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9 NORTHERN CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a non-profit corporation,

CASE NO: C04 04670 JCS

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**
(Environmental - Clean Water Act
33 U.S.C. §1251 et seq.; Business
and Professions Code §17200 et seq)

14 Plaintiff,

15 v.

16 CANYON ROCK COMPANY, INC.;;
17 RIVER READY MIX, INC.;; and
18 DOES 1-10, Inclusive,

19 Defendants.

20 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter, "PLAINTIFF") by
21 and through its attorney, and for its Complaint against defendants, CANYON ROCK COMPANY, INC. ,
22 RIVER READY MIX, INC. ,and DOES 1-10, Inclusive, (hereafter, "DEFENDANTS") 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 Control Act,
25 also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. § 1251 et seq., specifically 33 U.S.C.
26 § 1365, CWA § 505, and 33 U.S.C. § 1311, CWA § 301, to stop DEFENDANTS from repeated and
27 ongoing violations of the CWA.. These violations are detailed in the May 21, 2004 Notice of Violations and
28 Intent to File Suit (hereafter, "NOTICE") made part of the pleadings of this case as Exhibit A to this Complaint.

1 2. DEFENDANTS are routinely violating the terms of the CWA by discharging pollutants into the waters
2 of the United States in violation of the procedural requirements of National Pollutant Discharge Elimination
3 System (hereafter, “NPDES”) General Permit No. CAS000001 [State Water Resources Control Board]
4 Water Quality Order No. 97-03-DWQ and Water Quality Order No.91-13-DWQ (as amended by Water
5 Quality Order 92-12-DWQ) issued pursuant to 33 U.S.C. § 1342(p) CWA § 402(p) (hereafter, “General
6 Permit”).

7 3. DEFENDANTS are routinely violating the terms of the CWA by discharging non-storm water
8 pollutants into the waters of the United States in violation of their storm water permit.

9 4. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil
10 penalties, and other relief for DEFENDANTS’ violations of the terms of their PERMIT and their violations of
11 the CWA.

12 5. Under 33 U.S.C § 1251(e), CWA § 101, Congress declared its goals and policy with regard to public
13 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

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

18 6. DEFENDANTS have and continue to illegally discharge wastewater to wetlands, Green Valley Creek,
19 and the Russian River all of which are habitat for threatened and endangered species as that term is defined by
20 the California Environmental Protection Agency and United States Environmental Protection Agency.

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23 **PARTIES**

24 7. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit
25 corporation duly organized under the laws of the State of California, with headquarters located at 74 Main
26 Street, Suite D, P.O. Box 1360, 95465. PLAINTIFF is dedicated to protecting, enhancing, and helping to
27 restore the surface and subsurface waters of Northern California. Many of PLAINTIFF’s members live,
28 recreate, and/or work in Sonoma County.

1 8. Many of PLAINTIFF's members live in or around the City of Forestville. PLAINTIFF's members
2 have interests which are or may be adversely affected by DEFENDANTS' violations as described in this
3 Complaint. Said members use Green Valley Creek and the Russian River, its tributaries, and effected
4 watershed areas for domestic recreation, drinking water, sports, fishing, swimming, hiking, photography, nature
5 walks and the like. Furthermore, the relief sought herein will redress the injury in fact, likelihood of future injury
6 and interference with the interests of said members.

7 9. DEFENDANTS CANYON ROCK COMPANY INC., and RIVER READY MIX, INC., are
8 California businesses engaged in the extraction of rock from hillsides for sale and the manufacture of concrete.
9 Their administrative office is located at 7310 Highway 116, Forestville, Sonoma County, CA 95436.
10 DEFENDANTS are registered corporations with the State of California.

11 10. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
12 entities, who are, or were, responsible for, or in some way contributed to, the violations which are the subject
13 of this Complaint or are, or were, responsible for the maintenance, supervision, management, operations, or
14 insurance coverage of DEFENDANTS' Facilities. The names, identities, capacities, and functions of
15 DEFENDANTS DOES 1 - 10, Inclusive are presently unknown to PLAINTIFF. PLAINTIFF shall seek
16 leave of court to amend this Complaint to insert the true names of said DOES Defendants when the same have
17 been ascertained.

