

1 Jack Silver, Esq. SB #160575
2 [E-mail:lhm28843@sbcglobal.net](mailto:lhm28843@sbcglobal.net)
3 Law Office of Jack Silver
4 Post Office Box 5469
5 Santa Rosa, CA 95402-5469
6 Tel.(707) 528-8175
7 Fax.(707) 528-8675

8 David J. Weinsoff, Esq. SBN 141372
9 Email: david@weinsofflaw.com
10 Law Office of David J. Weinsoff
11 138 Ridgeway Avenue
12 Fairfax, CA 94930
13 Tel. (415) 460-9760
14 Fax. (415) 460-9762

15 Attorneys for Plaintiff
16 CALIFORNIA RIVER WATCH

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

19 CALIFORNIA RIVER WATCH, a
20 501(c)(3), nonprofit, Public Benefit
21 Corporation,

Case No.: 1:14-cv-01501-MJS

22 Plaintiff,
23 v.

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF, CIVIL
PENALTIES, RESTITUTION AND
REMEDATION**

24 COUNTY OF FRESNO and DOES 1 -
25 10, Inclusive,

(Environmental - Safe Drinking Water Act
42 U.S.C. § 300f *et seq.*, Resource Conservation
and Recovery Act - 42 U.S.C. §6901 *et seq.*)

26 Defendants.

JURY DEMAND

27 _____/

Initial Scheduling Conf. - February 19, 2015

28 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH (“RIVER WATCH”), by and
through its attorneys, and for its First Amended Complaint against Defendants, COUNTY OF
FRESNO and DOES 1-10, Inclusive, (collectively hereafter, “COUNTY”) states as follows:

I. NATURE OF THE CASE

1. This is a citizens’ suit for relief brought by RIVER WATCH under the Federal Safe
Drinking Water Act (“SDWA”), 42 U.S.C. §300f *et seq.*, specifically SDWA §1449, 42 U.S.C.
§300j-8, and the Federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901
et seq., specifically RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), to prevent the COUNTY
from repeated and ongoing violations of the SDWA and the RCRA. These violations are

1 detailed in the April 28, 2014 Notice of Violations and Intent to File Suit (“SDWA Notice”)
2 made part of these pleadings and attached hereto as EXHIBIT A, and in the September 25, 2014
3 Notice of Violations and Intent to File Suit (“RCRA Notice”) made part of these pleadings and
4 attached as EXHIBIT B.

5 2. RIVER WATCH alleges the COUNTY illegally fails to ensure that its public community
6 water system, specifically (i) County Service Area No. 32 – “Cantua Creek” regulated under
7 California Water Supply Permit No. 03-23-09P-017, (ii) County Service Area No. 49 – “J.E.
8 O’Neill Farming Community” regulated under California Water Supply Permit No. 03-23-12P-
9 016, and (iii) County Waterworks District No. 40 – “Shaver Springs” regulated under a domestic
10 water supply permit issued by the California Department of Public Health, does not exceed the
11 Maximum Contaminant Level (“MCL”) established by the U.S. Environmental Protection
12 Agency (“EPA”) for haloacetic acids (HAA5), total trihalomethanes (TTHM), and Gross Alpha,
13 as detailed in the SDWA Notice, as well as the failure to conduct requiring sampling. RIVER
14 WATCH alleges that the COUNTY’s transport and supply through these community water
15 systems of hazardous waste – Gross Alpha at Shaver Springs and HAA5 and TTHM at Cantua
16 Creek and J.E. O’Neill Farming Community – is a violation of RCRA § 7002(a)(1)(B), 42
17 U.S.C. § 6972(a)(1)(B), by creating an imminent and substantial endangerment to human health
18 or the environment. The RCRA provides that any person may commence a civil action against
19 any person including a past or present generator, or transporter of hazardous or solid waste, or
20 owner or operator of a treatment, storage or disposal facility who has contributed to the current
21 or past storage, or treatment, or transportation, or disposal of any solid or hazardous waste which
22 may present an imminent and substantial endangerment to health or to the environment.

23 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
24 the imposition of civil penalties, and other relief for the COUNTY’s violations as set forth in this
25 First Amended Complaint.

26 **II. PARTIES TO THE ACTION**

27 4. RIVER WATCH, is, and at all times relevant to this First Amended Complaint was, a
28 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of

1 California, with headquarters located in Sebastopol, California and offices in Los Angeles,
2 California. The mailing address of RIVER WATCH's northern California office is 290 S. Main
3 Street, #817, Sebastopol, CA 95472. The mailing address of RIVER WATCH's southern
4 California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. RIVER WATCH is
5 dedicated to protecting, enhancing, and helping to restore surface and ground waters of
6 California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated
7 environs, biota, flora and fauna, and to educate the public concerning environmental issues
8 associated with these environs.

9 Members of RIVER WATCH reside in or regularly visit central California including the
10 County of Fresno where the facilities under the COUNTY's operation and/or control which are
11 the subject of this First Amended Complaint are located. Said members are affected by the
12 COUNTY's illegal actions as alleged herein. Said members have environmental and personal
13 health and safety interests in said drinking water which are or may be adversely affected by the
14 COUNTY's violations as alleged herein. Furthermore, the relief sought will redress the injury
15 in fact, likelihood of future injury and interference with the interests of said members.

16 5. RIVER WATCH is informed and believes, and on such information and belief alleges,
17 that the COUNTY, with headquarters located at 2220 Tulare Street in Fresno, is now, and at all
18 times relevant to this First Amended Complaint was, a "supplier of water" as defined by 42
19 U.S.C. § 300f(5) and 40 C.F.R. § 121.2. At all times relevant hereto, the COUNTY owned and
20 operated a "public water system," as defined by 42 U.S.C. § 300f(4) and 40 C.F.R. § 141.2 and
21 permitted by the California Department of Public Health. RIVER WATCH is informed and
22 believes, however, that the COUNTY has no hazardous waste permit issued by any California
23 or Federal agency for the storage, treatment or disposal of hazardous or solid waste at its
24 community water systems at Shaver Springs, Cantua Creek, and J.E. O'Neill Farming
25 Community.

