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NORTHERN CALIFORNIA RIVER WATCH

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA RIVER WATCH, a non-profit Corporation      **CASE NO: C 03 04552 MJJ**

11 Plaintiff,

12 v.

13 LAKE COUNTY SANITATION DISTRICT, and DOES 1-10,  
14 INCLUSIVE,

15 Defendants.

**FIRST AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES**

(Environmental - Clean Water Act  
33 U.S.C. § 1251 et seq.)

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17  
18  
19 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (“PLAINTIFF”),  
20 by and through its attorneys, and for its Complaint against Defendant, LAKE COUNTY  
21 SANITATION DISTRICT, and DOES 1-10, Inclusive, (hereafter, “DEFENDANT”) states as  
22 follows:

23 **I. NATURE OF THE CASE**

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

1 2. DEFENDANT is routinely violating the terms of the CWA by discharging pollutants into  
2 the waters of the United States without a National Pollution Discharge Elimination System  
3 (“NPDES”) permit.

4 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the  
5 imposition of civil penalties, and other relief for the DEFENDANT’S violations of the CWA.

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

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

12 5. DEFENDANT illegally discharges to Clear Lake, Lyons Creek, Burns Valley Creek and  
13 other tributaries to Clear Lake in the vicinity of its Wastewater Treatment Facilities, all of which  
14 are waters of the United States.

## 15 II. PARTIES

16 6. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit  
17 public benefit corporation duly organized under the laws of the State of California, with  
18 headquarters located in Occidental, California. PLAINTIFF is dedicated to protect, enhance and  
19 help restore the surface and subsurface waters of Northern California. PLAINTIFF’S members  
20 live in Lake County. PLAINTIFF is organized under the laws of the State of California, with  
21 its main office at 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465.

22 7. DEFENDANT, LAKE COUNTY SANITATION DISTRICT, is a governmental entity,  
23 with administrative offices located at 230A Main Street, Lakeport, California 95453.

## 24 III. JURISDICTIONAL ALLEGATIONS

25 8. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA,  
26 33 U.S.C. § 1365(a)(1), which states in part that, “any citizen may commence a civil action on  
27 his own behalf against any person . . . who is alleged to be in violation of (A) an effluent  
28 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.”

9. Members and supporters of PLAINTIFF organization reside in the vicinity of, derive  
livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy

1 and benefit from Clear Lake, its tributaries and associated natural resources into which the  
2 DEFENDANT discharges wastewater, or by which DEFENDANT’S operations adversely affect  
3 members’ interests, in violation of the CWA. Said members use Clear Lake, its tributaries and  
4 effected watershed areas for domestic recreation, drinking water, sports fishing, swimming,  
5 hiking, photography, nature walks and the like. The health, economic, recreational, aesthetic and  
6 environmental interests of PLAINTIFF’s members may be, have been, are being, and will  
7 continue to be adversely affected by DEFENDANT’S unlawful violations of the CWA.  
8 PLAINTIFF contends there exists an injury in fact to its members, causation of that injury by the  
9 conduct of DEFENDANT complained of herein, and a likelihood that the requested relief will  
10 redress that injury.

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

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

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

21 **IV. GENERAL ALLEGATIONS**

22 13. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached  
23 herein.

24 14. All illegal discharges and activities complained of in this Complaint occurred in either  
25 Clear Lake or its tributaries, or other waters of the United States.

26 15. The Regional Water Quality Control Board (hereafter, “RWQCB”) has determined that  
27 the Clear Lake watershed area and affected waterways are beneficially used for drinking water,  
28 water contact recreation, non-contact water recreation, fresh water habitat, wildlife habitat, fish  
spawning, industrial service supply, navigation, and sport fishing.

1 16. DEFENDANT owns and/or operates The Northwest Regional Wastewater Treatment  
2 Plant Facility (hereafter, “ NRW FACILITY”) located in Lakeport, Lake County, California.  
3 The NRW FACILITY provides treatment for domestic and commercial wastewater from  
4 communities along the northern and eastern shores of Clear Lake, including Nice, Paradise  
5 Valley, Kono Tayee, Lucerne, Upper Lake and North Lakeport. The NRW FACILITY  
6 discharges both directly and indirectly into the waterways referenced above.

7 17. DEFENDANT owns and/or operates The Southeast Regional Wastewater Treatment Plant  
8 Facility (hereafter, “ SRW FACILITY”) located in Clear Lake, Lake County, California. The  
9 SRW FACILITY provides treatment for domestic and commercial wastewater from communities  
10 in the Clear Lake and Lower Lake areas. The SRW FACILITY discharges both directly and  
11 indirectly into the waterways referenced above.

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

20 **V. STATUTORY AND REGULATORY BACKGROUND**

21 19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants  
22 from a “point source” into the navigable waters of the United States, unless such discharge is in  
23 compliance with applicable effluent limitations as set by the Environmental Protection Agency  
24 and the applicable State agencies. These limits would normally be incorporated into a NPDES  
25 permit for that point source specifically. Additional sets of regulations are set forth in the Basin  
26 Plan, California Toxics Plan, the Code of Federal Regulations and other regulations promulgated  
27 by the Environmental Protection Agency and the State Water Resources Control Board. Any  
28 discharge of pollutants from a point source into navigable waters of the United States, which

1 discharge is not regulated by a NPDES permit, is in violation of Section 301(a) of the CWA.  
2 DEFENDANT'S NRW FACILITY and SRW FACILITY are regulated under State Waste  
3 Discharge Requirements Orders which do not impose federal standards, procedures and  
4 penalties. DEFENDANTS do not have NPDES permits for discharges from the collection  
5 system or process facilities at the NRW FACILITY and the SRW FACILITY.

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

8 21. The Administrator of the Environmental Protection Agency has authorized the RWQCB  
9 to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA §  
10 402 , 33 U.S.C. § 1342.

11 22. The RWQCB has never adopted a NPDES Permit prescribing effluent limitations for the  
12 DEFENDANT'S NRW FACILITY, or the DEFENDANT'S SRW FACILITY.

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

## 18 VI. VIOLATIONS OF THE DEFENDANT

19 24. The DEFENDANT'S discharges from its NRW FACILITY and its SRW FACILITY have  
20 violated the CWA on numerous occasions. Those violations are continuing.

21 25. The enumerated violations, documented overflows from DEFENDANT'S storage  
22 reservoirs and sewage collection systems, are detailed in the NOTICE, incorporated herein by  
23 reference, and below.

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

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

1 **VII. CLAIM FOR RELIEF**

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

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

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

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

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

24 **VIII. RELIEF REQUESTED**

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

- 26 1. Declare DEFENDANT, LAKE COUNTY SANITATION DISTRICT, to have violated  
27 and to be in violation of the CWA;

- 1 2. Issue an injunction ordering DEFENDANT to immediately operate its NRW FACILITY  
2 and its SRW FACILITY in compliance with the CWA and applicable effluent and receiving  
3 water limitations of State and Federal standards;
- 4 3. Order DEFENDANT to pay civil penalties of \$27,500.00 per violation per day for its  
5 violations of the CWA;
- 6 4. Order DEFENDANT to pay PLAINTIFF's reasonable attorneys' fees and costs (including  
7 expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,
- 8 5. Grant such other and further relief as may be just and proper.

9  
10 DATED: December 15, 2003

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