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JURISDICTIONAL ALLEGATIONS

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

26 12. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from, own property
27 near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from Green Valley Creek, the
28 Russian River, its tributaries, wetlands, hydrologically connected water bodies and associated natural resources

1 into which the DEFENDANTS discharge pollution, or by which DEFENDANTS' operations adversely affect
2 those members' interests, in violation of the CWA. The health, economic, recreational, aesthetic and
3 environmental interests of PLAINTIFF and its members may be, have been, are being, and will continue to be
4 adversely affected by DEFENDANTS' unlawful violations of the CWA. PLAINTIFF contends there exists
5 an injury in fact to its members, causation of that injury by the conduct of DEFENDANTS complained of
6 herein, and a likelihood that the requested relief will redress that injury.

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

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

14 15. Pursuant to 33 U.S.C. § 1365(c)(1), CWA § 505(c)(1), venue lies in this District as the operations
15 and facilities of the DEFENDANTS which are the sources of the violations complained of in this lawsuit, are
16 located within this District.

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20 **GENERAL ALLEGATIONS**

21 16. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached hereto as
22 Exhibit A.

23 17. All illegal discharges and activities complained of in this Complaint occur in wetlands located on
24 DEFENDANTS' property, Green Valley Creek, the Russian River, its tributaries, wetlands, and/or
25 hydrologically connected water bodies all of which are waters of the United States.

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

3 19. DEFENDANTS own and/or operate a rock quarry and cement recycling and manufacturing facilities
4 (hereafter, "FACILITIES") located in Sonoma County near the town of Forestville, California. The
5 FACILITIES are commercial businesses selling rock, gravel, and cement, to developers, builders, and
6 individuals. DEFENDANTS have discharged and continue to discharge from the FACILITIES both directly
7 and indirectly into the waterways referenced above.

8 20. Pursuant to 33 U.S.C. § 1311(a), CWA § 301(a) the Environmental Protection Agency and the State
9 of California have formally concluded that discharges by the DEFENDANTS of the type complained of in the
10 NOTICE, are prohibited by law. Beneficial uses of most portions of the specified waterways are being affected
11 in a prohibitive manner by the illegal discharges and activities of DEFENDANTS. Also pursuant to 33 U.S.C.
12 § 1311, CWA § 304, the Environmental Protection Agency and the State of California have identified
13 DEFENDANTS' FACILITIES as point sources, the discharges from which contribute to violations of
14 applicable water quality standards. 33 U.S.C. § 1316, CWA § 306 specifically identifies cement
15 manufacturing as a point source activity. Furthermore, these violations are continuing.

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17 **STATUTORY AND REGULATORY BACKGROUND**

18 21. 33 U.S.C. §§ 1311(a) & (b), CWA § 301(a) and § 301(b) prohibit the discharge of pollutants from
19 a "point source" into the navigable waters of the United States, unless such discharge is in compliance with
20 applicable effluent limitations as set by the Environmental Protection Agency and the applicable State agencies.
21 These limits would normally be incorporated into a NPDES permit for that point source specifically. Additional
22 sets of regulations are set forth in the Basin Plan, California Toxics Rule, the Code of Federal Regulations and
23 other regulations promulgated by the Environmental Protection Agency and the State Water Resources Control
24 Board. 33 U.S.C. § 1311, CWA § 301(a) prohibits discharges of pollutants or activities not authorized by,
25 or in violation of an effluent standard or limitation or an order issued by the Environmental Protection Agency
26 or a State with respect to such a standard or limitation including a NPDES permit issued pursuant to 33 U.S.C.
27 § 1342, CWA § 402. DEFENDANTS' FACILITIES are point sources under the CWA.

28 22. The effected waterways detailed in this Complaint and in the NOTICE are navigable waters of the United

1 States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), CWA § 502(7).

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

5 24. The RWQCB has never adopted a NPDES permit prescribing effluent limitations for DEFENDANTS'
6 FACILITIES with regard to direct discharges to wetlands located on DEFENDANTS' property, Green Valley
7 Creek, or the Russian River. DEFENDANTS have filed an application with the RWQCB to be covered by
8 California's General Storm Water Permit (hereafter, "General Permit") pursuant to 33 U.S.C. § 1342(p),
9 CWA § 402(p) for DEFENDANTS' FACILITIES as described in the NOTICE.

