

**RESOLUTION NO. 35-2019**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING EXECUTION  
OF SETTLEMENT AGREEMENT BETWEEN THE CITY OF PACIFICA AND CALIFORNIA  
RIVER WATCH**

**WHEREAS**, by letter dated March 8, 2019, California River Watch ("River Watch") sent notice that it intended to file suit against the City of Pacifica ("City") for violating the Clean Water Act ("CWA Notice"); and

**WHEREAS**, the Clean Water Act is a strict liability statute that provides statutory penalties for violations including sanitary sewer overflows and effluent limitation violations; and

**WHEREAS**, the City and River Watch have negotiated a settlement agreement in which the City has agreed to formalize many of its practices, make several revisions to the Sanitary Sewer Master Plan, create a link on its website to the State Water Resources Control Board CIWQS SSO Public Reports website, and provide River Watch certain monitoring data within 30 days of a request. In exchange, River Watch will fully and finally release the City for all claims identified in the CWA Notice; and

**WHEREAS**, the Parties desire to enter into the settlement agreement attached hereto as Exhibit A to completely and finally resolve the claims identified in the CWA Notice.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Pacifica hereby approves and authorizes the City Manager to execute the Settlement Agreement between the City of Pacifica and California River Watch in substantially the form attached hereto as Exhibit A.

. . . . .

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the 9<sup>th</sup> day of September 2019, by the following vote:

**AYES**, Councilmembers: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier

**NOES**, Councilmembers: None.

**ABSENT**, Councilmembers: None.

**ABSTAIN**, Councilmembers: None.

**CITY OF PACIFICA**

  
\_\_\_\_\_  
Sue Vaterlaus, Mayor

~~APPROVED AS TO FORM:~~

  
\_\_\_\_\_  
For Michelle Marchetta Kenyon, City Attorney

ATTEST:

  
\_\_\_\_\_  
Sarah Coffey, City Clerk



**EXHIBIT A**  
**Settlement Agreement between the City of Pacifica and California**  
**River Watch**



## 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 Pacifica, a municipal corporation (“**City**”). CRW and the City are sometimes hereinafter each referred to as “**Party**” or collectively as the “**Parties**.”

### RECITALS

A. CRW 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 waters and groundwaters 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 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 sanitary sewer collection system consistent with numerous regulatory requirements, including, but not limited to NPDES No. CA0038776. The City has also been enrolled under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (“**Statewide WDR**”), State Water Resources Control Board Order No. 2006-003-DWQ since the adoption of the WDR in May 2006.

C. On or about March 8, 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 operations of its sanitary sewer collection system violated the Clean Water Act. A copy of the CWA Notice is attached to this Agreement as Exhibit A.

D. Following issuance of the CWA Notice, the Parties 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, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the CWA Notice.

F. CRW and the City have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving CRW’s allegations, as set forth in the CWA Notice, including, without limitation, any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to 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:

## AGREEMENT

1. Parties Bound by this Agreement and Length of 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.

2.1 Collection System: A 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.

2.2 Condition Assessment: A report that comprises inspection, rating, and evaluation of the condition of the Collection System. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines, manhole inspections for structural defects, and inspections of pipe connections at the manhole. 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.

2.3 Condition Assessment Cycle: A Condition Assessment of the entire sewer Collection System requiring each sewer line to be CCTV'd at least every ten (10) years, but does not require all sewer lines to be on the same CCTV schedule.

2.4 Full Condition Assessment: A Condition Assessment, (excluding Surface Water Condition Assessment) of all sewer lines in the Collection System, except for sanitary sewer laterals.

2.5 Surface Water Condition Assessment: A Condition Assessment of sewer lines in the Collection System, (excluding sanitary sewer laterals) located within two hundred (200) feet of a surface water or beach.

