

1 Jack Silver, Esq. SB # 160575
Email: lhm28843@sbcglobal.net
2 LAW OFFICE OF JACK SILVER
Jerry Bernhaut, Esq. SB # 206264
3 Email: j3bernhaut@gmail.com
Post Office Box 5469
4 Santa Rosa, CA 95402-5469
Tel (707) 528-8175
5 Fax. (707) 528-8675

6 Attorneys for Plaintiff
CALIFORNIA RIVER WATCH
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 CALIFORNIA RIVER WATCH, an IRC
Section 501(c)(3) non-profit, public
12 benefit corporation,

CASE NO. 3:15-cv-02349

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

13 Plaintiff
14 v.

15 CITY OF SANTA ROSA,
16 Defendant.
/

17 CALIFORNIA RIVER WATCH (“RIVER WATCH ”), an Internal Revenue Code
18 Section 501(c)(3) non-profit, public benefit corporation, by and through its counsel, hereby
19 alleges:

20 **I. NATURE OF THE CASE**

21 1. This is a citizens’ suit for relief brought by RIVER WATCH under the Federal
22 Water Pollution Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. § 1251
23 et seq., specifically the citizen’s suit provision under CWA § 505, 33 U.S.C. §1365 to enforce
24 CWA § 301, 33 U.S.C. § 1311, and CWA § 402, 33 U.S.C. § 1342, in order to prevent
25 Defendant CITY OF SANTA ROSA (“SANTA ROSA”) from repeated and ongoing violations
26 of the CWA. These violations are detailed in the Notice of Violations and Intent to File Suit
27 dated January 21, 2015 (“CWA NOTICE”) made part of this pleading and attached hereto as

28 **EXHIBIT A.**

1 2. SANTA ROSA owns and operates a Subregional Water Reclamation System,
2 including a wastewater treatment plant located at 4300 Llano Road Santa Rosa, California.
3 95407.

4 3. RIVER WATCH contends SANTA ROSA is routinely violating the CWA by
5 exceeding the effluent discharge standards or limitations in the National Pollutant Discharge
6 Elimination System (“NPDES”) Permits under which the Subregional Water Reclamation
7 System and wastewater treatment plant are regulated, specifically, RWQCB Order No. R1-2006-
8 0045, NPDES No. CA0022764 (Waste Discharge Requirements and Master Reclamation Permit
9 for the Santa Rosa Subregional Water Reclamation System, Sonoma County), as amended by
10 Order No. R1-2008-0091, and replaced by Order No. R1-2013-0001.

11 4. RIVER WATCH contends SANTA ROSA is also violating the Regional Water
12 Quality Control Board, North Coast Region (“RWQCB”) Water Quality Control Plan (“Basin
13 Plan”), Environmental Protection Agency (“EPA”) regulations codified in the Code of Federal
14 Regulations, and toxics standards promulgated by the State Water Resources Control Board, in
15 the course of SANTA ROSA’s operation of the Subregional Water Reclamation System and its
16 wastewater treatment plant as described in the CWA NOTICE.

17 5. RIVER WATCH contends SANTA ROSA illegally discharges pollutants to Santa
18 Rosa Creek and the Laguna de Santa Rosa both of which are habitat for threatened or
19 endangered species as those terms are defined by the California EPA and the United States
20 EPA.

21 6. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future
22 violations, the imposition of civil penalties, and other relief for SANTA ROSA’s violations of
23 the CWA as alleged in this Complaint.

24 **II. PARTIES TO THE ACTION**

25 7. Plaintiff CALIFORNIA RIVER WATCH is an Internal Revenue Code § 501(c)(3)
26 non-profit, public benefit corporation organized under the laws of the State of California, with
27 headquarters located in Sebastopol, California and offices in Los Angeles, California. RIVER
28 WATCH’s southern California mailing address is 7401 Crenshaw Boulevard, #422, Los

1 Angeles, California 90043. The specific purpose of RIVER WATCH is to protect, enhance and
2 help restore surface and ground waters of California including rivers, creeks, streams, wetlands,
3 vernal pools, aquifers and associated environs, biota, flora and fauna; and, to educate the public
4 concerning environmental issues associated with these environs.

5 8. Members of RIVER WATCH live in the City of Santa Rosa and nearby to the
6 waters and watersheds affected by SANTA ROSA's illegal discharges as alleged herein. Said
7 members have interests in the waters and watersheds identified in this Complaint, which interests
8 are or will be adversely affected by SANTA ROSA's violations of the CWA. Said members use
9 the effected waters and watershed areas for domestic water, recreation, sports, fishing,
10 swimming, hiking, photography, nature walks, and the like.

11 9. RIVER WATCH is informed and believes and on such information and belief
12 alleges that Defendant CITY OF SANTA ROSA is now, and at all times relevant to this
13 Complaint was, a Municipality formed under the laws of the State of California, with
14 administrative offices located at 100 Santa Rosa Avenue, Santa Rosa, CA 95404.

15 **III. JURISDICTIONAL ALLEGATIONS**

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

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

22 11. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the
23 CWA, 33 U.S.C. § 1365(a)(1), which states in part,

24 "any citizen may commence a civil action on his own behalf against any
25 person . . . who is alleged to be in violation of (A) an effluent standard or
26 limitation . . . or (B) an order issued by the Administrator or a State with
27 respect to such a standard or limitation." For purposes of CWA § 505(a)(1),
28 33 U.S.C. 1365(a)(1) the term "citizen" means, "a person or persons having

1 an interest which is or may be adversely affected.”¹

2 12. Members and supporters of RIVER WATCH reside in the vicinity of, enjoy
3 visiting the area, derive livelihoods from, own property near, and/or recreate on, in or near and/or
4 otherwise use, enjoy and benefit from the waterways and associated natural resources into which
5 SANTA ROSA discharges pollutants, or by which SANTA ROSA’s operations of the
6 Subregional Water Reclamation System and wastewater treatment plant adversely affect said
7 members’ interests, in violation of CWA §§ 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.
8 The health, economic, recreational, aesthetic and environmental interests of RIVER WATCH
9 and its members may be, have been, are being, and will continue to be adversely affected by
10 SANTA ROSA’s unlawful violations of the CWA as alleged in this Complaint. RIVER
11 WATCH and its members contend there exists an injury in fact to them, causation of that injury
12 by SANTA ROSA’s complained of conduct, and a likelihood that the requested relief will
13 redress that injury.

