDANTS' illegal
22 discharges. Said members have interests in the watersheds identified in this Complaint, which
23 interests are or may be adversely affected by DEFENDANTS' violations of the CWA as alleged
24 herein. Said members use the effected waters and effected watershed areas for domestic water,
25 recreation, sports, fishing, swimming, hiking, photography, nature walks, religious, spiritual and
26 shamanic practices, and the like. Furthermore, the relief sought will redress the injury in fact,
27 likelihood of future injury and interference with the interests of said members.

28

1 10. RIVER WATCH is informed and believes and on such information and belief allege that
2 Defendant DRY CREEK GENERAL STORE, LLC is a limited liability company formed under
3 Section 17000 *et. sec.* of the California Corporations Code, located at 3495 Dry Creek Road,
4 Healdsburg California.

5 11. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships,
6 corporations and entities, who are, or were, responsible for, or in some way contributed to, the
7 violations which are the subject of this Complaint or are, or were, responsible for the
8 maintenance, supervision, management, operations, or insurance coverage of the Store. The
9 names, identities, capacities, and functions of DEFENDANTS DOES 1 - 10, Inclusive are
10 presently unknown to RIVER WATCH , who shall seek leave of court to amend this Complaint
11 to insert the true names of said DOES Defendants when the same have been ascertained.
12

13 **III. JURISDICTIONAL ALLEGATIONS**

14 12. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.
15 § 1365(a)(1), which states in part that, “any citizen may commence a civil action on his own
16 behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or
17 limitation . . . or (B) an order issued by the Administrator or a State with respect to such a
18 standard or limitation.” For purposes of CWA § 505, “the term ‘citizen’ means a person or
19 persons having an interest which is or may be adversely affected.”

20 13. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
21 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit
22 from the waterways and associated natural resources into which DEFENDANTS discharge
23 pollutants, or by which DEFENDANTS’ operations at the Store adversely affect their interests,
24 in violation of the CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1),
25 and CWA § 402, 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and
26 environmental interests of RIVER WATCH and its members may be, have been, are being, and
27 will continue to be adversely affected by DEFENDANTS’ unlawful violations of the CWA as
28 alleged in this Complaint. RIVER WATCH and its members contend there exists an injury in

1 fact to them, causation of that injury by DEFENDANTS' complained of conduct, and a
2 likelihood that the requested relief will redress that injury.

3 14. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the CWA
4 violations alleged in this Complaint was given more than sixty (60) days prior to commencement
5 of this lawsuit, to: (a) DEFENDANTS, (b) the United States EPA, Federal and Regional, and
6 (c) the State of California Water Resources Control Board.

7 15. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has been
8 served on the United States Attorney General and the Administrator of the Federal EPA.

9 16. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the
10 Store under DEFENDANTS' operation and/or control, and where illegal discharges occurred
11 which are the source of the violations complained of in this action, is located within this District.
12

13 **IV. GENERAL ALLEGATIONS**

14 17. DEFENDANTS own and operate the septic system and leach lines which process waste
15 from the Store. DEFENDANTS' discharges of untreated sewage to Dry Creek, a water of the
16 United States, from its failing septic system containing pollutants, including human pathogens,
17 are harmful to the beneficial uses of Dry Creek and its surrounding watershed, including
18 groundwater which is a potential source of drinking water.

19 18. All illegal discharges and activities complained of in this Complaint occur in the
20 waterways named in the CWA NOTICE, all of which are waters of the United States, and at the
21 locations identified in detail in the CWA NOTICE .

22 19. The Regional Water Quality Control Board has determined that the watershed areas and
23 affected waterways identified in the CWA Notice including Dry Creek, are beneficially used
24 for drinking water, water contact recreation, non-contact water recreation, fresh water habitat,
25 wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning,
26 industrial service supply and navigation.
27
28

1 **V. STATUTORY AND REGULATORY BACKGROUND**

2 20. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a “point
3 source” into the navigable waters of the United States unless such discharge is in compliance
4 with applicable effluent limitations as set by the EPA and the applicable State agency. These
5 limits are to be incorporated into a National Pollutant Discharge Elimination System or
6 “NPDES” permit for that point source specifically. The effluent discharge standards or
7 limitations specified in a NPDES Permit define the scope of the authorized exception to 33
8 U.S.C. § 1311(a) , such that violation of a permit limit places a polluter in violation of 33 U.S.C.
9 § 1311(a) and thus in violation of the CWA. Additional sets of regulations are set forth in the
10 Basin Plan, California Toxics Plan, the Code of Federal Regulations and other regulations
11 promulgated by the EPA and the State Water Resources Control Board. CWA § 301(a)
12 prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent
13 standard or limitation or an order issued by the EPA or a State with respect to such a standard
14 or limitation including a NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. The
15 septic system and leach lines owned and operated by DEFENDANTS at the Store are point
16 sources under the CWA.