10 25. A NPDES permit prescribes conditions to ensure compliance with the CWA. It requires the
11 discharger to establish and maintain records, to install, use and maintain monitoring equipment, to install and
12 use best available technologies to reduce and eliminate discharges, to regularly monitor and sample pollutants
13 in its discharges, and to report in specified ways on a regular basis to the RWQCB regarding discharge of
14 pollutants from a facility. The reports include mandatory monthly Self Monitoring Reports (hereafter, "SMRs")

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16 **CLAIMS FOR RELIEF**

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18 **Violation of Clean Water Act 33 U.S.C. § 1251 et seq.,**
19 **33 U.S.C. § 1311, CWA § 301, and 33 U.S.C. §1342, CWA § 402(a) and (b) –**
20 **Discharge of Pollutants from Point Sources Must Be**
21 **Regulated by NPDES Point Source Permit**

22 26. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 25 as
23 though fully set forth herein including all allegations in the NOTICE attached hereto and incorporated herein
24 by reference.

25 27. 33 U.S.C. § 1311(a), CWA § 301(a) prohibits the discharge of any pollutant into waters of the United
26 States, unless such discharge is in compliance with various enumerated sections of the CWA. 33 U.S.C §
27 1342, CWA § 402 regulates industrial discharges.

28 28. DEFENDANTS have and continue to violate the CWA as evidenced by the discharges of pollutants
to the wetlands located on their property, Green Valley, Creek, and the Russian River without a NPDES permit

1 in violation of 33 U.S.C. §1342(a) and (b), CWA §402(a) and CWA §402(b).

2 29. The violations of DEFENDANTS are ongoing and will continue after the filing of this Complaint.
3 PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for which data
4 may not have been available or submitted or apparent from the face of the reports or data submitted by
5 DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file
6 amended complaints if necessary to address DEFENDANTS' State and Federal violations which may occur
7 after the filing of this Complaint. Each of the DEFENDANTS' violations are separate violations of the CWA.

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10 30. PLAINTIFF avers and believes that without the imposition of appropriate civil penalties and the
11 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State
12 and Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and
13 believes that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members,
14 prevent future injury, and protect the interests which
15 are or may be adversely affected by DEFENDANTS' violations of the CWA, as well as other State and
16 Federal standards.

17 31. DEFENDANTS are in violation of the CWA requirement that discharges of pollutants via discrete
18 conveyances to waters of the United States be regulated by a NPDES permit.

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20 **Violation of Clean Water Act 33 U.S.C. § 1251 et seq.,**

21 **33 U.S.C. § 1342 CWA § 402(p)**

22 **Industrial Discharges Must Comply with the General Storm Water Permit**

23 32. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 31 as
24 though fully set forth herein including all allegations in the NOTICE attached hereto and incorporated herein
25 by reference.

26 33. Title 33 U.S.C. 1311(a), CWA § 301(a) prohibits the discharge of any pollutant into waters of the
27 United States, unless such discharge is in compliance with various enumerated sections of the Clean Water Act.
28 33 U.S.C. § 1342(p), CWA § 402(p), regulates industrial storm water discharges.

1 34. The General Permit as described in the NOTICE prohibits discharges of storm water contaminated with
2 industrial pollutants, which are not otherwise regulated by an NPDES permit, to storm sewer systems or waters
3 of the United States.

4 35. DEFENDANTS have and continue to violate the CWA and the Storm Water General Permit as
5 evidenced by the discharges of storm water containing pollutants to the wetlands located on their property,
6 Green Valley, Creek, and the Russian River in violation of 33 U.S.C. §1311, CWA § 301 and 33 U.S.C.
7 § 1342(p), CWA § 402(p).

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9 36. DEFENDANTS have and continue to violate 33 U.S.C. § 1311, CWA §301(a) and 33 U.S.C. §
10 1342, CWA § 402(p). The violations of DEFENDANTS are ongoing and will continue after the filing of this
11 Complaint.

12 37. PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for
13 which data may not have been available or submitted or apparent from the face of the reports or data submitted
14 by DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will
15 file amended complaints if necessary to address DEFENDANTS' State and Federal violations which may
16 occur after the filing of this Complaint. Each of the DEFENDANTS' violations are separate violations of the
17 CWA.

18 38. PLAINTIFF avers and believes that without the imposition of appropriate civil penalties and the
19 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State
20 and Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and
21 believes that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members,
22 prevent future injury, and protect the interests which are or may be adversely affected by DEFENDANTS'
23 violations of the CWA, as well as other State and Federal standards.

