

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), effective as of the last date of execution below (“Effective Date”), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members (“CRW”), and the City of Sebastopol (“City”). CRW and the City are sometimes hereinafter each referred to as “Party” or collectively as the “Parties.”

### RECITALS

A. California River Watch is an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protecting, enhancing, and helping to restore the surface and ground waters of California, including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

B. The City of Sebastopol, a municipality formed under the laws of the State of California, owns and operates a municipal separate storm sewer system for the purpose of collecting, channeling and discharging storm water. The City owns and operates a sanitary sewer collection system for the purpose of collecting and conveying wastewater from residential, commercial, and industrial sources. The City operates its storm sewer system and its sanitary sewer collection system consistent with regulatory requirements, including, but not limited to NPDES Permit No. CA0025054 – *“National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems”* (“MS4 Permit”) and the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (“Statewide WDR”), State Water Resources Control Board Order No. 2006-003-DWQ.

C. On or about April 11, 2019, CRW sent the City a Notice of Violations and Intent to File Suit under the Clean Water Act (“CWA Notice”), alleging that the City’s operation of its storm sewer system results in the discharge of wastewater sewage system overflows into the storm drain system in violation of the City’s MS4 Permit. The Notice also alleged violations of CWA § 301(a), 33 U.S.C. § 1311(a), on the basis of alleged unlawful discharges of sewage from sewer pipelines within the City’s sanitary sewer collection system to Zimpher Creek, Atascadero Creek, Calder Creek, and the Laguna de Santa Rosa, specifically impairing the Laguna Wetlands Preserve – all waters of the United States, without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A). A copy of the CWA Notice is attached to this Agreement as **Exhibit A**.

D. Following issuance of the CWA Notice, the Parties have engaged in discussions to resolve the claims asserted in the CWA Notice.

E. CRW and the City, through their authorized representatives and without either adjudication of CRW's claims or admission by the City of any alleged violation or other wrongdoing, now wish to resolve in full, through this Agreement, CRW's allegations, as set forth in the CWA Notice. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the City with regard to its Sewer Collection System and MS4 including without limitation any disputes, obligations, claims and/or causes of action that were in the CWA Notice.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

### **TERMS AND CONDITIONS**

1. Parties Bound by this Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the City, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future.

2. Definitions Specific to this Agreement.

- a. MS4 System: The system of storm drains and outlets owned by the City and located within the City's boundary used to collect and convey storm water which is discharged to surrounding surface waters.
- b. Collection System: The system of pipes, sewer lines, or other conveyances owned by the City and located within the City's boundary used to collect and convey wastewater to the wastewater treatment plant, excluding sanitary sewer laterals.
- c. Collection System Inundation: Any weather-related event or other event which causes any maintenance hole cover for the City's Collection System to become submerged under two (2) inches or more of water.
- d. Condition Assessment: A report that summarizes the results of the inspection, rating, and evaluation of the existing condition of the Collection System gravity sewer lines. Inspection is based upon closed circuit television ("CCTV") inspections of sewer lines for structural defects. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system developed by the National Association of Sewer Service Companies.

- e. Condition Assessment Cycle: A Condition Assessment of all gravity sewer lines in the Collection System (with the exception of pipe segments that are less than twenty (20) years old or are inaccessible or will not accommodate CCTV equipment, if any) requiring each sewer line to be CCTV'd at least every fifteen (15) years, but not requiring all sewer lines to be on the same CCTV schedule.
  - f. Significantly Defective: A sewer pipe is considered Significantly Defective if its condition receives a Structural grade of 4 or 5 based on the PACP rating system or an equivalent rating system developed by the City.
3. Actions by the City. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, the City shall perform the below-specified projects or activities:

3.1. Collection System Investigation and Repair

- a. The City shall adopt and implement a Condition Assessment Cycle.
- b. Within ten (10) years after the Effective Date of this Agreement, the City shall repair, rehabilitate, replace, abandon or reinspect all pipe segments within two hundred (200) feet of Zimpher Creek or Calder Creek and were found in a prior Condition Assessment to have a PACP structural rating of 4 or 5.
- c. Within one (1) year after the Effective Date, the City will provide to CRW a report explaining why, in the City's professional judgment, any pipe segments within two hundred (200) feet of the Laguna de Santa Rosa, Zimpher Creek or Calder Creek that were found in a prior Condition Assessment to have a PACP structural rating of 4 or 5, and that have not been repaired, rehabilitated, replaced, or abandoned, do not pose an imminent risk to human health or the environment.