17 21. The affected waterways detailed in this Complaint and in the CWA NOTICE are
18 navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. §
19 1362(7).

20 22. The Administrator of the EPA has authorized the Regional Water Quality Control Board
21 to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA §
22 402, CWA, 33 U.S.C. § 1342.

23 23. DEFENDANTS have no NPDES permit authorizing their discharge of pollutants from
24 the Store to the affected waterways detailed in this Complaint and in the CWA NOTICE.

25
26 **VI. DEFENDANTS’ VIOLATIONS OF THE CWA**

27 24. DEFENDANTS’ discharges of pollutants to waters of the United States without a NPDES
28 permit, as detailed in the CWA NOTICE, are violations of Section 301(a) of the CWA, 33

1 U.S.C. § 1311(a) The violations are established in Sonoma County PRMD Files for
2 DEFENDANTS' septic system.

3 25. The enumerated violations are detailed in the CWA NOTICE and below, designating the
4 section of the CWA violated by the described activity.

5 26. The location of the discharges are the discharges points as described in the CWA
6 NOTICE.

7

8 **VII. CLAIM FOR RELIEF**

9 **Violation of 33 U.S.C. § 1251 et seq., 33 U.S.C. §§ 1342 (a) and (b), 33 U.S.C. § 1311**
10 **Discharge of Pollutants from Point Sources to Waters of the United States in Violation of**
11 **Provisions in Order No. R2-2004-0093, NPDES Permit No. CA0037958**

12 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
13 1 through 26, including EXHIBIT A as though fully set forth herein.

14 27. RIVER WATCH is informed and believes and on such information and belief alleges that
15 DEFENDANTS have violated and continue to violate the CWA as evidenced by the discharges
16 of pollutants from a point source, the Store, without a NPDES permit, in violation of CWA §
17 301, 33 U.S.C. § 1311.

18 28. RIVER WATCH is informed and believes and on such information and belief alleges
19 that the violations of DEFENDANTS are ongoing and will continue after the filing of this
20 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will
21 occur prior to trial, but for which data may not have been available or submitted or apparent from
22 the face of the reports or data submitted by DEFENDANTS to the Sonoma County PRMD or
23 to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this
24 Complaint if necessary to address DEFENDANTS' State and Federal violations which may
25 occur after the filing of this Complaint. Each of DEFENDANTS' violations is a separate
26 violation of the CWA.

27 29. RIVER WATCH avers and believes and on such belief alleges that without the imposition
28 of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANTS
will continue to violate the CWA as well as State and Federal standards with respect to the

1 enumerated discharges and releases. Further, that the relief requested in this Complaint will
2 redress the injury to RIVER WATCH and its members, prevent future injury, and protect their
3 interests which are or may be adversely affected by DEFENDANTS' violations of the CWA,
4 as well as other State and Federal standards.

5
6 **VIII. RELIEF REQUESTED**

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

- 8 30. Declare DEFENDANTS to have violated and to be in violation of the CWA;
9 31. Issue an injunction ordering DEFENDANTS to immediately operate the septic system at
10 the Store in compliance with the CWA;
11 32. Order DEFENDANTS to pay civil penalties of \$27,500.00 per violation per day for their
12 violations of the CWA as alleged in this Complaint;
13 33. Order DEFENDANTS to pay reasonable attorneys' fees and costs of RIVER WATCH
14 (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable
15 California law; and,
16 34. For such other and further relief as the court deems just and proper.

17
18
19 Dated: May 7, 2010


20 JERRY BERNHAUT
21 Attorney for Plaintiff
22 NORTHERN CALIFORNIA RIVER WATCH
23
24
25
26
27
28

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Via Certified Mail - Return Receipt Requested

October 23, 2009

Operating and/or Managing Manager
AND
Ms. Gina Gallo, Owner
DRY CREEK GENERAL STORE, LLC
3495 Dry Creek Road
Healdsburg, CA 95448

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

Dear Managing Agent, Owner, and/or Operator:

NOTICE

The Clean Water Act (“CWA” or the “Act”) § 505(b) requires that sixty (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.

