

1 ANDREW L. PACKARD (State Bar No. 168690)
2 ERIK M. ROPER (State Bar No. 259756)
3 Law Offices of Andrew L. Packard
4 100 Petaluma Blvd. N., Suite 301
5 Petaluma, CA 94952
6 Tel: (707) 763-7227
7 Fax: (707) 763-9227
8 E-mail: Andrew@packardlawoffices.com

6 ROBERT J. TUERCK (Bar No. 255741)
7 Jackson & Tuerck
8 P.O. Box 148
9 429 W. Main Street, Suite C
10 Quincy, CA 95971
11 Tel: (530) 283-0406
12 E-mail: bob@jacksontuerck.com

10 Attorneys for Plaintiff
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,
17 Plaintiff,
18 vs.
19 CITY OF CHICO, and RUBEN
20 MARTINEZ, an individual,
21 Defendants,

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES

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

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

24 **I. JURISDICTION AND VENUE**

25 1. This is a civil suit brought under the citizen suit enforcement provisions of the
26 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”
27 or “the Act”) against the City of Chico and Mr. Ruben Martinez (hereafter “Defendants”).
28

1 This Court has subject matter jurisdiction over the parties and the subject matter of this
2 action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C.
3 § 1331 (an action arising under the laws of the United States). The relief requested is
4 authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of
5 actual controversy and further necessary relief based on such a declaration), 33 U.S.C. §§
6 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).

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

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

21 4. Venue is proper in the Eastern District of California pursuant to Section
22 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
23 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
24 Sacramento, California because the source of the violations is located within Butte County.

25 **II. INTRODUCTION**

26 5. This complaint seeks relief for Defendants' discharges of pollutants from an
27 approximately 1079-acre air transportation facility ("the Facility" or "the Airport") owned
28 and/or operated by Defendants City of Chico and Ruben Martinez. The Facility discharges

1 to Sycamore Creek, which ultimately drains to the Sacramento River, and the Sacramento-
2 San Joaquin Delta. Defendants' discharges of pollutants from the Facility are in violation of
3 the Act and the State of California's General Industrial Permit for storm water discharges,
4 State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ,
5 as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-
6 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.
7 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,
8 monitoring, reporting, discharge and management practice requirements, and other
9 procedural and substantive requirements of the General Permit and the Act are ongoing and
10 continuous.

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

18 **III. PARTIES**

19 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
20 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
21 California with its main office in Stockton, California. CSPA has approximately 2,000
22 members who live, recreate and work in and around waters of the State of California,
23 including Sycamore Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.
24 CSPA is dedicated to the preservation, protection, and defense of the environment, and the
25 wildlife and the natural resources of all waters of California. To further these goals, CSPA
26 actively seeks federal and state agency implementation of the Act and other laws and, where
27 necessary, directly initiates enforcement actions on behalf of itself and its members.

28 8. Members of CSPA reside in California and use and enjoy California's

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

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

14 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant City
15 of Chico is a municipality organized under the laws of the State of California.

16 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant
17 Ruben Martinez is the Director of the General Services Department for the City of Chico and
18 that in this capacity he directs the operations and maintenance of the Facility. Accordingly,
19 Defendants own and/or operate the Facility.

20 **IV. STATUTORY BACKGROUND**

21 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
22 pollutant into waters of the United States, unless such discharge is in compliance with
23 various enumerated sections of the Act. Among other things, Section 301(a) prohibits
24 discharges not authorized by, or in violation of, the terms of an NPDES permit issued
25 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

26 13. Section 402(p) of the Act establishes a framework for regulating municipal
27 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).
28 States with approved NPDES permit programs are authorized by Section 402(p) to regulate

1 industrial storm water discharges through individual permits issued to dischargers and/or
2 through the issuance of a single, statewide general permit applicable to all industrial storm
3 water dischargers. 33 U.S.C. § 1342.

4 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of
5 the U.S. EPA has authorized California's State Board to issue NPDES permits including
6 general NPDES permits in California.

