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9 NORTHERN CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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

CASE NO: C 01- 2973 BZ

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

16 v.
17 CITY OF CRESCENT CITY,
18 and DOES 1-10, Inclusive,
19 Defendant.

20 _____/

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22 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
23 “PLAINTIFF”) by and through its attorneys, and for its Complaint against Defendant, CITY OF
24 CRESCENT CITY (“CRESCENT CITY”), and DOES 1-10 (hereafter, “DEFENDANTS”), states as
25 follows:

26 **NATURE OF THE CASE**

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

2. DEFENDANTS are routinely violating the terms of their National Pollution Elimination
Discharge System Permit Number CA0022756 (hereafter, “PERMIT”), adopted by the Regional

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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 DEFENDANTS’ violations of the terms of their PERMIT.

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. DEFENDANTS illegally discharge to the Pacific Ocean which is habitat for threatened or 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 Humboldt 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 Crescent City. PLAINTIFF’s members have interests which are or may be adversely affected by DEFENDANTS’ violations. Said members use the Pacific Ocean and effected watershed areas for domestic recreation, sports, fishing, swimming,

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2 hiking, photography, nature walks and the like. Furthermore, the relief sought will redress the
3 injury in fact, likelihood of future injury and interference with the interests said members.

4 8. DEFENDANT, Crescent City, is a governmental entity. Its administrative offices are located
5 at 377 J Street, Crescent City, California 95531-4025

6 **JURISDICTIONAL ALLEGATIONS**

7 9. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA,
8 33 U.S.C. § 1365(a)(1), which states in part that, “any citizen may commence a civil action on his
9 own behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or
10 limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard
11 or limitation.” For purposes of Section 505, “the term ‘citizen’ means a person or persons having
12 an interest which is or may be adversely affected.”

13 10. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from,
14 own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the
15 Pacific Ocean and associated natural resources into which the DEFENDANTS discharge
16 wastewater, or by which its operations adversely affect members’ interests, in violation of its
17 PERMIT. The health, economic, recreational, aesthetic and environmental interests of PLAINTIFF
18 and its members may be, have been, are being, and will continue to be adversely affected by the
19 DEFENDANTS’ unlawful violations of its PERMIT. PLAINTIFF contends there exists an injury in
20 fact to its members, causation of that injury by the DEFENDANTS’ complained of conduct, and a
21 likelihood that the requested relief will redress that injury.

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

26 12. Pursuant to Section 309(g)(6)(B) of the CWA, 33 USC §1319(g)(6)(B), notice of the
27 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 DEFENDANTS’ treatment facilities, which are the source of the violations complained of in this action, are located within this District.

GENERAL ALLEGATIONS

14. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached herein. DEFENDANTS own and/or operate a wastewater treatment plant, located in Del Norte County near Crescent City. The plant provides treatment for domestic wastewater from Crescent City and outlying areas.

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

16. The RWQCB has determined that the watershed area and affected waterways are beneficially used for drinking water, water contact recreation, non-contact water recreation, fresh water habitat, salt water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

17. DEFENDANTS own and/or operate wastewater treatment, reuse and disposal facility(ies) (hereafter, “FACILITY”). The FACILITY discharges both directly and indirectly into the waterways referenced above.

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 DEFENDANTS 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 DEFENDANTS. Also pursuant to Section 304 of the CWA, 33 U.S.C. §1311, the Environmental Protection Agency and the State have identified the DEFENDANTS’ FACILITY as a point source, the discharges from which contribute to violations of applicable water quality standards.

STATUTORY AND REGULATORY BACKGROUND

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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, California Ocean Plan, the Code of Federal Regulations and other regulations promulgated by the Environmental Protection Agency and the SWRCB. Section 301(a) of the CWA 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. DEFENDANTS’ 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.

22. The RWQCB adopted NPDES Permit Number CA0022756, prescribing effluent limitations for the DEFENDANTS’ FACILITY. This PERMIT authorizes the DEFENDANTS to discharge limited quantities of wastewater and pollutants into the Pacific Ocean.

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

VIOLATIONS OF THE DEFENDANTS

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2 24. The DEFENDANTS' discharges from the FACILITY violated their PERMIT on numerous
3 occasions and those violations are continuing. The violations are established in the DEFENDANTS'
4 monitoring data and SMRs as well as data sent to the RWQCB by the DEFENDANTS.

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

7 26. The types of violations are described with particularity by using the designations as set forth
8 in the DEFENDANTS' PERMIT and detailed in the NOTICE.

9 27. The location of the discharges are the discharges points as described in the PERMIT which is
10 an attachment to the NOTICE 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.

13 28. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through
14 27 as though fully set forth herein including all allegations in the attached NOTICE and
15 incorporated herein by reference.

16 29. DEFENDANTS have and continue to violate the CWA as evidenced by their violations of the
17 terms of their PERMIT as well as applicable State and Federal standards.

18 30. DEFENDANTS' violations are ongoing and will continue after the filing of this Complaint.
19 PLAINTIFF alleges all violations which may have occurred or will occur prior to trial, but for which
20 data may not have been available or submitted or apparent from the face of the reports or data
21 submitted by the DEFENDANTS to the RWQCB or the PLAINTIFF prior to the filing of this
22 Complaint. PLAINTIFF will file additional amended complaints if necessary to address
23 DEFENDANTS' PERMIT, State and Federal violations which may occur after the filing of this
24 Complaint. Each of the DEFENDANTS' violations in excess of their PERMIT limits or State and
25 Federal standards have been and are separate violations of the CWA. DEFENDANTS have violated
26 and continue to violate an "effluent standard or limitation" under Section 505(a)(1) of the CWA, 33
27 U.S.C. §1365(a)(1).

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31. PLAINTIFF believes and avers that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate their 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 DEFENDANTS' violations of their PERMIT, State and Federal standards .

RELIEF REQUESTED

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

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

DATED: July 24, 2001

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