14 13. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the CWA
15 violations alleged in this Complaint was given more than sixty (60) days prior to commencement
16 of this lawsuit, to: (a) SANTA ROSA, (b) the United States EPA, Federal and Regional, (c) the
17 State of California Water Resources Control Board, and (d) the RWQCB.

18 14. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint
19 has been served on the United States Attorney General and the Administrator of the Federal
20 EPA.

21 15. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District
22 as the Subregional Water Reclamation System and wastewater treatment plant and the sites
23 where illegal discharges occurred, which are the source of the violations complained of in this
24 action, are located within this District.

25 **IV. GENERAL ALLEGATIONS**

26 16. RIVER WATCH incorporates by reference all the foregoing including the CWA

27
28 ¹ See CWA § 505(g), 33 U.S.C. 1365(g). “For purposes of this section [CWA § 505] the term ‘citizen’ means a person or persons having an interest which is or may be adversely affected.”

1 NOTICE as though the same were separately set forth herein.

2 17. SANTA ROSA's Subregional Water Reclamation System, including its
3 wastewater treatment plant consists of an extensive system of wastewater storage ponds and
4 associated sewage collection system. SANTA ROSA has a history of exceeding effluent limits
5 in its NPDES Permits for Total Coliform and Total Nitrogen.

6 18. The Laguna de Santa Rosa is CWA § 303(d) listed as impaired for nutrients
7 including nitrate. SANTA ROSA is the single largest contributing source of nutrients to the
8 Laguna de Santa Rosa. By discharging a prohibited quantity of nitrogenous compounds
9 (measured as total nitrogen), SANTA ROSA is causing contamination and a nuisance as defined
10 by Section 13050 of the California Water Code.

11 19. Beneficial uses of the Laguna de Santa Rosa as defined by the RWQCB's Basin
12 Plan and SANTA ROSA's NPDES Permits include water contact recreation, warm and cold
13 freshwater habitat, subsistence fishing, commercial and sport fishing, preservation of rare,
14 threatened or endangered species, migration of aquatic organisms, spawning, reproduction,
15 and/or early development, and wetland habitat. Nitrogen compounds are biostimulants. The
16 nitrogen discharged by SANTA ROSA causes a nutrient load which exceeds the budget for the
17 Laguna de Santa Rosa. This eutrophication results in algal blooms and the proliferation of
18 surface plants. The algae and surface plants reduce, and in some cases destroy, the quality of
19 the habitat for salmonids. The surface plants are known to harbor mosquitos, including species
20 which carry disease. One of the problems with nitrogen compounds is that they accumulate in
21 bottom deposits, thus when the bottom deposits are disturbed it causes prohibited amounts of
22 nitrogenous compounds to be discharged into the Laguna de Santa Rosa. In some cases, the
23 discharges by SANTA ROSA actually cause resuspension of nitrogen compounds. Each and
24 every day SANTA ROSA discharges, these discharges violate provisions of its NPDES Permits
25 as detailed below and in the CWA NOTICE.

26 20. SANTA ROSA has a history of discharging waste to receiving waters during the
27 non-discharge season, in violation of discharge prohibitions in its NPDES Permits, both from
28 its storage ponds and runoff from reclamation sites where SANTA ROSA's reclaimed

1 wastewater is applied for irrigation use. As the ponds leak continually, SANTA ROSA is
2 discharging during the discharge prohibition period of May 15 through September 30.
3 Therefore, SANTA ROSA is violating its permit conditions each and every day during the non-
4 discharge season that the ponds contain wastewater.

5 21. SANTA ROSA maintains an extensive reuse program which includes
6 approximately 6,236 acres of urban and agricultural land that is irrigated with treated
7 wastewater. Many of these acres lie adjacent to waters of the United States including the Laguna
8 de Santa Rosa. SANTA ROSA has a history of discharges of wastewater from its reclamation
9 sites during the discharge prohibition period of May 15 through September 30. As an example,
10 as reported in the California Integrated Water Quality System's ("CIWQS") Public Self
11 Monitoring reports, on July 23, 2013, a recycled water line split, discharging approximately
12 17,000 gallons of recycled wastewater into Santa Rosa Creek. On July 8, 2013, over-irrigation
13 at the Christiansen South property resulted in the discharge of approximately 18,000 gallons of
14 recycled wastewater into Irwin Creek, a tributary of the Laguna de Santa Rosa.