2.6 Significantly Defective: A sewer line is considered to be Significantly Defective if its condition receives a Structural or Operation and Maintenance grade of 4 or 5 based on the PACP rating system or an equivalent rating system developed by the City. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect
- 2 – Minor to moderate defect
- 1 – Minor defect

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 following:

3.1 Collection System Investigation and Repair.

3.1.1 Repair or replace all gravity sewer lines and/or manholes found to be Significantly Defective as defined in the Condition Assessment within fifteen (15) days for those with a PACP rating of 5, and within sixty (60) days for those with a rating of 4.

3.1.2 Repair, replace, or take other appropriate action (defined as diverting sewage flow from a sewer line or abandoning a sewer line in lieu of repair or replacement), for gravity sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a sewer system overflow (“SSO”) or, if in the City’s discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced.

3.1.3 Sewer pipe segments which contain defects with a PACP rating of 3 that are not repaired or replaced within five (5) years are to be re-CCTV’d every ten (10) years to ascertain the condition of the sewer line segment. If the City determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle.

3.2 Condition Assessment Cycle. The City shall reinspect all sewer lines, manholes, and segments at least once every ten (10) years.

3.3 SSO Reporting and Response.

3.3.1 The City will comply with all training, reporting, and response actions set forth in the State and Federal permits, and regulatory and legislative requirements imposed by the various agencies having jurisdiction over the City’s Collection System and the City shall continue to provide the following information to the CIWQS State Reporting System:

(a) The method or calculations, and the actual calculations, used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered as approved by the State Water Resources Control Board and Sanitary Sewer collection industry (e.g., the California Water Environmental Association/Southern Collection System Committee);

(b) For Category I and II Spills, a good faith effort to ascertain an accurate estimate of the start time of the SSO based upon direct observation and witness inquiry rather than setting the start time of the SSO as the time the call was received or the SSO was reported.

(c) Taking of photographs of the manhole flow at the SSO site using either the San Diego or Central Coast Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume. The City shall keep a record of the time and date each photograph taken pursuant to this Section 3.3.1.c.

(d) Any time a section of sewer line is Surcharged by a storm event or surge tide, the City will report such event as an SSO. As used in this Agreement, “**Surcharge**” refers to the overloading of a sewer line beyond its design capacity such that sewage overflows out of the sewer line due to the inflow and/or infiltration of water. In the event of an SSO described in this Section 3.3.1.d, the City shall sample for sewage and instruct the testing laboratory to return test results within 24-hours.

3.3.2 In the event that an SSO of one thousand (1,000) gallons or more poses a risk to health or the environment and reaches a surface water, the City shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include ammonia, human fecal indicators, and dissolved oxygen. Water quality sampling results shall be reported in an appropriate category on the CIWQS reporting form to the extent required by the State Water Resources Control Board.

#### 3.4 City’s Compliance With Obligations Under Statewide WDR.

3.4.1 Compliance with the Statewide WDR includes, but is not limited to, the preparation of a Sewer System Management Plan (“**SSMP**”), and complying with the requirements in this Agreement to develop and implement an adequate spill response training and sampling program to determine the nature and impact of all SSOs. A subpart of the SSMP is the Overflow Emergency Response Plan (“**OERP**”). Cleanup and disinfection must be set forth in the certified SSMP. Within sixty (60) days from the Effective Date of this Agreement the City shall update its certified SSMP to include the cleanup and disinfection procedures associated with an SSO event as well as any remedial requirements set forth in this Agreement.

(a) For SSOs reaching surface waters, the City shall sample for ammonia, fecal coliform, and dissolved oxygen, for any SSO that is greater than one thousand (1,000) gallons or that may pose a risk to health or the environment. In the event the City cannot confirm that specific human pathogens from an SSO have been removed or mitigated, the City shall post and maintain appropriate public notification signs and place barricades to keep vehicle and pedestrian traffic away from contact with the spilled sewage.

(b) For Major SSOs that contaminate a significant area and may pose a significant danger to public health, the City shall post signs, barricades, and/or contact the local media as set forth in the OERP and/or Emergency Operations Plan. For purposes of this Agreement a “**Major SSO**” is defined as any discharge of ten thousand (10,000) gallons or more. The signs and other public notices will not be removed until the Health Department or other agency with jurisdiction over the matter has determined there is no further risk to public health and the environment.

