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California Sportfishing Protection Alliance
“An Advocate for Fisheries, Habitat and Water Quality”
www.calsport.org

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 1, 2008

Mark Madison, Director
City of Stockton, Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206

J. Gordon Palmer, Jr., City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

Manuel Lopez, County Administrator
County of San Joaquin
222 E. Weber Avenue #707
Stockton, CA 95202

Thomas R. Flinn, Director
County of San Joaquin
Public Works Department
1810 East Hazelton Avenue
Stockton, CA 95205

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

To the above-listed notice recipients:

California Sportfishing Protection Alliance (“CSPA”) hereby provides notice of CSPA’s intent to sue for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”), committed by the City of Stockton (“Stockton”) and the County of San Joaquin (“County”). As explained below, this letter covers violations of: (1) *Waste Discharge Requirements for City of Stockton Regional Wastewater Control Facility*, National Pollution Discharge Elimination System (NPDES) Permit No. CA0079138, Order No. R5-2002-0083 and Monitoring and Reporting Program No. R5-2002-0083, California Regional Water Quality Control Board Central Valley Region (“RWCF Permit”); (2) *Waste Discharge Requirements City of Stockton and County of San Joaquin Storm Water Discharges from Municipal Separate Storm Sewer System (MS4)*, NPDES Permit No. CAS083470, Order No. R5-2002-0181 California Regional Water Quality Control Board Central Valley Region (“the 2002 MS4 Permit”); and (3) *Waste Discharge Requirements City of Stockton and County of San Joaquin Storm Water Discharges from Municipal Separate Storm Sewer System* NPDES Permit No. CAS083470, Order No. R5-2007-0173 California Regional Water Quality Control Board Central Valley Region (“the 2007 MS4 Permit”) (the 2002 MS4 Permit and 2007 MS4 Permit are referred to collectively as the “MS4 Permits”).

The RWCF Permit regulates Stockton's wastewater collection system, and wastewater treatment system (this system is referred to as the "RWCF"). The RWCF Permit prohibits the discharge of sanitary sewer overflows ("SSOs"). *See* RWCF Permit, Discharge Prohibitions, A.2. and A.3. The RWCF Permit also prohibits the discharge of wastewater from any locations or in any manner different from that described in the RWCF Permit. *See* RWCF Permit, Discharge Prohibitions, A.1. The 2007 MS4 Permit regulates discharges to and from Stockton's and the County's municipal separate storm sewer system ("MS4"). Prior to the 2007 MS4 Permit's adoption, the 2002 MS4 Permit regulated these systems. The violations alleged in this letter concern Stockton's discharges of raw sewage without an NPDES permit, discharges from the RWCF in violation of the RWCF Permit's effluent limitations and monitoring requirements, discharges from the collection system to Stockton's and the County's MS4, discharges of raw sewage and other pollutants from the MS4 to receiving waters, and failure to adequately monitor and report discharges of raw treated sewage.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intent to file suit. Notice must be given to the alleged violator, the United States Environmental Protection Agency ("EPA"), the State water agency in the State in which the violations occur, and if the alleged violator is a corporation, to the registered agent for the corporation. 33 U.S.C. § 1365(b)(1)(A), *see also* 40 C.F.R. § 135.2.

As required by the Clean Water Act, Stockton and the County are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violations and Intent to File Suit ("Notice Letter"), CSPA intends to file suit in federal District Court pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), against the persons responsible for the violations described in this Notice Letter.

I. ORGANIZATIONS GIVING NOTICE OF CLEAN WATER ACT VIOLATIONS

CSPA is an alliance of sport fishing groups that advocate for the restoration and protection of degraded California fisheries. CSPA accomplishes its mission through seeking administrative and legal remedies by monitoring, participation in agency proceedings, and enforcement.