Northern California River Watch (hereafter referred to as “River Watch”), hereby places Dry Creek General Store, LLC and Gina Gallo (hereafter collectively referred to as “Polluters”), on notice, that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against Polluters for their continuing violations of “an effluent standard or limitation”, permit condition or requirement and/or “an order issued by the Administrator or a State with respect to such standard or limitation” under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board Basin Plan, as exemplified by Polluters’ illegally discharging sewage from the Dry Creek General Store site and facilities described further in this NOTICE into Dry Creek, a tributary of the Russian River, both waters of the United States, without a CWA § 402(a) National Pollutant Discharge Elimination System (“NPDES”) permit issued under CWA § 402(b).

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, 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. River Watch alleges that Polluters do not have a NPDES permit for point source discharges. Without a NPDES permit, all discharges from the Dry Creek General Store site and facilities to waters of the United States are illegal..

The violations herein are alleged against Polluters as individuals who were and/or are involved in activities which have resulted in ongoing violations of an effluent standard or limitation under the CWA, or an order issued by an Administrator or the State with respect to such a standard or limitation, as described below. CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), permits a citizen to commence an action against any person alleged to be in violation of such a standard or limitation. The CWA does not define "person" in other than its ordinary meaning for the purpose of CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1). An individual who participates in activities which violate provisions of the CWA, by directly carrying out said activities, arranging for or supervising said activities, or by authorizing said activities, is liable for those violations even if he or she was acting in his or her capacity as a corporate officer or employee. The liability imposed on such an individual is not derivative, but is based on the individual's personal participation in wrongful conduct.

As directed 33 U.S.C. § 1342(b), 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. 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, North Bay Region, hereafter referred to as the "RWQCB".

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:

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

To comply with this requirement River Watch is noticing Polluters of the fact that Polluters have no NPDES permit allowing them to discharge pollutants to waters of the

United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

2. The activity alleged to constitute a violation.

To comply with this requirement River Watch has set forth narratives below describing with particularity the activities leading to violations.

3. The discharger responsible for the alleged violation.

The discharger responsible for the alleged violations are the addressees of this NOTICE, identified collectively as POLLUTERS in this NOTICE and those of their employees responsible for the activities leading to violations.

4. The location of the alleged violation.

The location or locations of the violations are identified in the SITE DESCRIPTION section of this NOTICE, as well as in records either created or maintained by or for Polluters which relate to Polluters' activities on the Dry Creek General Store site.

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

This NOTICE covers the 5-year statutory period of limitations to date running from October 16, 2004 through October 16, 2009. River Watch will from time to time update and supplement this NOTICE to include all violations which occur after the date of this NOTICE.

The majority of the violations such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. River Watch believes all violations set forth in the NOTICE are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of regulatory agencies including the Sonoma County Permit and Resource Management Department.

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

The entity giving this notice is Northern California River Watch, referred to through this NOTICE as "River Watch", located at 500 North Main Street, Suite 110, Sebastopol, CA 95472. Tel. 707-824-4372. Northern California River Watch is a non-profit corporation

organized under the laws of the State of California and dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

SITE DESCRIPTION

The Dry Creek General Store and associated structures are located at 3495 Dry Creek Road and 3485 Dry Creek Road in the City of Healdsburg , Sonoma County, California (hereafter referred to as the "Store"). The Store's leach lines are 23 feet from Dry Creek at their closest point, in violation of Sonoma County Septic System Setback Requirements, which mandate that leaching trenches be at a minimum of 50 feet from an ephemeral stream. The Store's leach lines are 75 feet from the domestic well on the neighboring property at 3475 Dry Creek Road, owned by Mr. Brady Phenicie, violating Sonoma County's minimum setback requirement of 100 feet from water supply wells. The Store's leach lines run under trailers located on neighboring property at 3449 Dry Creek Road, owned by Ms. Carol St. John. There is regular vehicular traffic on the ground above the Store's leach lines under Ms. St. John's property, all of which are likely contributing to the defective condition of the lines.

When the current owner, Gina Gallo, purchased the Store in 2002, it was disclosed by the seller at that time, that the leach lines were failing. No action has been taken by Gina Gallo from then up to the present time to repair or relocate the damaged leach lines. During the current year, 2009, sewage was discovered on the ground on Brady Phenicie's neighboring property at 3475 Dry Creek Road. Mr. Phenicie reported this discovery to the County, which sent a staff member to investigate. Mr Phenicie's septic system was fully tested and found to be completely functional with no defects. It was ultimately determined that the sewage on Mr. Phenicie's property was originating from the septic system on the Store property at 3495 and 3485 Dry Creek Road.