15 22. SANTA ROSA has a history of violations of receiving water limitations in its
16 NPDES Permits, as detailed below and in the CWA NOTICE. The majority of its permitted
17 discharges to surface waters occur from its various ponds. In comparison to the waters into
18 which they discharge, the ponds are relatively stagnate, lower in dissolved oxygen ("DO"),
19 higher in temperature, and varying in pH and turbidity. The RWQCB does not allow for mixing
20 zones, therefore the discharges must not lower the DO, raise the temperature or turbidity, or alter
21 the pH of the receiving waters more than a specified amount at the point of discharge. In
22 addition to specific numeric limitations, SANTA ROSA's NPDES Permits contain narrative
23 standards (Order No. R1-2006-0045 Section V. Receiving Water Limitations, A.4 - 10; Order
24 No. R1-2013-0001, Section V. Receiving Water Limitations, A.1 - A.17). By law it is SANTA
25 ROSA's burden to prove it is in compliance with the conditions of its NPDES Permits.
26 Therefore, each day SANTA ROSA discharges, it must have the data to prove it is in compliance
27 with the requirements of its NPDES Permits. To the extent that SANTA ROSA fails to possess
28 such data, it is in violation of the CWA for failure to monitor and/or report. In an examination

1 of records filed by SANTA ROSA, River Watch could not find any evidence of compliance with
2 the above referenced Receiving Water Limitations, nor with numeric limitations for a majority
3 of the ponds from which SANTA ROSA discharges to receiving waters. In addition to
4 violations for failure to monitor and/or report, each day SANTA ROSA discharges from its
5 ponds, it is in violation of the above referenced provisions in its NPDES Permits and therefore
6 in violation of the CWA.

7 23. SANTA ROSA has a history of unpermitted sewer system overflows (“SSOs”)
8 from its sewage collection system, in violation of provisions in its NPDES Permits as detailed
9 below and in the CWA NOTICE. SANTA ROSA’s collection system has historically
10 experienced high inflow and infiltration (“I/I”) of rain water and groundwater during wet
11 weather. Forty two percent (42%) of its sewer lines were constructed prior to 1979. Structural
12 defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs.
13 Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals
14 and storm drains which are connected to adjacent surface waters – all waters of the United
15 States. As recorded in CIWQS Public SSO Reports, SANTA ROSA’s collection system has
16 experienced at least 17 SSOs between February 28, 2010 and February 22, 2015, with a
17 combined volume of at least 53,530 gallons – 36,826 gallons of which were reported as having
18 reached surface waters. As an example, on February 1, 2014, a spill occurred at 3540 Unocal
19 Place. The total estimated volume of the spill was 15,580 gallons. Of that amount, 15,482
20 gallons were estimated to have reached surface water impacting Nagasawa Creek which feeds
21 into Piner Creek, a tributary to Santa Rosa Creek. On October 31, 2012, 13,800 gallons spilled
22 at Summerfield Road and San Antonio Drive, 12,970 of which were unrecovered, impacting
23 Sierra Park Creek, tributary to the Santa Rosa Creek. The Unocal Place spill was noticed and
24 responded to 2 days after it began. The Summerfield Road spill was noticed and responded to
25 on the day after it began. Given the extensive time lag, RIVER WATCH believes SANTA
26 ROSA has grossly underestimated the volume of its discharges. The EPA’s “Report to Congress
27 on the Impacts of SSOs” identifies SSOs as a major source of microbial pathogens and oxygen
28 depleting substances. Numerous critical habitat areas exist within the areas of SANTA ROSA’s

1 SSOs. Santa Rosa Creek is relied upon by endangered coho salmon and threatened steelhead
2 trout. The Laguna de Santa Rosa is the most biologically diverse part of Sonoma County, and
3 home to a number of rare and endangered species, including the California tiger salamander and
4 California freshwater shrimp, as well as coho salmon and steelhead trout. There is no record of
5 SANTA ROSA performing any analysis of the impacts of its SSOs on critical habitat of
6 protected species under the ESA, nor any evaluation of the measures needed to restore water
7 bodies designated as critical habitat from the impacts of SSOs.

8 24. SANTA ROSA has a history of unpermitted sewer system subsurface discharges
9 caused by underground exfiltration from its sewage collection system, in violation of provisions
10 in its NPDES Permits as detailed below and in the CWA NOTICE. Underground discharges
11 from which untreated sewage is discharged from SANTA ROSA's collection system prior to
12 reaching the wastewater treatment plant are alleged to have been continuous throughout the
13 period from January 1, 2010 through January 1, 2015. Exfiltration caused by pipeline cracks and
14 other structural defects in the collection system result in discharges to adjacent surface waters
15 via underground hydrological connections. SANTA ROSA's internal reports indicate discharges
16 to surface waters not reported to the CIWQS. Because the entire collection system has not been
17 adequately inspected by means of closed circuit television ("CCTV"), SANTA ROSA lacks
18 insufficient information concerning the condition or the extent of exfiltration for a significant
19 portion of the collection system. Some sections of the system are old and in need of repair.
20 Untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., into ground
21 water hydrologically connected to surface waters. Evidence indicates extensive exfiltration from
22 lines located within 200 feet of a surface water.

23 25. RIVER WATCH alleges that such discharges are continuous wherever aging,
24 damaged, and/or structurally defective sewer lines in SANTA ROSA's collection system are
25 located adjacent to surface waters, including Santa Rosa Creek and the Laguna de Santa Rosa,
26 tributaries of the Russian River, and waters of the United States under the CWA. Surface waters
27 and groundwater become contaminated with fecal coliform, exposing people to pathogens.
28 Studies tracing human markers specific to the human digestive system in surface waters adjacent

1 to defective sewer lines in other systems have verified the contamination of the adjacent waters
2 with untreated sewage.² Evidence of exfiltration can be found in mass balance data, I/I data,
3 video inspection, and tests of waterways adjacent to sewer lines for nutrients, human pathogens
4 and other human markers such as caffeine. Exfiltration from SANTA ROSA's collection system
5 is a daily occurrence and a violation of SANTA ROSA's NPDES permits and the CWA.

6 26. RIVER WATCH alleges that both surface and underground SSOs have ongoing
7 harmful effects on critical habitat in and around Santa Rosa Creek and the Laguna De Santa
8 Rosa, adjacent to SANTA ROSA's sewer lines.

