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11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 CALIFORNIA SPORTFISHING
15 PROTECTION ALLIANCE, a non-profit
16 corporation,

16 Plaintiff,

17 vs.

18 BALDWIN CONTRACTING COMPANY,
19 INC., a California corporation, TED HALE,
20 an individual, BRYAN MORGAN, an
21 individual, MASON RICHARDSON, an
22 individual,

22 Defendants,

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

23 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and
24 through its counsel, hereby alleges:

25 **I. JURISDICTION AND VENUE**

26 1. This is a civil suit brought under the citizen suit enforcement provisions of the
27 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”
28

1 or “the Act”) against Baldwin Contracting Company, Inc., Mr. Ted Hale, Mr. Bryan Morgan,
2 Mr. Mason Richardson and Mr. Rene Vercruyssen (hereafter “Defendants”). This Court has
3 subject matter jurisdiction over the parties and the subject matter of this action pursuant to
4 Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action
5 arising under the laws of the United States). The relief requested is authorized pursuant to 28
6 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual controversy and further
7 necessary relief based on such a declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive
8 relief), and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).

9 2. On or about February 12, 2010, Plaintiff provided notice of Defendants’
10 violations of the Act, and of its intention to file suit against Defendants, to the Administrator
11 of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA
12 Region IX; the Executive Director of the State Water Resources Control Board (“State
13 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley
14 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. §
15 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and
16 is incorporated by reference.

17 3. More than sixty days have passed since notice was served on Defendants and
18 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
19 neither the EPA nor the State of California has commenced or is diligently prosecuting a
20 court action to redress the violations alleged in this complaint. This action’s claim for civil
21 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
22 33 U.S.C. § 1319(g).

23 4. Venue is proper in the Eastern District of California pursuant to Section
24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
25 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
26 Sacramento, California because the source of the violations is located within Butte County.

27 **II. INTRODUCTION**

28 5. This complaint seeks relief for Defendants’ discharges of pollutants from an

1 approximately 60-acre sand and gravel mining and processing facility (“the Facility”) owned
2 and/or operated by Defendants Baldwin Contracting Company, Inc., Mr. Ted Hale, Mr.
3 Bryan Morgan, Mr. Mason Richardson and Mr. Rene Vercreyssen. The Facility collects and
4 discharges storm water to Sawmill Ravine Creek and Dry Creek. Both Sawmill Ravine
5 Creek and Dry Creek ultimately flow into the Sacramento River, and the Sacramento-San
6 Joaquin Delta. Defendants’ discharges of pollutants from the Facility are in violation of the
7 Act and the State of California's General Industrial Permit for storm water discharges, State
8 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as
9 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-
10 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.
11 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,
12 monitoring, reporting, discharge and management practice requirements, and other
13 procedural and substantive requirements of the General Permit and the Act are ongoing and
14 continuous.

15 6. The failure on the part of industrial facility operators such as Defendants to
16 comply with the General Permit is recognized as a significant cause of the continuing decline
17 in water quality of these receiving waters. The general consensus among regulatory agencies
18 and water quality specialists is that storm water pollution amounts to more than half the total
19 pollution entering the marine environment each year. With every rainfall event, hundreds of
20 thousands of gallons of polluted storm water originating from industrial facilities discharge
21 to Sawmill Ravine Creek, Dry Creek, the Sacramento River, and the Sacramento-San
22 Joaquin Delta.

23 **III. PARTIES**

24 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
25 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of
26 California with its main office in Stockton, California. CSPA has approximately 2,000
27 members who live, recreate and work in and around waters of the State of California,
28 including the Sawmill Ravine Creek, Dry Creek, the Sacramento River, and the Sacramento-

1 San Joaquin Delta. CSPA is dedicated to the preservation, protection, and defense of the
2 environment, and the wildlife and the natural resources of all waters of California. To
3 further these goals, CSPA actively seeks federal and state agency implementation of the Act
4 and other laws and, where necessary, directly initiates enforcement actions on behalf of itself
5 and its members.