CSPA's address and contact information is as follows:

California Sportfishing Protection Alliance
Bill Jennings, Executive Director
3536 Rainier Avenue
Telephone: 209-464-5067
Fax: 209-464-1028

CSPA's members use and enjoy the waters of the Sacramento-San Joaquin River Delta ("Delta") in and around Stockton, including, but not limited to, the San Joaquin and Calaveras Rivers, Mosher Slough, Five Mile Slough, Smith Canal, and Yosemite Lake (these waters are

hereinafter referred to as the “Receiving Waters”). Each of these Receiving Waters is a part of the Delta system. Specifically, CSPA’s members fish and enjoy the wildlife in and around the Receiving Waters. CSPA’s members’ use and enjoyment of these Receiving Waters has been and continues to be adversely affected by the ongoing sewer overflows, discharges of raw or inadequately treated wastewater, and discharges of storm water contaminated with sewage to Receiving Waters all of which are directly used by CSPA’s members and all tributaries to such waters (given that pollutants discharged to tributaries will flow into the Receiving Waters directly used by CSPA’s members). The discharge of pollutants to the Receiving Waters has deleterious effects on those water bodies and the numerous fish species’ habitats. Degradation of water quality and harm to aquatic life in any of the Receiving Waters impairs CSPA’s members’ use and enjoyment of those waters.

Information available to CSPA, including reports of SSOs submitted by Stockton, indicates that sewage from SSOs has reached the Receiving Waters. In addition, Stockton’s own sewer overflow master reports and/or work orders demonstrate that sewage is discharged to area businesses, residents’ yards and basements, sidewalks, and streets, which exposes members of CSPA (as well as members of the general public) to substantial health risks.

II. THE ENTITIES RESPONSIBLE FOR THE ILLEGAL DISCHARGES

1. Stockton’s Sewage Collection System and Wastewater Treatment Facilities

The City of Stockton is a municipality incorporated under the laws of the State of California. The Stockton Municipal Utilities Department (“SMUD”) has offices at 2500 Navy Drive, Stockton, California 95206. The City of Stockton and/or SMUD, which is a department of the City of Stockton government, is the owner and/or operator of the RWCF. The City of Stockton is the permittee for the RWCF. SMUD is responsible for operating and maintaining the RWCF, tasks which include responding to citizen complaints of SSOs, and conducting routine maintenance, cleaning, and inspection of the collection system.

The RWCF is located at 2500 Navy Drive, Stockton, California. The RWCF contains a secondary treatment facility¹ that provides secondary level treatment of wastewater from domestic, commercial and industrial sources within Stockton, the Port of Stockton, and urbanized areas of San Joaquin County. Wastewater is then piped beneath the San Joaquin River to the tertiary treatment facility consisting of approximately 630 acres of facultative oxidation ponds, followed by dissolved air flotation, mixed-media filters, and chlorination/dechlorination facilities. The RWCF discharges treated municipal wastewater through a single outfall to the San Joaquin River, which is a navigable water of the United States and is part of the Delta.

Stockton has a service population of approximately 300,000, and the sewage collection system consists of 900 miles of sanitary line, with 38,000 sewer connections that transport waste to the Stockton RWCF. The Stockton RWCF’s dry-weather discharge flow rate is 55 million

¹ In 2002, Stockton was nearing the completion of a staged expansion of the secondary treatment plant including construction of additional anaerobic sludge digesters, improvements to the sludge management system, bio-tower improvements, and other ancillary improvements. RWCF Permit, Finding 6.

gallons a day “(MGD)”. The EPA and the Regional Water Control Board, Central Valley Region (“Regional Board”) have classified this as a major discharge.

2. The City of Stockton’s and San Joaquin County’s Municipal Separate Storm Sewer System

Clean Water Act Section 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating municipal storm water discharges under NPDES Permits. Section 402(p) of the CWA requires an NPDES Permit for storm water discharges from a MS4 to waters of the United States. The MS4 Permits at issue here regulate discharges into and from the municipal storm sewer system within Stockton city limits, the urbanized areas of San Joaquin County enclosed within the City of Stockton, and the urbanized areas that surround the City of Stockton (referred to collectively as the “Stockton Urbanized Area”).² See 2002 MS4 Permit, Findings 3-5; 2007 MS4 Permit, Findings 3-5. The urbanized areas of San Joaquin County adjacent to Stockton city limits are subject to the MS4 Permits’ requirements due to the proximity of these urbanized areas to the City of Stockton, the physical interconnections to the separate storm sewer system within the city limits, and the locations of the discharges relative to discharges from the MS4 in city limits. See 2002 MS4 Permit, Finding 4; 2007 MS4 Permit, Finding 4.