26 6. RIVER WATCH is informed and believes, and on such information and belief alleges,
27 that Defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
28 entities, who are, or were, responsible for, or in some way contributed to, the violations which

1 are the subject of this First Amended Complaint or are, or were, responsible for the maintenance,
2 supervision, management, operations, or insurance coverage of the COUNTY's facilities and
3 operations as identified in the SDWA Notice, the RCRA Notice and this First Amended
4 Complaint. The names, identities, capacities, and functions of Defendants DOES 1 - 10,
5 Inclusive are presently unknown to RIVER WATCH. RIVER WATCH shall seek leave of court
6 to further amend these pleadings to insert the true names of said DOES defendants when the
7 same have been ascertained.

8 III. JURISDICTIONAL ALLEGATIONS

9 7. Subject matter jurisdiction is conferred upon this Court by SDWA §1449(a), 42 §300j-
10 8(a), which states in part,

11 "any person may commence a civil action on his own behalf against any person
12 . . . who is alleged to be in violation of any requirement prescribed by or under
13 [SDWA] ..." The United States district courts shall have jurisdiction, without
14 regard to the amount in controversy or the citizenship of the parties, to enforce
15 in an action brought under [SWDA] any requirement prescribed by or under
16 [SWDA] ..."

17 For purposes of SDWA §1449(a), "the term 'person' means an individual, corporation,
18 association ..." under SDWA §1401(12), 42 U.S.C. §300f(12).

19 Subject matter jurisdiction is further conferred upon this Court by RCRA § 7002(a)(1),
20 42 U.S.C. § 6972(a)(1), which states in relevant part,

21 "... any person may commence a civil action on his own behalf (A) against any
22 person . . . who is alleged to be in violation of any permit, standard, regulation,
23 condition requirement , prohibition or order which has become effective
24 pursuant to this chapter, or (B) against any person . . . who has contributed or
25 who is contributing to the past or present handling, storage, treatment,
26 transportation or disposal of any solid or hazardous waste which may present an
27 imminent and substantial endangerment to health or the environment."

28

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

3 9. Members and supporters of RIVER WATCH reside in or regularly visit the COUNTY.
4 The health interests of RIVER WATCH and its members may be, have been, are being, and will
5 continue to be adversely affected by the COUNTY's unlawful violations as alleged herein.
6 RIVER WATCH contends there exists an injury in fact to its members, causation of that injury
7 by the COUNTY's complained of conduct, and a likelihood that the requested relief will redress
8 that injury.

9 10. Pursuant to SWDA §1449(b), 42 U.S.C. §300j-8(b), RIVER WATCH gave notice of the
10 violations alleged in this First Amended Complaint more than sixty days prior to commencement
11 of this action to: (a) the COUNTY, (b) the United States EPA, Federal and Regional, (c) the
12 State of California Department of Public Health, and (d) the State of California Department of
13 Justice. The SDWA Notice is attached to this First Amended Complaint as EXHIBIT A and
14 fully incorporated herein.

15 Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), RIVER WATCH gave notice
16 of the violations alleged in this First Amended Complaint more than ninety days prior to the
17 commencement of this lawsuit to: (a) the COUNTY, (b) the United States EPA, Federal and
18 Regional, (c) the State of California Water Resources Control Board, and (d) the State of
19 California Integrated Waste Management Board. The RCRA Notice is attached to this First
20 Amended Complaint as EXHIBIT B and fully incorporated herein.

21 **IV. STATUTORY AND REGULATORY BACKGROUND**

22 11. SDWA §1412(b)(1)(A), 42 U.S.C. §300g-1(b)(1)(A), requires the EPA to identify
23 contaminants in public water supply systems which may have an adverse human health effect
24 and for which regulation would present a "meaningful opportunity" for reduction of that health
25 risk. For each of the contaminants identified SDWA §1412(b)(1), SDWA §1412(b)(1)(E)
26 requires the EPA to establish maximum contaminant level goals ("MCLGs") as well as
27 Maximum Contaminant Levels ("MCLs"). The EPA established an MCL for HAA5 at 60 μ /l,
28 TTHM at 80 μ /l, Gross Alpha Emitters at 15 pCi/L (*see* 41 C.F.R. § 141). A violation of the

1 SWDA occurs when testing/monitoring indicate that the level of a contaminant in treated water
2 is above the MCL.

3 12. The RCRA's statutory goals are to protect the public from harm caused by waste disposal;
4 to encourage reuse, reduction, and recycling; and to clean up spilled or improperly stored wastes.
5 RCRA specifically protects groundwater and drinking water supplies, and would require a
6 hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste such
7 as Gross Alpha Emitters, HAA5, and TTHM through a community water system. The absence
8 of such permit poses an imminent and substantial endangerment to health or to the environment
9 under RCRA section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).

10 **V. VIOLATIONS**

11 13. RIVER WATCH alleges the COUNTY's recurring violations of the MCLs for HAA5
12 and TTHM at "Cantua Creek" and "J.E. O'Neill Farming Community," and Gross Alpha at
13 "Shaver Springs," as detailed herein and in the SDWA Notice, are violations of SDWA § 1412,
14 42 U.S.C. § 300g-1. The violations are established in California Department of Public Health's
15 "All Source Chemical Monitoring" files and the COUNTY's records. The California Department
16 of Public Health's "Compliance Orders" enumerate the alleged violations in No. 03-23-13R-010
17 (for Gross Alpha MCL Non-Compliance at "Shaver Springs"), in No. 03-23-13R-007 and No.
18 03-12-08O-003 (for HAA5 and TTHM MCL Non-Compliance at "Cantua Creek"), and No. 03-
19 23-13R-006 and No. 03-23-12O-012 (for HAA5 and TTHM MCL Non-Compliance at "J.E.
20 O'Neill Farming Community").

21 14. County Service Area No. 32 - Cantua Creek, is located on the north side of Clarkson
22 Avenue, west of San Mateo Avenue, and provides drinking water to a population of
23 approximately 230 residents in the Cantua Creek farm labor housing development. The water
24 supply is raw surface water which is treated by the COUNTY prior to distribution. The
25 COUNTY has reported "positive" detections above the MCLs for HAA5 and TTHM and has
26 failed to conduct required sampling occurring during specific quarterly reporting periods
27 between 2009 and 2014. County Service Area No. 49 - J.E. O'Neill Farming Community, is
28 located in the area of S. Lassen Avenue and W. Mt Whitney Avenue, in the non-contiguous areas

1 adjacent to the Fresno, Coalinga Road (SR-145), approximately 3 miles southwest of the
2 community of Five Points, and provides drinking water to a population of approximately 450
3 residents in the farming community of J.E. O'Neill. The water supply is raw surface water,
4 treated by the COUNTY prior to distribution. The COUNTY has reported "positive" detections
5 above the MCLs for HAA5 and TTHM, and has failed to conduct required sampling occurring
6 during specific quarterly reporting periods between 2009 and 2014. County Waterworks District
7 No. 40 - Shaver Springs, is located mainly along Shaver Springs Road near its intersection with
8 Tollhouse Road, with Tocaloma Road to the north and Elk Lane and Natoma Road to the south,
9 and provides drinking water to a population of approximately 160 residents for the Shaver
10 Springs subdivision. The water supply is groundwater. The COUNTY has reported "positive"
11 detections above the MCL for Gross Alpha emitters, and has failed to conduct required
12 sampling, occurring during specific quarterly reporting periods between 2009 and 2014. The
13 violations for each of these Special Districts are described herein and in the SWDA Notice with
14 particularity, and are based on data detailed in public reports and other documents in the
15 COUNTY's possession or otherwise available to the COUNTY. In addition to these reported
16 violations, RIVER WATCH could find no evidence in any public reports that the COUNTY has
17 determined the quality of water delivered to end-users in any of the three (3) identified Special
18 Districts.

19 15. RIVER WATCH alleges the COUNTY to be a past and present generator, past and
20 present transporter, past and present owner and operator of a treatment facility, which has
21 contributed to or which is contributing to the past and present handling, storage, treatment, and
22 transportation of hazardous waste which may present an imminent and substantial endangerment
23 to health or the environment. RIVER WATCH alleges the COUNTY transports Gross Alpha
24 Emitters, HAA5, and TTHM, each of which is a "hazardous waste" and "solid waste" under the
25 RCRA, through its community public water systems at Shaver Springs, Cantua Creek, and the
26 J.E. O'Neill Farming Community without a hazardous waste permit. As referenced fully in the
27 RCRA Notice, the EPA describes clearly the dangers to human health and environment
28 associated with the hazardous wastes identified in this First Amended Complaint and discharged

1 by the COUNTY when consumed in drinking water. The EPA states that “some people who
2 drink water containing apha emitters in excess of the MCL over many years may have an
3 increased risk of getting cancer.” The EPA states that “when people are exposed to disinfection
4 byproducts [including HAA5 and TTHM] at high levels over many years, they may develop
5 bladder cancer or problems with their liver, kidneys, or circulatory system. There may also be
6 a connection between exposure to DBPs [Disinfection Byproducts] during pregnancy and
7 miscarriages, premature births, low birth weight, and birth defects.”

8 **VI. FIRST CLAIM FOR RELIEF**

9 **Violation of SDWA - 42 U.S.C. §300g-1, 40 C.F.R. Part 141 –**

10 **Exceeding the MCL for HAA5, TTHM, Gross Alpha**

11 16. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs
12 1 through 15 above as though fully set forth herein, including all allegations in the SDWA
13 Notice. RIVER WATCH is informed and believes, and on such information and belief, alleges
14 as follows:

15 17. The COUNTY has violated and continues to violate the MCL for HAA5, TTHM, and
16 Gross Alpha Emitters as evidenced by the list of reported violations it has provided to the
17 California Department of Public Health and identified in the Department’s “Compliance Orders”
18 - No. 03-23-13R-010 (for Gross Alpha MCL Non-Compliance at Shaver Springs); No. 03-23-
19 13R-007 and No. 03-12-08O-003 (for HAA5 and TTHM MCL Non-Compliance at Cantua
20 Creek); and No. 03-23-13R-006 and No. 03-23-12O-012 (for HAA5 and TTHM MCL Non-
21 Compliance at J.E. O’Neill Farming Community).

22 18. The violations of the COUNTY as alleged in this First Amended Complaint are ongoing
23 and will continue after the filing of this First Amended Complaint. RIVER WATCH alleges
24 herein all violations which may have occurred or will occur prior to trial, but for which data may
25 not have been available or submitted or apparent from the face of the reports or data submitted
26 by the COUNTY to the California Department of Public Health prior to the filing of this First
27 Amended Complaint. RIVER WATCH will further amend the pleadings if necessary to address
28 the COUNTY’s Federal violations which may occur after the filing of this First Amended

1 Complaint. Each of the COUNTY's violations is a separate violation of the SDWA.

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

8 20. RIVER WATCH alleges that continuing violations of the SDWA by the COUNTY at
9 County Service Areas No. 32 and 49, and County Waterworks District No. 40 will irreparably
10 harm RIVER WATCH and its members, for which harm RIVER WATCH and its members have
11 no plain, speedy or adequate remedy at law.

12 **VII. SECOND CLAIM FOR RELIEF**

13 **Violations of RCRA - 42 U.S.C. § 6972(a)(1)(B) –**

14 **Imminent and Substantial Endangerment to Health or to the Environment**

15 RIVER WATCH incorporates by reference the allegations of Paragraphs 1 through 20
16 as though fully set forth herein, including all allegations in the RCRA Notice. River Watch is
17 informed and believes, and on such information and belief, alleges as follows:

18 21. The pollutants identified in the preceding paragraphs of this First Amended Complaint
19 are known carcinogens or reproductive toxins, and when released into the environment in
20 sufficient quantity, pose an imminent or substantial risk to public health or to the environment
21 in general. The amount of said pollutants used, handled, stored, transported, disposed of or
22 treated by the COUNTY is in sufficient quantity to pose an imminent or substantial risk to
23 environment or to human health.

