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Via Certified Mailing - Return Receipt

February 11, 2011

Rod Huls, General Manager
Bodega Bay Public Utility District
265 Doran Park Road
P.O. Box 70
Bodega Bay, CA 94923

John S. Locey, P.E., President
and Registered Agent for Service
Brelje & Race Consulting Civil Engineers
475 Aviation Boulevard, Suite 120
Santa Rosa, CA 95403

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Huls and Mr. Locey:

NOTICE

The Clean Water Act ("CWA" or "Act") Section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby gives notice to Bodega Bay Public Utility District and Brelje & Race Consulting Civil Engineers (hereafter, collectively "BBPUD,") that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against BBPUD for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance identified and outlined in this Notice.

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 specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch identifies discharges of partially treated and raw sewage from BBPUD's privately owned treatment works including its collection, storage, treatment and disposal systems to groundwater and surface waters in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing discharges to hydrologically-connected groundwater and surface waters as the activities leading to violations, and describing with particularity specific incidents which may or may have not been reported in public reports and other public documents in BBPUD's possession or otherwise available to BBPUD. River Watch incorporates by reference the records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are Brelje & Race Consulting Civil Engineers as operators or partial operators of the facilities identified herein and the Bodega Bay Public Utility District as owners and partial operators of said facilities. The parties are identified individually herein and collectively as "BBPUD". This Notice includes both named entities as well as all of their employees responsible for compliance with the CWA and compliance with any applicable state and federal regulations and permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in records either created or maintained by or for BBPUD, including the records cited further in this Notice and the description of specific incidents referenced below.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined State Water Resource Control Board and Regional Water Quality Control Board records for the period from February 1, 2006 to February 1, 2011. The range of dates covered by this Notice is from February 1, 2006 to February 1, 2011. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, Telephone/Facsimile 707-824-4372, email: US@ncriverwatch.org which is referred to throughout this Notice as “River Watch”. River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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BACKGROUND

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, which has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens’ suits pursuant to 33 U.S.C. § 1365 to enforce violations of effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1). River Watch contends that currently, BBPUD has no NPDES permit allowing it to discharge pollutants to waters of the United States.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the 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 and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, North Coast Region (“RWQCB”).

Among its other activities, BBPUD collects primarily residential and some commercial sewage. Its sewage collection system has numerous lift stations at various elevations and several miles of sewer lines. Sewage is transported via the trunk line to the Bodega Bay Public Utility District sewer plant for processing.

BBPUD owns and/or operates wastewater treatment and disposal facilities which serve the Bodega Bay area. The facilities are located approximately one mile south of the community of Bodega Bay and adjacent to Bodega Harbour, within the watershed of Bodega Bay. The wastewater treatment facilities are currently designed to provide secondary treatment of waste generated by the community of Bodega Bay and the Bodega Harbour subdivision, and consist of an extended aeration treatment plant followed by clarification, filtration and disinfection systems. The treated, disinfected waste is stored in ponds and disposed of in spray irrigation of the Bodega Harbour Golf Course or pasture land. Solids generated during the treatment process are aerobically digested, dried on sand beds and used as a soil amendment on irrigated pasture lands.

The beneficial uses of Bodega Bay and adjacent waters include but are not limited to: industrial water supply; navigation; water contact recreation; non-contact water recreation; ocean commercial and sport fishing; preservation of areas of special biological significance; wildlife habitat; marine habitat; habitat for threatened and endangered species; fish spawning; and, shellfish harvesting.

Sources of discharge by BBPUD to waters of the United States include the following areas, locations and activities:

1. Unlined storage ponds are hydrologically connected and adjacent to United States waters. The ponds discharge through hydrologically-connected groundwater to United States waters. The ponds have also been reported as overflowing into the adjacent United States waters;
2. BBPUD has exceeded the agronomic loading to the lands it uses for spreading of its sludge. BBPUD over-irrigates the Bodega Harbour Golf Course and the other lands it uses for disposal. There are numerous reports of BBPUD irrigating during storm events. The disposal has been seen to be running off the disposal properties into adjacent waters of the United States via natural and artificial conduits; and,
3. BBPUD's collection system has a history of chronic surface overflows of untreated sewage. Structural defects in the collection system, which allow inflow and infiltration ("I/I") of rainwater and groundwater into the sewer lines, result in a buildup of pressure which also causes sewage system surface overflows. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters. Some surface overflows discharge directly overland into surface waters. Underground leakages caused by pipeline cracks and

other defects result in discharges to these adjacent surface waters via underground hydrological connections. Surface waters and groundwater become contaminated with fecal coliform, exposing persons to human pathogens. These chronic collection system failures thereby pose a substantial threat to public health.

BBPUD's collection system that is more than one mile in length. However, a review of the files at the RWQCB and the State Water Resources Control Board, identifies no enrollment by BBPUD in, or any attempt to comply with SWRCB Order No. 2006-0003-DWQ ("Statewide General WDR") which proscribes statewide, general waste discharge requirements for all sanitary sewer systems of one mile or more in length. River Watch contends BBPUD has no NPDES permit, and only has a waste discharge requirement permit for land disposal which specifically prohibits any discharge to waters of the State or the United States.