The City of Stockton and San Joaquin County are co-permittees under the MS4 Permits and have jurisdiction over and/or maintenance responsibilities for storm drains in the Stockton Urbanized Area (“Stockton Urbanized Area’s MS4”). 2002 MS4 Permit, Finding 1, 5; 2007 MS4, Finding 1, 5. The City of Stockton is responsible for compliance with the MS4 Permits within Stockton city limits. 2002 MS4 Permit, Provisions, D.4.a.; 2007 MS4, Provisions, D.1.a. The County is responsible for compliance with the MS4 Permits in areas outside the Stockton city limits but within the Stockton Urbanized Area. *Id.*

The MS4s in the Stockton Urbanized Area contain numerous storm drain inlets that lead to underground storm drain pipes, which in turn are directed to the San Joaquin River and/or its local tributaries. Pollutants, including those found in SSOs, that enter Stockton Urbanized Area’s MS4s discharge to natural drainage watersheds. The major natural drainage watersheds in the Stockton urbanized area are: Bear Creek; Littlejohns Creek; Calaveras River; Mormon Slough; Stockton Deep Water Ship Channel; Mosher Slough; Duck Creek; Smith Canal; Five Mile Slough; Walker Slough; and Fourteen Mile Slough. 2002 MS4 Permit, Finding 5; 2007 MS4 Permit, Finding 5. All of these water bodies either comprise or flow to the Sacramento-San Joaquin River Delta and are tidal freshwater within the Stockton Urbanized Area with a one-to-three-foot tide range. *Id.*

The MS4 Permits require Stockton and the County to prohibit discharges of non-storm water into their respective MS4s. 2002 MS4 Permit, Discharge Prohibitions, B.1; 2007 MS4 Permit, Discharge Prohibitions, B.1. The MS4 Permits contain Receiving Water Limitations, including prohibitions on discharges that cause deleterious effects on aquatic biota, wildlife, or

² The urbanized area of San Joaquin County that is regulated under the MS4 Permits is also referred to as County Service Area 54. 2002 MS4 Permit, Finding 1; 2007 MS4 Permit, Finding 1.

waterfowl, or which render any of these unfit for human consumption, or cause or contribute to violations of water quality standards. MS4 Permit, Receiving Water Limitations, C.1.j.-n. and C.2.

Information available to CSPA indicates that raw sewage is frequently discharged into Stockton Urbanized Area's MS4 from the Stockton sewage collection system, and from private lateral lines connected to the collection system. Further, information available to CSPA indicates that sewage spills entering the Stockton Urbanized Area's MS4 from Stockton's sanitary sewage collection system or from third party sewage conveyance appurtenances (such as privately owned sewage lateral lines connecting to Stockton's sewage collection system and clean-outs for such lines) discharge to the Receiving Waters. A separate violation of the MS4 Permits occurs each time sewage or any other prohibited non-storm water is discharged into Stockton Urbanized Area's MS4, as well as each time sewage or any prohibited non-storm water is discharged from Stockton Urbanized Area's MS4 contrary to terms of the MS4 Permits.

III. BACKGROUND AND ENVIRONMENTAL IMPACTS FROM THE ILLEGAL DISCHARGES

The Delta is the largest Pacific Coast estuary of both North and South America. The Delta is the confluence of five major rivers and numerous creeks and sloughs. This maze of finger-like waterways ebbs and flows through prime California natural habitat and farmland. The Delta is also the primary source of fresh water supply for two-thirds of California's residents. The preservation of this natural resource is essential. The Delta and its tributaries also provide special aesthetic and recreational significance for people living in the surrounding communities. These activities depend upon water quality and habitat preservation of the Delta. The growing urbanization of the Delta area makes these recreational and aesthetic uses even more important to the quality of life of the approximately 500,000 Delta residents. Furthermore, the Delta fosters the commercial fishing industry. Commercial fishers and sport fishers alike continue to suffer from the constant degradation of the Delta through illegal discharges and sewer overflows. The Delta's once-abundant and varied fisheries and species habitat have been drastically diminished by pollution.

The Delta has 700 miles of channels, nearly all navigable. Recreation in the Delta is therefore mainly water-oriented. The Delta serves as a major recreational outlet for activities such as fishing, water-skiing, sailing, cruising, personal watercraft, canoeing, kayaking, swimming, and windsurfing.