6 8. Members of CSPA reside in California and use and enjoy California's
7 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the
8 waters of Sawmill Ravine Creek, Dry Creek, the Sacramento River, and the Sacramento-San
9 Joaquin Delta, into which Defendants have caused, are causing, and will continue to cause,
10 pollutants to be discharged. Members of CSPA use these areas to fish, sail, boat, kayak,
11 swim, birdwatch, view wildlife and engage in scientific study, including monitoring
12 activities, among other things. Defendants' discharges of pollutants threaten or impair each
13 of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's
14 members have been, are being, and will continue to be adversely affected by Defendants'
15 ongoing failure to comply with the Clean Water Act. The relief sought herein will redress the
16 harms to Plaintiff caused by Defendants' activities.

17 9. Continuing commission of the acts and omissions alleged above will
18 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have
19 no plain, speedy or adequate remedy at law.

20 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant
21 Baldwin Contracting Company, Inc. is a corporation organized under the laws of the State of
22 California, that Defendant Ted Hale is the Plant Manager of the Facility, that Defendant Bryan
23 Morgan is the Operations Manager of the Facility, that Defendant Mason Richardson is the
24 Facility Manager, and that Rene Vercruyssen is the Operator of the Facility. Accordingly,
25 Defendants own and/or operate the Facility.

26 **IV. STATUTORY BACKGROUND**

27 11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
28 pollutant into waters of the United States, unless such discharge is in compliance with

1 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
2 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
3 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4 12. Section 402(p) of the Act establishes a framework for regulating municipal
5 and industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).
6 States with approved NPDES permit programs are authorized by Section 402(p) to regulate
7 industrial storm water discharges through individual permits issued to dischargers and/or
8 through the issuance of a single, statewide general permit applicable to all industrial storm
9 water dischargers. 33 U.S.C. § 1342.

10 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of
11 the U.S. EPA has authorized California's State Board to issue NPDES permits including
12 general NPDES permits in California.

13 14. The State Board elected to issue a statewide general permit for industrial
14 discharges. The State Board issued the General Permit on or about November 19, 1991,
15 modified the General Permit on or about September 17, 1992, and reissued the General
16 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33
17 U.S.C. § 1342(p).

18 15. The General Permit contains certain absolute prohibitions. Discharge
19 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials
20 other than storm water ("non-storm water discharges"), which are not otherwise regulated by
21 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the
22 General Permit prohibits storm water discharges and authorized non-storm water discharges
23 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water
24 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or
25 ground water that adversely impact human health or the environment. Receiving Water
26 Limitation C(2) of the General Permit prohibits storm water discharges that cause or
27 contribute to an exceedance of any applicable water quality standards contained in a
28 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

1 16. In addition to absolute prohibitions, the General Permit contains a variety of
2 substantive and procedural requirements that dischargers must meet. Facilities discharging,
3 or having the potential to discharge, storm water associated with industrial activity that have
4 not obtained an individual NPDES permit must apply for coverage under the State's General
5 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing
6 dischargers to file their NOIs before March 30, 1992.

7 17. Effluent Limitation B(3) of the General Permit requires dischargers to reduce
8 or prevent pollutants in its storm water discharges through implementation of the Best
9 Available Technology Economically Achievable ("BAT") for toxic and nonconventional
10 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for
11 conventional pollutants. BAT and BCT include both nonstructural and structural measures.
12 General Permit, Section A(8).

13 18. EPA has established Benchmark Levels as guidelines for determining
14 whether a facility discharging industrial storm water has implemented the requisite BAT and
15 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
16 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –
17 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –
18 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; nitrate + nitrite
19 nitrogen – 0.68 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control Board has
20 proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Dischargers
21 must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") before
22 October 1, 1992. The SWPPP must comply with the BAT and BCT standards. (Section
23 B(3)). The SWPPP must include, among other elements: (1) a narrative description and
24 summary of all industrial activity, potential sources of pollutants and potential pollutants; (2)
25 a site map showing facility boundaries, the storm water conveyance system, associated
26 points of discharge, direction of flow, areas of industrial activities, and areas of actual and
27 potential pollutant contact; (3) a description of storm water management practices, best
28 management practices ("BMPs") and preventive maintenance undertaken to avoid storm