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

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

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

1 18. Effluent Limitation B(3) of the General Permit requires dischargers to reduce
2 or prevent pollutants in its storm water discharges through implementation of the Best
3 Available Technology Economically Achievable (“BAT”) for toxic and nonconventional
4 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for
5 conventional pollutants. BAT and BCT include both nonstructural and structural measures.
6 General Permit, Section A(8).

7 19. EPA has established Benchmark Levels as guidelines for determining
8 whether a facility discharging industrial storm water has implemented the requisite BAT and
9 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
10 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –
11 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –
12 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.
13 The State Water Quality Control Board has proposed adding a benchmark level for specific
14 conductance of 200 µmhos/cm.

15 20. Dischargers must develop and implement a Storm Water Pollution
16 Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must comply with the
17 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:
18 (1) a narrative description and summary of all industrial activity, potential sources of
19 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm
20 water conveyance system, associated points of discharge, direction of flow, areas of
21 industrial activities, and areas of actual and potential pollutant contact; (3) a description of
22 storm water management practices, best management practices (“BMPs”) and preventive
23 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)
24 the location where Significant Materials are being shipped, stored, received and handled, as
25 well as the typical quantities of such materials and the frequency with which they are
26 handled; (5) a description of potential pollutant sources including industrial processes,
27 material handling and storage areas, dust and particulate generating activities; (6) a summary
28 of storm water sampling points; (7) a description of individuals and their responsibilities for

1 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of
2 potential pollutant sources including industrial processes, material handling and storage
3 areas, and dust and particulate generating activities; (9) a description of significant spills and
4 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description
5 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an
6 assessment of potential pollutant sources at the Facility and a description of the BMPs to be
7 implemented at the Facility that will reduce or prevent pollutants in storm water discharges
8 and authorized non-storm water discharges, including structural BMPs where non-structural
9 BMPs are not effective (Section A(7), (8)).

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

24 22. The General Permit requires dischargers to eliminate all non-storm water
25 discharges to storm water conveyance systems other than those specifically set forth in
26 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth
27 in Special Condition D(1)(b).

28 23. The General Permit requires dischargers commencing industrial activities

1 before October 1, 1992 to develop and implement an adequate written Monitoring and
2 Reporting Program no later than October 1, 1992. Existing facilities covered under the
3 General Permit must implement all necessary revisions to their monitoring programs no later
4 than August 1, 1997.

5 24. The General Permit also requires dischargers to submit “Annual Reports” to
6 the Regional Board. As part of their monitoring program, dischargers must identify all storm
7 water discharge locations that produce a significant storm water discharge, evaluate the
8 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
9 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
10 then conduct visual observations of these discharge locations for at least one storm per
11 month during the wet season (October through May) and record their findings in their
12 Annual Report. Dischargers must also collect and analyze storm water samples from at least
13 two storms per year. Section B requires dischargers to sample and analyze during the wet
14 season for basic parameters such as pH, total suspended solids (“TSS”), specific
15 conductance, and total organic content (“TOC”) or oil and grease, certain industry-specific
16 parameters, and toxic chemicals and other pollutants likely to be in the storm water
17 discharged from the facility. Section B(5) and Table D of the General Permit requires
18 dischargers whose industrial activities fall within SIC Code 4512, 4582 or 4583 (“Air
19 Transportation Facilities That Have Vehicle Maintenance, Material Handling Facilities,
20 Equipment Cleaning Operations, or Airport and/or Aircraft De-icing / Anti-icing
21 Operations”) to analyze their storm water discharge samples for NH₃, pH, biological oxygen
22 demand and chemical oxygen demand. Dischargers must also conduct dry season visual
23 observations to identify sources of non-storm water pollution. The monitoring and reporting
24 program requires dischargers to certify, based upon the annual site inspections, that the
25 facility is in compliance with the General Permit and report any non-compliance, and
26 contains additional requirements as well.

27 25. In order to discharge storm water lawfully in California, industrial
28 dischargers must comply with the terms of the General Permit or have obtained and

1 complied with an individual NPDES permit.

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

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

9 28. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
10 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
11 Waters of the United States include man-made water bodies that are tributary to waters that
12 are navigable in fact. Waters of the United States include ephemeral waters that are tributary
13 to waters that are navigable in fact.

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

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

27 31. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
28 waters shall be maintained free of toxic substances in concentrations that produce

1 detrimental physiological responses in human, plant, animal, or aquatic life.”