24 22. The COUNTY is of the class of entities covered by RCRA § 7002(a)(1)(B) and qualifies
25 as a past or present generator, past or present transporter of hazardous or solid waste, or a past
26 or present owner or operator of a treatment, or storage, or disposal facility which has contributed
27 or is contributing to the past or present storage, treatment, transportation, or disposal of any solid
28 or hazardous waste which may present an imminent and substantial endangerment to health or

1 the environment, by virtue of the activities and endangerment as alleged in the preceding
2 paragraphs of this First Amended Complaint, and by reason of the following:

- 3 a. The presence of the contaminants Gross Alpha Emitters, TTHM and HAA5 in the
4 COUNTY's public water supply system in excess of EPA's established MCLs;
- 5 b. Transporting pollutants through the COUNTY's public water system;
- 6 c. Failing to operate the COUNTY's public water system properly to ensure no
7 contaminants are in excess of EPA's established MCLs;
- 8 d. Generating solid or hazardous waste; and,
- 9 e. Being the owner or operator of the community public water system through which
10 said contaminants are transported.

11 23. The levels of pollutants in the COUNTY's community public water system remain high
12 above the allowable MCLs for said constituents, creating an imminent and substantial
13 endangerment to public health or the environment.

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

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

1 26. RIVER WATCH alleges that continuing violations of the RCRA by the COUNTY at
2 County Service Areas No. 32 and 49, and County Waterworks District No. 40 will irreparably
3 harm RIVER WATCH and its members, for which harm RIVER WATCH and its members have
4 no plain, speedy or adequate remedy at law.

5 **VIII. RELIEF REQUESTED**

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

7 27. Declare the COUNTY to have violated and to be in violation of the SDWA and the
8 RCRA;

9 28. Issue an injunction (i) ordering the COUNTY to immediately operate its community
10 public water system in compliance with the SDWA, and (ii) enjoining the COUNTY from
11 discharging chemicals and chemical constituents from the COUNTY community public
12 water system which pose an imminent and substantial risk to human health and the
13 environment;

14 29. Order the COUNTY to provide public notification by mail and through newspapers of
15 general circulation within two (2) days of receipt of a laboratory report identifying a
16 violation of an MCL to parents/guardians of children, pregnant women, the elderly, and
17 the infirm (among other at-risk individuals from HAA5, TTHM and Gross Alpha in
18 drinking water);

19 30. Order the COUNTY to fund a Supplemental Environmental Project providing potable
20 drinking water to parents/guardians of children, pregnant women, the elderly, and the
21 infirm (among other at-risk individuals from HAA5, TTHM and Gross Alpha in drinking
22 water) whose doctors provide a written request to the COUNTY;

23 31. Order the COUNTY to pay civil penalties per violation/per day for its violations of the
24 SDWA and the RCRA;

25 32. Order the COUNTY to pay RIVER WATCH's reasonable attorneys' fees and costs
26 (including expert witness fees); and,

27 33. Grant such other and further relief as may be just and proper.
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IX. DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), RIVER WATCH demands a jury trial in this matter.

DATED: January 5, 2015

LAW OFFICE OF JACK SILVER

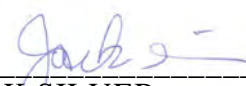
By:  _____
JACK SILVER
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760 fax. 415-460-9762
david@weinsofflaw.com

Via Certified Mail - Return Receipt Requested

April 28, 2014

John Thompson, Resources Division Manager
Division of Public Works & Planning/ Resources Division
County of Fresno
Special Districts Administration
2220 Tulare Street, 6th Floor
Fresno, CA 93721

Re: Notice of Violations and Intent to File Suit under the Safe Drinking Water Act

Dear Mr. Thompson and Special Districts Administration:

NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. §§300f to 300j-26, that River Watch believes are occurring at the Fresno County Service Areas and Fresno County Waterworks District identified in this Notice.

The Safe Drinking Water Act §300j-8(b)(1)(A) requires that sixty (60) days prior to the initiation of a civil action under SDWA §300j-8(a)(1), 42 U.S.C. §1449(a)(1), a citizen must give notice of the intent to sue to the alleged violator and applicable federal and state authorities. River Watch is sending you this Notice to preserve its rights under the Safe Drinking Water Act.

River Watch hereby gives notice to the County of Fresno, Division of Public Works & Planning Resources Division ("the County,") that following the expiration of sixty (60) days from the date of receipt of this Notice, River Watch will be entitled to bring suit in the United States District Court against the County for violations of requirements prescribed by

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
Tel. 415-460-9760 Fax. 415-460-9762
david@weinsofflaw.com

Via Certified Mail - Return Receipt Requested

April 28, 2014

John Thompson, Resources Division Manager
Division of Public Works & Planning/ Resources Division
County of Fresno
Special Districts Administration
2220 Tulare Street, 6th Floor
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The Safe Drinking Water Act §300j-8(b)(1)(A) requires that sixty (60) days prior to the initiation of a civil action under SDWA §300j-8(a)(1), 42 U.S.C. §1449(a)(1), a citizen must give notice of the intent to sue to the alleged violator and applicable federal and state authorities. River Watch is sending you this Notice to preserve its rights under the Safe Drinking Water Act.