3.4.2 Sampling and testing is required to determine the extent and impact of any SSO whenever the SSO either enters a surface water or is discharged to land (including beaches) where it poses a risk to public health or the environment.



3.4.3 The City, after an initial response to the spill to protect public health, safety, or the environment, shall collect sample(s). Samples should be collected as soon as reasonably possible after the discovery of the SSO.

3.4.4 In the event that an SSO of one thousand (1,000) gallons or more poses a risk to health or the environment and reaches a surface water, the City shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include ammonia, human fecal indicators, and dissolved oxygen. Water quality sampling results shall be reported in an appropriate category on the CIWQS reporting form to the extent required by the State Water Resources Control Board.

3.4.5 In the event an SSO of one thousand gallons (1,000) or more poses a risk to health or the environment and reaches land (including beaches), the City shall collect and test samples for human fecal indicators. Water quality sampling results shall be reported in an appropriate category on the CIWQS reporting form to the extent required by the State Water Resources Control Board.

### 3.5 Chemical Root Control.

3.5.1 The City shall use root control chemicals registered by the federal Environmental Protection Agency or the Regional Water Quality Control Board. All root control contractors shall be instructed that applications shall comply with the recommendations of the manufacturer of the chemical and as required by Cal-OSHA. All root control agents shall have a half-life of fewer than sixty (60) days in water.

3.5.2 The City shall maintain records that identify the pipe section treated with a root control chemical, a map identifying locations where treatment occurs, the chemical(s) used including the MSDS sheets, and the amount(s) of chemical(s) applied.

3.5.3 The City will monitor areas of the Collection System where chemical root control has been used for vegetation die-off in a pattern suggesting root control chemicals have escaped from the sewer resulting in plant mortality. If such vegetation die-off is observed, the City will take action to avoid recurrence.

3.6 SSMP Update. Within sixty (60) days after the Effective Date of this Agreement, the City shall update its SSMP and OERP, if necessary, to include the remedial terms set forth in Section 3 of this Agreement. The City's SSMP shall be kept current and properly certified.

3.7 City Website. 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.

4. Reporting to River Watch. Between the Effective Date and Termination Date, the City shall, within thirty (30) calendar days of receiving a request from CRW, provide CRW with its receiving monitoring data showing compliance with the receiving water limitations in its NPDES permit including both narrative as well as numeric limits.

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 to 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 ten (10) 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.

7.1 Release by RWC. 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 in the CWA Notice or any Clean Water Act violation, if any, that occurred on or before the Effective Date, with regard to the City's Collection System. 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 action, claims, damages, penalties, demands, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising exclusively out of the specific claims asserted in the CWA Notice or that otherwise occurred on or before the Effective Date concerning the operation and ownership of the City's Collection System ("**Claims**"). The release provided for herein shall be valid and effective whether the Claims 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 shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

7.2 Waiver of Civil Code Section 1542. The releases contained in this Section 7 are intended to be complete and final as to the City and to cover (1) known Claims asserted in the CWA Notice, and also (2) unknown Claims asserted in the CWA Notice, which, if known by a CRW at the time of executing this Agreement, might have affected its actions. Accordingly, CRW expressly waives the benefit of the provisions of section 1542 of the California Civil Code with respect to the released claims only, which section provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE

DEBTOR OR RELEASED PARTY.

  
CRW

This waiver of unknown Claims does not extend to unknown Claims other than those Claims asserted in the CWA Notice or arising directly or indirectly from this Agreement.

7.3 Covenant Not to Sue. The Parties agree not to sue each other, or in any way assist any other third party in suing one another, with respect to any Claims released under this Agreement. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any dispute, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of the releases contained herein.

8. Termination Date. This Agreement shall terminate two (2) years after the Effective Date.

9. 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.

9.1 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, that Party 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.

