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***Via Certified Mail –  
Return Receipt Requested***

March 1, 2023

Grant Davis, General Manager  
Sonoma County Water Agency  
404 Aviation Boulevard  
Santa Rosa, CA 95403

Sonoma County Board of Supervisors  
Acting as Board of Directors for the  
Sonoma County Water Agency  
575 Administration Drive, Room 100A  
Santa Rosa, CA 95403

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Mr. Davis and Members of the Board:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of the Sonoma Valley County Sanitation District Wastewater Treatment Plant and Wastewater Collection System (“Facility”).

River Watch hereby places the Sonoma Valley County Sanitation District as the owner, and the Sonoma County Water Agency as operator, of the Facility (collectively the “Discharger”), on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay Region (“RWQCB-SF”), Water Quality Control Plan (“Basin Plan”), as the result of violations of the Discharger’s National Pollution Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in an NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the Discharger is in violation of the CWA by violating the terms of its NPDES Permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Discharger’s operations in the region at issue in this Notice is the RWQCB-SF.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce the Discharger’s compliance with the CWA.

## **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

### **1. Standard, Limitation, or Order Alleged to Have Been Violated**

The order violated is NPDES No. CA0037800 (“NPDES Permit”) which sets forth waste discharge requirements (“WDRs”) applicable to the Discharger. River Watch has identified specific violations of the Discharger’s NPDES Permit including violations of receiving water limitations, effluent limitations, and raw sewage discharges, in addition to failure by the Discharger to either comply with or provide evidence that it has complied with all the terms of its NPDES Permit.

### **2. Activity Alleged to Constitute a Violation**

River Watch contends the Discharger has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the

future.

**A. Violations of Effluent Limitations and Discharge Prohibitions**

River Watch's review of the Discharger's Self-Monitoring Reports identifies the following violations of the effluent limitations imposed under the Discharger's NPDES Permit section IV.A, Table 4:

1. September 30, 2021 (Event ID# 1095954) - Exceedance of Zinc.
2. November 30, 2019 (Event ID# 1068226) - Exceedance of Zinc.
3. February 28, 2018 (Event ID# 1041000) - Exceedance of Oil and Grease.
4. February 13, 2018 (Event ID# 1041001) - Exceedance of Oil and Grease.

River Watch's review of the Discharger's Self-Monitoring Reports identifies the following violations imposed under NPDES Permit section V.B.1.c.2:

1. August 13, 2021 (Event ID# 1095955) - Exceedance of Chronic Toxicity.
2. August 03, 2021 (Event ID# 1094436) - Exceedance of Chronic Toxicity.
3. July 12, 2021 (Event ID# 1093623) - Exceedance of Chronic Toxicity.
4. April 12, 2020 (Event ID# 1075047) - Exceedance of Chronic Toxicity.
5. July 15, 2019 (Event ID# 1062671) - Exceedance of Chronic Toxicity.

River Watch's review of the Discharger's Self-Monitoring Reports identifies the following violations imposed under NPDES Permit section V.A.5:

1. March 18, 2019 (Event ID# 1058153) - Exceedance of Acute Toxicity.
2. February 25, 2019 (Event ID# 1057242) - Exceedance of Acute Toxicity.

**B. Deficient Monitoring Violations**

River Watch's review of the Discharger's Self-Monitoring Reports identifies the following deficient monitoring violations:

1. September 12, 2022 (Event ID# 1109565) - Samples for BOD & TSS were sent to contract lab for analysis for 09/12, 09/13, & 9/14. Alpha Labs only logged in the BOD samples. All three samples for TSS were run past hold time.
2. September 12, 2022 (Event ID# 1109566) - Samples for BOD & TSS were sent to contract lab for analysis for 09/12, 09/13, & 9/14. Alpha Labs only logged in the BOD samples. All three samples for TSS were run past hold time.
3. September 16, 2020 (Event ID# 1080746) - No Total Coliform sampled September 16 through 17.

4. September 16, 2020 (Event ID# 1080745) - No Total Residual Chlorine Instantaneous Maximum was recorded September 16 through 17.
5. September 16, 2020 (Event ID# 1080748) - No pH readings for minimum and maximum were recorded September 16 through 17.
6. August 15, 2020 (Event ID# 1080747) - Daily flow readings for Effluent Flow and Peak Flow were not recorded September 15 through 17. Reported flow readings were shown as 0.
7. August 15, 2020 (Event ID# 1080744) - Daily flow readings for Influent Flow and Peak Flow were not recorded September 15 through 17 while generator and PG&E power were unavailable.
8. October 29, 2019 (Event ID# 1067345) - Effluent sample for Enterococci analysis was received and sent to Alpha Laboratories past the recommended hold time.
9. October 28, 2019 (Event ID# 1067346) - Effluent sample sent to Alpha Laboratories for BOD analysis was prepared outside of the recommended hold time.
10. October 28, 2019 (Event ID# 1067347) - Influent sample sent to Alpha Laboratories for BOD analysis was prepared outside of the recommended hold time.
11. August 12, 2019 (Event ID# 1064558) - TSS samples for both INF-001 and EFF-001 were missed by the Discharger's contract lab and were run outside of the recommended hold time.
12. August 12, 2019 (Event ID# 1064559) - TSS samples for both INF-001 and EFF-001 were missed by the Discharger's contract lab and were run outside of the recommended hold time.
13. September 18, 2018 (Event ID# 1051207) - EFF-001 BOD sample prepared outside of recommended hold time by Alpha Lab.