9 27. SANTA ROSA's NPDES Permits prohibit the discharge of wastes that lead to the
10 creation of a "nuisance" as defined under the California Water Code. The term "nuisance" is
11 defined in California Water Code § 13050(m) as anything which meets all of the following
12 requirements: 1) "is injurious to health, or is indecent or offensive to the senses . . . so as to
13 interfere with the comfortable enjoyment of life or property", 2) "affects at the same time an
14 entire community or neighborhood, or any considerable number of persons, although the extent
15 of the annoyance or damage inflicted upon individuals may be unequal"; and, 3) "occurs during,
16 or as a result of, the treatment or disposal of wastes."

17 28. Santa Rosa Creek and the Laguna de Santa Rosa have many beneficial uses as
18 defined in the RWQCB's Basin Plan. SSOs from SANTA ROSA reaching Santa Rosa Creek,
19 the Laguna de Santa Rosa, or their tributaries, cause prohibited pollution by unreasonably
20 affecting the beneficial uses of these waters. SANTA ROSA is also required by its NPDES
21 Permits to comply with narrative standards as set forth in the Basin Plan, used when testing by
22 numeric standards would be inadequate or impractical. RIVER WATCH has found nothing in
23 the public record to demonstrate that SANTA ROSA has monitored for and complied with these
24 narrative standards. RIVER WATCH is understandably concerned regarding the effects of both
25 surface and underground SSOs on critical habitat in and around Santa Rosa Creek and the

26 ² See Report of Human Marker Study issued July of 2008 conducted by Dr. Michael L. Johnson,
27 U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived
28 bacteria in two creeks adjacent to defective sewer lines.

1 Laguna de Santa Rosa.

2 29. All illegal discharges and activities complained of in this Complaint occur in the
3 waterways named in the CWA NOTICE and in this Complaint, all of which are waters of the
4 United States, and at the locations identified in detail in the CWA NOTICE and in this
5 Complaint or in the records of SANTA ROSA.

6 **V. STATUTORY AND REGULATORY BACKGROUND**

7 30. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from
8 a point source to navigable waters of the United States, or activities not authorized by, or in
9 violation of an effluent standard or limitation or an order issued by the EPA or a State with
10 respect to such a standard or limitation including a NPDES permit issued pursuant to CWA §
11 402, 33 U.S.C. § 1342. Additional sets of regulations are set forth in the Basin Plan, California
12 Toxics Rule, the Code of Federal Regulations and other regulations promulgated by the EPA and
13 the State Water Resources Control Board. Sewage is specifically identified in the CWA as a
14 pollutant. The discharge outfalls, ponds, and sewer lines owned and operated by SANTA
15 ROSA and irrigation sites where SANTA ROSA’s reclaimed wastewater is applied, are point
16 sources under the CWA.

17 31. The affected waterways identified in this Complaint and in the CWA NOTICE
18 are navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. §
19 1362(7).

20 32. The CWA provides that authority to administer the NPDES permitting system in
21 any given state or region can be delegated by the EPA to a state or to a regional regulatory
22 agency, provided that the applicable state or regional regulatory scheme under which the local
23 agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has
24 granted authorization to a state regulatory apparatus comprised of the State Water Resources
25 Control Board and several subsidiary regional water quality control boards to issue NPDES
26 permits. The entity responsible for issuing NPDES permits and otherwise regulating SANTA
27 ROSA’s operations of the Subregional Water Reclamation System, including the wastewater
28 treatment plant, extensive system of wastewater storage ponds and associated sewage collection

1 system is the RWQCB.

2 33. SANTA ROSA'S Subregional Water Reclamation System, including the
3 wastewater treatment plant, extensive system of wastewater storage ponds and associated sewage
4 collection are regulated under RWQCB Order No. R1-2006-0045, NPDES No. CA0022764
5 (Waste Discharge Requirements and Master Reclamation Permit for the Santa Rosa Subregional
6 Water Reclamation System, Sonoma County), as amended by Order No. R1-2008-0091, and
7 replaced by Order No. R1-2013-0001. RIVER WATCH alleges SANTA ROSA has committed
8 numerous violations of its NPDES Permits, as detailed herein and in the CWA NOTICE. All
9 violations of a duly authorized NPDES Permit are a violation of the CWA.

10 34. The Code of Federal Regulations Title 40 § 122.41 (40 CFR § 122.41) includes
11 conditions, or provisions, that apply to all NPDES. Additional provisions applicable to NPDES
12 permits are found at 40 CFR § 122.42. SANTA ROSA must comply with all of the provisions
13 of its NPDES Permits. Pursuant to 40 CFR § 122.41, any permit noncompliance constitutes a
14 violation of the CWA.

15 VI. VIOLATIONS

16 35. RIVER WATCH alleges that SANTA ROSA's violations as detailed herein and
17 in the CWA NOTICE, are violations of CWA § 301(a), 33 U.S.C. § 1311(a) and consist of the
18 following: Violations of Order No. R1-2006-0045, NPDES No. CA0022764 and Order No. R1-
19 2013-0001 including:

- 20 a. Discharges of treated effluent exceeding effluent limits for Total Coliform and
21 Total Nitrogen;
- 22 b. Discharges of waste to receiving waters during the non-discharge season; and,
- 23 c. Discharges to receiving waters in violations of receiving water limitations.

24 36. The enumerated violations are detailed in the CWA NOTICE, incorporated herein
25 by reference, and below, designating the section of the CWA violated by the described activity.

26 37. The location of the violations are the discharges points as described herein and in
27 the CWA NOTICE, incorporated herein by reference, as well as SANTA ROSA's self
28 monitoring reports and SSO records of SANTA ROSA.

1 38. The violations are established in RWQCB Files for SANTA ROSA as well as in
2 studies conducted by SANTA ROSA in compliance with orders from regulatory agencies.

