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Northern California River Watch

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA
12 RIVER WATCH, non-profit
13 Corporation ,
14 Plaintiffs,

15 v.

16 CITY OF FORTUNA,
17 Defendant.

CASE NO:

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

18 _____/ _____

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20 NOW COMES the Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
21 “PLAINTIFF”) by and through its attorneys, and for its Complaint against Defendant, CITY OF
22 FORTUNA (hereafter, “DEFENDANT”), states as follows:

23 **NATURE OF THE CASE**

24 1. This is a citizens’ suit for relief brought by PLAINTIFF under the Federal Water Pollution
25 Control Act, also known as the Clean Water Act (hereafter, “CWA”), 33 U.S.C. §1251 et seq.,
26 specifically Section 505, 33 U.S.C. §1365, to stop DEFENDANT from repeated and ongoing

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violations of the CWA. These violations are detailed in the Notice Of Intent To Sue made part of the pleading of this case and attached hereto as EXHIBIT A.

2. DEFENDANT is routinely violating the terms of its National Pollution Elimination Discharge System permit number CA0022764 (hereafter, "PERMIT"), adopted by the Regional Water Quality Control Board, North Coast Bay Region (hereafter, "RWQCB"), the Water Quality Control Plan for the North Coast Region (hereafter, "Basin Plan"), EPA regulations codified in the Code of Federal Regulations and toxics standards promulgated by the State Water Resources Control Board (hereafter, "SWRCB").

3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for the DEFENDANT's violations of the terms of its PERMIT.

4. Under 33 U.S.C § 1251(e), the Congress declared its goals and policy with regard to public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:
Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

5. DEFENDANT illegally discharges to the Eel River which is habitat for threatened or endangered species as that term is defined by California Environmental Protection Agency and U.S. Environmental Protection Agency.

PARTIES

6. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California, with headquarters located in Santa Rosa, California. PLAINTIFF is dedicated to protect, enhance and help restore the surface and subsurface waters of Northern California. PLAINTIFF's members live in Humboldt County. PLAINTIFF is organized under the laws of the State of California, with its main office in

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Santa Rosa, California. at P.O. Box 3591, Santa Rosa, CA, 95402. Its telephone number is 707-632-6070.

7. PLAINTIFF’s members live in or around the City of Fortuna. PLAINTIFF’s members have interests which are or may be adversely affected by DEFENDANT’s violations. Said members use the Eel River and Strong’s Creek watershed areas for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests said members.

8. DEFENDANT, City of Fortuna, is a governmental entity. Its administrative offices are located at 100 Fortuna Avenue, Fortuna, CA 95540.

JURISDICTIONAL ALLEGATIONS

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

10. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the Eel River and Strong’s Creek watershed area and associated natural resources into which the DEFENDANT discharges wastewater, or by which its operations adversely affect members’ interests, in violation of its PERMIT. The health, economic, recreational, aesthetic and environmental interests of PLAINTIFF and its members may be, have been, are being, and will continue to be adversely affected by the DEFENDANT’s unlawful violations of its PERMIT. PLAINTIFF contends there exists an injury in fact to its members, causation of that injury by the

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2 DEFENDANT's complained of conduct, and a likelihood that the requested relief will redress that
3 injury.

4 11. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A), PLAINTIFF gave
5 notice of the violations alleged in this Complaint more than sixty days prior to commencement of
6 this lawsuit, to: (a) the DEFENDANT, (b) the United States

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8 Environmental Protection Agency, and (c) the State of California Water Resources Control Board.

9 12. Pursuant to Section 309(g)(6)(B) of the CWA, 33 USC §1319(g)(6)(B), notice of the
10 alleged violations was given 60 days prior to filing suit and the suit has been filed within 120 days
11 of the date notice was given.

12 13. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this
13 District as the DEFENDANT's treatment facilities, which are the source of the violations
14 complained of in this action, are located within this District.

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GENERAL ALLEGATIONS

16 14. DEFENDANT owns and operates a wastewater treatment plant, located in Humboldt County
17 near the City of Fortuna. The plant provides treatment for domestic wastewater from the City of
18 Fortuna and outlying area.

19 15. All illegal discharges and activities complained of in this Complaint occur in either the Eel
20 River or Strong's Creek and their tributaries, all of which are waters of the United States.

21 16. The RWQCB has determined that the Eel River and Strong's Creek watershed area and
22 affected waterways are beneficially used for drinking water, water contact recreation, non-contact
23 water recreation, fresh water habitat, wildlife habitat, preservation of rare and endangered species,
24 fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

25 17. DEFENDANT owns and operates wastewater treatment, reuse and disposal facility(ies)
26 (hereafter, "FACILITY"). The FACILITY discharges both directly and indirectly into the waterways
27 referenced above.