River Watch hereby gives notice to the County of Fresno, Division of Public Works & Planning Resources Division ("the County,") that following the expiration of sixty (60) days from the date of receipt of this Notice, River Watch will be entitled to bring suit in the United States District Court against the County for violations of requirements prescribed by

or under the SDWA including, but not limited to: non-compliance with maximum contaminant levels ("MCLs") issued under SDWA §300g-1, 42 U.S.C. §1412 and the Code of Federal Regulations, as exemplified by the incidents of non-compliance identified and outlined in this Notice; failure to properly monitor water quality delivered to end-users; and, failure to conduct required sampling with respect to the three (3) public water systems identified below, operated by the County of Fresno as Special Districts:

County Service Area No. 32 - Cantua Creek
County Service Area No. 49 - J.E. O'Neill Farming Community
County Waterworks District No. 40 - Shaver Springs

The SDWA requires that any Notice regarding an alleged violation of any requirement prescribed by or under the Act shall include sufficient information to permit the recipient to identify the following:

1. *The specific requirement alleged to have been violated.*

In addition to the narratives below, River Watch identifies the results of "All Source Chemical Monitoring" obtained from the California Department of Public Health's Division of Drinking Water and Environmental Management identifying repeated non-compliance with MCLs set by the SWDA at source points in violation of the SDWA's regulation of the maximum permissible level of contaminants in water delivered to any user of a public water system, and failure to conduct required sampling, in violation of SDWA §300fg-1, 42 U.S.C. §1412.

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

County Service Area No. 32 - Cantua Creek -- located on the north side of Clarkson Avenue, west of San Mateo Avenue, provides drinking water to a population of approximately 230 residents in the Cantua Creek farm labor housing development. It is regulated under domestic Water Supply Permit No. 03-23-09P-017, issued by the California Department of Public Health. The water supply is raw surface water which is treated prior to distribution. River Watch has set forth narratives below describing "positive" detections above the MCLs for the disinfection byproducts haloacetic acids (HAA5) and total trihalomethanes (TTHM); occurring during specific quarterly reporting periods between 2009 and 2014.

County Service Area No. 49 - J.E. O'Neill Farming Community -- located in the area of S. Lassen Ave and W. Mt Whitney Ave, in the non-contiguous areas adjacent to the Fresno - Coalinga Road (SR-145), approximately 3 miles southwest of the community of

Five Points, provides drinking water to a population of approximately 450 residents in the farming community of J.E. O'Neill. It is regulated under domestic Water Supply Permit No. 03-23-12P-016 issued by the California Department of Public Health. The water supply is raw surface water, treated prior to distribution. River Watch has set forth narratives below describing "positive" detections above the MCLs for haloacetic acids (HAA5) and total trihalomethanes (TTHM); and, failure to conduct required sampling all occurring during specific quarterly reporting periods between 2009 and 2014.

County Waterworks District No. 40 - Shaver Springs – mainly along Shaver Springs Road near its intersection of Tollhouse Road, with Tocaloma Road to the north and Elk Lane and Natoma Road to the south, provides drinking water to a population of approximately 160 residents for the Shaver Springs subdivision. It is regulated by the California Department of Public Health. The water supply is groundwater. River Watch has set forth narratives below describing "positive" detections above the MCL for radionuclides, and failure to conduct required sampling, occurring during specific quarterly reporting periods between 2009 and 2014.

The violations for each of these Special Districts are described in this Notice with particularity, and are based on data detailed in public reports and other documents in the County's possession or otherwise available to the County. In addition to these reported violations, River Watch could find no evidence in any public reports that the County has determined the quality of water delivered to end-users in any of the three (3) identified Special Districts. 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 entity responsible for the alleged violation is the County of Fresno, Division of Public Works and Planning, Resources Division, and those of its operators and employees responsible for compliance with the SDWA 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 the locations of the Special Districts as set forth in Paragraph 2 above, and in the domestic Water Supply Permits for the Special Districts identified in this Notice.

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

River Watch has examined records on file with the California Department of Public Health and the County. The range of dates covered by this Notice is from April 28, 2009 to April 28, 2014. River Watch will from time to time update this Notice to include violations which occur after the range of dates covered by this Notice. Specific violations occurring on specific dates are listed herein. Some of the violations are continuous in nature such as failure to monitor water quality at point of delivery. Therefore, each day constitutes a separate violation.

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

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch." River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to its rivers, creeks, streams, wetlands, vernal pools and tributaries. River Watch may be contacted via email: US@ncriverwatch.org or through its attorneys.

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

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Fax. 707-528-8675

STATUTORY BACKGROUND

SDWA, 42 U.S.C. §§300f to 300j-26, was enacted in 1974 to "assure that water supply systems serving the public meet minimum national standards for protection of public health." Safe Drinking Water Act. Legislative History, H.R. Rep. No. 93-1185 (1974), reprinted at 1974 U.S.C.C.A.N. 6454. The Act authorizes the EPA to "establish federal standards applicable to public water supplies from harmful contaminants, and establish a joint federal-state system for assuring compliance with these standards and for protecting underground sources of drinking water." *Id.* at 6454-55.

Section 1412(b)(1)(A) of the SDWA requires the EPA to identify contaminants in public water supply systems that may have an adverse human health effect and for which regulation would present a "meaningful opportunity" for reduction of that health risk. 42 U.S.C. §300g-1(b)(1)(A). For each of the contaminants identified under Section 1412(b)(1), Section 1412(b)(1)(E) requires the EPA to establish maximum contaminant level goals ("MCLGs") as well as MCLs. 42 U.S.C. §300g-1(b)(1)(E). A violation of the SDWA occurs when testing/monitoring indicates that the level of a contaminant in treated water exceeds the MCL.

Private parties may bring citizens' suits pursuant to 42 U.S.C. §300j-8 to enforce violations of MCLs. River Watch contends that the County, as operator of the three (3) Special Districts identified in this Notice, is, among its other activities, a supplier of drinking water regulated under the SDWA and, as detailed in the most recent monitoring reports provided by the California Department of Public Health, violating the MCLs for radionuclides, and the disinfection byproducts HAA5 and TTHM.

VIOLATIONS

River Watch contends that between April 28, 2009 and April 28, 2014, the County violated the SDWA and the Code of Federal Regulations by failing to ensure the drinking water supplied to its customers met and continues to meet the standards required by law including, but not limited to: exceeding MCLs for HAA5, TTHM, and radionuclides; failure to conduct required sampling; and, inadequate compliance with monitoring requirements obligating the supplier to confirm water quality at the point of delivery.