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

5 33. The Basin Plan provides that “[w]aters shall not contain chemical constituents
6 in concentrations that adversely affect beneficial uses.”

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

12 **V. STATEMENT OF FACTS**

13 35. Defendants operate the Facility, an approximately 1079-acre air transport
14 facility located at 150 Airpark Boulevard, in Chico, California. The Facility discharges
15 water to Sycamore Creek, which ultimately flows into the Sacramento River, and the
16 Sacramento-San Joaquin Delta.

17 36. The Facility is classified under SIC Codes 4512, 4582, 4583 (“Air
18 Transportation Facilities That Have Vehicle Maintenance, Material Handling Facilities,
19 Equipment Cleaning Operations, or Airport and/or Aircraft De-icing / Anti-icing
20 Operations”) and 3721 (“Transportation Equipment”). Industrial activities occur throughout
21 the Facility. The Facility is primarily used as an aircraft terminal. Other current industrial
22 activities occurring at the Facility include: (a) the use, storage, and maintenance of
23 motorized vehicles; and, (b) the use, storage and handling of materials such as solvents,
24 petroleum products, paints and aircraft and runway de-icing chemicals . Many of these
25 activities occur outside in areas that are exposed to storm water and storm flows due to the
26 lack of overhead coverage, functional berms and other storm water controls. Plaintiff is
27 informed and believes that Defendants’ storm water controls, to the extent any exist, fail to
28 achieve BAT and BCT standards.

1 37. 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 38. During rain events storm water laden with pollutants flows from the Facility
11 into the Sycamore Creek, which ultimately flows to the Sacramento River, and the
12 Sacramento-San Joaquin Delta.

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

16 40. Sycamore Creek, the Sacramento River, and the Sacramento-San Joaquin
17 Delta are waters of the United States.

18 41. Information available to Plaintiff indicates that Defendants have not fulfilled
19 the requirements set forth in the General Permit for discharges from the Facility due to the
20 continued discharge of contaminated storm water.

21 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants
22 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

23 43. Information available to Plaintiff indicates the continued existence of
24 unlawful storm water discharges at the Facility.

25 44. Plaintiff is informed and believes, and thereupon alleges, that Defendants
26 have failed to develop and implement adequate monitoring, reporting and sampling
27 programs for the Facility. Plaintiffs are informed and believe, and thereupon allege, that
28 Defendants have not sampled with adequate frequency, have not conducted visual

1 monitoring, and have not analyzed the samples collected for the required pollutant
2 parameters.

3 45. Plaintiff is informed and believes, and thereupon alleges, that all of the
4 violations alleged in this Complaint are ongoing and continuing.

5 **VI. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**
7 **Discharges of Contaminated Storm Water**
8 **in Violation of Permit Conditions and the Act**
9 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

10 46. Plaintiff incorporates the allegations contained in the above paragraphs as
11 though fully set forth herein.

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

19 48. Plaintiff is informed and believes, and thereupon alleges, that since at least
20 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
21 Sycamore Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation
22 of the General Permit.

23 49. During every significant rain event, storm water flowing over and through
24 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
25 Facility to Sycamore Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

51. Plaintiff is informed and believes, and thereupon alleges, that these

1 discharges of contaminated storm water are adversely affecting human health and the
2 environment in violation of Receiving Water Limitation C(1) of the General Permit.

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

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

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

14 **SECOND CAUSE OF ACTION**

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

16 54. Plaintiff incorporates the allegations contained in the above paragraphs as
17 though fully set forth herein.

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

21 56. Defendants have failed to develop and implement an adequate SWPPP for
22 the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for
23 the Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,
24 including waste materials, without appropriate best management practices; the continued
25 exposure of significant quantities of industrial material to storm water flows; the failure to
26 either treat storm water prior to discharge or to implement effective containment practices;
27 and the continued discharge of storm water pollutants from the Facility at levels in excess of
28 EPA benchmark values and other applicable water quality standards.

1 57. Defendants have further failed to update the Facility's SWPPP in response to
2 the analytical results of the Facility's storm water monitoring as required by the General
3 Permit.