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25 **Violation of Clean Water Act 33 U.S.C. §1251 et seq.,**
26 **33 U.S.C. 1311, CWA § 301; 33 U.S.C. § 1342, CWA § 402;**
27 **40 Code of Federal Regulations Subchapter N Parts 411, 436, 440, and 443**
28 **Discharges Must Not Exceed Effluent Limitations and Guidelines**

1 39. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 38 as
2 though fully set forth herein including all allegations in the NOTICE attached hereto and incorporated herein
3 by reference.

4 40. DEFENDANTS have and continue to violate the CWA by failing to ensure that discharge of pollutants
5 from the FACILITIES do not exceed acceptable established levels for storm water and non-storm water
6 discharge of pollutants set out in the General Storm Water Permit and 40 CFR Subchapter N Parts 411, 436,
7 440, and 443.

8 41. PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for
9 which data may not have been available or submitted or apparent from the face of the reports or data submitted
10 by DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will
11 file amended complaints if necessary to address DEFENDANTS' State and Federal violations which may
12 occur after the filing of this Complaint. Each of the DEFENDANTS' violations are separate violations of the
13 CWA.

14 42. PLAINTIFF avers and believes that without the imposition of appropriate civil penalties and the
15 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State and
16 Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and believes
17 that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members, prevent future
18 injury, and protect the interests which are or may be adversely affected by DEFENDANTS' violations of the
19 CWA, as well as other State and Federal standards.

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21 **Violation of Clean Water Act 33 U.S.C. § 1251 et seq.,**

22 **33 U.S.C. § 1311 , CWA § 301, 33 U.S.C. § 1316,**

23 **CWA § 306, 33 U.S.C. § 1342, CWA § 402 -**

24 **Best Management Practices Must Be Implemented to Achieve**

25 **National Standards of Performance**

26 43. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 42 as
27 though fully set forth herein including all allegations in the NOTICE attached hereto and incorporated herein
28 by reference.

1 44. DEFENDANTS have and continue to violate the CWA by operating and discharging in a manner which
2 does not reflect the greatest degree of effluent reduction which the administrator determined to be “achievable
3 through application of the best available demonstrated control technology, processes, operating methods, or
4 other alternatives, including, where practicable, a standard permitting no discharge of pollutants.” 33 U.S.C.
5 §1316, 33 CWA § 306.

6 45. DEFENDANTS’ failure to implement best management practices is further evidenced in the
7 environmental document prepared by the County of Sonoma in 2004 for expansion of the site, wherein BMPs
8 long available to DEFENDANTS but never implemented, are identified and recommended.

9 46. PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for
10 which data may not have been available or submitted or apparent from the face of the reports or data submitted
11 by DEFENDANTS to the RWQCB or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will
12 file amended complaints if necessary to address
13 DEFENDANTS’ State and Federal violations which may occur after the filing of this Complaint. Each of the
14 DEFENDANTS’ violations are separate violations of the CWA.

15 47. PLAINTIFF avers and believes that without the imposition of appropriate civil penalties and the
16 issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State and
17 Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and believes
18 that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members, prevent future
19 injury, and protect the interests which
20 are or may be adversely affected by DEFENDANTS’ violations of the CWA, as well as other State and
21 Federal standards.

22 48. 33 U.S.C. § 1311 and § 1342, CWA § 301 and § 402 respectively, require that dischargers
23 implement BMPs to reduce and eliminate polluted discharges to waters of the United States.

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25 **RELIEF REQUESTED**

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

27 49. Declare DEFENDANTS to have violated and to be in violation of the CWA;

28 50. Issue an injunction ordering DEFENDANTS to immediately operate their FACILITIES, as described

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in the NOTICE, in compliance with the CWA and applicable effluent and receiving water limitations of State and Federal standards, including acquiring the appropriate permits including NPDES permits for direct discharges to wetlands, Green Valley Creek, and the Russian River and to file a Notice of Intent to be covered by an NPDES Permit for the FACILITIES

- 51. Order DEFENDANTS to pay civil penalties of \$27,500.00 per violation per day for their violations of the CWA;
- 52. Order DEFENDANTS 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,
- 53. Grant such other and further relief as may be just and proper.

/s/

DATED: October 29, 2004

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