3 **VII. CLAIMS FOR RELIEF**

4 **A. FIRST CLAIM FOR RELIEF**

5 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) - Violation of NPDES No.**
6 **CA0022764 - Effluent Limit for Total Coliform**

7 39. RIVER WATCH realleges and incorporates by reference the allegations of
8 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
9 RIVER WATCH is informed and believes and based upon such information and belief alleges
10 as follows:

11 40. SANTA ROSA has violated and continues to violate the CWA as evidenced by
12 the discharges of pollutants (Total Coliform) exceeding effluent limits, from discharges points
13 003, 006A, 006B, 012A, 012B, 014, 015, 001, and 002. RIVER WATCH contends that from
14 January 1, 2010 through January 1, 2015, SANTA ROSA experienced 20 effluent discharges
15 exceeding the NPDES Permit limit for Total Coliform, in violation of the following:

- 16 a. Order No. R1-2006-0045, Effluent Limitation IV. A. 1.b; and,
- 17 b. Order No. R1-2013-0001, Effluent Limitation IV.1. b.

18 **B. SECOND CLAIM FOR RELIEF**

19 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) - Violation of NPDES No.**
20 **CA0022764 - Effluent Limit for Total Nitrogen**

21 41. RIVER WATCH realleges and incorporates by reference the allegations of
22 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
23 RIVER WATCH is informed and believes and based upon such information and belief alleges
24 as follows:

25 42. SANTA ROSA has violated and continues to violate the CWA as evidenced by
26 the discharges of pollutants (Total Nitrogen) exceeding effluent limits, from discharges points
27 003, 006A, 006B, 012A, 012B, 014, 015, 001, and 002. RIVER WATCH contends that from
28 January 1, 2010 through January 1, 2015, SANTA ROSA experienced 260 effluent discharges

1 exceeding the NPDES Permit limit for Total Nitrogen, in violation of the following:

- 2 a. Order No. R1-2006-0045, IV. Effluent Limitations and Discharge Specifications,
 3 A. Effluent Limitations, f. Effluent Limitations for Protection of Human Health,
 4 Table 8, Average Monthly concentration of Nitrate not to exceed 10 mg/L; and,
 5 b. Order No. R1-2013-0001, IV. Effluent Limitations and Discharge Specifications,
 6 A. Effluent Limitations, 2. Final Effluent Limitations - Water Quality-Based
 7 Effluent Limitations, b.ii, Effluent Limitation for Total Nitrogen., “The average
 8 monthly concentration of total nitrogen shall not exceed 10.6 mg/L.” .

9 **C. THIRD CLAIM FOR RELIEF**

10 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) - Violation of NPDES No.**
 11 **CA0022764 - Prohibition Against Discharging During Non-discharge Season**

12 43. RIVER WATCH realleges and incorporates by reference the allegations of
 13 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
 14 RIVER WATCH is informed and believes and based upon such information and belief alleges
 15 as follows:

16 44. SANTA ROSA has violated and continues to violate the CWA as evidenced by
 17 its unpermitted discharges during the non-discharge season from discharges points including
 18 003, 006A, 006B, 012A, 012B, and 014, (Santa Rosa’s storage ponds) and reclamation sites
 19 where runoff has occurred, as recorded in records of the RWQCB and SANTA ROSA. RIVER
 20 WATCH contends that from January 1, 2010 through January 1, 2015, SANTA ROSA
 21 experienced 155 discharges of waste to receiving waters during the non-discharge season in
 22 violation of the following:

- 23 a. Order No. R1-2006-0045, Discharge Prohibition III. A: “The discharge of any
 24 waste not disclosed by the Discharger or not within the reasonable contemplation
 25 of the Regional Water Board is prohibited.”;
 26 b. Order No. R1-2006-0045, Discharge Prohibition III. B: “Creation of (a) pollution,
 27 contamination, or nuisance, as defined by CWC Section 13050 is prohibited.”;
 28 c. Order No. R1-2006-0045, Discharge Prohibition III. I: “The discharge of

1 wastewater effluent from the WWTF to the Russian River or its tributaries is
2 prohibited during the period (of) May 15 through September 30 of each year.”;

3 d. Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and
4 Provisions, B. Water Reclamation Requirements, 2. “The use of recycled water
5 shall not create a condition of pollution or nuisance as defined in CWC Section
6 13050(m).”;

7 e. Order No. R1-2006-0045, Attachment G - Water Reclamation Requirements and
8 Provisions, B. Water Reclamation Requirements, 6. “Recycled water shall not be
9 allowed to escape the recycled use area(s) in the form of surface runoff. [CCR
10 Title 22, Section 60310(e)].”;

11 f. Order No. R1-2013-0001, Discharge Prohibition III. A: “The discharge of any
12 waste not disclosed by the Permittee or not within the reasonable contemplation
13 of the Regional Water Board is prohibited.”;

14 g. Order No. R1-2013-0001, Discharge Prohibition III. B: “Creation of pollution,
15 contamination, or nuisance, as defined by section 13050 of the California Water
16 Code (Water Code) is prohibited.”;

17 h. Order No. R1-2013-0001, Discharge Prohibition III. I: “The discharge of
18 wastewater effluent from the Subregional System to the Russian River or its
19 tributaries is prohibited during the period from May 15 through September 30 of
20 each year.” ;

21 i. Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and
22 Provisions, B. Water Reclamation Requirements, 2. “The use of recycled water
23 shall not create a condition of pollution or nuisance as defined in Water Code
24 section 13050(m).” ; and,

25 j. Order No. R1-2013-0001, Attachment G - Water Reclamation Requirements and
26 Provisions, B. Water Reclamation Requirements, 11. “Recycled water shall not be
27 allowed to escape the recycled use area(s) in the form of surface runoff. [CCR
28 Title 22, Section 60310(e)] However, incidental runoff of recycled water, such

1 as unintended, minimal over-spray from sprinklers that escapes the recycled water
2 use area, or accidental breakage of a sprinkler head on a properly maintained
3 irrigation system, is not a violation of this Order.” .