3.2. Collection System Inundation Mitigation Projects.

- a. Within two (2) years of the Effective Date of this Agreement, the City will procure and install five (5) maintenance hole overflow alarm and tracking system devices in the Collection System.
- b. Within two (2) years of the Effective Date of this Agreement, the City will procure and install twenty (20) new maintenance hole frames and covers.

3.3. Condition Assessment Cycle. The City shall reinspect all sewer lines, manholes, and segments at least every fifteen (15) years.

3.4. SSO Response Procedures. The City shall continue its full compliance with its legal obligation under the Statewide WDR which compliance includes, but is not limited to, the preparation of a Sewer System Management Plan (“SSMP”), and complying with the requirements in Section D.7.v. of the Statewide WDR to develop and implement an adequate spill response training and sampling program to determine the nature and impact of all SSOs. Cleanup and disinfection procedures are set forth in the certified SSMP. The City shall include the following cleanup and disinfection procedures associated with an SSO event:

- a. If the City determines that an SSO is occurring in connection with a Collection System Inundation, it will report any such SSO to the CIWQS State Reporting System
- b. Water quality sampling and testing will be used to determine the extent and impact of SSOs that enter surface waters based upon the City’s assessment of the risk presented by the circumstances of the SSO. The water quality sampling procedures shall include:
  - i. The City shall collect samples if required. Samples should be collected as soon as possible after the discovery of the SSO event.
  - ii. The water quality samples should be collected, where feasible, from upstream of the spill, from the spill area, and downstream of the spill in flowing water. In addition, samples should be collected near the point of entry of the spilled sewage and every one hundred (100) feet along the shore on impoundments.
  - iii. Pursuant to the Statewide WDR, Section D.7, the City shall sample to determine the nature and impact of any SSO. The water surface basic analyses shall include fecal coliform, biochemical oxygen demand (BOD), dissolved oxygen, and ammonia. Additional samples will be taken to determine when posting of warning signs can be discontinued.
- c. In any affected surface water area in which the City cannot confirm that all of the sewage from an SSO has been removed or mitigated, the City shall post appropriate public notification signs and place barricades to keep vehicle and pedestrians away from contact with spilled sewage, if appropriate. For example, signs will be posted at creeks and streams that have been contaminated as a result of an SSO and at visible access locations until the risk of exposure has subsided to water quality standards or

background levels. Major spills warrant broader public notice. For such major spills, the City shall contact local media when significant areas may have been contaminated by sewage and may pose a danger to public health. The signs and other public notices will not be removed until the City has determined there is no further risk to public health and the environment.

- d. The City will also determine the extent and impact of SSOs that do not reach surface waters. For SSOs to hard surfaces, all sewage should be vacuumed up and the affected area washed down with potable water. If the SSO has been partially absorbed by soils, the soils should be removed and replaced as necessary and practicable. If all affected soils cannot be removed and replaced, and the area is accessible to the public, an appropriate sign or notice should be posted as appropriate.

3.5. Creation of website link. Within sixty (60) days after the Effective Date of this Agreement, the City shall create a link from the City's website to the State Water Resources Control Board CIWQS SSO Public Reports website and shall publicize this new link to its customers and members of the public. Additionally, the City shall publicize the 24-hour, 7 days per week emergency hotline on the City's website.

3.6. Lateral Inspection/Repair Program.

- a. Within one (1) year after the Effective Date of this Agreement, the City will hold a public hearing to consider adoption, by way ordinance, a mandatory private sewer lateral inspection and repair program triggered by 1) transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer, or 2) the occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years.
- b. If the City does not adopt an ordinance within the one (1) year time required by, and as described in Section 3.6.a above, then within two (2) years after the Effective Date, the City shall create a revolving loan fund, in the amount of fifty thousand dollars (\$50,000), to assist property owners in the repair or replacement of private sewer laterals.