Spills of raw sewage, inadequately treated effluent, and discharges of sewage-contaminated storm water harm the Delta and pose a serious risk to fisheries, wildlife habitat, and human health. In addition to human waste and bacteria, sewage contains chemicals that cause cancer or reproductive toxicity. These chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by households and

businesses and then discarded to sewage collection systems.³ High concentrations of these pollutants are typically found in discharges of raw sewage. The intensive use of the Delta for commercial, sport fishing, and water-contact recreation increases the likelihood that people will come into direct contact with spilled sewage and the pollutants it contains. Sewage pollution also affects people who eat fish caught in the Delta. Toxic chemicals are concentrated in the Delta's food web, which means that contaminants absorbed by plankton are magnified in fish and birds farther up the food chain and ultimately ingested by human consumers. Contamination of fish is particularly damaging to certain ethnic communities and low-income people, who eat a greater-than-average amount of fish.

SSOs that do not directly reach the Delta still pose significant health risks by depositing raw sewage in public streets, public buildings and grounds, and private yards and homes. SSOs contain large quantities of bacteria, viruses, mold spores, and protozoa. Exposure to raw or partially treated sewage can cause a variety of health problems, including gastroenteritis, respiratory illness, ear, nose, and throat problems, and skin rashes. Mold spores can establish an ecological niche when they are carried onto a homeowner's property during an overflow, creating an ongoing health risk from chronic exposure. Sewage contaminated waters also may provide a breeding ground for mosquitoes. Residential sewage overflows also diminish property values and impose severe nuisance on local residents.

In addition to the discharges as a result of SSOs, discharges into the Delta containing constituents that exceed effluent limits set out in the RWCF Permit also threaten CSPA members' and Delta area residents' health and recreation. Stockton has violated several of the RWCF effluent limits by discharging water that contains elevated amounts of harmful pollutants. For example, Stockton frequently discharges total coliform in excess of the effluent limitation in the RWCF Permit. Total coliform is used as an indicator for contamination of water from human waste and pathogens.⁴ The Delta was listed on the State of California's 2006 Clean Water Act section 303(d) list of Water Quality Limited Segments ("303(d) List") as impaired for pathogens. By emitting increased amounts of total coliform in the Delta, Stockton causes further degradation of already impaired Delta waters. Stockton's discharges of pollutants other than total coliform in violation of the effluent limitations in the RWCF cause similar harm to Receiving Waters and to CSPA members' and Delta area residents' use and enjoyment of these waters.

Many of the Receiving Waters discussed in this Notice Letter are listed on the State of California's 303(d) List. A waterbody that is listed as impaired cannot support the designated beneficial uses for that waterbody. The Receiving Waters' designated uses include, but are not limited to, municipal and domestic use, warm and cold freshwater habitat, and warm and cold fish migration. The Delta and its tributaries are listed as impaired for diazinon, Group A

³ See People for Puget Sound, "Puget Sound Georgia Basin Sewage Report," February 1995; see also Excerpt from "Safe Substitutes at Home: Non-Toxic Household Products," Gary A. Davis and Em Turner, University of Tennessee-Knoxville Waste Management Institute, es.epa.gov/techinfo/facts/safe-fs.html; see also Frick, E., et al, Presence of Pharmaceuticals in Wastewater Effluent and Drinking Water, Metropolitan Atlanta, Georgia July-September 1999, Proceedings of the 2001 Georgia Water Resources Conference, March 26-27, 2001.

⁴ See Environmental Protection Agency Monitoring and Assessing Water Quality, Volunteer Stream Monitoring: A Methods Manual, Chapter 5.11 Fecal Bacteria ¶ 1, available at <http://www.epa.gov/volunteer/stream/vms511.html>.

pesticides, unknown toxicity, chlorpyrifos, mercury, DDT, boron, pathogens, low dissolved solids, and organophosphorus pesticides. Many of these pollutants are found in discharges of raw sewage or inadequately treated effluent by Stockton. Therefore, by discharging excessive levels of these pollutants, Stockton's violations of the Clean Water Act have directly harmed CSPA's members, who use and enjoy the Receiving Waters, by contributing to the continued impairment of the Delta.

CSPA brings this action to abate Stockton's and the County's ongoing violations of the Clean Water Act. Specifically, CSPA seeks to compel Stockton to comply with federal law and their RWCF Permit, to restore the Receiving Waters damaged by their discharges, and to pay penalties for their violations of the Clean Water Act. CSPA further seeks to compel Stockton and the County to comply with federal law and their MS4 Permits, to restore the Receiving Waters damaged by their discharges, and to pay penalties for their violations of the Clean Water Act.