The Store's defective leach lines have been an ongoing source of discharge of sewage into Dry Creek since at least 2002, both from the runoff of surface discharges as well as from underground sewage discharges into Dry Creek via groundwater. Since the determination was made that the Store's septic system is the source of the sewage discharge, Gina Gallo has been daily pumping her septic tank to stop the sewage discharge onto the surface of the ground. However, this is merely an interim solution. Without a viable, long term solution there is the highest degree of likelihood that ongoing discharges will resume.

Before the determination of the source of the discharged sewage was made, Mr. Phenicie received a Notice & Order of Substandard Premises-Sewage from the Sonoma County Permit and Resource Management Department, based on the discovery of sewage on his property. He was ordered to repair or replace the damaged sewage disposal system within 30 days or to vacate his property. He was also ordered to daily pump his septic tank as an interim measure. However, once it was determined that the Store was the source of the

discharged sewage, Gina Gallo has been allowed to pump the septic tank on the Store on a daily basis with no plan to repair or relocate the damaged leach lines. This daily pumping activity creates a noise and odor nuisance for the neighbors and does not provide an effective long term solution as we enter the wet season. River Watch will be seeking, either through litigation or settlement, a commitment by Polluters to either repair or relocate the Store's failing septic system within a time certain in the very near future or to vacate the premises until such remediation is completed.

VIOLATIONS

Polluters have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be discharged into the waters of the State and the United States and creates, or threatens to create, a condition of pollution or nuisance. Continuing discharges are in violation of the CWA, the Porter-Cologne Water Quality Control Act and provisions of the RWQCB's Water Quality Control Plan for the Bay Area, also known as the Basin Plan.

Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Dry Creek and the Russian River watersheds include: municipal and domestic supply; agricultural supply; industrial process supply; groundwater recharge; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; migration of aquatic organisms; and, spawning, reproduction, and/or early development.

Water quality objectives for the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria.

Discharge prohibitions contained in the Basin Plan apply to the Store site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to the Store site. State Water Resources Control Board Resolution 92-49 also applies to the Store site and sets out the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

From October 16, 2004 through October 16, 2009 Polluters have violated the CWA, the Basin Plan and the Code of Federal Regulation for discharging pollutants into waters of the United States without a NPDES permit as described above. Polluters' failure to obtain a NPDES permit, failure to implement the requirements of the CWA, and failure to meet water quality objectives by their discharge of sewage are continuous, and therefore each day is a violation.

The enumerated violations in this NOTICE are based upon review of the Sonoma County Permit and Resource Management Department files for Polluters as well as studies conducted by Polluters in compliance with orders from regulatory agencies. In addition to the above violations, this NOTICE covers any and all violations evidenced by Polluters' records which Polluters have submitted (or failed to submit) to the Permit and Resource Management Department, the RWQCB or other regulatory agencies. This NOTICE also covers any and all violations by Polluters which may have occurred, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the Permit and Resource Management Department or other regulatory agencies.

Pursuant to CWA § 309(d), 33 U.S.C. §1319(d), each of the above-described violations of the CWA subjects the violator to a penalty of up to \$32,500.00 per day/ per violation for violations occurring within five years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the CWA pursuant to CWA §§ 505(a) and 505(d), 33 U.S.C. §§1365(a) and 1365(d), and such other relief as is permitted by law.

Lastly, CWA § 505(d), 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

CONTACT INFORMATION

River Watch has retained legal counsel to represent it in this matter. All communications should be addressed to:

Jerry Bernhaut, Esquire
Jack Silver, Esquire
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Telephone: 707-528-8175
Facsimile 707-528-8675

CONCLUSION

The violations of Polluters as alleged in this NOTICE affect the health and enjoyment of members of River Watch who reside and recreate in the Dry Creek watershed. Members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of the CWA as alleged in this NOTICE.

River Watch believe this NOTICE sufficiently states grounds for filing suit for violations of the CWA. 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 Polluters for violations at the Dry Creek General Store site and facilities described herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if Polluters wish to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,



Jerry Bernhaut
Attorney for Northern California River Watch

JB:lhbm

cc: Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105-3901

Dorothy R. Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100