9.2 Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

10. Waiver. By agreeing to the dispute resolution provisions set out in Section 9 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 general, punitive, consequential, or special damages due to any form of breach.

11. Notices. 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 nationally-recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by electronic mail 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: [lh28843@sbcglobal.net](mailto:lh28843@sbcglobal.net)

If to the City: City of Pacifica  
City Hall  
170 Santa Maria Avenue  
Pacifica, CA 94044  
Attn.: City Manager

AND Michelle Marchetta Kenyon  
Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612-3501  
Email: [mkenyon@bws.com](mailto:mkenyon@bws.com)

The foregoing addresses may be changed by Notice given in accordance with this Section.

Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier 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.

12. 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.

13. 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.

14. 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.

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

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

17. 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.

18. 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.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal or competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, then this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

20. 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.

21. 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.

22. 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.


23. Attorneys' Fees and Costs. Each of the Parties shall bear its own attorneys' fees and costs incurred in connection with the CWA Notice and drafting of this Agreement.

*[Signatures on following page]*

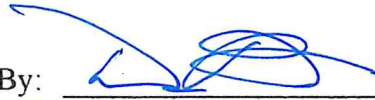
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

**CITY:**

CITY OF PACIFICA, a California municipal corporation

By:   
Name: Kevin Woodhouse  
Title: City Manager  
Date: 7/17/19

**APPROVED AS TO FORM:**

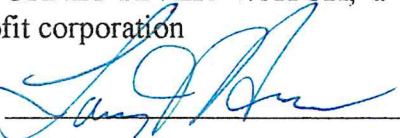
By:   
*For* Michelle Marchetta Kenyon, City Attorney

**ATTEST:**

By:   
Sarah Coffey, City Clerk

**CALIFORNIA RIVER WATCH:**

CALIFORNIA RIVER WATCH, a California nonprofit corporation

By:   
Name: Larry Hanson  
Title: Board President  
Date: Aug. 16, 2019

# EXHIBIT A

## Law Office of Jack Silver

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



**Via Certified Mail –  
Return Receipt Requested**

March 8, 2019

Kevin Woodhouse, City Manager  
Members of the City Council  
City of Pacifica  
City Hall  
170 Santa Maria Avenue  
Pacifica, CA 94044

Louis C. Sun, P.E., Deputy Director of Public Works  
- Wastewater Division  
Head of Agency  
Calera Creek Water Recycling Plant  
700 Pacific Coast Highway  
Pacifica, CA 94044

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

Dear Mr. Woodhouse, Members of the City Council, Mr. Sun and Head of Agency:

### 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 City of Pacifica’s ownership and operation of the Calera Creek Water Recycling Plant (“Facility”) and its associated sewer collection system.

River Watch hereby places the City of Pacifica (“Discharger”) as owner and operator of the Facility and associated 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 Discharger for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Francisco Bay, Water Quality Control Plan (“Basin Plan”), as the result of violations of the Discharger’s National Pollution Discharge Elimination System (“NPDES”) Permit.

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

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

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute, see CWA § 505, 33 U.S.C. § 1365. River Watch is exercising such citizen enforcement to enforce compliance by the Discharger 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 No. CA0038776, SWRCB Order No. R2-2017-0013 which is superseded by Order No. R2-2012-0002, collectively referred to hereafter as the “NPDES Permit.” River Watch has identified specific violations of the NPDES Permit by the Discharger including raw sewage discharges and failure to either comply with or provide evidence that the Discharger has complied with all the terms of the NPDES Permit.

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

River Watch contends that from February 01, 2014 through February 01, 2019, the Discharger has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.



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

i. Sanitary Sewer Overflow Occurrences

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

The Facility’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 including San Pedro Creek, Calera Creek, Pacifica State Beach and the Pacific Ocean – all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as 146, with 1,072,240 “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, the Discharger admits at least 1,048,772 gallons, or 97% of the total, reached a surface water. These discharges pose both a nuisance pursuant to California Water Code § 13050(m) as well as an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 16 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 846274, 843609, 832908, 832529, 831609, 831497, 831496, 830764, 822870, 822645, 821087, 820757, 811365, 811360, 811357, and 811355. Included in the 16 reported SSOs are the following incidents:

February 20, 2017 (Event ID# 832908) – (Coordinates: 37.59574-122.50341) an SSO estimated at 47,000 gallons occurred at the Linda Mar Lift Station as a result of “flow exceeding capacity”, all of which reached Pacifica State Beach due to the manhole overflowing.

