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9 UNITED STATES DISTRICT COURT
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11 NORTHERN DISTRICT OF CALIFORNIA

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

CASE NO: 02 0128 CRB

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

17 v.

18 CITY OF FORT BRAGG, FORT
19 BRAGG MUNICIPAL IMPROVEMENT
20 DISTRICT NO. 1, and DOES 1-10,
21
22 Defendant.

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24 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
25 “PLAINTIFF”) by and through its attorneys, and for its Complaint against Defendants, CITY OF
26 FORT BRAGG, FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1, and DOES 1-10
27 (hereafter, “DEFENDANTS”), states as follows:

NATURE OF THE CASE

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.,

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2 specifically Section 505, 33 U.S.C. §1365, to stop DEFENDANTS from repeated and ongoing
3 violations of the CWA. These violations are detailed in the Notice Of Intent To File Suit made part
4 of the pleadings of this case and attached hereto as EXHIBIT A (hereafter, “NOTICE”).

5 2. DEFENDANTS are routinely violating the terms of their National Pollution Elimination
6 Discharge System permit number CA0023078 (hereafter, “PERMIT”), adopted by the Regional
7 Water Quality Control Board, North Coast Bay Region (hereafter, “RWQCB”), the Water Quality
8 Control Plan for the North Coast Region (hereafter, “Basin Plan”), EPA regulations codified in the
9 Code of Federal Regulations and toxics standards promulgated by the State Water Resources
10 Control Board (hereafter, “SWRCB”).

11 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the
12 imposition of civil penalties, and other relief for the DEFENDANTS’ violations of the terms of
13 their PERMIT.

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

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

19 5. DEFENDANTS illegally discharge to the Pacific Ocean which is habitat for threatened or
20 endangered species as that term is defined by California Environmental Protection Agency and U.S.
21 Environmental Protection Agency.

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PARTIES

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

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2 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone number 707-874-
3 2579.

4 7. PLAINTIFF's members live in or around the City of Fort Bragg. PLAINTIFF's members
5 have interests which are or may be adversely affected by DEFENDANTS' violations. Said
6 members use the Pacific Ocean and effected watershed areas for domestic recreation, sports,
7 fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief sought
8 will redress the injury in fact, likelihood of future injury and interference with the interests said
9 members.

10 8. DEFENDANT, City of Fort Bragg, is a governmental entity. Its administrative offices are
11 located at 416 North Franklin Street, Fort Bragg, California 95437.

12 9. DEFENDANT, Fort Bragg Municipal Improvement District No. 1, is a governmental entity.
13 Its administrative offices are located at 416 North Franklin Street, Fort Bragg, California 95437.

14 **JURISDICTIONAL ALLEGATIONS**

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

21 11. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from,
22 own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the
23 Pacific Ocean and associated natural resources into which the DEFENDANTS discharge
24 wastewater, or by which their operations adversely affect members' interests, in violation of their
25 PERMIT. The health, economic, recreational, aesthetic and environmental interests of PLAINTIFF
26 and its members may be, have been, are being, and will continue to be adversely affected by the
27 DEFENDANTS' unlawful violations of their PERMIT. PLAINTIFF contends there exists an injury

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2 in fact to its members, causation of that injury by the DEFENDANTS' complained of conduct, and a
3 likelihood that the requested relief will redress that injury.

4 12. 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 (60) days prior to commencement
6 of this lawsuit, to: (a) the DEFENDANTS, (b) the United States, Environmental Protection Agency,
7 Federal and Regional, and (c) the State of California Water Resources Control Board.

8 13. Pursuant to Section 309(g)(6)(B) of the CWA, 33 USC §1319(g)(6)(B), notice of the
9 alleged violations was given sixty (60) days prior to filing suit. The parties entered into a written
10 Agreement to Stay Filing of Litigation to facilitate settlement discussions and in return for the
11 City's agreement to fund an audit of operations. A copy of that Agreement is attached hereto as
12 EXHIBIT B.

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

16 **GENERAL ALLEGATIONS**

17 15. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached
18 herein as Exhibit A.

19 16. DEFENDANTS own and/or operate a wastewater treatment plant, reuse and disposal
20 facility(ies) (hereafter, "FACILITY") located in Mendocino County near the City of Fort Bragg.
21 The plant provides treatment for domestic wastewater from the City of Fort Bragg and outlying
22 areas. The FACILITY discharges both directly and indirectly into the waterways referenced below.

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

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26 18. The RWQCB has determined that the watershed area and affected waterways are beneficially
27 used for drinking water, water contact recreation, non-contact water recreation, fresh water habitat,

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2 salt water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish
3 spawning, industrial service supply, navigation, and sport fishing.

4 19. Pursuant to Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Environmental Protection
5 Agency and the State of California have formally concluded that discharges by the DEFENDANTS
6 of the type complained of in the NOTICE are prohibited by law. Beneficial uses of most portions
7 of the specified waterways are being affected in a prohibited manner by the illegal discharges and
8 activities of the DEFENDANTS. Additionally, pursuant to Section 304 of the CWA, 33 U.S.C.
9 §1311, the Environmental Protection Agency and the State have identified the DEFENDANTS'
10 FACILITY as a point source, the discharges from which contribute to violations of applicable water
11 quality standards.

12 **STATUTORY AND REGULATORY BACKGROUND**

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

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

27 22. The Administrator of the Environmental Protection Agency has authorized the RWQCB

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2 to issue NPDES permits, subject to specified conditions and requirements, pursuant to Section 402
3 of the CWA, 33 U.S.C. §1342.

4 23. The RWQCB adopted NPDES permit No. CA0023078, prescribing effluent limitations for
5 the DEFENDANTS' FACILITY. This PERMIT authorizes the DEFENDANTS to discharge limited
6 quantities of wastewater and pollutants into the Pacific Ocean.

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

12 **VIOLATIONS OF THE DEFENDANT**

13 25. The DEFENDANTS' discharges from the FACILITY violated their PERMIT on numerous
14 occasions and those violations are continuing. The violations are established in the DEFENDANTS'
15 monitoring data and SMRs as well as data sent to the RWQCB by the DEFENDANTS.

16 26. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and
17 below.

18 27. The types of violations are described with particularity by using the designations as set forth
19 in the DEFENDANTS' PERMIT and detailed in the NOTICE.

20 28. The location of the discharges are the discharges points as described in the PERMIT attached
21 as EXHIBIT C and incorporated herein by reference.

22 **CLAIMS FOR RELIEF**

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

24 29. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through
25 28 as though fully set forth herein including all allegations in the attached NOTICE and
26 incorporated herein by reference.

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30. DEFENDANTS have and continue to violate the Clean Water Act as evidenced by the violations of the terms of their PERMIT as well as applicable State and Federal standards.

31. DEFENDANTS’ 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 DEFENDANTS to the RWQCB or the PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address State and Federal violations of DEFENDANTS’ PERMIT which may occur after the filing of this Complaint. Each of the DEFENDANTS’ violations in excess of their PERMIT limits or State and Federal standards have been and are separate violations of the CWA. DEFENDANTS have violated and continue to violate an “effluent standard or limitation” under Section 505(a)(1) of the CWA, 33 U.S.C. §1365(a)(1).

32. 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;

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- 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: January 7, 2002

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