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

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

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

11 **THIRD CAUSE OF ACTION**

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

15 60. Plaintiff incorporates the allegations contained in the above paragraphs as
16 though fully set forth herein.

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

21 62. Defendants have failed to implement BAT and BCT at the Facility for their
22 discharges of pollutants in violation of Effluent Limitation B(3) of the General Permit.

23 63. Each day since April 2, 2005 that Defendants have failed to develop and
24 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
25 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

26 64. Defendants have been in violation of the BAT and BCT requirements every day
27 since at least April 2, 2005. Defendant continues to be in violation of the BAT and BCT
28 requirements each day that it fails to develop and fully implement an adequate BAT and BCT
for the Facility.

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

2 **FOURTH CAUSE OF ACTION**

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

5 65. Plaintiff incorporates the allegations contained in the above paragraphs as
6 though fully set forth herein.

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

26 **False Certification of Compliance in Annual Report**
27 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

28 69. Plaintiff incorporates the allegations contained in the above paragraphs as

1 though fully set forth herein.

2 70. Defendants have falsely certified compliance with the General Permit in each
3 of the Annual Reports submitted to the Regional Board since April 2, 2005.

4 71. Each day since at least April 2, 2005, that Defendants have falsely certified
5 compliance with the General Permit is a separate and distinct violation of the General Permit
6 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation
7 of the General Permit's verification requirement each day that they maintain their false
8 certification of its compliance with the General Permit.

9 **VII. RELIEF REQUESTED**

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

- 11 a. Declare Defendants to have violated and to be in violation of the Act as
12 alleged herein;
- 13 b. Enjoin Defendants from discharging pollutants from the Facility and to the
14 surface waters surrounding and downstream from the Facility;
- 15 c. Enjoin Defendants from further violating the substantive and procedural
16 requirements of the General Permit;
- 17 d. Order Defendants to immediately implement storm water pollution control
18 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
19 pollutants in the Facility's storm water from contributing to violations of any water quality
20 standards;
- 21 e. Order Defendants to comply with the General Permit's monitoring and
22 reporting requirements, including ordering supplemental monitoring to compensate for past
23 monitoring violations;
- 24 f. Order Defendants to prepare a SWPPP consistent with the General Permit's
25 requirements and implement procedures to regularly review and update the SWPPP;
- 26 g. Order Defendants to provide Plaintiff with reports documenting the quality
27 and quantity of their discharges to waters of the United States and their efforts to comply with
28 the Act, the General Permit and the Court's orders;

1 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for
2 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all
3 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
4 309(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
5 (pp. 200-202) (Dec. 31, 1996);

6 i. Order Defendants to take appropriate actions to restore the quality of
7 navigable waters impaired by their activities;

8 j. Award Plaintiffs' costs (including reasonable attorney, witness, and
9 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

10 k. Award any such other and further relief as this Court may deem appropriate.
11

12 Dated: June 1, 2010

Respectfully Submitted,

13 LAW OFFICES OF ANDREW L. PACKARD

14
15 By: /s/ Erik Roper
16 Erik M. Roper
17 Attorneys for Plaintiff
18 CALIFORNIA SPORTFISHING
19 PROTECTION ALLIANCE
20
21
22
23
24
25
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

April 2, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Ruben Martinez, Director, General Services Department
City of Chico
965 Fir Street
Chico, CA 95928

Mr. Ruben Martinez, Director of Operations and Maintenance
City of Chico Municipal Airport
150 Airpark Boulevard
P.O. Box 3420
Chico, CA 95927-3420

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

Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the City of Chico Municipal Airport ("the Airport") facility located at 150 Airpark Boulevard in Chico, California ("the Facility"). The WDID identification number for the Facility is 5R04I003206. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sycamore Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the City of Chico Municipal Airport.

This letter addresses the unlawful discharges of pollutants from the Facility to Sycamore Creek, which in turn ultimately flows into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water

April 2, 2010

Page 2 of 12

Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “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, the City of Chico and Mr. Ruben Martinez are 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 the City of Chico and Mr. Ruben Martinez 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.

