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8 NORTHERN CALIFORNIA RIVER WATCH

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

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

15 v.

16 CITY OF HEALDSBURG,  
17 and DOES 1-10, Inclusive,  
18 Defendant.

CASE NO: C 01-4686 WHA

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

19 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,  
20 "PLAINTIFF") by and through its attorneys, and for its Complaint against Defendant, CITY OF  
21 HEALDSBURG and DOES 1-10, Inclusive, (hereafter, "DEFENDANT") states as follows:

22 **NATURE OF THE CASE**

23 1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution  
24 Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §1251 et seq.,  
25 specifically Section 505, 33 U.S.C. § 1365 and Section 301, 33 U.S.C. § 1311 to stop  
26 DEFENDANT from repeated and ongoing violations of the CWA. These violations are detailed in  
27 the Notice Of Intent To File Suit (hereafter, "NOTICE") made part of the pleading of this case and  
attached hereto as EXHIBIT A.

2. DEFENDANT is routinely violating the terms of the CWA by discharging pollutants into the  
waters of the United States without a NPDES permit.

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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 CWA.

4. Under 33 U.S.C § 1251(e), 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 Russian River which is habitat for threatened and endangered species as that term is defined by the California Environmental Protection Agency and United States 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 Sonoma County. PLAINTIFF is organized under the laws of the State of California, with its main office at 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465. Its telephone number is 707-874-2579.

7. PLAINTIFF’s members live in or around the City of Healdsburg. PLAINTIFF’s members have interests which are or may be adversely affected by DEFENDANT’S violations. Said members use the Russian River, its tributaries and effected watershed areas for domestic recreation, drinking water, 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 HEALDSBURG, is a governmental entity. Its administrative offices are located at 401 Grove St., Healdsburg, California 95448

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**JURISDICTIONAL ALLEGATIONS**

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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.”

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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 Russian River, its tributaries and associated natural resources into which the DEFENDANT discharges wastewater, or by which DEFENDANT’S operations adversely affect members’ interests, in violation of the CWA.. 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 the CWA. PLAINTIFF contends there exists an injury in fact to its members, causation of that injury by the conduct of DEFENDANT complained of herein, and a likelihood that the requested relief will redress that injury.

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11. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A), PLAINTIFF gave notice of the violations alleged in this Complaint more than sixty (60) days prior to commencement of this lawsuit, to: (a) the DEFENDANT, (b) the United States Environmental Protection Agency (both Federal and local), and (c) the State of California Water Resources Control Board.

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

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

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### **GENERAL ALLEGATIONS**

3 14. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached  
4 herein.

5 15. All illegal discharges and activities complained of in this Complaint occur in either the  
6 Russian River or its tributaries, all of which are waters of the United States.

7 16. The Regional Water Quality Control Board (hereafter, "RWQCB") has determined that the  
8 Russian River watershed area and affected waterways are beneficially used for drinking water, water  
9 contact recreation, non-contact water recreation, fresh water habitat, salt water habitat, wildlife  
10 habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial  
11 service supply, navigation, and sport fishing.

12 17. DEFENDANT owns and/or operates a wastewater treatment plant facility (hereafter,  
13 "FACILITY") located in Sonoma County near the City of Healdsburg in Sonoma County, California.  
14 The FACILITY provides treatment for domestic wastewater from the City of Healdsburg and  
15 outlying areas. The FACILITY discharges both directly and indirectly into the waterways  
16 referenced above.

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

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### **STATUTORY AND REGULATORY BACKGROUND**

26 19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from  
27 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

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2 the applicable State agencies. These limits would normally be incorporated into a NPDES permit  
3 for that point source specifically. Additional sets of regulations are set forth in the Basin Plan,  
4 California Toxics Plan, the Code of Federal Regulations and other regulations promulgated by the  
5 Environmental Protection Agency and the State Water Resources Control Board. Section 301(a) of  
6 the CWA prohibits discharges of pollutants or activities not authorized by, or in violation of an  
7 effluent standard or limitation or an order issued by the Environmental Protection Agency or a State  
8 with respect to such a standard or limitation including a NPDES permit issued pursuant to Section  
9 402 of the CWA, 33 U.S.C.

10 § 1342. DEFENDANT’S FACILITY is a point source under the CWA.

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

13 § 1362(7)

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

17 22. The RWQCB has never adopted a NPDES Permit prescribing effluent limitations for the  
18 DEFENDANT’S FACILITY.

19 23. A NPDES permit prescribes conditions to ensure compliance with the CWA. It requires the  
20 discharger to establish and maintain records, to install, use and maintain monitoring equipment, to  
21 regularly monitor and sample pollutants in its discharges, and to report in specified ways on a  
22 regular basis to the RWQCB regarding discharge of pollutants from a facility. The reports include  
23 mandatory monthly Self Monitoring Reports (hereafter, “SMRs”)

24 **VIOLATIONS OF THE DEFENDANT**

25 24. The DEFENDANT’S discharges from its FACILITY have violated the CWA on numerous  
26 occasions. Those violations are continuing.

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

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2 26. The types of violations are described with particularity in the NOTICE and Cease and Desist  
3 Orders of the RWQCB.

4 27. The location of the discharges are the discharges points as described in the NOTICE,  
5 DEFENDANT’S Report of Waste Discharge, as well as the various Cease and Desist Orders issued  
6 by the RWQCB and incorporated herein by reference.

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### **CLAIMS FOR RELIEF**

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

9 28. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through  
10 27 as though fully set forth herein including all allegations in the attached NOTICE and  
11 incorporated herein by reference.

12 29. DEFENDANT has and continues to violate the CWA as evidenced by the discharges of  
13 pollutants without a NPDES permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. §  
14 1311.

15 30. The violations of DEFENDANT are ongoing and will continue after the filing of this  
16 Complaint. PLAINTIFF alleges herein all violations which may have occurred or will occur prior to  
17 trial, but for which data may not have been available or submitted or apparent from the face of the  
18 reports or data submitted by the DEFENDANT to the RWQCB or the PLAINTIFF prior to the filing  
19 of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address  
20 DEFENDANT’S State and Federal violations which may occur after the filing of this Complaint.  
21 Each of the DEFENDANT’S violations are separate violations of the CWA.

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

### **RELIEF REQUESTED**

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

1. Declare DEFENDANT, CITY OF HEALDSBURG to have violated and to be in violation of the CWA;
2. Issue an injunction ordering DEFENDANT to immediately operate its FACILITY in compliance with the CWA and applicable effluent and receiving water limitations of State and Federal standards;
3. Order DEFENDANT to pay civil penalties of \$27,500.00 per violation per day for its violations of the CWA;
4. 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,
5. Grant such other and further relief as may be just and proper.

DATED: December 3, 2001

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