3.7. Chemical Root Control. The City shall eliminate the use of chemical root control.

3.8. Updating of SSMP. Within ninety (90) days after the Effective Date of this Agreement, the City shall update its SSMP, including its OERP, to include the remedial terms set forth in Section 3 of this Agreement. The City's SSMP shall be

kept current and properly certified. All documents relating to the certification shall be posted on the City's website.

3.9. Annual Reporting to CRW. At a date no later than one (1) year after the Effective Date of this Agreement, the City shall provide CRW with a report confirming the completion of any task identified in Section 3 of this Agreement, and shall, upon written request, provide CRW with a report annually thereafter throughout the term of this Agreement identifying additional tasks completed.

4. Attorney's Costs and Fees. Within thirty (30) calendar days after the Effective Date of this Agreement, the City shall pay CRW the sum of twenty-five thousand dollars (\$25,000.00). Payment shall be made by the City to CRW in the form of a single check payable to "California River Watch" and mailed to the Law Office of Jack Silver, 708 Gravenstein Hwy. North, Suite 407, Sebastopol, CA 95472-2808. Said payment shall constitute full and complete satisfaction of all costs of litigation and attorneys' fees incurred by CRW that have or could have been claimed in connection with this matter up to and including the Effective Date of the Agreement, and for CRW's expert and attorneys' fees and costs incurred for monitoring and enforcing the City's compliance with ongoing obligations under this Agreement up to and including the Termination Date.

5. Delays in Schedule Implementation. In the event implementation by the City of the remedial measures set forth in Section 3 of this Agreement does not occur by the agreed upon dates, despite the timely good faith efforts of the City to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, the City agrees to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days prior to any deadline set forth in Section 3, and shall describe the reasons for the anticipated delay.

6. Force Majeure. The City shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of the City or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the City's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

7. Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the City with respect to any and all allegations or claims made and facts set forth in the CWA Notice or with respect to any Clean Water Act violation up to the date of the Effective Date of this Agreement, with regard to the City's Sewer Collection System

and MS4. CRW on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, except as otherwise provided for herein, does hereby absolutely, fully and forever release, relieve, remise and discharge the City and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from all causes of actions, claims, damages, demands, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever that were or could have been asserted under the Clean Water Act, the Porter-Cologne Water Quality Control Act, RCRA (42 U.S.C. § 6901 et seq.), or any other federal or state law, or any local law, ordinance or regulation, regarding: the Sewer Collection System, or wastewater from the City's Collection System, including any such wastewater that goes into or comes out of the City's MS4 System, or the City's MS4 System, including any solid, liquid or gas that goes into or comes out of the City's MS4 System, which occurred at any time up to and including the Effective Date of this Agreement. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. The release set forth in this Section 7 shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

8. Waiver of Unknown Claims. CRW acknowledges that it is familiar with Section 1542 of the California Civil Code. CRW expressly waives and relinquishes any rights and benefits which it has or may have under Section 1542 of the Civil Code of the State of California, which provides:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.*

CRW acknowledges that it has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. CRW acknowledges that its attorneys have fully explained the impact of these provisions, and CRW knowingly accepts the risks associated with these provisions.

9. Covenant Not to Sue. Commencing upon the Effective Date of this Agreement and continuing for a period of seven (7) years thereafter, CRW agrees that neither CRW, its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notices of Violation and Intent to Sue or file any lawsuit against the City seeking relief for alleged violations of the Clean Water Act, the Porter-Cologne Water Quality Control Act, RCRA (42 U.S.C. § 6901 et seq.), or any other federal or state law, or any local law, ordinance or regulation, regarding: the Sewer Collection System, or wastewater from the City's Collection System, including any such wastewater that goes

into or comes out of the City's MS4 System, or the City's MS4 System, including any solid, liquid or gas that goes into or comes out of the City's MS4 System. CRW will not act affirmatively to initiate, encourage, or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions. The covenants set forth in this Section 9 shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

10. Termination Date. This Agreement shall terminate five (5) years after the Effective Date.

11. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the City concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures:

11.1. Good Faith Negotiations. CRW and the City shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, the Party claiming a breach shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