The City of Chico (“the City”) operates the Airport Facility located in Chico, California. The Facility is an air transportation facility. Other activities at the Facility include the use, storage, and maintenance of heavy machinery, and the storage and handling of materials such as solvents, scrap metal, petroleum products, paints, aircraft parts and de-icing materials.

On or about April 3, 1992, the City submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as an aircraft terminal facility under Standard Industrial Classification (“SIC”) Code 4512 (“Air Transportation, Scheduled”). The Facility collects and discharges storm water from its approximately 1079-acre industrial site through at least one discharge point to Sycamore Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). Sycamore Creek, the Sacramento River, the Delta, and the creeks that receive storm water discharge 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 (the “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 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; copper – 0.01; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states

April 2, 2010

Page 3 of 12

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 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a 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

April 2, 2010

Page 4 of 12

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 discharged by the City from the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; ammonia – 19 mg/L; biological oxygen demand – 30 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmho/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

The Facility 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 such as the General Permit. 33 U.S.C. § 1342. 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, Oil & Grease, 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.

Based on its review of available public documents, CSPA is informed and believes that the Facility continues to discharge myriad pollutants in excess of benchmarks and that the City has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. The City’s ongoing violations are discussed further below.

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

The Facility has discharged and continues to discharge stormwater with unacceptable levels of Specific Conductivity (SC) and Oil and Grease (O&G) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data

April 2, 2010
 Page 5 of 12

attached hereto as Attachment A. The Facility’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 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 Specific Conductivity at Levels in Excess of Proposed EPA Benchmark

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/26/2007	Spec. Con.	432 µmhos/cm	200 µmhos/cm
1 st Storm Event analyzed on Form 1 of 2007-2008 Annual Report for the Facility; event date not recorded on Form 1	Spec. Con.	330 µmho/cm	200 µmhos/cm
11/03/2008	Spec. Con.	243 µmhos/cm	200 µmhos/cm
02/05/2009	Spec. Con.	409 µmhos/cm	200 µmhos/cm

2. Discharges of Storm Water with Oil and Grease (O&G) in Excess of Applicable EPA Benchmark

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	O&G	122 mg/L	15 mg/L

CSPA’s investigation, including its review of the City’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that the City has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC) and Oil and Grease (O&G) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. The City was required to have implemented BAT and BCT at the Facility by no later than October 1,

April 2, 2010

Page 6 of 12

1992 or the start of its operations. Thus, the City is discharging polluted storm water associated with its industrial operations at the Facility without having implemented BAT and BCT.

CSPA is informed and believes that the City has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 2, 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 April 2, 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 the City has discharged storm water from the Facility containing impermissible levels of Specific Conductivity (SC) and Oil and Grease (O&G), and other unmonitored 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, the City is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 2, 2005.

B. The City Has Failed to Implement an Adequate Monitoring & Reporting Plan at the Facility.

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 the Airport, designated under SIC Code 4512 are also required to sample for Ammonia (NH₃), Biological Oxygen Demand (BOD) and Chemical Oxygen Demand (COD). 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.”

April 2, 2010

Page 7 of 12

Based on its investigation, CSPA is informed and believes that the City has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records indicates that various Annual Reports filed by the City for the Facility are incomplete and/or evidence a failure to analyze storm water samples for all required pollutants. Further, CSPA's review of these Annual Reports indicates that the City failed to collect storm water samples at the Facility during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. 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 federal Clean Water Act, the City is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 2, 2005. These violations are set forth in greater detail below:

1. The City 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 the City 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.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one discharge point currently designated by the City. This failure to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

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

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires the City to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as the Airport which are designated as SIC Code 4512 to analyze its storm water discharge for Ammonia (NH₃), Biological Oxygen Demand (BOD) and Chemical Oxygen Demand (COD).

Based on its ongoing investigation, CSPA is informed and believes that the City has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include benzene, toluene and other petroleum-based derivatives found in aviation fuel, lubricants and solvents. The City's failure to monitor these pollutants at the Facility extends as far back as April 2, 2005. The City's failure to monitor these other

April 2, 2010

Page 8 of 12

pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

3. The City Is Subject to Civil Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 2, 2005.

CSPA is informed and believes that available documents demonstrate the City's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 2, 2005.