1 water contamination that achieve BAT and BCT; (4) the location where Significant
2 Materials are being shipped, stored, received and handled, as well as the typical quantities of
3 such materials and the frequency with which they are handled; (5) a description of potential
4 pollutant sources including industrial processes, material handling and storage areas, dust
5 and particulate generating activities; (6) a summary of storm water sampling points; (7) a
6 description of individuals and their responsibilities for developing and implementing the
7 SWPPP (Permit, Section A(3)); (8) a description of potential pollutant sources including
8 industrial processes, material handling and storage areas, and dust and particulate generating
9 activities; (9) a description of significant spills and leaks; (10) a list of all non-storm water
10 discharges and their sources, and (11) a description of locations where soil erosion may
11 occur (Section A(6)). The SWPPP must also include an assessment of potential pollutant
12 sources at the Facility and a description of the BMPs to be implemented at the Facility that
13 will reduce or prevent pollutants in storm water discharges and authorized non-storm water
14 discharges, including structural BMPs where non-structural BMPs are not effective (Section
15 A(7), (8)).

16 19. The SWPPP must be re-evaluated annually to ensure effectiveness and must
17 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires
18 a discharger to prepare and submit a report to the Regional Board describing changes it will
19 make to its current BMPs in order to prevent or reduce any pollutant in its storm water
20 discharges that is causing or contributing to an exceedance of water quality standards. Once
21 approved by the Regional Board, the additional BMPs must be incorporated into the
22 Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days
23 from the date the discharger first learns that its discharge is causing or contributing to an
24 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of
25 the General Permit's Standard Provisions also requires dischargers to report any
26 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires
27 an annual evaluation of storm water controls including the preparation of an evaluation
28 report and implementation of any additional measures in the SWPPP to respond to the

1 monitoring results and other inspection activities.

2 20. The General Permit requires dischargers to eliminate all non-storm water
3 discharges to storm water conveyance systems other than those specifically set forth in
4 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth
5 in Special Condition D(1)(b).

6 21. The General Permit requires dischargers commencing industrial activities
7 before October 1, 1992 to develop and implement an adequate written Monitoring and
8 Reporting Program no later than October 1, 1992. Existing facilities covered under the
9 General Permit must implement all necessary revisions to their monitoring programs no later
10 than August 1, 1997.

11 22. The General Permit also requires dischargers to submit yearly “Annual
12 Reports” to the Regional Board. As part of their monitoring program, dischargers must
13 identify all storm water discharge locations that produce a significant storm water discharge,
14 evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
15 pollution control measures set out in the SWPPP are adequate and properly implemented.
16 Dischargers must then conduct visual observations of these discharge locations for at least
17 one storm per month during the wet season (October through May) and record their findings
18 in their Annual Report. Dischargers must also collect and analyze storm water samples from
19 at least two storms per year. Section B requires dischargers to sample and analyze during the
20 wet season for basic parameters such as pH, total suspended solids (“TSS”), specific
21 conductance, and total organic content (“TOC”) or oil and grease, certain industry-specific
22 parameters, and toxic chemicals and other pollutants likely to be in the storm water
23 discharged from the facility. Section B(5) and Table D of the General Permit requires
24 dischargers whose industrial activities fall within Standard Industrial Classification (“SIC”)
25 Code 1442 to analyze their storm water discharge samples for nitrates + nitrites (N+N).
26 Dischargers must also conduct dry season visual observations to identify sources of non-
27 storm water pollution. The monitoring and reporting program requires dischargers to certify,
28 based upon the annual site inspections, that the facility is in compliance with the General

1 Permit and report any non-compliance, and contains additional requirements as well.

2 23. In order to discharge storm water lawfully in California, industrial
3 dischargers must comply with the terms of the General Permit or have obtained and
4 complied with an individual NPDES permit.

5 24. The term “discharge of pollutants” means “any addition of any pollutant to
6 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to
7 include, among other examples, industrial waste, chemical wastes, biological materials, heat,
8 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

9 25. A point source is defined as “any discernable, confined and discrete
10 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .
11 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

12 26. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
13 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
14 Waters of the United States include man-made water bodies that are tributary to waters that
15 are navigable in fact. Waters of the United States include ephemeral waters that are tributary
16 to waters that are navigable in fact.

17 27. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
18 enforcement actions against any “person,” including individuals, corporations, or
19 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of
20 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under
21 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an
22 assessment of civil penalties of up to \$32,500 per day for violations that occurred between
23 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500
24 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of
25 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

26 28. The Regional Board has established water quality standards for the
27 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan
28 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin

1 Plan.

2 29. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
3 waters shall be maintained free of toxic substances in concentrations that produce
4 detrimental physiological responses in human, plant, animal, or aquatic life.”