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18. Pursuant to Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Environmental Protection Agency and the State of California have formally concluded that discharges by the DEFENDANT of the type complained of in the NOTICE, are prohibited by law. Beneficial uses of most portions of the specified waterways are being affected in a prohibited manner by the illegal discharges and activities of the DEFENDANT. Also pursuant to Section 304 of the CWA, 33 U.S.C. §1311, the Environmental Protection Agency and the State have identified the DEFENDANT’s FACILITY as a point source, the discharges from which contribute to violations of applicable water quality standards.

STATUTORY AND REGULATORY BACKGROUND

19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a “point source” into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the Environmental Protection Agency and the applicable State agency. These limits are to be incorporated into a NPDES permit for that point source specifically. Additional sets of regulations are set forth in the Basin Plan, the Code of Federal Regulation and other regulations promulgated by Environmental Protection Agency and the SWRCB. Section 301(a) prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the Environmental Protection Agency or a State with respect to such a standard or limitation including a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. DEFENDANT’s FACILITY is a point source under the CWA.

20. The effected waterways detailed in this Complaint and in the NOTICE are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7)

21. The Administrator of the Environmental Protection Agency has authorized the RWQCB to issue NPDES permits, subject to specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

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2 22. The RWQCB adopted NPDES permit No. CA0022730, prescribing effluent limitations for
3 the DEFENDANT's FACILITY. This PERMIT authorizes the DEFENDANT to discharge limited
4 quantities of wastewater and pollutants into the Eel River and Strong's Creek watershed.

5 23. The PERMIT also prescribes conditions to ensure compliance with the CWA. It requires the
6 DEFENDANT to establish and maintain records; to install, use and maintain monitoring equipment;
7 to regularly monitor and sample pollutants in its discharges; and to report in specified ways on a
8 regular basis to the RWQCB regarding discharge of pollutants from the FACILITY. The reports
9 include mandatory monthly Self Monitoring Reports (hereafter, "SMRs")

10 **VIOLATIONS OF THE DEFENDANT**

11 24. The DEFENDANT's discharges from the FACILITY violated its PERMIT on numerous
12 occasions and those violations are continuing. The violations are established in the DEFENDANT's
13 monitoring data and SMRs as well as data sent to the RWQCB by the DEFENDANT.

14 25. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and
15 below.

16 26. The types of violations are described with particularity by using the designations as set forth
17 in the DEFENDANT's PERMIT and detailed in the NOTICE.

18 27. The location of the discharges are the discharges points as described in the PERMIT attached
19 as EXHIBIT B and incorporated herein by reference.

20 **CAUSE OF ACTION**

21 **Violation of Federal Water Pollution Control Act 33 U.S.C. §1251 et seq.**

22 28. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through
23 27 as though fully set forth herein including all allegations in the attached NOTICE and
24 incorporated herein by reference.

25 29. DEFENDANT has and continues to violate the Clean Water ACT as evidenced by the its
26 violations of the terms of its PERMIT as well as applicable State and Federal standards.

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30. DEFENDANT’s violations are ongoing and will continue after the filing of this Complaint. PLAINTIFF alleges all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the DEFENDANT to the RWQCB or the PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address DEFENDANT’s PERMIT, State and Federal violations which may occur after the filing of this Complaint. Each of the DEFENDANT’s violations in excess of its PERMIT limits or State and Federal standards have been and are separate violations of the CWA. DEFENDANT has violated and continues to violate an “effluent standard or limitation” under Section 505(a)(1) of the CWA, 33 U.S.C. §1365(a)(1).

31. PLAINTIFF believes and avers that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANT will continue to violate its PERMIT limits as well as State and Federal standards with respect to the enumerated discharges and releases. PLAINTIFF believes and avers that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members, prevent future injury, and protect the interests which are or may be adversely affected by DEFENDANT’s violations of its PERMIT, State and Federal standards .

RELIEF REQUESTED

WHEREFORE, PLAINTIFF prays that the Court grant the following relief:

- 32. Declare DEFENDANT to have violated and to be in violation of the CWA;
- 33. Issue an injunction ordering DEFENDANT to immediately operate its FACILITY in compliance with the CWA and applicable effluent and receiving water limitations in its PERMIT, as well as State and Federal standards;
- 34. Order DEFENDANT to pay civil penalties of \$27,500.00 per violation per day for its violations of the CWA;
- 35. Order DEFENDANT to pay PLAINTIFF’s reasonable attorneys’ fees and costs (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and
- 36. Grant such other and further relief as may be just and proper.

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DATED: September 11, 2000

JACK SILVER, Esq.
Attorneys for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH