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10 CALIFORNIA RIVER WATCH

11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 CALIFORNIA RIVER WATCH, a
501(c)(3), non-profit, Public Benefit
15 Corporation,

16 Plaintiff,

v.

17 COUNTY OF MADERA; DOES
18 1-10, Inclusive,

19 Defendants.
20 _____/

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

(Environmental - Safe Drinking Water Act
42 U.S.C. § 300f *et seq.*)

21 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH (“RIVER WATCH”), by and
22 through its attorneys, and for its Complaint against Defendants, COUNTY OF MADERA and
23 DOES 1-10, Inclusive, (collectively hereafter, “the COUNTY”) states as follows:

24 **I. NATURE OF THE CASE**

25 1. This is a citizens’ suit for relief brought by RIVER WATCH under the Federal Safe
26 Drinking Water Act (hereafter, “SDWA”), 42 U.S.C. §300f *et seq.*, specifically SDWA §1449,
27 42 U.S.C. §300j-8, to prevent the COUNTY from repeated and ongoing violations of the
28 SDWA. These violations are detailed in the May 2, 2013 Notice of Violations and Intent to File

1 Suit (“SDWA Notice”) made part of these pleadings and attached hereto as EXHIBIT A.

2 2. RIVER WATCH alleges the COUNTY, whose Board of Supervisors sits as the Board
3 of Directors of Maintenance District # 6 (“Lake Shore”), Maintenance District # 24 (“Teaford
4 Meadows”), and Maintenance District # 42 (“Still Meadow”), illegally fails to ensure that these
5 public community water systems do not exceed the Maximum Contaminant Levels as established
6 by the U.S. Environmental Protection Agency (“EPA”) for arsenic and/or uranium as follows:

7 (a) Maintenance District # 6 – located on the north shore of Bass Lake on Road 274
8 and providing drinking water to a population of over 150 residents, regulated under California
9 Water Permit No. CA2000550 issued by the California Department of Public Health, and
10 allegedly violating the Maximum Contaminant Levels for arsenic and uranium.

11 (b) Maintenance District # 24 – located west of the community of North Fork and
12 providing drinking water to a population of over 150 residents, regulated under California Water
13 Permit No. CA2000552 issued by the California Department of Public Health, and allegedly
14 violating the Maximum Contaminant Level for arsenic.

15 (c) Maintenance District # 42 - located in the area of Still Meadow Drive and Road
16 426 in the community of Oakhurst, providing drinking water to a population of over 100
17 residents, regulated under California Water Permit No. CA2000737 issued by the California
18 Department of Public Health, and allegedly violating the Maximum Contaminant Levels for
19 arsenic and uranium.

20 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
21 the imposition of civil penalties, and other relief for the COUNTY’s violations as set forth in this
22 Complaint.

23 **II. PARTIES TO THE ACTION**

24 4. RIVER WATCH is an Internal Revenue Code §501(c)(3) non-profit public benefit
25 corporation duly organized under the laws of the State of California, with headquarters and main
26 office located at 290 S. Main Street, #817, Sebastopol, California. RIVER WATCH is dedicated
27 to protecting, enhancing and helping to restore the groundwater and surface water environs of
28 California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools,

1 aquifers, and associated environs, as well as to educate the public concerning environmental
2 issues associated with these environs. Members of RIVER WATCH reside in central California
3 including Madera County where the facilities under the COUNTY's operation and/or control
4 which are the subject of this Complaint are located. Said members drink the waters affected by
5 the COUNTY's illegal actions as alleged herein. Said members have environmental and personal
6 health and safety interests in said drinking water which are or may be adversely affected by the
7 COUNTY's violations as alleged herein. Furthermore, the relief sought will redress the injury
8 in fact, likelihood of future injury and interference with the interests of said members.

9 5. RIVER WATCH is informed and believes and on such information and belief alleges that
10 Defendant COUNTY OF MADERA, with headquarters located at 200 West Fourth Street, in
11 Madera, California, is now, and at all times relevant to this Complaint was, a "supplier of water"
12 as defined by 42 U.S.C. §300f(5) and 40 C.F.R. §121.2. At all times relevant hereto, the
13 COUNTY owned and operated "public water systems," as defined by 42 U.S.C. §300f(4) and
14 40 C.F.R. §141.2. identified as Maintenance District 6 - Lake Shore, Maintenance District 24 -
15 Teaford Meadows, and Maintenance District 42 - Still Meadow, regulated under California
16 Water Permit Numbers CA2000550, CA2000552, and CA2000737 respectively, issued by the
17 California Department of Public Health.