January 08, 2017 (Event ID# 831497) – (Coordinates: 37.59549-122.50375) an SSO estimated at 78,910 gallons occurred at 500 Linda Mar Boulevard as a result of “flow exceeding capacity.” The entire volume spilled into Pacifica State Beach due to the manhole overflowing.

December 11, 2014 (Event ID# 811365) – an SSO estimated at 124,500 gallons occurred at Anza Drive at Arguello Boulevard caused by “surcharged system due to rainfall from a heavy storm.” The entire volume spilled into Pacifica State Beach due to the manhole overflowing.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are 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. Further, these alleged discharges are violations of the NPDES Permit, specifically Order No. CA0038776 which states in Section III. Discharge Prohibitions:

A. Discharge of treated wastewater at a location or in a manner different from that described in this Order is prohibited.

B. The bypass of untreated or partially-treated wastewater to waters of the United States is prohibited.

C. Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

ii. Inadequate Reporting of Discharges

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

In addition, following a review of the SSO reports filed by the Discharger, River Watch's expert believes many of the SSOs reported by the Discharger 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. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the Discharger received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

April 07, 2018 (Event ID # 846274) – (Coordinates: 37.59591-122.50322) the spill start time and agency notification time are both reported as 05:17, the operator arrival time is reported at 00:00, and the estimated spill end time is reported at 07:01. The cause of the spill is reported as "Rainfall Exceeded Design."

March 13, 2016 (Event ID # 822870) – (Coordinates: 37.5958 -122.50346) the spill start time and agency notification time are both reported at 15:40, the operator arrival time is reported at 15:10 and estimated spill end time is reported at 17:04. The cause of the spill is reported as "flow exceeded capacity."

December 11, 2014 (Event ID # 811357) – (Coordinates: 37.59534 -122.50287) the spill start time, agency notification, and operator arrival are all reported at 10:42. The spill end time is reported as 00:00 on December 12, 2014. The cause of the spill is reported as "Rainfall exceeded design."

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 Discharger fails to adequately mitigate the impacts of its SSOs. The Discharger 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 Discharger to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

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 Discharger’s SSOs. Neighboring waterways include sensitive areas for the Western Snowy Plovers, steelhead trout, endangered San Francisco Garter Snake and the threatened California red-legged frog. River Watch finds no record of the Discharger performing any analysis of the impact of its SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system result in discharges to adjacent surface waters either directly or via underground hydrological connections. 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.

River Watch contends untreated or partially treated sewage is discharged from the Discharger’s collection system either directly or via hydrologically connected groundwater to surface waters including San Pedro Creek, Calera Creek, Pacifica State Beach and the Pacific Ocean. Due to SSOs, surface waters become contaminated with pollutants, including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, and video inspection as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the Discharger is a violation of its NPDES Permit and thus the CWA.

C. Violations of Effluent Limitations

A review of the Discharger's Self-Monitoring Reports ("SMRs") identifies the following **Nine (9)** reported violations of effluent limitations imposed under NPDES Permit, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations - Discharge Point 001:

(12/11/2014) Total Suspended Solids (TSS), 1-Hour Average (Mean) limit is 20 mg/L and reported value was 46 mg/L at E-001. Event ID# 986951

(12/11/2014) Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C) Daily Maximum limit is 20 mg/L and reported value was 92.8 mg/L at E-001. Event ID# 986952

(12/11/2014) Turbidity 1-Hour Average (Mean) limit is 10 NTU and reported value was 131 NTU at E-001. Event ID# 986953