4 **D. FOURTH CLAIM FOR RELIEF**

5 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) – Violation of NPDES No.**
6 **CA0022764 - Violation of Receiving Water Limitations**

7 45. RIVER WATCH realleges and incorporates by reference the allegations of
8 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
9 RIVER WATCH.

10 46. SANTA ROSA has violated and continues to violate the CWA as evidenced by
11 its discharges in violation of receiving water limitations. The RWQCB does not allow for
12 mixing zones, therefore the discharges must not lower the DO, raise the temperature or turbidity,
13 or alter the pH of the receiving waters more than a specified amount at the point of discharge.
14 In addition to specific numeric limitations, SANTA ROSA’s NPDES Permits contain narrative
15 standards. RIVER WATCH contends that from January 1, 2010 through January 1, 2015,
16 SANTA ROSA experienced 1300 discharges from discharges points 003, 006A, 006B, 012A,
17 012B, and 014, (Santa Rosa’s storage ponds) in violation of the following:

- 18 a. Order No. R1-2006-0045, V. Receiving Water Limitations, A. Surface Water
- 19 Limitations, A.1 - A.14; and,
- 20 b. Order No. R1-2013-0001, V. Receiving Water Limitations, A. Surface Water
- 21 Limitations, A.1 - A.17.

22 **E. FIFTH CLAIM FOR RELIEF**

23 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) – Violation of NPDES No.**
24 **CA0022764 - Collection System Unpermitted Subsurface Discharges**

25 47. RIVER WATCH realleges and incorporates by reference the allegations of
26 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
27 RIVER WATCH is informed and believes and based upon such information and belief alleges
28 as follows:

1 48. SANTA ROSA has violated and continues to violate the CWA as evidenced by
2 its wastewater collection system subsurface discharges of pollutants (raw sewage) from a point
3 source (the sewer lines) caused by underground exfiltration. RIVER WATCH contends that
4 from January 1, 2010 through January 1, 2015, SANTA ROSA experienced 1825 subsurface
5 discharges from its sewer lines, which are point sources under the CWA, in violation of the
6 following:

- 7 a. Order No. R1-2006-0045, Discharge Prohibition III. A: “The discharge of any
8 waste not disclosed by the Discharger or not within the reasonable contemplation
9 of the Regional Water Board is prohibited.”;
- 10 b. Order No. R1-2006-0045, Discharge Prohibition III B: “Creation of (a) pollution,
11 contamination, or nuisance, as defined by CWC Section 13050 is prohibited.”;
- 12 c. Order No. R1-2006-0045, Discharge Prohibition III D: “The discharge or
13 reclamation of untreated or partially treated waste (receiving a lower level of
14 treatment than described in Section II.A of the Fact Sheet) from anywhere within
15 the collection, treatment, or disposal facility is prohibited, except as provided for
16 in Prohibition III.E and in Attachment D, Standard Provision G (Bypass
17 Provision).”;
- 18 d. Order No. R1-2006-0045, Discharge Prohibition III. E: “Any sanitary sewer
19 overflow (SSO) that results in a discharge of untreated or partially treated
20 wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a
21 pollution, contamination, or nuisance as defined in CWC section 13050(m) is
22 prohibited.”;
- 23 e. Order No. R1-2006-0045, Discharge Prohibition III. G: “The discharge of waste
24 at any point not described in Finding II.B or authorized by any State Water Board
25 or other Regional Water Board permit is prohibited.”;
- 26 f. Order No. R1-2013-0001, Discharge Prohibition III. A: “The discharge of any
27 waste not disclosed by the Permittee or not within the reasonable contemplation
28 of the Regional Water Board is prohibited.”;

- 1 g. Order No. R1-2013-0001, Discharge Prohibition III. B: “Creation of pollution,
2 contamination, or nuisance, as defined by section 13050 of the California Water
3 Code (Water Code) is prohibited.”;
- 4 h. Order No. R1-2013-0001, Discharge Prohibition III. D: “The discharge or
5 reclamation use of untreated or partially treated waste (receiving a lower level of
6 treatment than described in section II.A of the Fact Sheet) from anywhere within
7 the collection, treatment, or disposal systems is prohibited, except as provided for
8 in section IV.C.2 (Reclamation Specifications) and in Attachment D, Standard
9 Provisions G (Bypass) and H (Upset).”;
- 10 i. Order No. R1-2013-0001, Discharge Prohibition III. E: “Any sanitary sewer
11 overflow (SSO) that results in a discharge of untreated or partially treated
12 wastewater to (a) waters of the State or (b) land that creates pollution,
13 contamination, or nuisance, as defined in Water Code section 13050(m) is
14 prohibited.”; and,
- 15 j. Order No. R1-2013-0001, Discharge Prohibition III. G: “The discharge of waste
16 at any point not described in Finding II.B of the Fact Sheet or authorized by a
17 permit issued by the State Water Resources Control Board (State Water Board) or
18 another Regional Water Board is prohibited, except for use for fire suppression.”.