C. The City 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 the City has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity and Oil and Grease (O&G) 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, the City 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 internal structure of the Facility, CSPA believes that at a minimum the City 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. The City has failed to adequately implement such measures at the Facility.

The City was required to have implemented BAT and BCT at the Facility by no later than October 1, 1992. Therefore, the City 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 the City fails to implement BAT and BCT at the Facility. The City is subject to penalties for violations of the Order and the Act occurring since April 2, 2005.

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

April 2, 2010

Page 9 of 12

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit 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 include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). Additional mandatory SWPPP elements 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 must also 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 the City has been operating with an inadequately developed or implemented SWPPP for the Facility in violation of the requirements set forth above.

April 2, 2010
Page 10 of 12

The City has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. The City 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 the City fails to develop and implement an effective SWPPP. The City is subject to penalties for violations of the Order and the Act occurring since April 2, 2005.

E. The City 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, the City is discharging elevated levels of Specific Conductivity and Oil and Grease (O&G) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the City was required to submit a report for the Facility 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.

Based on CSPA's review of available documents, the City was aware of high levels of these pollutants prior to April 2, 2005. Likewise, the City has not filed any reports describing its non-compliance 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). The City 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 April 2, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The City is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 2, 2005.

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

April 2, 2010
Page 11 of 12

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 City agents/employees have 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, in its 2008-2009 Annual Report, the City failed to include Form 3 and Form 5. As indicated above, the City has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the City has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. The City's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The City is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 2, 2005.

III. Persons Responsible for the Violations.

CSPA puts the City of Chico and Mr. Ruben Martinez (in his professional capacity as both Director of the City's General Services Department and as Director of Maintenance and Operations for the Facility operated by the City of Chico) 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 these notices on notice that it intends to include those persons in this action.

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
Erik M. Roper
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
E-mail: Andrew@PackardLawOffices.com
Erik@PackardLawOffices.com

And to:

Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
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 City of Chico and Mr. Ruben Martinez (in his professional capacity as both Director of the City's General Services Department and as Director of Maintenance and Operations for the Facility operated by the City of Chico) to a penalty of up to \$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, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. 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 the City of Chico and its agents (e.g., Mr. Ruben Martinez, in his professional capacity as both Director of the City's General Services Department and as the Director of Maintenance and Operations for the Facility operated by the City of Chico) for 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.

April 2, 2010

Page 13 of 12

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

Lori J. Barker, City Attorney
City of Chico
411 Main Street
Chico, CA 95928
P.O. Box 3420
Chico, CA 95927-3420

ATTACHMENT A

**Notice of Intent to File Suit, Chico City Municipal Airport (Chico, CA)
Significant Rain Events,* April 2, 2005 – April 2, 2010**