11.2 If the Parties cannot informally resolve the dispute, they shall first attempt to resolve such dispute through mediation, using a mutually agreed upon mediator. Should mediation be unsuccessful, the Parties will enter into binding arbitration conducted by an arbitrator agreed upon by both Parties. Either party may request that the presiding judge of the Sonoma County Superior Court select an arbitrator if the Parties cannot agree. The arbitration shall be binding and not subject to ordinary judicial appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure sections 1280, et seq. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Service) to the extent other conventional rules are not promptly agreed to by the Parties. The relief the arbitrator is empowered to award is limited to injunctive relief to take action specified in this Agreement. The Parties shall each bear their own costs and attorney's fees in connection with the Dispute Resolution as herein described.

12. Waiver. By agreeing to the dispute resolution provisions set out in Section 11 of this Agreement, the Parties understand they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement



including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

13. Notice. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by electronic mail when possible, or by certified United States mail, return receipt requested, addressed as set forth below:

If to CRW:                Jack Silver, Esq.  
                                Law Office of Jack Silver  
                                708 Gravenstein Highway North, #407  
                                Sebastopol, CA 95472  
                                Email: lhm28843@sbcglobal.net

If to the City:            City Manager  
                                City of Sebastopol  
                                7120 Bodega Avenue  
                                P.O. Box 1776  
                                Sebastopol, CA 95473

AND                        Gregory J. Newmark, Esq.  
                                MEYERS NAVE  
                                707 Wilshire Blvd. 24th Floor  
                                Los Angeles, CA 90017  
                                Email: gnewmark@meyersnave.com

The foregoing addresses may be changed by Notice given in accordance with this Section. Any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

14. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW, the City, and their respective counsel who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each party or its respective predecessors, successors, and assigns and as described above.

15. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

16. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

17. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

18. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

19. Entire Agreement in Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

20. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

21. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

22. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

23. Authority. Each of the persons signing this Agreement on behalf of an entity

represents and warrants that he or she has actual authority and capacity to execute the Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

CITY OF SEBASTOPOL

By:

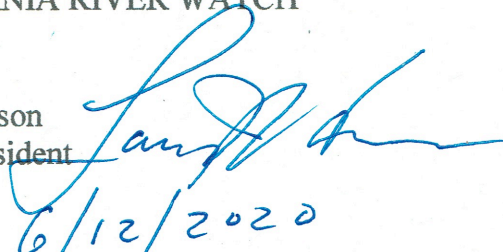


Larry McLaughlin  
City Manager

By:

CALIFORNIA RIVER WATCH

Larry Hanson  
Board President



Dated:

Dated:

6/12/2020

3535833.1

# EXHIBIT A

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# Law Office of Jack Silver

708 Gravenstein Hwy North, Suite 407 Sebastopol, CA 95472-2808  
Phone 707-528-8175 Email JSilverEnvironmental@gmail.com



**Via Certified Mail –  
Return Receipt Requested**

April 11, 2019

Received

APR 22 2019

City of Sebastopol

Larry McLaughlin  
City Manager / City Attorney  
Members of the City Council  
City of Sebastopol  
7120 Bodega Avenue  
P.O. Box 1776  
Sebastopol, CA 95473

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

Dear Mr. McLaughlin and Members of the City Council:

**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 City of Sebastopol’s sewage collection system.

River Watch hereby places the City of Sebastopol (the “City”) as owner and operator of its sewage collection system, 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 City 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, North Coast Region, Water Quality Control Plan (“Basin Plan”) on the basis of alleged unlawful discharges of sewage from sewer pipelines within the City’s sewage collection system to Zimpher Creek, Atascadero Creek, Calder Creek, and the Laguna de Santa Rosa, specifically impairing the Laguna Wetlands Preserve – all waters of the United States.

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, who 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 a National Pollutant Discharge Elimination System (“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 contends the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

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 City’s operations of its sewage collection system in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (“RWQCB-North Coast”).