IV. CLEAN WATER ACT VIOLATIONS

1. Sanitary Sewer Overflows: Sewage Discharges in Violation of the RWCF Permit and Clean Water Act Section 301, 33 U.S.C. § 1311

CSPA hereby puts the City of Stockton, as the owner and operator of the Stockton collection system, on notice that after the expiration of sixty (60) days from the date of this Notice Letter, it intends to file suit in federal District Court against Stockton for their discharges of pollutants to waters of the United States in the form of SSOs from the Stockton collection system in violation of Clean Water Act Section 301, and RWCF Permit's Discharge Prohibitions A.1, A.2, and A.3.

Clean Water Act section 301 provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a permit. 33 U.S.C. §1311(a). Discharge Prohibition A.2 of the RWCF Permit prohibits bypass or overflow of untreated or partially treated wastewater to waters of the State unless under specified conditions. The RWCF Permit also prohibits the discharge of wastewater from any location or in any manner different from that described in the RWCF Permit. RWCF Permit Discharge Prohibitions, A.1.

Information available to CSPA including Stockton's Intra-Systems Sewage Release Report ("ISSRP"), spill reports submitted to the Regional Board, spill reports submitted to the Office of Emergency Services ("OES"), and annual reports generated by Stockton and submitted to the Regional Board indicate that since July 1, 2003, Stockton has had at least 1,487 SSOs from its collection system. Specifically, from July 1, 2003, through the end of 2003, Stockton had 183 SSOs from its collection system. In 2004, Stockton had 256 SSOs from its collection system, or 28.4 spills per 100 miles of pipes.⁵ In 2005, Stockton had 335 SSOs from its collection system,

⁵ Information available to CSPA indicates that well run collection systems in California average between 0-3 SSOs per 100 miles of pipe per year, average systems have between 4-6 SSOs per 100 miles of pipe per year, and poorly run systems exceed 10 SSOs per 100 miles of pipe per year.

or 37.2 spills per 100 miles of pipes. In 2006, Stockton had 371 SSOs from its collection system, or 41.2 spills per 100 miles of pipes. In 2007, Stockton had 253 SSOs from its collection system, or 28.1 spills per 100 miles of pipes. Through April 7, 2008, Stockton had 95 SSOs from its collection system. Information currently available to CSPA indicates that since July 1, 2003, Stockton has spilled SSOs from its collection system on at least 1,487⁶ separate occasions totaling at least 1,487 separate CWA violations, and that Stockton's SSO violations are continuing.

Information available to CSPA also indicates that Stockton has been underreporting the number of SSOs that take place from Stockton's collection system and that Stockton lacks an adequate monitoring program to detect, report, and address SSOs and their impacts. CSPA believes significantly more SSOs will be discovered through this enforcement action. CSPA, therefore, specifically puts Stockton on notice that all SSOs, whether specifically reported or not, will be included in this litigation.

Stockton has been continuously discharging raw sewage from Stockton's collection system to area Receiving Waters. Stockton is responsible for violations described in this section occurring in the five years prior to the date of this Notice Letter. These violations are ongoing. CSPA will include additional violations including, but not limited to, SSOs occurring after the date of this Notice Letter when additional information becomes available. Information currently available to CSPA indicates that Stockton has taken inadequate affirmative steps to eliminate these violations by improving the decrepit, outdated, and poorly operated and maintained collection system. Because Stockton has failed to undertake appropriate and adequate measures, these violations will continue in the future. Every day that Stockton has discharged and continues to discharge raw sewage into area Receiving Waters is a separate and distinct violation of Section 301 of the Clean Water Act. 33 U.S.C. § 1311. Stockton's violations will continue each day it discharges SSOs in violation of the requirements of the CWA. Stockton is subject to penalties for all violations of the Clean Water Act occurring in the past five years.