5 30. The Basin Plan establishes a standard for electrical conductivity in the Delta
6 of 0.7 $\mu\text{mhos/cm}$ from April 1 through August 31 and 1.0 $\mu\text{mhos/cm}$ from September 1
7 through March 31.

8 31. The Basin Plan provides that “[w]aters shall not contain chemical constituents
9 in concentrations that adversely affect beneficial uses.”

10 32. The Basin Plan provides that “[a]t a minimum, water designated for use as
11 domestic or municipal supply (MUN) shall not contain concentrations of chemical
12 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the
13 Sacramento Creek and the Delta have been designated by the State Board for use as
14 municipal and domestic supply.

15 **V. STATEMENT OF FACTS**

16 33. Defendants operate an approximately 60-acre construction sand and gravel
17 facility located at 4970 Wheelock Road, in Oroville, California (the "Facility"). The Facility
18 collects and discharges storm water to Sawmill Ravine Creek and Dry Creek. Both Sawmill
19 Ravine Creek and Dry Creek ultimately flow into the Sacramento River, and the
20 Sacramento-San Joaquin Delta.

21 34. The Facility is classified under SIC Code 1442 (“Construction Sand &
22 Gravel”). Industrial activities occur throughout the Facility, and primarily involve the
23 mining and processing of sand and gravel; and, the use, storage, and maintenance of
24 motorized vehicles, including trucks used to haul materials to and from the Facility.
25 Virtually all of these activities occur outside in areas that are exposed to storm water and
26 storm flows due to the lack of overhead coverage, functional berms and other storm water
27 controls. Plaintiff is informed and believes that Defendants’ storm water controls, to the
28 extent any exist, fail to achieve BAT and BCT standards.

1 35. The management practices at the Facility are wholly inadequate to prevent
2 the sources of contamination described above from causing the discharge of pollutants to
3 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential
4 structural controls such as grading, berming and roofing to prevent rainfall and storm water
5 flows from coming into contact with these and other sources of contaminants, thereby
6 allowing storm water to flow over and across these materials and become contaminated prior
7 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the
8 discharge of water once contaminated. The Facility also lacks an adequate filtration system
9 to treat water once it is contaminated.

10 36. Vehicle traffic at the Facility tracks dust and particulate matter, increasing
11 the discharges of polluted water and mud into waters of the United States.

12 37. During rain events storm water laden with pollutants flows from the Facility
13 and into unnamed creeks draining to Sawmill Ravine Creek and Dry Creek, respectively,
14 both of which ultimately flow to the Sacramento River, and the Sacramento-San Joaquin
15 Delta.

16 38. Information available to Plaintiff indicates that as a result of these practices,
17 storm water containing pollutants harmful to fish, plant and bird life, and human health are
18 being discharged from the Facility directly to these waters during significant rain events.

19 39. Sawmill Ravine Creek, Dry Creek, the Sacramento River, and the
20 Sacramento-San Joaquin Delta are waters of the United States.

21 40. Information available to Plaintiff indicates that Defendants have not fulfilled
22 the requirements set forth in the General Permit for discharges from the Facility due to the
23 continued discharge of contaminated storm water.

24 41. Plaintiff is informed and believes, and thereupon alleges, that Defendants
25 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

26 42. Information available to Plaintiff indicates the continued existence of
27 unlawful storm water discharges at the Facility.

28 43. Plaintiff is informed and believes, and thereupon alleges, that Defendants

1 have failed to develop and implement adequate monitoring, reporting and sampling
2 programs for the Facility. Plaintiffs are informed and believe, and thereupon allege, that
3 Defendants have not sampled with adequate frequency, have not conducted visual
4 monitoring, and have not analyzed the samples collected for the required pollutant
5 parameters.

6 44. Plaintiff is informed and believes, and thereupon alleges, that all of the
7 violations alleged in this Complaint are ongoing and continuing.

8 **VI. CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Discharges of Contaminated Storm Water
11 in Violation of Permit Conditions and the Act
12 (Violations of 33 U.S.C. §§ 1311(a), 1342)**

13 45. Plaintiff realleges and incorporates Paragraphs 1-44, inclusive, as if fully set
14 forth herein.