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 compliance by the City 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. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch contends the order being violated is:

- NPDES Permit No. CA0025054 – *“National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems.”* (“MS4 Permit”). This Permit governs the discharges from MS4s draining into the watersheds within the North Coast Region. The MS4 Permit states in relevant part:

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- “Discharges of storm water or non-storm water from the MS4 in a manner causing or contributing to a condition of pollution, contamination, or nuisance (as defined in the California Water Code section 13050), in waters of the state are prohibited.” (see Section III.A. “Discharge Prohibitions”).
- “The Co-Permittees shall prohibit non-storm water discharges from entering into the MS4 unless such discharges are either authorized by an NPDES permit...” (see Section III.C. “Discharge Prohibitions”).

River Watch has identified discharges of sewage from the City’s sewage collection system to waters of the United States without an NPDES permit in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in pertinent part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

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

River Watch contends that from April 1, 2014 to April 1, 2019, the City has violated the Act and the MS4 Permit as described in this Notice. River Watch contends these violations are continuing or have the likelihood of occurring in the future.

### **A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts**

#### **i. Sanitary Sewer Overflows Occurrence**

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the sewage collection system prior to reaching a treatment 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 City, all in violation of the CWA and MS4 Permit.

A review of the CIWQS Spill Public Report – Summary Page dated February 5, 2019 identifies the “Total Number of SSO locations” as 37, with 212,523 “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the City admits at least 199,756 gallons, or 93% of the total, reached a surface water. These discharges, whether or not they reach a surface water, pose both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment. The cause of these SSOs appear clear. The City’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains connected to



adjacent surface waters such as Calder Creek, Zimpher Creek, Atascadero Creek, and the Laguna de Santa Rosa – all waters of the United States.

A review of the CIWQS SSO Reporting Program Database specifically identifies 10 recent SSOs reported by the City as having reached a water of the United States, (or a storm drain) identified by Event ID numbers 845783, 844817, 832383, 830076, 824930, 822646, 818712, 813977, 811557, and 809334. Included in those reports are the following incidents:

March 19, 2015, Event ID# 813977 (Coordinates: 38.40341-122.83588) - an SSO estimated at 26,800 gallons occurred at a manhole at 7870 Brookside Avenue as a result of “roots.” All 26,800 gallons are estimated to have reached the Laguna de Santa Rosa.

November 24, 2016, Event ID# 830076 (Coordinates: 38.40387 -122.8333) - an SSO estimated at 2,250 gallons occurred at 410 Murphy Avenue as a result of “root intrusion”. Only 360 gallons were recovered. As a result, 1,890 gallons spilled into Zimpher Creek and from there flowed to the Laguna de Santa Rosa.

January 11, 2017, Event ID# 832383 (Coordinates: 38.39745 -122.8468) - an SSO estimated at 1,540 gallons occurred at 8401 Bodega Avenue caused by “Pump Station Failure-Controls.” None of the spill was recovered, and 1,540 gallons of sewage discharged into Atascadero Creek.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act.

ii. Inadequate Reporting of Discharges

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City’s SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch’s expert believes many of the SSOs reported by the City as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. A careful reading of the time when the SSO began, the time the City received notification of the SSO, the time of the City’s response, and the time at which the SSO ended, too often appear as unlikely estimations. Examples of the alleged violations included in this list of CIWQS-reported SSOs are:

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June 06, 2018 (Event ID# 847908) (Coordinates: 38.40084 -122.84423) - A spill of 53 gallons was reported at 298 Ragle Road due to "root intrusion". The spill start time is reported as 00:30, the agency notification time is reported as 01:00, the estimated operator arrival time is reported at 01:30 and the spill end time is reported as half an hour earlier, at 01:00.

February 19, 2016 (Event ID# 822792) (Coordinates: 38.4025 -122.82469) - a spill occurred at 132 N Main Street due to "root intrusion". The spill start time is reported as 11:40 and the agency notification time is reported as 12:00. The operator arrival time is reported as just fifteen minutes later, at 12:15 and the spill end time is reported as 12:00 - fifteen minutes before the operator arrival and at the same time as the agency notification.

September 21-22, 2014 (Event ID# 809334) (Coordinates: 38.403719 -122.823911) - the spill start time is reported at 22:00 on September 21. The agency notification time doesn't occur until the next day, September 22 at 12:45, and the operator is reported as arriving five minutes later at 12:50. The spill end time is reported as 13:18. The total spill volume is reported as 52 gallons.