The violations listed below are derived from records publically available, or records in the possession and control of the County. Monitoring dates and reported exceedances were taken from files on record with the California Department of Public Health and records in the EPA ECHO database.

COUNTY SERVICE AREA NO. 32 - CANTUA CREEK

MCL - HAA5 - 60 ug/L

Monitoring Dates and Reported Exceedances
(Quarters out of Compliance and Running Annual Averages):

1st Qtr 2013 - 110 ug/L (RAA - 63 ug/L)
2nd Qtr 2013 - 75 ug/L (RAA - 68 ug/L)

MCL - TTHM - 80 ug/L

Monitoring Dates and Reported Exceedances
(Quarters out of Compliance and Running Annual Averages):

1 st Qtr 2012 - 130 ug/L.	(RAA 93 ug/L.)
2 nd Qtr 2012 - 140 ug/L.	(RAA 109 ug/L.)
3 rd Qtr 2012 - 130 ug/L.	(RAA 118 ug/L.)
4 th Qtr 2012 - 140 ug/L.	(RAA 135 ug/L.)
1 st Qtr 2013 - 190 ug/L.	(RAA 150 ug/L.)
2 nd Qtr 2013 - 140 ug/L.	(RAA 150 ug/L.)

COUNTY SERVICE AREA NO. 49 - J.E. O'NEILL FARMING COMMUNITY

MCL - HAA5 60 ug/L

Monitoring Dates and Reported Exceedances
(Quarters out of Compliance and Running Annual Averages):

3 rd Qtr 2012 - 82 ug/L.	
4 th Qtr 2012 - no reported results	
1 st Qtr 2013 - 110 ug/L.	(RAA - 83 ug/L.)
2 nd Qtr 2013 - 98 ug/L.	(RAA - 97 ug/L.)

MCL - TTHM 80 ug/L

Monitoring Dates and Reported Exceedances
(Quarters out of Compliance and Running Annual Averages):

1 st Qtr 2012 - 120 ug/L.	(RAA - 83ug/L.)
2 nd Qtr 2012 - 130 ug/L.	(RAA - 98 ug/L.)
3 rd Qtr 2012 - 150 ug/L.	(RAA - 116 ug/L.)
4 th Qtr 2012 - 140 ug/L.	(RAA - 135 ug/L.)
1 st Qtr 2012 - 180 ug/L.	(RAA - 150 ug/L.)
2 nd Qtr 2012 - 160 ug/L.	(RAA - 158 ug/L.)

COUNTY WATERWORKS DISTRICT NO. 40 - SHAVER SPRINGS

MCL - Gross Alpha Emitters - 15 picoCuries per Liter

Monitoring Dates, Running Annual Averages, and Reported Exceedances:

06/04/2009 - 22.0 pCi/L.
09/15/2009 - 19.4 pCi/L.
03/25/2010 - 97.8 pCi/L.
06/10/2010 - 28.5 pCi/L.
06/23/2010 - 28.0 pCi/L.
(No reported sampling for 3rd Qtr 2010)
12/21/2010 - 20.0 pCi/L.
04/13/2011 - 23.7 pCi/L.
06/21/2011 - 36.5 pCi/L.
09/13/2011 - 34.6 pCi/L.
12/15/2011 - 31.9 pCi/L.
03/14/2012 - 37.3 pCi/L (GA-Ur Quarterly RAA - 15.9 pCi/L)
06/07/2012 - 16.0 pCi/L.
10/04/2012 - 42.4 pCi/L (GA-Ur Quarterly RAA - 19.1 pCi/L)
12/06/2012 - 27.4 pCi/L (GA-Ur Quarterly RAA - 19.1 pCi/L)
03/07/2013 - 34.8 pCi/L (GA-Ur Quarterly RAA - 17.8 pCi/L)
06/11/2013 - 43.3 pCi/L. (GA-Ur Quarterly RAA - 17.1 pCi/L)

MCL - Combined Uranium - 20 pCi/L

Monitoring Dates and Reported Exceedances:

03/25/2010 - 67.3 pCi/L.
06/10/2010 - 26.4 pCi/L.
06/23/2010 - 27.0 pCi/L.
09/13/2011 - 34.4 pCi/L.

MCL - Ra-226 + Ra-228 - 5 pCi/L

Monitoring Dates and Reported Exceedances:

09/15/2009 - 18 pCi/L (13.1 + 4.9)

Point of Use Quality Assurance

Although drinking water suppliers tend to sample water quality from a central location such as directly after treatment, the water supplier is responsible for water quality either at the point of use or point of delivery. There is no evidence in the public record that the County has ever assured its water quality at point of use or point of delivery for each of the THREE (3) Special Districts identified in this Notice.

CONCLUSION

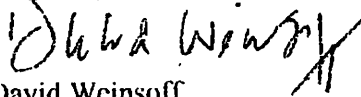
It is presumed that the water supplier is in continual violation of the applicable standard until constituent measurements are below that applicable standard. Therefore, each day after an exceedance and until the supplier is in compliance is considered a separate violation of the SDWA and the court can grant relief in the form of requiring that the drinking water be brought to meet drinking water standards, awarding of attorney fees, and in some cases, penalties.

The importance of quality drinking water cannot be overstated. MCLs are established by the SDWA with the biology of healthy young adults in mind. The same standards are set for everyone, including children, pregnant women, the elderly and infirm. River Watch is understandably concerned about the health effects of water systems which continue to provide contaminants above MCLs. Both radionuclides and disinfection byproducts in drinking water have been linked to health problems, most notably cancer, as well as reproductive and developmental effects. It is the County's responsibility to conform to the standards set forth in the Act, to comply with proper monitoring requirements, as well as to ensure that water supplied has been tested at the point of delivery.