18 6. RIVER WATCH is informed and believes and on such information and belief alleges that
19 Defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
20 entities, who are, or were, responsible for, or in some way contributed to, the violations which
21 are the subject of this Complaint or are, or were, responsible for the maintenance, supervision,
22 management, operations, or insurance coverage of the COUNTY's operations as identified in
23 the SDWA Notice and this Complaint. The names, identities, capacities, and functions of
24 defendants DOES 1 - 10, Inclusive are presently unknown to RIVER WATCH. RIVER
25 WATCH shall seek leave of court to amend this Complaint to insert the true names of said
26 DOES defendants when the same have been ascertained.

27 **III. JURISDICTIONAL ALLEGATIONS**

28 7. Subject matter jurisdiction is conferred upon this Court by SDWA §1449(a), 42 §300j-

1 8(a), which states in part,

2 “any person may commence a civil action on his own behalf against any person
3 . . . who is alleged to be in violation of any requirement prescribed by or under
4 [SDWA] ...’ The United States district courts shall have jurisdiction, without
5 regard to the amount in controversy or the citizenship of the parties, to enforce
6 in an action brought under [SWDA] any requirement prescribed by or under
7 [SWDA] ...”

8 For purposes of SDWA §1449(a), “the term ‘person’ means an individual, corporation,
9 association ...” under SDWA §1401(12), 42 U.S.C. §300f(12).

10 8. All violations and activities complained of in this Complaint occur at the public water
11 system(s) owned and operated by the COUNTY.

12 9. Members and supporters of RIVER WATCH reside in or regularly visit Maintenance
13 Districts # 6, # 24 and #42, governed by the COUNTY Board of Supervisors serving as the
14 Board of Directors of each Maintenance District, and drink the water provided by the COUNTY.
15 The health interests of RIVER WATCH and its members may be, have been, are being, and will
16 continue to be adversely affected by the COUNTY’s unlawful violations as alleged herein.
17 RIVER WATCH contends there exists an injury in fact to its members, causation of the injury
18 by the COUNTY’s complained of conduct, and a likelihood that the requested relief will redress
19 that injury.

20 10. Pursuant to SWDA §1449(b), 42 U.S.C. §300j-8(b), RIVER WATCH gave notice of the
21 violations alleged in this Complaint more than sixty days prior to commencement of this action
22 to: (a) the COUNTY, (b) the United States EPA, Federal and Regional, (c) the State of
23 California Department of Public Health, and (d) the State of California Department of Justice.

24 **IV. STATUTORY AND REGULATORY BACKGROUND**

25 11. SDWA §1412(b)(1)(A), 42 U.S.C. §300g-1(b)(1)(A), requires the EPA to identify
26 contaminants in public water supply systems which may have an adverse human health effect
27 and for which regulation would present a “meaningful opportunity” for reduction of that health
28 risk. For each of the contaminants identified SDWA §1412(b)(1), SDWA §1412(b)(1)(E)

1 requires the EPA to establish maximum contaminant level goals (“MCLGs”) as well as
2 Maximum Contaminant Levels (“MCLs”). The EPA established an MCL for arsenic at 10µ/l
3 (see 41 C.F.R. §141.62(b)(2)); and an MCL for uranium at 20 ug/L (see 41 C.F.R. §141.66).

4 12. A violation of the SWDA occurs when testing/monitoring indicate that the level of a
5 contaminant in treated water is above the MCL.

6 **V. VIOLATIONS**

7 13. RIVER WATCH alleges the COUNTY’s recurring violations of the MCLs for arsenic
8 and uranium, as detailed in the SDWA Notice, are violations of SDWA §1412, 42 U.S.C. §300g-
9 1. The violations are established in the California Department of Public Health’s “All Source
10 Chemical Monitoring” files and the COUNTY’s records. On October 10, 2013 RIVER WATCH
11 received an e-mail from the COUNTY (time-stamped 2:13 pm from County Counsel Doug
12 Nelson), stating, in relevant part:

13 “MD #6 (Lake Shore Park) compliance order was issued June 25, 2007 for
14 arsenic and radionucleides (*sic*). The water system is now on the CDPH active
15 project list with a total project cost of \$500,000.00. A replacement well is
16 being drilled. The district is on the path to solving the arsenic and
17 radionucleides (*sic*) problem.

18 MD 24 (Teaford Meadows) originally had an arsenic exceedance but because
19 the running annual average was below MCLs for arsenic the system was
20 bypassed by the state for funding. Well #4 was deepened and showed signs of
21 arsenic so there will likely be a compliance order in the future and the district
22 will make a new application for state funding. The coliform issue is resolved.
23 MD 42 (Still Meadows) exceeds MCLs for arsenic and uranium. A compliance
24 order was issued June 25, 2007. The water system is on the CDPH active
25 project list with a total feasibility study project cost of \$278,000 which is prop.
26 84 funded. The solution to the problem may lie in an intertie with another
27 system.”

28 //

1 14. The enumerated violations are detailed in the SWDA Notice, the COUNTY's October
2 10, 2013 e-mail correspondence with RIVER WATCH, and with the section of the SDWA
3 violated by the described activity set forth below.