15 46. Discharge Prohibition A(2) of the General Permit requires that storm water
16 discharges and authorized non-storm water discharges shall not cause or threaten to cause
17 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
18 General Permit require that storm water discharges and authorized non-storm water discharges
19 shall not adversely impact human health or the environment, and shall not cause or contribute
20 to a violation of any water quality standards contained in a Statewide Water Quality Control
21 Plan or the applicable Regional Board's Basin Plan.

22 47. Plaintiff is informed and believes, and thereupon alleges, that since at least
23 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
24 Sawmill Ravine Creek, Dry Creek, the Sacramento River, and the Sacramento-San Joaquin
25 Delta in violation of the General Permit.

26 48. During every significant rain event, storm water flowing over and through
27 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
28 Facility to Sawmill Creek and Dry Creek, the Sacramento River, and the Sacramento-San
Joaquin Delta.

1 49. Plaintiff is informed and believes, and thereupon alleges, that these discharges
2 of contaminated storm water are causing pollution and contamination of the waters of the
3 United States in violation of Discharge Prohibition A(2) of the General Permit.

4 50. Plaintiff is informed and believes, and thereupon alleges, that these
5 discharges of contaminated storm water are adversely affecting human health and the
6 environment in violation of Receiving Water Limitation C(1) of the General Permit.

7 51. Plaintiff is informed and believes, and thereupon alleges, that these discharges
8 of contaminated storm water are contributing to the violation of the applicable water quality
9 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's
10 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

11 52. Plaintiff is informed and believes, and thereupon alleges, that every day since
12 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
13 from the Facility in violation of the General Permit. Every day Defendants have discharged
14 and continue to discharge polluted storm water from the Facility in violation of the General
15 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
16 These violations are ongoing and continuous.

17 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan
20 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 53. Plaintiff realleges and incorporates Paragraphs 1-52, as if fully set forth
22 herein.

23 54. Section A and Provision E of the General Permit requires dischargers of
24 storm water associated with industrial activity to develop and implement an adequate Storm
25 Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

26 55. Defendants have failed to develop and implement an adequate SWPPP for
27 the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for
28 the Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,
including waste materials, without appropriate best management practices; the continued

1 exposure of significant quantities of industrial material to storm water flows; the failure to
2 either treat storm water prior to discharge or to implement effective containment practices;
3 and the continued discharge of storm water pollutants from the Facility at levels in excess of
4 EPA benchmark values and other applicable water quality standards.

5 56. Defendants have further failed to update the Facility's SWPPP in response to
6 the analytical results of the Facility's storm water monitoring as required by the General
7 Permit.

8 57. Each day since October 1, 1992 that Defendants have failed to develop and
9 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate
10 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

11 58. Defendants have been in violation of the SWPPP requirement every day since
12 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to
13 develop and fully implement an adequate SWPPP for the Facility.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Develop and Implement the Best Available
17 And Best Conventional Treatment Technologies
18 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 59. Plaintiff realleges and incorporate Paragraphs 1-58, as if fully set forth herein.

20 60. The General Permit's SWPPP requirements and Effluent Limitation B(3)
21 require dischargers to reduce or prevent pollutants in their storm water discharges through
22 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
23 pollutants.

24 61. Defendants have failed to implement BAT and BCT at the Facility for its
25 discharges of total suspended solids, iron, pH, Oil and Grease, lead, zinc, nitrates + nitrites
26 and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

27 62. Each day since February 12, 2005 that Defendants have failed to develop and
28 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 63. Defendants have been in violation of the BAT and BCT requirements every day
2 since at least February 12, 2005. Defendant continues to be in violation of the BAT and BCT
3 requirements each day that it fails to develop and fully implement an adequate BAT and BCT
4 for the Facility.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 64. Plaintiff realleges and incorporates Paragraphs 1-63, as if fully set forth
9 herein.

10 65. Section B of the General Permit requires dischargers of storm water associated
11 with industrial activity to develop and implement a monitoring and reporting program
12 (including, among other things, sampling and analysis of discharges) no later than October 1,
13 1992.