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 citizens' suit under SDWA §1449 against the County for the violations 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 the County 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,


David Weinsoff

DW:lh

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

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

Director/State Public Health Officer
California Department of Public Health
1616 Capitol Avenue, MailStop 7408
Sacramento, CA 95899

Kamala D. Harris - Attorney General
State of California Department of Justice
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Kevin Briggs, County Counsel
County of Fresno
2220 Tulare Street, Fifth Floor
Fresno, CA 93721

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA REGISTERED MAIL -
RETURN RECEIPT REQUESTED***

September 25, 2014

Mr. John Thompson
Resources Division Manager
Division of Public Works & Planning
Resources Division
Special Districts Administration
2220 Tulare Street / 6th Floor
Fresno, California 93721

Fresno County Board of Supervisors
2281 Tulare Street, Suite 301
Hall of Records
Fresno, CA 93721

*Re: Notice of Violations and Intent to File Suit Under the Resource
Conservation and Recovery Act*

Dear Mr. Thompson and Members of the Board of Supervisors:

NOTICE

On behalf of California River Watch (“River Watch”), this letter provides statutory notification (“Notice”) to the County of Fresno (“the County”) of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. § 6901 *et seq.* in conjunction with continuing pollution transported through groundwater supplied from Wells 5 and 6 located in County Waterworks District No. 40 (“Shaver Springs”), and the County water system following its treatment of Westlands Water District supplies to County Service Area No. 32 (“Cantua Creek”) and County Service Area No. 49 (“J.E. O’Neill Farming Community”). River Watch contends that the transport and supply through these community public water systems of hazardous waste – gross alpha at Shaver

Springs and haloacetic acids (HAA5) and total trihalomethanes (TTHM) at Cantua Creek and J.E. O’Neill Farming Community – is in violation of RCRA by creating an imminent and substantial endangerment to human health or the environment. *See* RCRA § 7002(a)(1)(B); 42 U.S.C. § 6972(a)(1)(B).

RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency (“EPA”) and the State in which the violation is alleged to have occurred.

RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the EPA and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*)

Subchapter C of RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment.

River Watch hereby notifies the County that at the expiration of the appropriate notice period under RCRA, River Watch intends to commence a civil action against the County or will amend the complaint filed in the U.S. District Court, Eastern District of California, in the case entitled *California River Watch vs. County of Fresno*, Case No. 1:14-cv-01501 MJS, pursuant to 42 U.S.C. § 6972(a)(1)(B).

Under RCRA, 42 U.S.C. § 6972(a)(1)(A), Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, shall include sufficient information to permit the recipient to identify the following specific information:

1. *Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated:*

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. RCRA’s goals are to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes. RCRA specifically protects groundwater and drinking water supplies.

The EPA's waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

River Watch contends that the County has no hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at through its community water systems at Shaver Springs, Cantua Creek, and J.E. O'Neill Farming Community, and that the County's alleged transport of gross alpha, HAA5, and TTHM as identified in this Notice presents an imminent and substantial endangerment to human health or the environment pursuant to 42 U.S.C. § 6972(a)(1)(B).

2. *The Activity Alleged to Constitute a Violation*

River Watch has set forth narratives in this Notice describing with particularity the activities leading to violations. In summary, RCRA requires that the environment and public be protected from hazardous wastes including those transported by the County via its community public water systems. The specific pollutants transported by the County, gross alpha, HAA5, and TTHM, constitute hazardous waste under RCRA, and is required to be managed such that potential and actual harm to the environment and public is eliminated.

The EPA describes clearly the dangers to human health and the environment associated with these hazardous wastes when consumed in drinking water:

- (Adjusted) Gross Alpha – “Some people who drink water containing alpha emitters in excess of the MCL [Maximum Contaminant Level] over many years may have an increased risk of getting cancer” (<http://water.epa.gov/drink/contaminants/basicinformation/radionuclides.cfm>). The MCL is 15 picocuries per Liter. Even more seriously is the inhalation of alpha emitters, especially radon, that are known to cause lung cancer. Each and every time the good citizens of the County take showers and/or baths they are exposed to these hazardous products transported by the County. The airborne limit is 0.05 $\mu\text{g}/\text{m}^3$.
- HAA5 and TTHM – “When people are exposed to disinfection byproducts at high levels over many years, they may develop bladder cancer or problems with their liver, kidneys, or circulatory system. There may also be a connection between exposure to DBPs [Disinfection Byproducts] during pregnancy and miscarriages, premature births, low birth weight, and birth defects.” (http://ehib.org/page.jsp?page_key=53). These DBPs are produced

by the County through its mishandling of the disinfection process. The MCL for TTHM is 80 µg/L and the MCL for HAA5 is 60 µg/L. Adverse health effects due to inhalation have been found with as little as 1 µg/m³.

There are many ways that gross alpha emitters and/or DBPs can get into the human body:

- **Ingestion:** Drinking water containing gross alpha emitters or DBPs.
- **Inhalation:** Breathing in gross alpha emitters or DBPs that are in the air. Gross alpha emitters or DBPs may be released into the air when using tap water. This can happen when taking a shower or washing dishes. The hotter the water, the more likely it is that gross alpha emitters or DBPs will be released into the air. Gross alpha emitters or DBPs can also get into the air when boiling tap water, such as when making tea or soup.
- **Absorption:** DBPs can be absorbed through the skin when bathing and showering. “For most people, only very small amounts of DBPs get into the body through the skin. However, these amounts can increase as your contact time with water increases, for example, if you typically take long baths or swim frequently in public pools”(http://ehib.org/page.jsp?page_key=53).

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

The entity responsible for the alleged violations is the County of Fresno, referred to as the “the County” throughout this Notice.

4. *The date or dates of violations or a reasonable range of dates during which the alleged activities occurred.*

RCRA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is September 25, 2009 through September 25, 2014. River Watch will from time to time supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to surface and ground waters, and the failure to implement the requirements of RCRA are continuous, and therefore each day is a violation.

