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Attorneys for Plaintiff  
Northern California River Watch

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA  
RIVER WATCH, a non-profit  
Corporation,

Plaintiff,

v.

SONOMA COUNTY WATER  
AGENCY, SONOMA VALLEY  
SANITATION DISTRICT,  
COUNTY OF SONOMA  
DOES 1 - 10, INCLUSIVE,  
Defendants.

CASE NO: C 97-04263 CRB

**SECOND AMENDED  
COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES,  
RESTITUTION AND REMEDIATION**

\_\_\_\_\_ /

NOW COMES the Plaintiff, NORTHERN CALIFORNIA RIVER WATCH ("RIVER WATCH" or "PLAINTIFF") by and through its attorneys, and for its Complaint against the Defendants, SONOMA COUNTY WATER AGENCY, SONOMA VALLEY COUNTY SANITATION DISTRICT, COUNTY OF SONOMA and DOES 1 -10, INCLUSIVE ("DEFENDANTS"), states as follows:

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### **NATURE OF THE CASE**

4 1. This is a citizens' suit for relief brought by Plaintiff under the Federal Water Pollution  
5 Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq.,  
6 specifically Section 505, 33 U.S.C. § 1365, to stop DEFENDANTS from repeated and  
7 ongoing violations of the CWA. These violations are detailed in the Notice Of Intent To Sue  
8 ("NOTICE") made part of the pleading of this case.

9 2. The DEFENDANTS are routinely violating the terms of their National Pollution  
10 Elimination Discharge System permit ("PERMIT), Waste Discharge Requirements Order No.  
11 92-063, adopted by the Regional Water Quality Control Board, San Francisco Bay Region  
12 ("RWQCB") on June 17, 1992, which also serves as a permit under the National Pollutant  
13 Discharge Elimination System ("NPDES") permit, No. CA0037800.

14 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the  
15 imposition of civil penalties, and other relief for the DEFENDANTS' violations of the terms of  
16 their PERMIT.

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

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

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### **PARTIES**

24 5. Plaintiff, RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly  
25 organized under the laws of the State of California, with headquarters located in Santa Rosa,  
26 California. RIVER WATCH is dedicated to protect, enhance and help restore the rivers,  
27 creeks and tributaries of Northern California. Many of the members of RIVER WATCH live in

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2 Sonoma County. Several members live in the Sonoma Valley area. Members of RIVER  
3 WATCH have an interest which is or may be adversely affected by DEFENDANTS' violations.

4 Said members use the Sonoma Valley watershed area for domestic water supply,  
5 agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature  
6 walks and the like. Furthermore, the relief sought will redress the injury in fact, likelihood of  
7 future injury and interference with the interests of the members of River Watch.

8 6. Defendant County Of Sonoma ("COUNTY") is a governmental entity. Its county seat  
9 is in the town of Santa Rosa, California. County Counsel's address is 575 Administration  
10 Drive, Santa Rosa, California 95403. The County is governed by a board of 5 supervisors.  
11 Mike Cale is the supervisor for the district in which the violations of the CWA are occurring.

12 7. Defendant Sonoma County Water Agency ("SCWA") is an agency of the County.  
13 The board of directors for the SCWA is the County Board of Supervisors.

14 8. Defendant Sonoma Valley County Sanitation District ("SVSD") is an agency of the  
15 County. The board of directors for the SVSD is the County Board of Supervisors.

16 **JURISDICTIONAL ALLEGATIONS**

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

23 10. Members and supporters of RIVER WATCH reside in the vicinity of, derive  
24 livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use,  
25 enjoy and benefit from the Sonoma Valley watershed area and associated natural resources  
26 into which the DEFENDANTS discharge wastewater, or by which their operations adversely  
27 affect members interests, in violation of their PERMIT. The health, economic, recreational,

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2 aesthetic and environmental interests of RIVER WATCH members may be, have been, are  
3 being, and will continue to be adversely affected by the DEFENDANTS' unlawful violations of  
4 their PERMIT. PLAINTIFF contends there exists an injury in fact to the PLAINTIFF's  
5 members, causation of that injury by the DEFENDANTS' complained of conduct, and a  
6 likelihood that the requested relief will redress that injury.

7 11. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A), on  
8 September 17, 1997, Plaintiff RIVER WATCH gave notice of the violations alleged in this  
9 Complaint more than sixty days prior to commencement of this lawsuit, to: (a) the  
10 DEFENDANTS, (b) the United States Environmental Protection Agency ("EPA") both in  
11 Washington, DC as well as the regional office in San Francisco, California, (c) the State of  
12 California Water Resources Control Board, and (d) the Regional Water Quality Control Board  
13 ("RWQCB").

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

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

20 **GENERAL ALLEGATIONS**

21 14. The DEFENDANTS own and/or operate and/or maintain the Sonoma Valley County  
22 Sanitation District wastewater treatment plant, located in and around the town of Sonoma in  
23 Sonoma County. The plant provides secondary level treatment for domestic wastewater from  
24 the towns of Sonoma and Glen Ellen as well as the adjacent areas.