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

iii. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under 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 City 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 spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is failing to conduct sampling on most SSOs.

The EPA's *Report to Congress on the Impacts and Control of CSOs and SSOs* (U.S. Environmental Protection Agency, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the City's SSOs. Neighboring waterways include sensitive areas for numerous animal, fish, and bird species.

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The RWQCB-North Coast Basin Plan designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies to achieve those objectives for all waters addressed through the Basin Plan. Chapter 2. Beneficial Uses, Section 2.1 Introduction - states, "...beneficial uses of any specifically identified water body generally apply to all its tributaries." The Basin Plan does not specifically identify beneficial uses for the Laguna de Santa Rosa, but does identify present and potential uses for the Russian River Hydrologic Unit to which the Laguna de Santa Rosa is tributary. These beneficial uses are: municipal and domestic supply, agricultural supply including stock watering, hydropower generation, water contact recreation including canoeing and rafting, non-contact water recreation including aesthetic enjoyment, commercial and sport fishing, aquaculture, warm freshwater habitat, cold freshwater habitat, and wildlife habitat.

In addition, the Basin Plan implements SWRCB Resolution No. 88-63 which established state policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

River Watch finds no record of the City performing any analysis of the impact of its SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Failure to Comply with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit.

River Watch contends the City fails to adequately comply with the discharge prohibitions and receiving water limitations of its MS4 Permit as detailed in Section 1 of this Notice. The City's MS4 is a system of conveyances intended to carry stormwater. It is connected to storm drain pipes which discharge into neighboring surface waters. However, SSOs bring sewage into the MS4 and in turn into waterways connected to, and downstream of, the MS4. In practice, the discharge of any SSO to any storm drain system or watercourse under the City's jurisdiction violates this subsection of the City's MS4 Permit.

C. Discharge to Surface Waters Via Underground Leakage (Exfiltration)

The City's reported history of multiple surface overflows is a clear indication of widespread structural defects in its sewage collection system. Defects including cracked or eroded pipes, misaligned joints and blockages result in I/I of rain water and groundwater causing surface overflows. In addition to surface overflows which discharge overland into surface waters, these structural defects result in underground leakages or exfiltration. It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections.

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River Watch contends untreated sewage is discharged from cracks, displaced joints eroded segments, etc., in the City's sewage collection system either directly or via hydrologically connected groundwater to surface waters including Zimpher Creek, Atascadero Creek, Calder Creek, and the Laguna de Santa Rosa, specifically impairing the Laguna Wetlands Preserve. Due to these SSOs, 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 from the City's sewer collection system is a violation of the CWA.

#### D. Impacts to Beneficial Uses

The Laguna de Santa Rosa, Zimpher Creek, Calder Creek and Atascadero Creek have many beneficial uses as defined in the RWQCB-North Coast Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

**Laguna de Santa Rosa** - a 22-mile long wetland complex that drains a 254-square mile watershed encompassing most of the Santa Rosa Plain in Sonoma County. Its principal tributary streams rise on the southern slopes of the Sonoma and Mayacamas Mountains. East of Sebastopol, the Laguna de Santa Rosa crosses under State Route 12 at milepost 9.63 and turns to the north. Just south of Guerneville Road, the Santa Rosa Flood Control Channel enters the Laguna de Santa Rosa bringing water from Santa Rosa Creek and its tributaries. The Laguna de Santa Rosa continues north, emptying into Mark West Creek east of Forestville.

The Laguna de Santa Rosa is the second largest freshwater wetland in coastal Northern California and Sonoma County's richest area of wildlife habitat and biological diversity. A number of rare and endangered species are found in the Laguna de Santa Rosa including federally-listed threatened and endangered anadromous salmonid species and three endangered plants. In addition, the Laguna de Santa Rosa is home to over 200 species of birds, mountain lion, river otter, coyote, bobcat, mink, and grey fox. The watercourse is listed under CWA Section 402 as impaired for sediment, nitrogen, phosphorus, temperature, mercury, and dissolved oxygen.