19 **F. SIXTH CLAIM FOR RELIEF**

20 **Pursuant to CWA § 505(a)(1)(B), 33 U.S.C. 1365(a)(1)(B) – Violation of NPDES No.**
21 **CA0022764 - Collection System Unpermitted Surface Discharges**

22 49. RIVER WATCH realleges and incorporates by reference the allegations of
23 Paragraphs 1 through 38 above including the CWA NOTICE as though fully set forth herein.
24 RIVER WATCH is informed and believes and based upon such information and belief alleges
25 as follows:

26 50. SANTA ROSA has violated and continues to violate the CWA as evidenced by
27 its wastewater collection system surface discharges of pollutants (raw sewage) from a point
28 source (the sewer lines) caused by SSOs. RIVER WATCH contends that from January 1, 2010

1 through February 22, 2015, SANTA ROSA experienced 18 surface discharges from its sewer
2 lines, which are point sources under the CWA, in violation of the following:

- 3 a. Order No. R1-2006-0045, Discharge Prohibition III. A: “The discharge of any
4 waste not disclosed by the Discharger or not within the reasonable contemplation
5 of the Regional Water Board is prohibited.”;
- 6 b. Order No. R1-2006-0045, Discharge Prohibition III B: “Creation of (a) pollution,
7 contamination, or nuisance, as defined by CWC Section 13050 is prohibited.”;
- 8 c. Order No. R1-2006-0045, Discharge Prohibition III D: “The discharge or
9 reclamation of untreated or partially treated waste (receiving a lower level of
10 treatment than described in Section II.A of the Fact Sheet) from anywhere within
11 the collection, treatment, or disposal facility is prohibited, except as provided for
12 in Prohibition III.E and in Attachment D, Standard Provision G (Bypass
13 Provision).”;
- 14 d. Order No. R1-2006-0045, Discharge Prohibition III. E: “Any sanitary sewer
15 overflow (SSO) that results in a discharge of untreated or partially treated
16 wastewater to (a) waters of the State, (b) groundwater, or (c) land that creates a
17 pollution, contamination, or nuisance as defined in CWC section 13050(m) is
18 prohibited.”;
- 19 e. Order No. R1-2006-0045, Discharge Prohibition III. G: “The discharge of waste
20 at any point not described in Finding II.B or authorized by any State Water Board
21 or other Regional Water Board permit is prohibited.”;
- 22 f. Order No. R1-2013-0001, Discharge Prohibition III. A: “The discharge of any
23 waste not disclosed by the Permittee or not within the reasonable contemplation
24 of the Regional Water Board is prohibited.”;
- 25 g. Order No. R1-2013-0001, Discharge Prohibition III. B: “Creation of pollution,
26 contamination, or nuisance, as defined by section 13050 of the California Water
27 Code (Water Code) is prohibited.”;
- 28 h. Order No. R1-2013-0001, Discharge Prohibition III. D: “The discharge or

1 reclamation use of untreated or partially treated waste (receiving a lower level of
2 treatment than described in section II.A of the Fact Sheet) from anywhere within
3 the collection, treatment, or disposal systems is prohibited, except as provided for
4 in section IV.C.2 (Reclamation Specifications) and in Attachment D, Standard
5 Provisions G (Bypass) and H (Upset).”;

6 i. Order No. R1-2013-0001, Discharge Prohibition III. E: “Any sanitary sewer
7 overflow (SSO) that results in a discharge of untreated or partially treated
8 wastewater to (a) waters of the State or (b) land that creates pollution,
9 contamination, or nuisance, as defined in Water Code section 13050(m) is
10 prohibited.”; and,

11 j. Order No. R1-2013-0001, Discharge Prohibition III. G: “The discharge of waste
12 at any point not described in Finding II.B of the Fact Sheet or authorized by a
13 permit issued by the State Water Resources Control Board (State Water Board) or
14 another Regional Water Board is prohibited, except for use for fire suppression.”.

15 51. The violations of SANTA ROSA as identified in all Claims for Relief are ongoing
16 and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations
17 which may have occurred or will occur prior to trial, but for which data may not have been
18 available or submitted or apparent from the face of the reports or data submitted by SANTA
19 ROSA to the RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER
20 WATCH will amend this Complaint if necessary to address SANTA ROSA’s State and Federal
21 violations which may occur after the filing of this Complaint. Each of SANTA ROSA's
22 violations is a separate violation of the CWA.

23 52. RIVER WATCH avers and believes and on such belief alleges that without the
24 imposition of appropriate civil penalties and the issuance of appropriate equitable relief,
25 SANTA ROSA will continue to violate the CWA as well as State and Federal standards with
26 respect to the enumerated discharges and releases set forth in all Claims for Relief herein.
27 RIVER WATCH avers and believes and on such belief alleges that the relief requested in this
28 Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and

1 protect their interests which are or may be adversely affected by SANTA ROSA’s violations of
2 the CWA, as well as other State and Federal standards.

3 **VIII. PRAYER FOR RELIEF**

4 RIVER WATCH prays this Court grant the following relief:

- 5 1. Declare SANTA ROSA to have violated and to be in violation of the CWA;
- 6 2. Issue an injunction ordering SANTA ROSA to immediately operate its Subregional
7 Water Reclamation System, including its wastewater treatment plant and associated
8 wastewater collection system in compliance with the CWA;
- 9 3. Order SANTA ROSA to perform the following remedial measures:
 - 10 a. The repair or replacement, within five (5) years, of all sewer lines in SANTA
11 ROSA’s wastewater collection system located within two hundred (200) feet from
12 surface waters, which have been inspected via closed circuit television (CCTV)
13 within the past ten (10) years and were rated as Significantly Defective under the
14 Pipeline Assessment and Certification Program (“PACP”) rating system or given
15 a comparable assessment;
 - 16 b. A Surface Water Condition Assessment, by way of CCTV, within two (2) years,
17 of sewer lines in SANTA ROSA’s wastewater collection system located within
18 two hundred (200) feet of surface waters, which have not been CCTV'd within the
19 past ten (10) years;
 - 20 c. Within five (5) years after completion of the Surface Water Condition
21 Assessment:
 - 22 i. The repair or replacement of all sewer lines in SANTA ROSA’s
23 wastewater collection system which have been found to be Significantly
24 Defective under the PACP rating system;
 - 25 ii. The repair or replacement of sewer pipe segments containing defects with
26 a rating of 4 based on the PACP rating system, if such defect resulted in a
27 SSO, or, if SANTA ROSA determines such defects are in close proximity
28 to Significantly Defective segments that are in the process of being

