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8 Northern California River Watch

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA  
12 RIVER WATCH, a non-profit  
13 Corporation,

14 Plaintiff,

15 v.

16 CITY OF UKIAH and DOES 1-10,

17 Defendants,

CASE NO:

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

18 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,  
19 "PLAINTIFF") by and through its attorneys, and for its COMPLAINT against Defendants,  
20 CITY OF UKIAH, and DOES 1-10 (hereafter, "DEFENDANT"), states as follows:

21 **I. NATURE OF THE CASE**

22 1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution  
23 Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §1251 et seq.,  
24 specifically Section 505, 33 U.S.C. §1365, to stop DEFENDANT from repeated and ongoing  
25 violations of the CWA. These violations are detailed in the Notice Of Intent To File Suit  
26 made part of the pleadings of this case and attached hereto as EXHIBIT A (hereafter,  
27 "NOTICE").  
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1 2. PLAINTIFF contends DEFENDANT is routinely violating the terms of its National  
2 Pollution Elimination Discharge System (hereafter, "NPDES") Permit Number CA0022888  
3 (hereafter, "PERMIT"), adopted by the Regional Water Quality Control Board, North Coast  
4 Bay Region (hereafter, "RWQCB"), the Water Quality Control Plan for the North Coast  
5 Region (hereafter, "Basin Plan"), Environmental Protection Agency (hereafter, "EPA")  
6 regulations codified in the Code of Federal Regulations, and toxics standards promulgated by  
7 the State Water Resources Control Board (hereafter, "SWRCB").

8 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the  
9 imposition of civil penalties, and other relief for DEFENDANT'S violations of the terms  
10 of its PERMIT. Said PERMIT is attached to the NOTICE and made a part thereof and a part  
11 of these pleadings.

12 4. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies 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*  
15 *of any regulation, standard, effluent limitation, plan or program*  
16 *established by the Administrator or any State under this chapter*  
*shall be provided for, encouraged, and assisted by the Administrator*  
*and the States.*

17 5. PLAINTIFF contends DEFENDANT illegally discharges to the Russian River, and its tributaries , which  
18 are habitat for threatened or endangered species as that term is defined by the California EPA and the United  
19 States EPA.

## 20 21 **II. PARTIES**

22 6. PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit  
23 corporation duly organized under the laws of the State of California, with its main office at 74 Main Street, Suite  
24 D., P.O. Box 1360, Occidental, CA, 95465, telephone number 707-874-2579. PLAINTIFF is dedicated  
25 to protect, enhance and help restore the surface and subsurface waters of Northern California.  
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1 7. PLAINTIFF's members live throughout Northern California including in or around the City of Ukiah, and  
2 Mendocino County, along the Russian River and in its watershed. PLAINTIFF's  
3 members have interests which are or may be adversely affected by DEFENDANT's violations. Said members  
4 use the Russian River, its tributaries and effected watershed areas for domestic water, recreation, sports,  
5 fishing, swimming, hiking, photography, nature walks, religious,  
6 spiritual and shamanic practices, and the like. Furthermore, the relief sought will redress the injury in fact,  
7 likelihood of future injury and interference with the interests of said members.

8 8. DEFENDANT, CITY OF UKIAH, is a governmental entity, with administrative offices located at 300  
9 Seminary Avenue, Ukiah, California.

10 9. DEFENDANTS sued herein as DOES 1-10 are unknown at this time. PLAINTIFF will amend this  
11 Complaint when the identities and capacities of said DOE Defendants become known.

### 12 **III. JURISDICTIONAL ALLEGATIONS**

13 10. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA, 33 U.S.C. §  
14 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf against any  
15 person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an order issued  
16 by the Administrator or a State with respect to such a standard or limitation." For purposes of Section 505,  
17 "the term 'citizen' means a person or persons having an interest which is or may be adversely affected."

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

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26 causation of that injury by the DEFENDANT'S complained of conduct, and a likelihood that the requested  
27 relief will redress that injury.

12. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave notice of the violations alleged in this Complaint more than sixty (60) days prior to

commencement of this lawsuit, to: (a) the DEFENDANT, (b) the United States Environmental Protection Agency, Federal and Regional, and (c) the State of California Water Resources Control Board.

13. Pursuant to 505(c)(3) of the CWA, 33 USC § 1365(c)(3), an endorsed, filed copy of this Complaint will be served on the United States Attorney General and the Administrator of the Federal EPA.

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

#### IV. GENERAL ALLEGATIONS

15. PLAINTIFF incorporates by reference all the foregoing including the NOTICE and PERMIT attached to this complaint as EXHIBIT A.