**Calder Creek and Zimpher Creek** - Calder Creek flows from Pleasant Hill Road at the southwest Sebastopol boundary and through Ives Park before going underground to an outfall near the Laguna de Santa Rosa at the Joe Rodota and West County Trail. Zimpher Creek originates near Zimpher Drive and flows east (mostly underground) through downtown

Sebastopol to an outfall at the Laguna de Santa Rosa near the City's sewer pumping station. Calder Creek and Zimpher Creek have served as integral parts of the City's sewage collection system for nearly 100 years.

**Atascadero Creek** - an 8.8-mile long creek with origins in the north flank of English Hill about 3 miles southwest of Sebastopol. It descends to the north flowing under Barnett Valley Road, Watertrough Road, and Bodega Highway, continues north through Ragle Ranch Regional Park, then crosses Mill Station Road, Occidental Road, Graton Road, and Green Valley Road to enter Green Valley Creek about 2 miles northwest of Graton. Atascadero Creek is the central channel of the Atascadero Wetland system, designated by the Army Corps of Engineers. As a tributary to Green Valley Creek, Atascadero Creek and its wetlands are part of the greater Russian River Watershed. Several endangered species make the Atascadero Creek watershed home including steelhead, freshwater shrimp and the Pitkin marsh lily. In 1998, California designated 44 acres as the Atascadero Creek Marsh Ecological Reserve. Its mix of riparian forest and seasonal and permanent wetlands draws large numbers of waterbirds, raptors and song birds.

River Watch is extremely concerned regarding the effects of surface, underground, and unreported SSOs on critical habitat in and around the diverse and sensitive ecosystems of these waterbodies including risks to the health of those who recreate in, and consume fish from, those ecosystems.

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

The entity responsible for the alleged violations identified in this Notice is the City of Sebastopol and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

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

The location or locations of the various violations alleged in this Notice is the City's sewage collection system as further described in this Notice.

The City owns and operates its wastewater collection and conveyance system that serves a population of approximately 7,440 in a 1.85-square mile service area. The sewage system served 2,800 service lateral connections as of January 2014. The sewage system consists of 29.6 miles of gravity sewers (approximately 750 line segments), 10.5 miles of lower laterals (approximately 2,800 laterals), 749 manholes, 2.7 miles of force mains, and 2 lift stations - the Morris Street Lift Station and the Valley View Lift Station. The sewers range in size from 6 to 21 inches in diameter. Approximately 114,025 linear feet of main line (75%) was installed between 1960-1979. The City currently contracts with the City of Santa Rosa Sub-regional Water Reclamation System for wastewater treatment.

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The City provides service and repair of the lower lateral (the portion of the lateral that extends from the sewer main in the public right-of-way to the clean out at the property line/edge of the right-of-way or for easements to the easement line). The property owner is responsible for installation, maintenance, operation, inspection, testing, rehabilitation and repair of the upper lateral that extends from the clean out at the property line/edge of right-of-way or from the easement edge to the building.

**5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is April 1, 2014 through April 1, 2019. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

**6. The Full 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 mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwater 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 has retained legal counsel with respect to the issues raised in this Notice. All communications with respect to this Notice should be directed to the undersigned.

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**RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with the City's staff to tailor remedial measures to the specific operation of the sewage collection system. In advance of that conversation, River Watch identifies the following issues for discussion 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. Determining the specific sewage collection system repairs required, and establishing deadlines for compliance.
2. Requiring implementation of an effective SSO reporting and response program.
3. Providing a lateral inspection and repair program.

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4. Ensuring application of chemical root control complies with federal EPA or the RWQCB-North Coast as well as manufacturer and Cal-OSHA requirements.
5. Keeping the Sewer System Management Plan up-to-date and properly certified.
6. Promoting staff training and education.

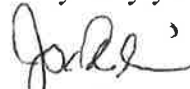
## CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who may reside and recreate in the affected community and use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks, and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City'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), § 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 \$54,833.00 per day/per violation 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 Supplemental 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 encourages the City 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

JS

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## Service List

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

Mike Stoker, Regional Administrator  
U.S. Environmental Protection Agency  
Pacific Southwest, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

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