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***Via Certified Mail –
Return Receipt Requested***

September 7, 2023

Gregory P. Humora, City Manager
Members of the City Council
City of La Mesa
8130 Allison Ave.
La Mesa, CA 91942

Michael Throne, Director of Public Works
Managing Agent
City of La Mesa
8130 Allison Avenue
La Mesa, CA 91942

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

Dear Mr. Humora, Mr. Throne, Managing Agent and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring through the ownership and operation of the City of La Mesa ("City") sewage collection system.

River Watch hereby places the City, as owner and operator of its collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, San Diego Region ("RWQCB-SD"), Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the City's sewer pipelines to Alvarado Creek, Chollas Creek, San Diego River, and the Pacific Ocean - all waters of the United States.

River Watch takes this action to ensure compliance with the CWA which regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, which has been issued a permit pursuant to CWA § 402,

33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System (“NPDES”) permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a discharger in violation of the CWA. For the violations listed herein, the City has no NPDES permit authorizing the City to discharge sewage to a water of the United States. Therefore, River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with the CWA §§ 301(a), 33 U.S.C. § 1311(a).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

River Watch has identified discharges of raw sewage from the City’s sewage collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

2. The Activity Alleged to Constitute a Violation.

River Watch contends that from September 7, 2018 through September 7, 2023, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

The City encompasses nearly nine square miles in San Diego County, California. Seventy percent of the City’s sewage collection system was constructed between 1920 and 1960. City staff reports the sewage collection system consists of approximately 165 miles of sewer pipe servicing roughly 13,000 service lateral connections and a population of 64,500. The City’s wastewater eventually flows to the City of San Diego’s Metropolitan Wastewater System for treatment and disposal.

A. Sanitary Sewer Overflows

River Watch is understandably concerned as to the effects of both surface and underground Sanitary Sewer Overflows (“SSOs”) on critical habitat in and around the City’s diverse and

sensitive ecosystem. SSOs, in which untreated sewage is discharged above ground from the sewage collection system prior to reaching a treatment plant, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports and on the dates when no reports were submitted to CIWQS by the City, all in violation of the CWA. All SSOs, directly or indirectly discharging to a surface water, are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

Numerous causes for SSOs include storm water inflow and/or groundwater infiltration (I/I), defects in sewer lines, root intrusion, and blockages due to grease and rags. Currently, the capacity of the City’s sewage collection system is insufficient to handle peak wet weather flows. During heavy storms, the system becomes surcharged and untreated sewage overflows at various locations eventually draining to Alvarado Creek, Chollas Creek, the San Diego River and the Pacific Ocean - all waters of the United States. These SSOs impact the water quality and beneficial uses of these waters. Possible adverse effects on water quality and beneficial uses resulting from SSOs include the following:

- i. Adverse impacts to fish and aquatic biota caused by bio-solids deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals).
- ii. Creation of a localized toxic environment in the water column as the result of the discharge of oxygen-demanding pollutants that lower dissolved oxygen, and elevated ammonia concentration which is a fish toxicant.
- iii. Impairment of water contact recreation and non-contact water recreation and harm to fish and wildlife as a result of elevated bacteria levels including pathogens.

A review of the City’s CIWQS Spill Public Report - Summary Page, a copy of which is attached to this Notice, identifies **1,364,552** gallons of raw sewage discharged into the environment. Of this total volume, the City admits at least **1,339,190** gallons reached a surface water – a violation of the CWA, a nuisance pursuant to Calif. Water Code § 13050(m), and an imminent and substantial endangerment to public health and the environment. During the past five (5) years, the City reported discharging 13,438 gallons of raw sewage into the environment. The major portion of these discharges were reported as reaching a surface water (*see* attached CIWQS SSO Detail Page). While some areas where spills have occurred were dry at the time, the discharged pollutants remain on the surface of the land and enter receiving waters following rainfall or flooding.

B. Inadequate Reporting of Discharges

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

River Watch's expert believes that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters; and those reported as partially reaching a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the SSO Reports submitted by the City state the estimated start time of the SSO as the same time as, or very soon after, the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The City's reports indicate that some of the discharges reached a storm drain, but the reports fail to determine the accurate amounts which reached a surface water.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume.

C. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order* No. 2022-0103-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The EPA's *Report to Congress on the Control of CSOs and SSOs* (EPA, Office of Water, (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances.

Numerous critical habitat areas (e.g., spawning habitat for rare and endangered species) exist within areas of the City's SSOs. There is no record of the City performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

The Statewide WDR mandates that the permittee shall conduct adequate sampling of SSOs to determine the nature and impact of any release. The City must sample any SSO, regardless of size or location that may pose a risk to human health or the environment. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City's sampling of most SSOs is therefore inadequate.

D. Failure to Warn

River Watch contends the City is understating the significance of the impacts of its SSOs by failing to consistently post health warning signs for discharges reaching a surface water.

E. Sewer Collection System Subsurface Discharges

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewage collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the City's sewage collection system into groundwater hydrologically connected to surface waters – specifically, which becomes contaminated with pollutants including human pathogens. Chronic failures in the sewage collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other collection systems have verified the contamination of the adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as testing of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City's sewage collection system which reached a surface water is a discharge of a pollutant to a surface water without an NPDES permit, and therefore a violation of the CWA.

3. The Person or Persons Responsible for the Alleged Violation.

The entity responsible for the alleged violations identified in this Notice is the City of La Mesa and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation.

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewage collection system as further described in this Notice.

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

The range of dates covered by this Notice is September 7, 2018 through September 7, 2023. This Notice also includes all violations of the CWA by the City which occur after the range of dates covered by this Notice up to and including the time of trial. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California, with headquarters and main office in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora, and fauna, and educating the public concerning

environmental issues associated with these environs.

River Watch may be contacted via email at US@criverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver, Esq.
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708 Gravenstein Hwy. North, #407
Sebastopol, CA 95472
Tel. (707) 528-8175
Email: jsilverenvironmental@gmail.com

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Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with City staff to tailor remedial measures to the specific operation of the City's sewage collection system. In advance of that conversation, River Watch identifies the following general remedial categories that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. A full condition assessment of the sewage collection system including setting timelines for repairing or replacing significantly defective assets such as sewer lines, manholes and pump/lift stations.
2. Mitigating the effects of SSOs.
3. Adequate public and worker safety protocols, including protocols to minimize exposure to infectious vectors.
4. Elimination of the use of chemical root control.
5. Consideration of a Supplemental Environmental Project in lieu of penalties.

CONCLUSION

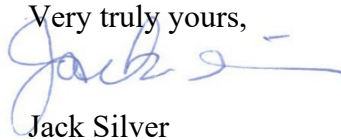
The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, horseback riding, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §

1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$64,618.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS
Attachments

Service List

Michael Regan - Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

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

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

Glenn Sabine - City Attorney
City of La Mesa
P.O. Box 937
La Mesa, CA 91944



California Integrated Water Quality System Project (CIWQS)

Spill Public Report – Summary Page

Here is the summary page with the results of your spill public report search. These results correspond to the following search criteria:

SEARCH CRITERIA: [\[REFINE SEARCH\]](#)

- Agency (La Mesa City)
- Region (9)
- Spill Type (sso_cat1_2_3)

Please see the [Glossary of Terms](#) for explanations of the search results column headings. [More information about the report is found at the bottom of this page.](#)

Note: For the "Collection System Performance Report" column, the Performance report will only show the most recent 12 months of data if in the original SSO Interactive Report search the date range was not specified.

[\[VIEW PRINTER FRIENDLY VERSION\]](#)[\[EXPORT THIS REPORT TO EXCEL\]](#)[\[EXPORT ALL SPILL DETAILS TO EXCEL\]](#)

Region	Responsible Agency	Collection System	Total Number of SSO locations	Total Vol of SSOs(gal)	Total Vol Recover (gal)	Total Vol Reach Surface Water	Percent Recover	Percent Reach Surface Water	Miles Pressure Sewer	Miles Gravity Sewer	Miles of Laterals	Number of Pump Stations	WDID	Collection System Performance Report
9	La Mesa City	City of La Mesa CS	158	1,364,552	17,148	1,339,190	1	98	0.0	155.0	0.0	0		Operational Performance
			158	1,364,552	17,148	1,339,190			0.0	155.0	0.0	0.0		

Each individual SSO report contains the data related to one specific location where sewage discharged from the sanitary sewer system due to a failure (e.g., sewer pipe blockage or pump failure). A single failure within a sanitary sewer system can result in multiple sewage discharge locations and, thus, multiple SSO reports. For example, a lift station power failure can result in sewage being discharged from numerous manholes. In this example, a SSO report would be submitted for each manhole that discharged sewage with all reports sharing the same failure or cause data.