2. Non-Stormwater MS4 Permit Violations: Discharges of Sewage from the Collection System to the Municipal Separate Storm Sewer System and to Receiving Waters in Violation of the MS4 Permits and Clean Water Act Section 301, 33 U.S.C. § 1311

The MS4 Permits prohibit the discharge of non-storm water (material other than storm water) into the Stockton Urbanized Area's MS4. 2002 MS4 Permit, Discharge Prohibitions B.1; 2007 MS4 Permit, Discharge Prohibitions B.1. SSOs that enter the Stockton Urbanized Area's MS4 are not storm water but rather raw sewage. Information currently available to CSPA indicates that Stockton, the County, or both have violated Clean Water Act Section 301 by allowing the discharge of non-storm water in the form of SSOs into the Stockton Urbanized Area's MS4. Stockton reported to the regulatory agencies such illegal discharges of non-storm

⁶ CSPA bases this number on information provided by OES, the Regional Board, and Stockton. The evidence includes, OES Spill Reports, Stockton's Spill Table provided to the Regional Board since January 2004, Stockton's sewer overflow master reports, work orders, and other correspondence from Stockton indicating SSOs from its collection system.

water to the Stockton Urbanized Area's MS4 on at least 1,487 occasions. Stockton and/or the County violate the MS4 Permit every time an SSO from the Stockton collection system enters the Stockton Urbanized Area's MS4. *Id.* Moreover, information available to CSPA indicates that discharges of non-storm water in the form of SSOs to the Stockton Urbanized Area MS4 occur on many more occasions than reported to the regulatory agencies. CSPA will add additional violations by both Stockton and/or the County as they are discovered in the course of this litigation. CSPA, therefore, specifically puts Stockton and/or the County on notice that each discharge of non-storm water, in the form of SSOs, into Stockton or the County's MS4 will be included in this enforcement action.

The MS4 Permit also prohibits discharges containing pollutants not reduced to the maximum extent practicable from the MS4. 2002 MS4 Permit, Discharge Prohibitions A.3; 2007 MS4 Permit, Discharge Prohibitions A.3. Every time water is discharged from the Stockton Urbanized Area's MS4 into the Delta containing raw sewage or other prohibited non-storm water elements, the MS4 Permit is violated. *Id.* Likewise, these discharges violate the MS4 Permits by causing or contributing to a violation of water quality standards by contributing to the Delta's impairment by pathogens. *See* 2002 MS4 Permit, Receiving Water Limitations, C.2; 2007 MS4 Permit, Receiving Water Limitations, C.2. Information available to CSPA indicates that Stockton, the County, or both have discharged non-storm water, including in the form of sewage from SSOs, from the Stockton Urbanized Area's MS4 in violation of the MS4 Permits. CSPA will add additional violations by both Stockton and/or the County as they are discovered in the course of this litigation.

Stockton, the County, or both have continuously allowed discharges of non-storm water, in the form of SSOs, into the Stockton Urbanized Area's MS4. Stockton, the County, or both have also continuously discharged pollutants from the Stockton Urbanized Area's MS4. Stockton, the County, or both are responsible for violations described in this section occurring in the five years prior to the date of this Notice Letter. CSPA will include additional violations when additional information becomes available. Stockton, the County, or both have taken inadequate affirmative steps to eliminate these violations, thus these violations are ongoing and will continue in the future.

Every day that non-storm water, in the form of SSOs, enters the Stockton Urbanized Area's MS4 is a separate and distinct violation of Clean Water Act section 301, 33 U.S.C. § 1311, and the MS4 Permit. Similarly, every day that pollutants not reduced to the maximum extent practicable are discharged from the MS4, or every day that pollutants discharged from the MS4 cause or contribute to a violation of water quality standards is a separate and distinct violation of the Clean Water Act section 301, 33 U.S.C. § 1311, and the MS4 Permit. Stockton's and/or the County's violations will continue each day discharges of non-storm water from SSOs enter the Stockton Urbanized Area's MS4 or pollutants are discharged from the MS4 in violation of the requirements of the CWA and the MS4 Permit. Stockton, the County, or both are subject to penalties for all violations of the Clean Water Act occurring in the past five years.

3. Effluent Limitation and Monitoring Requirements Violations: Stockton's Exceedances of Effluent Limitations and Failures to Monitor in Violation of

the RWCF Permit and Clean Water Act Section 301, 33 U.S.C. § 1311

As explained, the Stockton RWCF discharges an average of 55 million gallons per day (“MGD”) of effluent into the San Joaquin River. The RWCF Permit imposes effluent limitations on the effluent from the RWCF before being discharged to the San Joaquin River Outfall. RWCF Permit, Effluent Limitations, B.1.-12. The RWCF Permit requires the sampling and analysis of each of the RWCF effluent discharges for various constituents on a daily, weekly, monthly, and/or semi-annual basis. *Id.*, Provisions, G.18. Information currently available to CSPA indicates that Stockton has been violating the effluent limitations and monitoring requirements set forth in the RWCF Permit.