**C. Violations of Receiving Water Limitations and Impacts to Beneficial Uses**

Discharges in excess of the Receiving Water Limitations (NPDES Section V) cause prohibited pollution by unreasonably affecting their beneficial uses. In order to protect these beneficial uses, the Discharger is required by its NPDES Permit to ensure that discharges shall not cause the listed limitations to be exceeded. River Watch finds insufficient information in the public record demonstrating the Discharger has monitored for and complied with these receiving water standards.

**D. Sanitary Sewer Overflows, Inadequate Reporting of Discharges, Failure to Warn, Failure to Mitigate Impacts, Sewer Collection System Subsurface Discharges**

River Watch is understandably concerned as to the effects of both surface and underground Sanitary Sewer Overflows (“SSOs”) on critical habitat in and around the diverse and sensitive ecosystem of the Facility. The Discharger’s NPDES permit (*see* Attachment F – Fact Sheet, Section III.C.1.) lists the beneficial uses of Discharge Points 001 and 003, with Receiving Waters Schell Slough and Ringstrom Bay (both waters of the United States), as commercial and sport fishing, estuarine habitat, preservation of rare and endangered species, wildlife habitat, water contact recreation and non-contact water recreation. The beneficial uses of Discharge Points 004, 005, 006 and 007, with Receiving Waters Management Unit 1, Management Unit 3, and Napa-Sonoma Salt Marsh, Pond 7A, are listed in the Discharger’s NPDES permit as commercial and sport fishing, estuarine habitat, fish migration, preservation of rare and endangered species, wildlife habitat, water contact recreation, and non-contact water recreation.

1. Sanitary Sewer Overflows

SSOs, in which untreated sewage is discharged above ground from the sewer collection system prior to reaching the Facility, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports and on the dates when no reports were filed by the Discharger, all in violation of the CWA.

Numerous causes for SSOs include stormwater inflow and/or groundwater infiltration (I/I), defects in sewer lines, root intrusion, and blockages due to grease and rags. Currently, the Discharger’s sewer collection system has insufficient capacity to handle peak wet weather flows. During heavy storms, the system becomes surcharged and untreated sewage overflows at various locations eventually draining to Nathanson Creek, Agua Caliente Creek, Rodgers Creek, Lilley Creek and Sonoma Creek - all waters of the United States. These SSOs impact the water quality and beneficial uses of these waters. Possible adverse effects on water quality and beneficial uses as a result of SSOs include the following:

- a. Adverse impacts to fish and aquatic biota caused by bio-solids deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals).
- b. Creation of a localized toxic environment in the water column as the result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a fish toxicant.
- c. Impairment of water contact recreation and non-contact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

A review of the Discharger's CIWQS Spill Public Report – Summary Page identifies the **4,823,346** gallons of raw sewage discharged into the environment. Of this total volume, the Discharger acknowledges at least **4,779,331** gallons, or **99%** of the total, reached a surface water. A review of the Discharger's records indicates an even greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Of the 4,823,346 gallons of sewage spilled the Discharger reported 9,287 gallons as recovered, with the remaining sewage discharged into the environment posing both a nuisance pursuant to Calif. Water Code § 13050(m), and an imminent and substantial endangerment to public health and the environment.

The Discharger's CIWQS SSO Public Report - Detail Page also specifically identifies at least 99% of recent SSOs reported as having reached a water of the United States. Of significant concern is the spill volume in a number of the most recent events:

- i. January 9, 2023 (Event ID# 885341) – an SSO estimate at 56,190 gallons occurred at 17455 Vailetti Drive (Coordinates 38.32235-122.48848). All 56,190 gallons were reported as reaching Sonoma Creek.
- ii. October 24, 2021 (Event ID# 877205) – an SSO estimated at 148,656 gallons occurred at 17450 Vailetti Drive (Coordinates 38.32227-122.48863). All 148,656 gallons were reported as reaching Sonoma Creek.
- iii. February 26, 2019 (Event ID# 856680) – an SSO estimated at 19,170 gallons occurred at 239 Boyes Boulevard (Coordinates 38.31369-122.48631). All 19,170 gallons were reported as reaching Sonoma Creek.