It is important to review SSO reports in detail to determine if individual sewage discharge locations share a common underlying failure or cause when assessing the performance of Enrollees and their sanitary sewer systems through SSO events. This is because it is the failures that are the ultimate problem which the Enrollees should be making all reasonable efforts to prevent.

The search results below present summary data for all sewage discharge locations, as submitted through individual SSO reports, which meet the search criteria selected. To determine if SSO reports relate to a common failure within the sanitary sewer system, the SSO reports should be reviewed in detail by selecting the specific "agency" or "collection sys" name from the table below.

The "agency", or Enrollee, listed on a SSO report is responsible for the sewage discharge described and should be contacted directly for questions related to that incident.

The current report was generated with real-time data entered by Enrollees.

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California Integrated Water Quality System Project (CIWQS)

SSO Public Report - Detail Page

Here is the detail page of your SSO public report search for the selected region, responsible agency, or collection system. These results correspond to the following search criteria:

SEARCH CRITERIA: [\[REFINE SEARCH\]](#)

- Region (9)
- Spill Type (sso_cat1_2_3)
- Start Date (09/01/2018)
- End Date (09/01/2023)

The table below presents important details for all sewage discharge locations, as submitted through individual SSO reports, which meet the search criteria selected. If data is not shown for a particular field, it means the Enrollee did not provide the information and was not required to do so. To view the entire SSO report for a specific sewage discharge location, please select the corresponding EVENT ID.

DRILLDOWN HISTORY: [\[GO BACK TO SUMMARY PAGE\]](#)

REGION: 9

[\[VIEW PRINTER FRIENDLY VERSION\]](#)

EVENT ID	Region	Responsible Agency	Collection System	SSO Category	Start Date	SSO Vol	Vol of SSO Recovered	Vol of SSO Reached Surface Water	SSO Failure Point	WDID
851424	9	La Mesa City	City of La Mesa CS	Category 3	2018-09-28 10:16:00.0	29	29	0	Gravity Mainline	
856403	9	La Mesa City	City of La Mesa CS	Category 3	2019-02-15 14:25:00.0	50	50	0	Gravity Mainline	
862344	9	La Mesa City	City of La Mesa CS	Category 3	2019-10-23 07:25:00.0	68	68	0	Gravity Mainline	
863660	9	La Mesa City	City of La Mesa CS	Category 3	2019-12-12 17:05:00.0	405	405	0	Gravity Mainline	
864903	9	La Mesa City	City of La Mesa CS	Category 1	2020-02-15 09:50:00.0	5,400	300	5,100	Gravity Mainline	
865033	9	La Mesa City	City of La Mesa CS	Category 3	2020-02-22 15:30:00.0	75	75	0	Gravity Mainline	
866417	9	La Mesa City	City of La Mesa CS	Category 3	2020-04-27 18:30:00.0	120	120	0	Gravity Mainline	
869475	9	La Mesa City	City of La Mesa CS	Category 3	2020-10-06 08:55:00.0	25	25	0	Gravity Mainline	
871598	9	La Mesa City	City of La Mesa CS	Category 3	2020-12-03 16:00:00.0	16	0	0	Gravity Mainline	
885643	9	La Mesa City	City of La Mesa CS	Category 1	2023-01-16 08:00:00.0	5,900	0	5,850	Gravity Mainline	
885648	9	La Mesa City	City of La Mesa CS	Category 1	2023-01-16 07:00:00.0	1,350	0	1,350	Gravity Mainline	

The current report was generated with real-time data entered by Enrollees.

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