14 66. Defendants have failed to develop and implement an adequate monitoring
15 and reporting program for the Facility. Defendants' ongoing failures to develop and
16 implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their
17 continuing failure to collect and analyze at least two storm water samples per wet season from
18 all discharge locations, their continuing failure to analyze storm water samples for all toxic
19 chemicals and other pollutants likely to be present in the Facility's storm water discharges in
20 significant quantities, and their failure to file required Annual Reports with the Regional Board
21 which provide required information concerning the Facility's visual observations and storm
22 water sampling and analysis.

23 67. Each day since October 1, 1992 that Defendants have failed to develop and
24 implement an adequate monitoring and reporting program for the Facility in violation of the
25 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
26 1311(a). These violations are ongoing and continuous.

27 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

28 **VII. RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- 1 a. Declare Defendants to have violated and to be in violation of the Act as
2 alleged herein;
- 3 b. Enjoin Defendants from discharging pollutants from the Facility and to the
4 surface waters surrounding and downstream from the Facility;
- 5 c. Enjoin Defendants from further violating the substantive and procedural
6 requirements of the General Permit;
- 7 d. Order Defendants to pay civil penalties of \$32,500 per day per violation for
8 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all
9 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
10 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4
11 (pp. 200-202) (Dec. 31, 1996);
- 12 e. Order Defendants to take appropriate actions to restore the quality of
13 navigable waters impaired by their activities;
- 14 f. Award Plaintiffs' costs (including reasonable attorney, witness, and
15 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,
- 16 g. Award any such other and further relief as this Court may deem appropriate.
- 17
18

19 Dated: April 13, 2010

Respectfully Submitted,

20 LAW OFFICES OF ANDREW L. PACKARD

21
22 /s/ Erik Roper
23 Erik M. Roper
24 Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
25 PROTECTION ALLIANCE
26
27
28

EXHIBIT A



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

February 12, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Baldwin Contracting Co., Inc.
c/o C T Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Mr. Ted Hale
Plant Manager
Baldwin Contracting Co., Inc.
4970 Wheelock Rd.
Oroville, CA 95965

Mr. Bryan Morgan
Operations Manager
Baldwin Contracting Co., Inc.
4970 Wheelock Rd.
Oroville, CA 95965

Mr. Mason Richardson
Facility Manager
Baldwin Contracting Co., Inc.
4970 Wheelock Rd.
Oroville, CA 95965

Mr. Rene Vercruyssen
Facility Operator
Baldwin Contracting Co., Inc.
1764 Skyway
Chico, CA 95928

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

Dear Messrs. Hale, Morgan, Richardson and Vercruyssen:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the Baldwin Contracting Co., Inc. ("BCCI") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owners, officers and/or operators of the Facility.

This letter addresses BCCI's unlawful discharges of pollutants from the Facility

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to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit”).

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, BCCI is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against BCCI under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

I. Background.

BCCI owns and operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

On May 16, 1997, BCCI submitted its notice of intent (“1997 NOI”) to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 (“Construction Sand & Gravel”). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek (“SRC”) and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative

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toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL

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2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants CSPA believes are being discharged by BCCI: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

II. Pollutant Discharges in Violation of the NPDES Permit.

BCCI has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCCI to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the

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mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCCI of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCCI failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCCI to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, its 2008-2009 Annual Report reveals BCCI has failed to comply to the extent it reported discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCCI has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCCI’s ongoing violations are discussed further below.

A. BCCI Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

BCCI has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. BCCI’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit

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are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
2/17/2009	1	TSS	6200 mg/L	100 mg/L

CSPA’s investigation, including its review of BCCI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. BCCI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, BCCI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that BCCI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 12, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 12, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that BCCI has discharged storm water containing impermissible levels of TSS and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

B. BCCI Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as BCCI, designated under SIC 1442 are also required to sample for nitrates + nitrites (N+N). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that BCCI has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCCI has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, BCCI has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005. These violations are set forth in greater detail below.