(12/11/2014) Copper, Total Recoverable 1-Hour Average (Mean) limit is 15 ug/L and reported value was 37 ug/L at E-001. Event ID# 986954

(02/20/2017) TSS, Percent Removal Daily Minimum limit is 85% and reported value was 42.78% at E-001. Event ID# 1022259

(02/20/2017) BOD (5-day @ 20 Deg. C) Percent Removal Daily Minimum limit is 85% and reported value was 80.53% at E-001. Event ID# 1022260

(02/20/2017) TSS, Daily Maximum limit is 20 mg/L and reported value was 55.5 mg/L at E-001. Event ID# 1022261

(02/20/2017) Turbidity Daily Maximum limit is 10 NTU and reported value was 32 NTU at E-001. \*\*\* "MMP Exempt Reason: This is not a Group I or Group II Pollutant, and is therefore not a serious violation. Further, since this was the only occurrence within the 180 day period (WC 13385(I)(1), it does not require mandatory penalties)." Event ID# 1022262

(08/02/2017) Chronic Toxicity Daily Maximum limit is 1.0 TUc and reported value was 12.1 TUc at E-001. Event ID# 1032130.

D. Impacts to Beneficial Uses

Discharges in excess of effluent limitations, SSOs, and overwhelming already saturated irrigation fields cause prohibited pollution by unreasonably affecting beneficial uses of neighboring waterways.

The City of Pacifica is located about 12 miles south of San Francisco. Situated between Sweeney Ridge in the east, Montara Mountain to the south, and the bluffs of the Pacific Ocean rocky on the west, it's 6-mile stretch of coastal beaches and hills are a popular destination for both locals and tourists. Pacifica's Coastal Zone is part of 8 watersheds, some of which drain directly into the

Pacific Ocean. Others feed one of 5 creeks, including Calera Creek and San Pedro Creek, both waterways affected by the discharges described in this Notice.

The Facility is located near the mouth of Calera Creek, west of Highway 1. The lower reach of Calera Creek in the Coastal Zone was part of a significant restoration project implemented in 1997 and 1998 which included excavation of a new stream channel, restoration of 16 acres of wetlands and 12 acres of surrounding uplands. The restoration site receives additional tertiary-treated wastewater from the Facility adding approximately 3.6 million gallons per day (mgd) to the lower reach. The amount of flow generated by the Facility varies with rainfall and usage.

Calera Creek drains approximately 1,600 acres via two forks: a main channel to the north, and a smaller southern fork – Rockaway Creek. Land use is dominantly residential with some businesses along main roads. The contributing area of Calera Creek is altered along the valley bottom and near the mouth. Calera Creek is now perennial in the lower reach due to input from the Facility. The Creek is intermittent with residual pools above the Facility's discharge point, and is habitat for the threatened California Red-Legged Frog and endangered San Francisco Garter Snake.

San Pedro Creek is a perennial stream running from the Santa Cruz Mountains through the San Pedro Valley to its mouth at Pacifica State Beach. It drains a 5,114-acre basin and is composed of 5 main tributaries that delineate 7 sub-watersheds. The Creek has 4 major forks: the North, Middle, South, and Sanchez. The San Pedro Creek watershed is bordered by the Pacific Ocean to the northwest and by mountains on the 3 remaining sides. Pacific Coast Highway crosses the watershed at its northwestern edge. Urban development covers most of the valley floor extending up onto some hillsides. The watershed is approximately 33% developed (residential, commercial, mixed urban or build-up, and other urban or built-up). Open areas and parklands in and around the watershed harbor wildlife such as deer, bobcat, fox, and turkey vultures. San Pedro Creek provides the only good habitat for a native steelhead population between San Francisco and Half Moon Bay.