Effluent Limitations in the RWCF Permit regulate and limit the discharge of pollutants from the San Joaquin River Outfall. *See* RWCF Permit, Effluent Limitations B.1.-12. For example, the RWCF Permit imposes effluent limitations for total coliform, which Stockton is responsible for achieving in its effluent. *Id.*, B.1. The RWCF Permit requires monitoring in order to ensure that the effluent shall not exceed the proscribed limits, and compliance is intended to be achieved through secondary treatment, tertiary and, as necessary, pretreatment and source control. RWCF Permit, Monitoring and Reporting Requirements at 1-9. Stockton has violated and continues to violate the effluent limitations of the RWCF Permit as set forth in the Table of Effluent Violations attached to this Notice Letter as Exhibit A.⁷

Stockton has exceeded, and continues to exceed various effluent limitations.⁸ *See* Exhibit A. Stockton has also failed, and continues to fail to conduct required monitoring of its effluent. *Id.* Specifically, Stockton has violated the RWCF Permit’s effluent limits on 604 occasions, and has violated the RWCF Permit’s monitoring requirements on 279 occasions. *See* Exhibit A. CSPA believes that many more violations of effluent limitations or other limitations in the RWCF Permit, monitoring requirements, and/or reporting requirements will be discovered in the course of this enforcement action. CSPA therefore specifically puts Stockton on notice that these additional violations will be included in this enforcement action.

Stockton is responsible for violations described in this section occurring in the past five years. CSPA will include additional violations including, but not limited to, effluent violations occurring after the date of this Notice Letter when CSPA becomes aware of such violations. Every day that Stockton has discharged and continues to discharge effluent in violation of effluent limitations established by the RWCF Permit is a separate and distinct violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311. These violations will continue each day effluent is discharged in violation of the RWCF Permit and the requirements of the CWA.

⁷ The Discharge Monitoring Reports submitted by Stockton to the Regional Board pursuant to the RWCF Permit Monitoring and Reporting Requirements establish the effluent limitation and monitoring violations identified in Exhibit A.

⁸ Stockton may have paid the mandatory minimum penalty, imposed by the Regional Board, for some of the violations indicated in Exhibit A. CSPA does not believe the mandatory civil penalty process employed by the Regional Board represents diligent prosecution of those violations pursuant to Clean Water Act Section 309(g), 33 U.S.C. § 1319(g), and CSPA intends to seek penalties for those violations. In addition, CSPA will seek injunctive relief for those violations.

Likewise, failure by Stockton to monitor as required by the RWCF Permit is a separate and distinct violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311. These violations will continue time Stockton fails to monitor in violation of the RWCF Permit and the requirements of the CWA. Stockton is subject to penalties for all violations of the Clean Water Act occurring in the past five years other than violations diligently prosecuted and already penalized by the Regional Board under law comparable to CWA section 309(g), 33 U.S.C. § 1319(g).

V. CONCLUSION

CSPA will seek injunctive relief pursuant to CWA Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), and declaratory relief and such other relief permitted by law to remedy the CWA violations outlined above. Furthermore, CSPA will seek civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d) and the EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, set forth at 40 C.F.R. § 19.4. These provisions of law authorize civil penalties for each separate violation of the Clean Water Act occurring between November 4, 1999 and March 15, 2004 of up to \$27,500 per day per violation and civil penalties of up to \$32,500 per day per violation for all CWA violations after March 15, 2004. Finally, CSPA will seek to recover costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

Upon expiration of the 60-day notice period, CSPA will file a citizen suit enforcement action pursuant to Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CSPA is willing to discuss effective remedies for the violations noted in this letter. If Stockton or the County wish to pursue such discussions in the absence of litigation, we suggest that they initiate those discussions immediately. If good faith negotiations are not being conducted at the close of the 60-day notice period, CSPA will move forward with litigation.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to Lawyers for Clean Water, Inc. and Lozeau Drury LLP, at the addresses/numbers below:

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Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Stephen Johnson, Administrator
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