April 02 2005	Feb. 02 2006	Feb. 08 2007	Jan. 27 2008
April 07 2005	Feb. 26 2006	Feb. 09 2007	Jan. 28 2008
April 08 2005	Feb. 27 2006	Feb. 10 2007	Jan. 29 2008
April 09 2005	Feb. 28 2006	Feb. 12 2007	Jan. 31 2008
April 11 2005	Mar. 02 2006	Feb. 13 2007	Feb. 02 2008
April 24 2005	Mar. 03 2006	Feb. 22 2007	Feb. 19 2008
April 25 2005	Mar. 05 2006	Feb. 24 2007	Feb. 20 2008
April 28 2005	Mar. 06 2006	Feb. 26 2007	Feb. 21 2008
May 05 2005	Mar. 07 2006	Feb. 28 2007	Feb. 22 2008
May 06 2005	Mar. 12 2006	Mar. 26 2007	Feb. 23 2008
May 08 2005	Mar. 13 2006	Mar. 27 2007	Feb. 24 2008
May 09 2005	Mar. 14 2006	April 11 2007	Mar. 15 2008
May 10 2005	Mar. 16 2006	April 12 2007	April 23 2008
May 18 2005	Mar. 17 2006	April 14 2007	May 24 2008
May 19 2005	Mar. 20 2006	April 16 2007	Oct. 06 2008
Oct. 15 2005	Mar. 21 2006	April 19 2007	Oct. 31 2008
Oct. 17 2005	Mar. 24 2006	April 21 2007	Nov. 01 2008
Oct. 26 2005	Mar. 25 2006	April 23 2007	Nov. 03 2008
Oct. 28 2005	Mar. 27 2006	May 02 2007	Nov. 04 2008
Oct. 31 2005	Mar. 28 2006	May 04 2007	Nov. 10 2008
Nov. 04 2005	Mar. 29 2006	Oct. 01 2007	Dec. 15 2008
Nov. 08 2005	April 02 2006	Oct. 10 2007	Dec. 24 2008
Nov. 25 2005	April 03 2006	Oct. 12 2007	Dec. 25 2008
Nov. 28 2005	April 04 2006	Oct. 17 2007	Jan. 05 2009
Nov. 29 2005	April 05 2006	Nov. 10 2007	Jan. 12 2009
Dec. 01 2005	April 10 2006	Nov. 11 2007	Jan. 13 2009
Dec. 17 2005	April 11 2006	Nov. 13 2007	Jan. 20 2009
Dec. 18 2005	April 12 2006	Dec. 04 2007	Jan. 28 2009
Dec. 19 2005	April 13 2006	Dec. 07 2007	Feb. 06 2009
Dec. 20 2005	April 16 2006	Dec. 18 2007	Feb. 09 2009
Dec. 21 2005	April 17 2006	Dec. 19 2007	Feb. 11 2009
Dec. 22 2005	April 22 2006	Dec. 20 2007	Feb. 12 2009
Dec. 25 2005	April 24 2006	Dec. 21 2007	Feb. 13 2009
Dec. 26 2005	May 21 2006	Dec. 28 2007	Feb. 15 2009
Dec. 27 2005	May 22 2006	Dec. 29 2007	Feb. 16 2009
Dec. 28 2005	Oct. 05 2006	Jan. 03 2008	Feb. 17 2009
Dec. 29 2005	Nov. 03 2006	Jan. 04 2008	Feb. 18 2009
Dec. 30 2005	Nov. 11 2006	Jan. 05 2008	Feb. 23 2009
Dec. 31 2005	Nov. 13 2006	Jan. 07 2008	Feb. 24 2009
Jan. 01 2006	Nov. 16 2006	Jan. 08 2008	Feb. 26 2009
Jan. 03 2006	Nov. 26 2006	Jan. 09 2008	Mar. 01 2009
Jan. 04 2006	Nov. 27 2006	Jan. 11 2008	Mar. 02 2009
Jan. 11 2006	Dec. 09 2006	Jan. 12 2008	Mar. 03 2009
Jan. 14 2006	Dec. 10 2006	Jan. 21 2008	Mar. 04 2009
Jan. 17 2006	Dec. 11 2006	Jan. 22 2008	Mar. 23 2009
Jan. 18 2006	Dec. 12 2006	Jan. 24 2008	April 09 2009
Jan. 30 2006	Dec. 13 2006	Jan. 25 2008	May 01 2009
Jan. 31 2006	Jan. 09 2007	Jan. 26 2008	May 02 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, Chico City Municipal Airport (Chico, CA)
Significant Rain Events,* April 2, 2005 – April 2, 2010**

May	05	2009
Oct.	13	2009
Oct.	14	2009
Nov.	18	2009
Nov.	23	2009
Nov.	27	2009
Nov.	30	2009
Dec.	11	2009
Dec.	12	2009
Dec.	13	2009
Dec.	14	2009
Dec.	16	2009
Dec.	20	2009
Dec.	21	2009
Dec.	27	2009
Dec.	29	2009
Dec.	30	2009
Jan.	04	2010
Jan.	12	2010
Jan.	13	2010
Jan.	14	2010
Jan.	17	2010
Jan.	18	2010
Jan.	19	2010
Jan.	20	2010
Jan.	21	2010
Jan.	22	2010
Jan.	24	2010
Jan.	25	2010
Jan.	26	2010
Jan.	27	2010
Jan.	30	2010
Feb.	01	2010
Feb.	04	2010
Feb.	06	2010
Feb.	08	2010
Feb.	09	2010
Feb.	22	2010
Feb.	24	2010
Mar.	03	2010
Mar.	12	2010
Mar.	13	2010

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