Pacifica State Beach is the southernmost of Pacifica's beaches, winding 0.75 miles long in a crescent shape at the mouth of the San Pedro Valley in downtown Pacifica off the Pacific Coast Highway. Though technically a State Beach, it is operated by the City of Pacifica as a public park. Pacifica State Beach marks the northern gateway to the coastline stretching south of San Francisco and is widely regarded as the best beach for both surfing and kayaking in the Bay Area. It is frequently referred to as Linda Mar Beach because it fronts the Linda Mar subdivision. Pacifica State Beach provides habitat for the Western Snowy Plover, a shorebird designated as Threatened under the Endangered Species Act. Pacifica State Beach and San Pedro Creek are listed as impaired water bodies under CWA § 303(d) due to high indicator bacteria levels.

River Watch is understandably concerned as to the effects of both surface and underground exceedances of the NPDES Permit limitations to beneficial uses applicable to San Pedro Creek, Calera Creek, Pacifica State Beach, and the Pacific Ocean as well as the impacts of SSOs in and around the diverse and sensitive ecosystem of the Facility and the locations where sewage spills from the Discharger's collection system have occurred.

### **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 Pacifica, as owner and operator of the Calera Creek Water Recycling Plant and its associated collection system, as well as 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 are identified in records created and/or maintained by or for the Discharger which relate to its ownership and operation of the Facility and associated sewer collection system as described in this Notice.

The Discharger owns and operates the Facility, a publicly-owned treatment works, and its associated collection system. The Facility provides advanced-secondary treatment of domestic and commercial wastewater collected from its service area and discharges to Calera Creek. The Facility currently serves a population of approximately 39,000. The collection system consists of 82 miles of gravity sewers, 50 miles of public laterals, 4.2 miles of force mains and 5 pump stations with a total pumping capacity of 34,000 gallons per minute. In addition, there are an estimated 3,500 private sewer laterals in the San Pedro Creek watershed. The sewer laterals in the older neighborhoods of the lower San Pedro Creek Valley are constructed of tarpaper-like materials more than 50 years old. The Facility can provide advanced-secondary treatment for an average daily dry weather design flow of 4.0 mgd and a peak wet weather discharge capacity to Calera Creek of 20 mgd. In 2016, the average daily dry weather flow was 1.9 mgd.

Wastewater flows by gravity to the Sharp Park and Linda Mar pump stations where it is screened to remove inorganic objects then pumped to the Facility. The first stage of treatment at the Facility is a vortex chamber separating grit from the sewage. The influent then goes to the sequencing batch reactors basins – a combination of primary and secondary treatment and nutrient removal. The sludge left over from this process is pumped to a biosolids holding tank, and then thickened and pumped into the digesters. In the digesters, the ATAD organisms live at a high temperature which kills bacteria and other organisms found in sewage. After the sludge settles to the bottom of the basins, water is drawn out from the middle and drained to the filters. Passage through sand filters removes any remaining particles. The water then passes through the UV disinfection channel and is discharged into the environment via Calera Creek.

The first of 2 treatment areas is the treatment swales associated with the Anza Storm Drain Pump Station along Highway 1 north of Pacifica State Beach extending to Crespi Drive. The second is the Linda Mar Storm Drainage Pump station where water is pumped from the Linda Mar wet well into a storm water treatment swale surrounding the pump station. Another feature links both the Linda Mar and Anza Pump Station wet wells together, such that diversion flows from both drainage sheds can go to either and/or both of the treatment wetlands. Water which would normally be discharged onto the beach is pumped into a treatment swale from this pump station wet well and thus diverted from beach discharge during low flow and first flush situations.

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

The range of dates covered by this Notice is February 01, 2014 through February 01, 2019. This Notice also includes all violations of the CWA by the Discharger which occur during and after this Notice period up to and including the time of trial.

**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 Supplemental Notice as “River Watch,” an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

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

**RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with the Discharger and its staff to tailor remedial measures to the specific operation of the Facility and associated sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures 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 sewer 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.
4. Ensuring application of chemical root control complies with federal EPA or the RWQCB-SF as well as manufacturer and Cal-OSHA requirements.
5. Keeping the Sewer System Management Plan for the Facility 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 reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, swimming, fishing, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, 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 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 Discharger to contact counsel for River Watch within 20 days after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. 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:lhbm



**Service List**

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