1. BCCI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that BCCI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2004-2005, 2005-2006, 2006-2007 and 2007-2008 wet seasons, BCCI failed to collect any storm water samples from any discharge point. (*See, e.g.,* BCCI, 2005-2006 Annual Report, at p. 3). CSPA anticipates BCCI will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility’s topography and the above-discussed comments of the Board’s Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. Further, contrary to its affirmative response to item D.1. in Annual Reports filed for the 2004-2005, 2005-2006 and 2006-2007 wet seasons, BCCI was *not*

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exempt from collecting and analyzing samples from two storm events in accordance with sections B.12 or B.15 of the General Permit. Notwithstanding BCCI's assertion, found in the 2005-2007 Annual Reports, that "sampling is not required [because] all water is contained on site," as amply demonstrated by the exempt categories presented by Annual Report item D.2(i)-(v), BCCI was not exempt from the sampling and analysis required under the General Permit. Moreover, this conclusion is compelled by BCCI's failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v). Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

With respect to the Annual Report filed by BCCI for the 2008-2009 wet season, CSPA is informed and believes that February 17, 2009 was not the first qualifying storm event for the 2008-2009 wet season. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCCI's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by BCCI. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

2. BCCI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that BCCI has failed to monitor for at least eleven other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. BCCI's failure to monitor these pollutants extends back at least until February 12, 2005. BCCI's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

3. BCCI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 12, 2005.

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CSPA is informed and believes that available documents demonstrate BCCI's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI "must modify [its] existing...Monitoring Plan...." Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its Monitoring Plan as requested by the Board and required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

C. BCCI Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCCI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the current internal structure and operations of the Facility, CSPA believes that at a minimum BCCI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether, through infiltration and evaporation measures. BCCI has failed to implement such measures adequately.

BCCI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCCI has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that BCCI fails to implement BAT and BCT. BCCI is subject to penalties for violations of the General Permit and the Act occurring since February 12, 2005.

D. BCCI Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit

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require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that BCCI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCCI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. As recently as December 15, 2009, the Board informed BCCI that in order “to reduce or eliminate the discharge of pollutants” from the Facility in compliance with the General Permit, BCCI

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“must modify [its] existing Storm Water Pollution Prevention Plan (SWPPP)....” Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its SWPPP or Monitoring Plan as requested by the Board and required by the General Permit. BCCI has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that BCCI fails to develop and implement an effective SWPPP. BCCI is subject to penalties for violations of the Order and the Act occurring since February 12, 2005.

E. BCCI Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility’s SWPPP. The report must be submitted to the Regional Board no later than 60 days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit’s Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, BCCI is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCCI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60 days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. It has not done so.

Based on CSPA’s review of available documents, BCCI was aware of high levels of these pollutants prior to February 12, 2005. Likewise, BCCI has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). BCCI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since February 12, 2005, and will continue to be in violation every day that BCCI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

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F. BCCI Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that BCCI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, based on its review of publicly available documents, CSPA is informed and believes that BCCI submitted an incomplete Annual Report for the 2008-2009 wet season. To wit, on December 15, 2009, the Board sent BCCI a Notice of Violation indicating BCCI is "in violation of the General Permit (Section B-16), the California Water Code, and the federal Clean Water Act, for failure to submit a complete 2008-2009 annual report."

As discussed further above, BCCI's pattern and practice of submitting incomplete reports is further evidenced by its repeated and ongoing failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v).

As indicated above, BCCI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, BCCI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time BCCI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. BCCI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. BCCI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

III. Persons Responsible for the Violations.

CSPA hereby puts BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts BCCI on notice that it intends to include those persons in this enforcement action.

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IV. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.
Erik M. Roper, Esq.
Law Offices of Andrew L. Packard
100 Petaluma Blvd North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
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And to:

Robert J. Tuerck, Esq.
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
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Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen for

February 12, 2010

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the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A