## 2. Inadequate Reporting of Discharges

Full and complete reporting of SSOs is essential to gauging their impact to public health and the environment. The Discharger's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would identify the causes and the potential repairs ensuring these violations would not recur. In addition, River Watch's expert believes many of the SSOs reported by the Discharger as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the Discharger received notification of an SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

- a. February 14, 2019 (Event ID# 856173) – The estimated spill start time is reported as 12:47 am. The notification time and the operator arrival time are both reported as 1:17 am. The spill end time at 2:17 pm is 13 hours after the notification and operator arrival time. The estimated total volume of the spill is reported as 61,142 gallons, all of which are reported as reaching a surface water.
- b. January 1, 2018 (Event ID# 843664) – The estimated spill start time is reported as 9:00 am, and agency notification time at 9:42 am. The operator arrival time reported as 10:30 am. The estimated spill time is reported as five minutes after the operator arrival

time - 0:35 am. The estimated total volume of the spill is reported as 665 gallons, with 165 gallons reported as recovered, 500 gallons reported as reaching a surface water and 165 gallons reported as reaching land.

c. October 29, 2018 (Event ID# 833037) – The estimated spill start time, agency notification, and estimated operator arrival are all reported 3:30 pm, with an estimated spill end time of 9:45 pm. The spill, estimated at lasting more than six hours, discharged 35,150 gallons of sewage into the Sonoma Creek.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Without accurately reporting the notification time, operator arrival, and the spill end time, there is a danger that the duration and volume of a spill will be underestimated.

### 3. Failure to Warn

River Watch contends the Discharger is understating the significance of the impacts of its SSOs by failing to post health warning signs for discharges reaching a surface water. For example, despite the obvious risk to health, the Discharger did not post any warning signs to alert the public of the spills detailed in Event ID #s 873635, 869424, 860154, 853213, and 843664.

### 4. Failure to Mitigate Impacts

The Discharger's NPDES Permit, Attachment D. Standard Provisions, Section I.C. Duty to Mitigate, states: "*The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)*"

River Watch contends the Discharger is failing to adequately mitigate the impacts of its SSOs. In addition to compliance with the requirements of its NPDES Permit, the Discharger is subject to the requirements of the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements*, Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the Discharger to take all feasible steps, and perform necessary remedial actions, following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the Discharger is underestimating SSOs which reach surface waters, River Watch contends the sampling on most SSOs is inadequate. For example, out of the thirty-three (33) SSOs reported as having reached a surface water, no sampling was conducted on seventeen (17): Event ID #s 877214, 873635, 869424, 860154, 856682, 856681, 856680, 856678, 856677, 856676, 856675, 856679, 856174, 855429, 855424, 855414, and

843664.

The EPA's *Report to Congress on the Impacts and Control of CSOs and SSOs* (EPA 833-R-04-001) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. River Watch finds no record indicating the Discharger has performed any analysis of the impact of its SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies designated as habitat from the impacts of SSOs.

#### 5. Sewer Collection System Subsurface Discharges

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch alleges untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the Discharger's sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to Nathanson Creek, Lilly Creek, Rodgers Creek, Agua Caliente Creek and Sonoma Creek, all waters of the United States. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the sewer collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens, and other human markers such as caffeine. Any exfiltration found is a violation of the Discharger's NPDES Permit and therefore a violation of the CWA.

### **3. The Person or Persons Responsible for the Alleged Violation**

The entities responsible for the alleged violations identified in this Notice are the Sonoma Valley County Sanitation District as the owner, and the Sonoma County Water Agency as operator, of the Facility (which includes the treatment plant and associated wastewater collection system) and those of their employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

The Discharger's service area covers 4,500 acres and includes the City of Sonoma and the unincorporated areas of Agua Caliente, Boyes Hot Springs, Glen Ellen, Schelville, Temelec and Vineburg. The Facility provides wastewater treatment, reclamation, and disposal for approximately 22,000 residences and businesses. Some parts of the collection system are over 100 years old with the majority of the system constructed in the 1940s and 1950s. There are 161.6 miles of sewers, including 132 miles of gravity sewer mains ranging in size from 4 to 42 inches, 0.1 miles of force mains, and 29.5 miles of service and 2 pump stations. The Facility is designed to treat an average dry weather flow of up to 3 million gallons per day to advance (tertiary) wastewater treatment standards. Between May 1 and October 30, the recycled water is used for irrigation and wetland habitat enhancement. Between November 1 and April 30, recycled water is discharged into Schell Slough or Hudman Slough.

**4. The Location of the Alleged Violation**

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the Discharger which relate to the ownership and operation of the Facility as further described in this Notice.

**5. Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is March 1, 2018 to the present. This Notice also includes all violations of the CWA by the Discharger which occur after the range of dates covered by this Notice up to and including the time of trial. Some violations are continuous, and therefore each day constitutes a violation.

**6. Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora, and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email at [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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**RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with the Discharger's staff to tailor remedial measures to the specific operation of the Facility. In advance of that conversation, River Watch identifies the following general remedial categories that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. A full condition assessment of the sewer collection system including setting timelines for repairing or replacing significantly defective assets such as sewer lines, manholes and pump/lift stations.
2. Mitigating the effects of SSOs.
3. Adequate public and worker safety, including protocols to minimize exposure to infectious vectors.
4. Elimination of the use of chemical root control.
5. Consideration of a Supplemental Environmental Project in lieu of penalties.

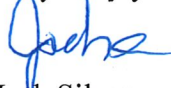
## CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, hiking, photography, or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$64,618.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** notice period to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

## **Service List**

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