4 15. The location of the discharges are the discharge points as described in the SWDA Notice.

5 **VI. FIRST CLAIM FOR RELIEF**

6 **Violation of 42 U.S.C. §300g-1, 40 C.F.R. Part 141 – Exceeding the MCL for Arsenic**

7 16. RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs
8 1 through 15 above as though fully set forth herein, including all allegations in the SDWA
9 Notice. RIVER WATCH is informed and believes, and on such information and belief, alleges
10 as follows:

11 17. The COUNTY has violated and continues to violate the MCL for arsenic in Maintenance
12 Districts # 6, #24 and #42 as evidenced by the list of reported violations the COUNTY has
13 provided to the California Department of Public Health and confirmed in its October 10, 2013
14 e-mail to RIVER WATCH.

15 18. The violations of the COUNTY as alleged in this Complaint are ongoing and will
16 continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which
17 may have occurred or will occur prior to trial, but for which data may not have been available
18 or submitted or apparent from the face of the reports or data submitted by the COUNTY to the
19 California Department of Public Health prior to the filing of this Complaint. RIVER WATCH
20 will amend this Complaint if necessary to address the COUNTY's Federal violations which may
21 occur after the filing of this Complaint. Each of the COUNTY's violations is a separate violation
22 of the SDWA.

23 19. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the
24 issuance of appropriate equitable relief, the COUNTY will continue to violate the SDWA as well
25 as Federal standards with respect to the enumerated discharges and releases alleged herein.
26 Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and
27 its members, prevent future injury, and protect the interests of its members which are or may be
28 adversely affected by the COUNTY's violations of the SDWA.

1 20. RIVER WATCH alleges that continuing violations of the SDWA by the COUNTY at
2 Maintenance Districts #6, #24 and #42 will irreparably harm RIVER WATCH and its members,
3 for which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at
4 law.

5 **VII. SECOND CLAIM FOR RELIEF**

6 **Violation of 42 U.S.C. § 300g-1, 40 C.F.R. Part 141 – Exceeding the MCL for Uranium**

7 21. RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs
8 1 through 20 above as though fully set forth herein, including all allegations in the SDWA
9 Notice. RIVER WATCH is informed and believes, and on such information and belief, alleges
10 as follows:

11 22. The COUNTY has violated and continues to violate the MCL for uranium in Maintenance
12 Districts # 6 and #42 as evidenced by the list of reported violations the COUNTY has provided
13 to the California Department of Public Health and confirmed in its October 10, 2013 e-mail to
14 RIVER WATCH.

15 23. The violations of the COUNTY as alleged in this Complaint are ongoing and will
16 continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which
17 may have occurred or will occur prior to trial, but for which data may not have been available
18 or submitted or apparent from the face of the reports or data submitted by the COUNTY to the
19 California Department of Public Health prior to the filing of this Complaint. RIVER WATCH
20 will amend this Complaint if necessary to address the COUNTY's Federal violations which may
21 occur after the filing of this Complaint. Each of the COUNTY's violations is a separate violation
22 of the SDWA.

23 24. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the
24 issuance of appropriate equitable relief, the COUNTY will continue to violate the SDWA as well
25 as Federal standards with respect to the enumerated discharges and releases alleged herein.
26 Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and
27 its members, prevent future injury, and protect the interests of its members which are or may be
28 adversely affected by the COUNTY's violations of the SDWA.

1 25. RIVER WATCH alleges that continuing violations of the SDWA by the COUNTY at
2 Maintenance Districts #6 and #42 will irreparably harm RIVER WATCH and its members, for
3 which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

4 **VIII. RELIEF REQUESTED**

5 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

- 6 26. Declare the COUNTY to have violated and to be in violation of the SDWA;
7 27. Issue an injunction ordering the COUNTY to immediately operate its public community
8 water system in compliance with the SDWA;
9 28. Order the COUNTY to provide public notification by mail and through newspapers of
10 general circulation within two (2) days of receipt of a laboratory report identifying a
11 violation of an MCL to parents/guardians of children, pregnant women, the elderly, and
12 the infirm (among other at-risk individuals);
13 29. Order the COUNTY to fund a Supplemental Environmental Project at Madera
14 Community College addressing the impacts to public health in Maintenance Districts #6,
15 #24, and #42 from arsenic and uranium in drinking water;
16 30. Order the COUNTY to pay civil penalties per violation/per day for its violations of the
17 SDWA;
18 31. Order the COUNTY to pay RIVER WATCH's reasonable attorneys' fees and costs
19 (including expert witness fees); and,
20 32. Grant such other and further relief as may be just and proper.

21
22 DATED: November 20, 2013

LAW OFFICE OF DAVID J. WEINSOFF

23
24 By: David Weinsoff
25 DAVID J. WEINSOFF
26 Attorney for Plaintiff
27 CALIFORNIA RIVER WATCH
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