16. DEFENDANT owns and/or operates a wastewater treatment plant, reuse and disposal facility(ies) (hereafter, "FACILITY") located in the City of Ukiah, Mendocino County. The FACILITY provides treatment for domestic wastewater from the City of Ukiah and outlying areas. The FACILITY discharges both directly and indirectly into the waterways referenced below.

17. All illegal discharges and activities complained of in this Complaint occur in the Russian River or its tributaries, all of which are waters of the United States.

18. The RWQCB has determined that the Russian River, its watershed area and affected waterways are beneficially used for drinking water, water contact recreation, non-contact water

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

19. 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 DEFENDANT of the type

1 complained of in the NOTICE are prohibited by law. Beneficial uses of most portions of the specified  
2 waterways are being affected in a prohibited manner by the illegal discharges and  
3 activities of DEFENDANT. Additionally, pursuant to Section 304 of the CWA, 33 U.S.C. §1311, the EPA  
4 and the State of California have identified the DEFENDANT’S FACILITY as a point source, the discharges  
5 from which contribute to violations of applicable water quality standards.

## 6 **V. STATUTORY AND REGULATORY BACKGROUND**

7 20. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a “point  
8 source” into the navigable waters of the United States, unless such discharge is in compliance with applicable  
9 effluent limitations as set by the EPA and the applicable State agency. These limits are to be incorporated into  
10 an NPDES permit specifically for that point source . Additional sets of regulations are set forth in the Basin  
11 Plan, California Toxics Plan, the Code of Federal Regulation and other regulations promulgated by the EPA  
12 and the SWRCB. Section 301(a) prohibits discharges of pollutants or activities not authorized by, or in  
13 violation of an effluent standard or limitation or an order issued by the EPA or a State with respect to such a  
14 standard or limitation including an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §  
15 1342. DEFENDANT’S FACILITY is a point source under the CWA.

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

18 22. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits, subject to specified  
19 conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

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23 23. The RWQCB adopted the PERMIT prescribing effluent limitations and other conditions of compliance  
24 for the DEFENDANT’S FACILITY. The PERMIT authorizes DEFENDANT to discharge limited quantities  
25 of wastewater and pollutants into the aforementioned waterways and requires DEFENDANT to comply with  
26 various reporting and monitoring requirements.

27 24. The PERMIT also prescribes conditions to ensure compliance with the CWA. It requires  
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1 DEFENDANT to establish and maintain records, to install, use and maintain monitoring equipment, to regularly  
2 monitor and sample pollutants in its discharges, and to report in  
3 specified ways on a regular basis to the RWQCB regarding discharge of pollutants from the FACILITY. The  
4 reports include mandatory monthly Self Monitoring Reports (hereafter, "SMRs"). All conditions of the  
5 PERMIT are enforceable in a citizens' suit.

## 6 VI. VIOLATIONS OF THE DEFENDANT

7 25. DEFENDANT'S discharges from the FACILITY violated its PERMIT on numerous occasions. Those  
8 violations are continuing. The violations are established in the DEFENDANT'S monitoring data or lack of  
9 monitoring and reporting which are necessary for DEFENDANT to prove compliance with its PERMIT, and  
10 in SMRs as well as data sent to the RWQCB by DEFENDANT.

11 26. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and below. The  
12 types of violations are described with particularity by using the designations as set forth in DEFENDANT'S  
13 PERMIT and detailed in the NOTICE using the same designations as in the PERMIT.

14 27. The location of the discharges are the discharges points as described in the NOTICE and incorporated  
15 herein by reference.

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## 19 VII. CLAIMS FOR RELIEF

### 20 Violation of CWA 33 U.S.C. §1251 et seq.

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

24 29. DEFENDANT has violated and continues to violate the CWA as evidenced by the violations of the terms  
25 of its PERMIT as well as applicable State and Federal standards.

26 30. PLAINTIFF contends DEFENDANT'S violations are ongoing, and will continue after the filing of this  
27 Complaint. PLAINTIFF alleges all violations which may have occurred or will  
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1 occur prior to trial, but for which data may not have been available or submitted or apparent from the face of  
2 the reports or data submitted by DEFENDANT to the RWQCB or PLAINTIFF  
3 prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address  
4 State and Federal violations of DEFENDANT'S PERMIT which may occur after the filing of this Complaint.  
5 Each of DEFENDANT'S violations in excess of its PERMIT limits or State and Federal standards have been  
6 and are separate violations of the CWA. DEFENDANT has violated and continues to violate an "effluent  
7 standard or limitation" under Section 505(a)(1) of the CWA, 33 U.S.C. §1365(a)(1).

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

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## 17 18 **VIII. RELIEF REQUESTED**

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

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

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DATED: April 19, 2004

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