25 15. All illegal discharges and activities complained of occur in the Sonoma Valley  
26 watershed area. Many of the illegal discharges eventually make their way to either Hudeman  
27 Slough, Schell Slough, Schell Creek, Steamboat Slough, the Napa Sloughs, San Pablo Bay

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and San Francisco Bay. Schell Slough is a tidal estuary which receives freshwater flow from Schell Creek during the wet weather months. Schell Slough flows into Steamboat Slough, which is a tributary to San Pablo Bay by way of the Third Napa Slough, the Second Napa Slough, and the lower reaches of Sonoma Creek, all waters of the United States.

16. The RWQCB has determined that the Sonoma Valley watershed area and affected water ways are beneficially used for: water contact recreation, non-contact water recreation, warm fresh water habitat, cold fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, ocean commercial and sport fishing, shellfish harvesting, and estuarine habitat.

17. The DEFENDANTS own and/or maintain and/or operate wastewater treatment, reuse and disposal facilities ("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 EPA 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 EPA 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**

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 EPA and the applicable State agency. These limits are to be incorporated into a NPDES permit for that point source. Section 301(a) prohibits discharges of pollutants or activities not authorized

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by, or in violation of the terms of, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 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 EPA 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. On June 17, 1992 the RWQCB adopted Order No. 92-063, applicable to NPDES permit No. CA0037800, prescribing effluent limitations for the DEFENDANTS' FACILITY. This PERMIT authorizes the DEFENDANTS to discharge limited quantities of wastewater and pollutants into the Sonoma Valley watershed.

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 their discharges; and to report in specified ways on a regular basis to the RWQCB regarding the FACILITY's discharge of pollutants. The reports include mandatory monthly Self Monitoring Reports ("SMRs").

**THE DEFENDANTS' VIOLATIONS**

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

25. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and below. These violations occurred from November 1992 to the present, and

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2 are detailed in the DEFENDANTS' own records as well as SMRs submitted by DEFENDANTS  
3 to the RWQCB as is required by law.

4 26. The types of violations are described with particularity by using the designations as  
5 set forth in the DEFENDANTS' PERMIT and detailed in the NOTICE as well as this Second  
6 Amended Complaint as set forth below.

7 27. The location of the discharges are the discharges points as described in the  
8 PERMIT and incorporated by reference.

9 **CAUSES OF ACTION**

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

13 29. In addition to the violations set forth in the NOTICE, from the period of July 1997 to  
14 the present, the DEFENDANTS have continued to violate their permit. In addition to the  
15 violations set forth in the NOTICE, PLAINTIFF alleges 340 additional violations. These  
16 additional violations are: 58 violations of discharge prohibition A(1) detailed at page 7 of the  
17 PERMIT; 25 violations of discharge prohibition A(2) detailed at page 7 of the PERMIT; 21  
18 violations of effluent limitation B(1) detailed at page 7 of the PERMIT; 15 violations of effluent  
19 limitation B(2) detailed at page 7 of the PERMIT; 23 violations of effluent limitation B(3)  
20 detailed at pages 7 and 8 of the PERMIT; 12 violations of effluent limitation B(4) detailed at  
21 page 8 of the PERMIT; 14 violations of effluent limitation B(5) detailed at page 8 of the  
22 PERMIT; 149 violations of effluent limitation B(6) detailed at pages 8 and 9 of the PERMIT;  
23 and, 23 violations of receiving water limitations C detailed at pages 10 and 11 of the  
24 PERMIT.

25 30. The DEFENDANTS' violations are ongoing and will continue after the filing of this  
26 Second Amended Complaint. PLAINTIFF alleges all violations which may have occurred or  
27 will occur prior to trial, but for which data may not have been available or submitted or

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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 Second Amended Complaint. The PLAINTIFF will file additional amended complaints to address DEFENDANTS' PERMIT violations that may occur after the filing of this Second Amended Complaint. Each of the DEFENDANTS' violations in excess of their PERMIT limits have been and are separate violations of the CWA. The 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).

31. PLAINTIFF believes and avers that without the imposition of appropriate civil penalties and issuance of appropriate equitable relief, the DEFENDANTS will continue to violate their PERMIT limits with respect to the enumerated discharges and releases. PLAINTIFF believes and avers that the relief requested 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.

**RELIEF REQUESTED**

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

1. Declare the DEFENDANTS to have violated and to be in violation of the CWA;
- 2 Issue an injunction ordering the DEFENDANTS to immediately operate their FACILITY in compliance with the CWA and applicable effluent and receiving water limitations in their PERMIT;
3. Order the DEFENDANTS to pay civil penalties of \$27,000 per violation per day for their violations of the CWA occurring after July 1, 1997, the period set forth in RWQCB Amended Complaint No. 97-126 for Administrative Civil Liability, as provided by 33 U.S.C. § 1319(d) and 1365(a)<sup>1</sup>;

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<sup>1</sup> On April 20, 1998 this Court issued an Order granting in part Defendants' motion dismissing Plaintiff's claim for civil penalties. Without waiving any rights Plaintiff has modified the Relief Requested to reflect the Court's ruling and prevailing law.

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4. Order the 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 \_\_\_\_\_, 1998

\_\_\_\_\_  
Jack Silver, Esq.  
Attorneys for Plaintiff