**Notice of Intent to File Suit, BCCI (Oroville, CA)
Significant Rain Events,* February 12, 2005-February 12, 2010**

Feb.	13	2005	Jan.	01	2006	Dec.	26	2006	Feb.	23	2008
Feb.	16	2005	Jan.	03	2006	Feb.	07	2007	Feb.	24	2008
Feb.	18	2005	Jan.	07	2006	Feb.	08	2007	Mar.	15	2008
Feb.	19	2005	Jan.	14	2006	Feb.	09	2007	Mar.	19	2008
Feb.	20	2005	Jan.	17	2006	Feb.	10	2007	April	03	2008
Feb.	21	2005	Jan.	18	2006	Feb.	12	2007	Oct.	30	2008
Feb.	27	2005	Jan.	30	2006	Feb.	22	2007	Oct.	31	2008
March	01	2005	Feb.	01	2006	Feb.	24	2007	Nov.	01	2008
March	19	2005	Feb.	26	2006	Feb.	27	2007	Nov.	03	2008
March	20	2005	Feb.	27	2006	Mar.	26	2007	Dec.	14	2008
March	21	2005	Feb.	28	2006	April	11	2007	Dec.	21	2008
March	27	2005	Mar.	01	2006	April	14	2007	Dec.	24	2008
April	03	2005	Mar.	03	2006	April	21	2007	Dec.	25	2008
April	07	2005	Mar.	05	2006	May	01	2007	Jan.	22	2009
April	08	2005	Mar.	06	2006	May	03	2007	Jan.	23	2009
April	24	2005	Mar.	12	2006	May	24	2007	Jan.	24	2009
April	27	2005	Mar.	13	2006	Oct.	09	2007	Feb.	05	2009
May	04	2005	Mar.	16	2006	Oct.	10	2007	Feb.	10	2009
May	05	2005	Mar.	20	2006	Oct.	16	2007	Feb.	11	2009
May	08	2005	Mar.	24	2006	Nov.	10	2007	Feb.	13	2009
May	09	2005	Mar.	25	2006	Nov.	11	2007	Feb.	15	2009
May	17	2005	Mar.	27	2006	Dec.	03	2007	Feb.	16	2009
May	18	2005	Mar.	28	2006	Dec.	04	2007	Feb.	17	2009
Oct.	08	2005	Mar.	29	2006	Dec.	06	2007	Feb.	22	2009
Oct.	11	2005	Mar.	31	2006	Dec.	07	2007	Feb.	23	2009
Oct.	15	2005	April	02	2006	Dec.	18	2007	Mar.	01	2009
Oct.	26	2005	April	03	2006	Dec.	19	2007	Mar.	02	2009
Oct.	28	2005	April	04	2006	Dec.	20	2007	Mar.	03	2009
Nov.	07	2005	April	10	2006	Dec.	28	2007	April	10	2009
Nov.	08	2005	April	11	2006	Dec.	29	2007	April	13	2009
Nov.	25	2005	April	12	2006	Jan.	03	2008	May	01	2009
Nov.	28	2005	April	16	2006	Jan.	04	2008	May	02	2009
Nov.	29	2005	April	22	2006	Jan.	05	2008	Oct.	13	2009
Nov.	30	2005	May	19	2006	Jan.	08	2008	Oct.	19	2009
Dec.	17	2005	May	21	2006	Jan.	12	2008	Nov.	17	2009
Dec.	18	2005	Oct.	05	2006	Jan.	21	2008	Nov.	20	2009
Dec.	19	2005	Oct.	26	2006	Jan.	24	2008	Nov.	27	2009
Dec.	20	2005	Nov.	02	2006	Jan.	25	2008	Dec.	11	2009
Dec.	21	2005	Nov.	11	2006	Jan.	26	2008	Dec.	12	2009
Dec.	22	2005	Nov.	13	2006	Jan.	27	2008	Dec.	13	2009
Dec.	25	2005	Nov.	26	2006	Jan.	29	2008	Dec.	15	2009
Dec.	26	2005	Dec.	08	2006	Jan.	31	2008	Dec.	16	2009
Dec.	27	2005	Dec.	09	2006	Feb.	02	2008	Dec.	20	2009
Dec.	28	2005	Dec.	10	2006	Feb.	19	2008	Dec.	21	2009
Dec.	29	2005	Dec.	11	2006	Feb.	20	2008	Dec.	27	2009
Dec.	30	2005	Dec.	12	2006	Feb.	21	2008	Dec.	29	2009
Dec.	31	2005	Dec.	21	2006	Feb.	22	2008	Dec.	30	2009

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A

**Notice of Intent to File Suit, BCCI (Orville, CA)
Significant Rain Events,* February 12, 2005-February 12, 2010**

Jan.	12	2010	Jan.	19	2010	Jan.	25	2010	Feb.	06	2010
Jan.	13	2010	Jan.	20	2010	Jan.	26	2010	Feb.	09	2010
Jan.	17	2010	Jan.	21	2010	Jan.	30	2010			
Jan.	18	2010	Jan.	24	2010	Feb.	04	2010			

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.