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

The entity giving this Notice is California River Watch, referred to herein as “River Watch,” with headquarters in Sebastopol, California and mailing address of 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface waters environs of California including, but not limited to, its rivers, creeks, streams wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications should be addressed to:

David Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415 460-9760
Email: lhm28843@scbglobal.net

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707 528-8175
Email: lhm28843@sbcglobal.net

LIABILITY/VIOLATIONS

MCLs and Water Quality Objectives (“WQOs”) exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent WQOs for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan, commonly referred to as the “Basin Plan,” which designates all surface and groundwater at or near Shaver Springs, Cantua Creek, and J.E. O’Neill Farming Community as capable of supporting industrial and domestic water supply. The pollutants gross alpha, TTHM, and HAA5 have been characterized as “hazardous waste” and “solid waste” within the meaning of RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to their transport.

River Watch alleges the County to be a past and present generator, past and present transporter, past and present owner and operator of a treatment facility, which has contributed or which is contributing to the past and present handling, storage, treatment, and transportation of hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Between September 25, 2009 and September 25, 2014, ongoing violations of RCRA as described herein have occurred. The County has caused or permitted, causes or permits, or threatens to cause or permit hazardous waste to be distributed from its community water systems at Shaver Springs, Cantua Creek, and J.E. O’Neill Farming Community where it is, or probably will be, supplied as water for human consumption and public use, creating, or threatening to create, a condition of pollution or nuisance. The distribution of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the hazardous waste is eliminated from the water supply. The County has known of the contamination of these public water supplies since at least 2004, and has also known that failing to promptly remediate the pollution allows for more and more exposure of its citizens.

Past or current violations of RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged. Accordingly, under these provisions, persons or entities violating RCRA are subject to a penalty of \$37,500 per day per violation.

The County’s discharge of gross alpha, TTHM, and HAA5 between September 25, 2009 and September 25, 2014 has allowed its citizens to be exposed to significant quantities of hazardous constituents in violation of provisions of the RCRA and California hazardous waste regulatory programs. Contaminant levels of gross alpha, TTHM, and HAA5 are significantly greater than the MCL and airborne health guidelines. Gross alpha, TTHM, and HAA5 are known carcinogens and toxins known to harm humans as detailed above. The current concentrations of gross alpha, TTHM, and HAA5 at Shaver Springs, Cantua Creek,

and J.E. O'Neill Farming Community have created an imminent and substantial endangerment to public health and the environment.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA evidenced by information which becomes available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations.

REQUESTED RELIEF

River Watch requests full investigation of Shaver Springs, Cantua Creek, and J.E. O'Neill Farming Community, including the following:

- (a) Ensure the supply of potable drinking water to County residents complies with the MCL for HAA5 and TTHM at Cantua Creek and J.E. O'Neill Farming Community, and the MCL for gross alpha, combined uranium, and RA-226 + RA-228 at Shaver Springs (collectively "Special Districts") by December 31, 2017. Prior to compliance with the MCLs by these deadlines, the County shall undertake sampling of potable water supplied by these Special Districts not less than quarterly.
- (b) Provide comprehensive and prompt public notification of a laboratory report identifying a violation of MCL(s) to the Special Districts' customers. Notification shall inform residents, in particular to the parents/guardians of children, pregnant women, the elderly, and the infirm (among other at-risk individuals) and businesses of a Special District's failure to supply them with drinking water meeting the applicable MCL(s). Residents must receive notification (by mail and through newspapers of general circulation) within ten (10) days of the County's knowledge that the drinking water falls below the applicable MCL so that, at a minimum, they have the opportunity to make informed decisions about whether and how to access alternative sources of drinking water. An alternative source of drinking water (e.g., bottled water or home/business filters) shall be provided to any Special District customers on the written advise of their physician.
- (c) Conduct a survey of at-risk individuals (children, pregnant women, the elderly, and the infirm (among other at-risk individuals)) and provide medical screening to those who have been exposed to the hazardous materials at issue in this Notice for more than twelve (12) consecutive months.

- (d) Conduct annual workshops at locations in the County where residents are supplied with drinking water in Cantua Creek, J.E. O'Neill Farming Community and Shaver Springs, addressing efforts by the County to ensure compliance with federal RCRA and SDWA requirements. Information provided to residents must specifically include warnings of the health impacts of alpha emitters, HAA5 and TTHM provided by the EPA and discussed above.

In addition, the event the County discovers that sources used to provide drinking water other than those covered under this Notice violate federal or state primary drinking water standards and/or RCRA, the County shall, within six (6) months of this discovery, conduct workshops at locations in the County that address efforts by the County to ensure compliance with federal SWDA, RCRA and California SDWA requirements.

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA in order to seek injunctive relief and the imposition of significant civil penalties. The enforcement of provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged. Accordingly, under these provisions, persons or entities violating RCRA are subject to a penalty of \$37,500 per day per violation.

At the close of the notice period, or shortly thereafter, River Watch intends to either file suit against the County under the provisions of the RCRA for each of the violations alleged in this Notice and with respect to the existing conditions at Shaver Springs, Cantua Creek, and J.E. O'Neill Farming Community, or to amend the complaint filed in the U.S. District Court, Eastern District of California, in the case entitled *California River Watch vs. County of Fresno*, Case No. 1:14-cv-01501 MJS, to add the RCRA violations identified in this Notice.

During this notice period, consistent with its actions following service on the County of the Safe Drinking Water Act Notice of Violations dated April 28, 2014, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If the County wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues set forth in this Notice before the end of the Notice period. River Watch will not delay the filing of a lawsuit or amending the aforementioned Complaint if discussions have not commenced by the time the notice period ends.

Very truly yours



Jack Silver

JS:lhv

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

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

Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "I" Street
Sacramento, CA 95814

Daniel C. Cederborg, Esq.
County Counsel
County of Fresno
2200 Tulare Street / 5th Floor
Fresno, CA 93721

Michael G. Marderosian, Esq.
Marderosian, Runyon, Cercone, Lehman & Armo
1260 Fulton Mall
Fresno, CA 93721