As stated previously, the CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a NPDES permit. Pursuant to the CWA and the Basin Plan for the RWQCB, any point source discharge of effluent to waters of the United States must comply with technology-based, tertiary treatment standards at a minimum, as well as any additional stringent requirements necessary to meet applicable water quality standards. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater.

River Watch contends BBPUD discharges pollutants from numerous point sources including but not limited to storage ponds, its collection system, disposal system and sludge land spreading equipment. Discharges by BBPUD as described herein constitute a nuisance. These discharges are injurious to health, indecent and offensive to the senses, and/or an obstruction to the free use of property. Discharges occur during, or as a result of, the transportation, disposal or treatment of wastes. River Watch contends the operations of BBPUD at its collection system are not regulated under a NPDES Permit, nor do they appear to be regulated under the Statewide General WDR.

This ongoing discharge of pollutants to waters of the United States without a NPDES Permit poses an immediate threat to public health and the environment from both surface overflows and underground leakage of untreated sewage which impacts both surface and groundwater.

REMEDIAL MEASURES REQUESTED

River Watch believes the following listed remedial measures are necessary in order to bring BBPUD into compliance with the CWA. Also, that the implementation of these measures will reduce the biological impacts of BBPUD's non-compliance upon public health and the environment surrounding BBPUD's waste treatment facilities:

1. Reduction of collection system I/I through an aggressive collection system management, operation and maintenance (“CMOM”) program, including clear time lines for prioritized repairs based on an industry-recognized system for rating the severity of sewer pipeline defects;
2. A mandatory, private sewer lateral inspection and repair program, funded cooperatively by BBPUD and triggered by the sale of property or based on geographical, age and/or composition factors – preferably coordinated with repair of the sewer mains to which the laterals are connected. In the alternative, a voluntary program whereby BBPUD negotiates discounted group rates for private lateral inspection and repair in conjunction with repair of the sewer mains to which the laterals are connected, supported by a grant and/or low cost loan program funded and administered by BBPUD;
3. Creation of website capacity to receive private party reports of sewage overflows. Provision of notification to all customers and other members of the public as to the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports. Included on said website would be regularly updated information regarding known overflows for the prior three years, and tracking of repeated overflows at the same or proximate locations in order to highlight hot spots for priority rehabilitation status. Also to be included would be information regarding the time an overflow was reported, the estimated time it began, its estimated flow rate, cleanup activities and proximity to storm drains or other water channels such that the public has access to the basis for a report that an overflow did not reach a surface water; and,
4. Performance of human marker testing on surface waters adjacent to sewer lines which have more serious structural defects as determined by the defect rating system referenced above, to test for sewage contamination from underground exfiltration. Said testing to be funded and administered by BBPUD. Test results to be considered in prioritizing sewer line rehabilitation.

VIOLATIONS

River Watch contends that between February 1, 2006 to February 1, 2011, BBPUD has violated the CWA, the RWQCB’s Basin Plan and the Code of Federal Regulations by reason of discharging pollutants to waters of the United States from its collection systems without a NPDES permit.

The below-listed violations are derived from eye witness reports and records publically available, or records in the possession and control of BBPUD. Furthermore, River Watch contends these violations are continuing.

<u>Violations</u>	<u>Description</u>
1825	<p>Collection System Overflows Caused by Underground Exfiltration Reaching Surface Water via Migration Through Underground Tributaries.</p> <p>This is an event in which untreated sewage is discharged from the collection system prior to reaching the treatment plant. Underground discharges are alleged to have been continuous throughout the period from February 1, 2006 to February 1, 2011. Evidence to support the allegation of underground discharge of raw sewage exists in BBPUD's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the subregional treatment plant reported in BBPUD's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks and wetlands, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.</p>
250	<p>Sewage System Surface Overflows.</p> <p>As estimated from eye witness reports and public documentation or information in the possession and control of BBPUD, between February 1, 2006 and February 1, 2011, BBPUD had approximately 250 surface overflows from the sewage collection system. Records at the RWQCB and State Water Resources Control Board contain no evidence that BBPUD has either reported any such overflows itself, or has the capacity to monitor and report such incidences. Therefore, the number of surface overflows alleged herein is based upon extrapolation from current data and eye witness reports from citizens.</p>
1825	<p>Discharges From Hydrologically-Connected Storage Ponds</p> <p>BBPUD's storage ponds are unlined and are hydrologically connected to water of the United States. Therefore it is alleged these ponds discharge to waters of the United States each and every day of operation from February 1, 2006 to February 1, 2011.</p>
100	<p>Discharge from Storage Pond Overflow</p> <p>Visual occurrences of overflows from BBPUD's storage ponds demonstrate numerous overflows from February 1, 2006 to February 1, 2011. Based upon eye witness accounts it is estimated the ponds overflow an average of 20 times per year.</p>

Discharge During Disposal to Saturated Soils Causing Runoff

Numerous accounts exist of BBPUD over-watering the Bodega Harbour Golf Course and the other lands it uses for effluent disposal. Spray disposal can often be seen during rain events, with the discharge seen being placed on saturated soils causing runoff to surface waters. Based upon eye witness accounts, it is estimated the over-watering runoff incidents occur on an average of 100 times per year between the period February 1, 2006 to February 1, 2011.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by BBPUD's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against BBPUD for the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if BBPUD wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,


Jack Silver

JS:lhmm

cc:

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