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- repaired or replaced; and,
- iii. SANTA ROSA shall ensure that sewer pipe segments that contain defects with a rating of 4 based on the PACP rating system that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are re-CCTV'd not more than every five (5) years to ascertain the condition of the sewer line segment. If SANTA ROSA determines that the grade-4 sewer pipe segment has deteriorated and needs to be repaired or replaced, SANTA ROSA shall complete such repair or replacement within five (5) years after the last CCTV cycle;
- d. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the commencement of a Full Condition Assessment by way of CCTV inspection of all sewer lines in SANTA ROSA's wastewater collection system not within 200 feet of a surface water, to be completed within seven (7) years. Any sewer pipe segment found to be Significantly Defective under the PACP rating system to be repaired or replaced within five (5) years of the rating determination;
- e. Implementation in SANTA ROSA's Capital Improvements Plan of a program to provide a Condition Assessment of all sewer lines at least every seven (7) years. Said program to begin one (1) year following the Full Condition Assessment described above;
- f. Modification of SANTA ROSA's Backup and SSO response plan to include the method or calculations used for estimating total spill volume, spill volume that reached surface waters and estimating spill volume recovered. For Category I Spills, creation of a listing of nearby residents or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained (such as from a caller who provides information with a given time that the SSO began). Taking of photographs of the manhole flow at the SSO site using

1 the San Diego Method array, if applicable to the SSO; or other photographic
2 evidence that may aid in establishing the spill volume;

3 g. A requirement for water quality sampling and testing whenever it is estimated that
4 fifty (50) gallons or more of untreated or partially treated waste water from a SSO
5 enters surface waters. Constituents tested for to include: ammonia, fecal coliform,
6 E. coli and a CAM-17 toxic metal analysis. SANTA ROSA shall collect and test
7 samples from three (3) locations: the point of discharge, upstream of the point of
8 discharge, and downstream of the point of discharge. If any of said constituents
9 are found at higher levels in the point of discharge sample and the downstream
10 sample than in the upstream sample, SANTA ROSA shall determine and address
11 the cause of the SSO that enters surface waters, and employ the following
12 measures to prevent future overflows:

13 i. If the SSO is caused by a structural defect, then immediately spot repair the
14 defect or replace the entire line;

15 ii. If the defect is non-structural, such as a grease blockage or vandalism to a
16 manhole cover, then perform additional maintenance or cleaning, and any
17 other appropriate measures to fix the non-structural defect;

18 h. The creation of website capacity to track information regarding SSOs; or, in the
19 alternative, the creation of a link from SANTA ROSA's website to the CIWQS
20 SSO Public Reports. Notification to all customers and other members of the public
21 of the existence of the web based program, including a commitment to respond to
22 private parties submitting overflow reports;

23 i. Performance of human marker sampling on creeks, rivers, wetlands and areas of
24 Santa Rosa Creek and the Laguna de Santa Rosa adjacent to sewer lines to test for
25 sewage contamination from exfiltration;

26 j. Creation of a mandatory, private sewer lateral inspection and repair program
27 triggered by any of the following events: transfer of ownership of the property if
28 no inspection/replacement of the sewer lateral occurred within twenty (20) years

1 prior to the transfer; the occurrence of two (2) or more SSOs caused by the private
2 sewer lateral within two (2) years; a change of the use of the structure served (a)
3 from residential to non-residential use, (b) to a non-residential use that will result
4 in a higher flow than the current non-residential use, and (c) to non-residential
5 uses where the structure served has been vacant or unoccupied for more than three
6 (3)years; upon replacement or repair of any part of the sewer lateral; upon
7 issuance of a building permit with a valuation of \$25,000.00 or more; upon
8 significant repair or replacement of the main sewer line to which the lateral is
9 attached;

- 10 k. Conduction of soil holding capacity and agronomic studies on all lands used by
11 SANTA ROSA for the disposal of treated or partially treated wastewater, to
12 ensure there will be no runoff of either wastewater or nutrients during use of
13 reclaimed water for irrigation;
- 14 l. SANTA ROSA will provide, for each site with which SANTA ROSA has an
15 agreement to provide reclamation water, site specific information which confirms
16 that reclamation water is applied at hydraulic and agronomic capacity rates;
- 17 m. Records of inspections of reclamation sites will be included in SANTA ROSA's
18 monthly self monitoring reports;
- 19 n. For each pond that is within two hundred (200) feet of a surface water (measured
20 from the closest portion of that pond to the surface water), SANTA ROSA shall
21 install a minimum of three (3) monitoring wells between the pond and that
22 adjacent surface water. The wells shall be sampled quarterly for fecal coliform,
23 total nitrogen and phosphate;
- 24 o. Performance of an annual mass balance analysis to calculate the amount of loss
25 through leakage from each storage pond;
- 26 p. Performance of a study to determine the cause of Total Coliform violations, said
27 study to include an evaluation of the need to upgrade SANTA ROSA'S
28 ultraviolet disinfection system; and,

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- q. Performance of a study to determine the cause of Total Nitrogen violations, said study to include an evaluation of the effectiveness of SANTA ROSA’S nutrient offset program.
- 4. Order SANTA ROSA to pay civil penalties of \$37,500.00 per violation/per day for its violations of the CWA;
- 5. Order SANTA ROSA to pay the reasonable attorneys’ fees and costs of RIVER WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d), and applicable California law; and,
- 6. For such other and further relief as the court deems just and proper.

DATED: May 27, 2015



JACK SILVER
Attorney for Plaintiff
CALIFORNIA RIVER WATCH