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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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17 CALIFORNIA SPORTFISHING ) Case No. \_\_\_\_\_  
18 PROTECTION ALLIANCE, a nonprofit )  
19 corporation ) COMPLAINT FOR DECLARATORY AND  
20 Plaintiff, ) INJUNCTIVE RELIEF AND CIVIL  
21 v. ) PENALTIES  
22 RECOLOGY OF BUTTE COLUSA ) (Federal Water Pollution Control Act, 33  
23 COUNTIES, fka NORCAL WASTE ) U.S.C. §§ 1251 to 1387)  
24 SYSTEMS OF BUTTE CO., a California )  
25 corporation, and JOE MATZ, an )  
26 individual )  
27 Defendants, )

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

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
3 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act” or  
4 “the Act”) against Recology of Butte Colusa Counties, fka NorCal Waste Systems of Butte  
5 County, Mr. Joe Matz (hereafter “Defendants”). This Court has subject matter jurisdiction over  
6 the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
7 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United  
8 States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue  
9 declaratory relief in case of actual controversy and further necessary relief based on such a  
10 declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),  
11 1365(a) (civil penalties).

12 2. On or about March 17, 2010, Plaintiff provided notice of Defendants’ violations  
13 of the Act, and of its intention to file suit against Defendants, to the Administrator of the United  
14 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the  
15 Executive Director of the State Water Resources Control Board (“State Board”); the Executive  
16 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional  
17 Board”); the U.S. Attorney General; and to Defendants, as required by the Act, 33 U.S.C. §  
18 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is  
19 incorporated by reference.

20 3. More than sixty days have passed since notice was served on Defendants and the  
21 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
22 neither the EPA nor the State of California has commenced or is diligently prosecuting a court  
23 action to redress the violations alleged in this complaint. This action’s claim for civil penalties  
24 is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §  
25 1319(g).

26 4. Venue is proper in the Eastern District of California pursuant to Section  
27 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
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1 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
2 Sacramento, California because the source of the violations is located within Butte County.

3 **II. INTRODUCTION**

4 5. This complaint seeks relief for Defendants' discharges of pollutants from an  
5 approximately thirteen-acre recycling facility ("the Facility") owned and/or operated by  
6 Defendants Recology of Butte Colusa Counties ("Recology") and Joe Matz. The Facility  
7 discharges surface water to the Feather River. The Feather River is a tributary to the  
8 Sacramento River, and the Sacramento-San Joaquin Delta. Defendants' discharges of pollutants  
9 from the Facility are in violation of the Act and the State of California's General Industrial  
10 Permit for storm water discharges, State Water Resources Control Board ("State Board") Water  
11 Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92- 12-DWQ and  
12 Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System  
13 ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or "Permit").  
14 Defendants' violations of the filing, monitoring, reporting, discharge and management practice  
15 requirements, and other procedural and substantive requirements of the General Permit and the  
16 Act are ongoing and continuous.

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

24 **III. PARTIES**

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

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

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

21         10.      Plaintiff is informed and believes, and thereupon alleges, that Defendant  
22 Recology is a corporation organized under the laws of the State of California, and that  
23 Defendant Joe Matz is the General Manager of the Facility. Accordingly, Defendants own  
24 and/or operate the Facility.

25 **IV.    STATUTORY BACKGROUND**

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

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

10 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
11 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
12 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 Permit  
16 on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. §  
17 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 an  
21 NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the General  
22 Permit prohibits storm water discharges and authorized non-storm water discharges that cause  
23 or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of  
24 the General Permit prohibits storm water discharges to any surface or ground water that  
25 adversely impact human health or the environment. Receiving Water Limitation C(2) of the  
26 General Permit prohibits storm water discharges that cause or contribute to an exceedance of  
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1 any applicable water quality standards contained in a Statewide Water Quality Control Plan or  
2 the applicable Regional Board's Basin Plan.

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

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

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

22 19. Dischargers must develop and implement a Storm Water Pollution Prevention  
23 Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the BAT and BCT  
24 standards. (Section B(3)). The SWPPP must include, among other elements: (1) a narrative  
25 description and summary of all industrial activity, potential sources of pollutants and potential  
26 pollutants; (2) a site map showing facility boundaries, the storm water conveyance system,  
27 associated points of discharge, direction of flow, areas of industrial activities, and areas of  
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1 actual and potential pollutant contact; (3) a description of storm water management practices,  
2 best management practices (“BMPs”) and preventive maintenance undertaken to avoid storm  
3 water contamination that achieve BAT and BCT; (4) the location where Significant Materials  
4 are being shipped, stored, received and handled, as well as the typical quantities of such  
5 materials and the frequency with which they are handled; (5) a description of potential pollutant  
6 sources including industrial processes, material handling and storage areas, dust and particulate  
7 generating activities; (6) a summary of storm water sampling points; (7) a description of  
8 individuals and their responsibilities for developing and implementing the SWPPP (Permit,  
9 Section A(3)); (8) a description of potential pollutant sources including industrial processes,  
10 material handling and storage areas, and dust and particulate generating activities; (9) a  
11 description of significant spills and leaks; (10) a list of all non-storm water discharges and their  
12 sources, and (11) a description of locations where soil erosion may occur (Section A(6)). The  
13 SWPPP must also include an assessment of potential pollutant sources at the Facility and a  
14 description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants  
15 in storm water discharges and authorized non-storm water discharges, including structural  
16 BMPs where non-structural BMPs are not effective (Section A(7), (8)).

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

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

7 22. The General Permit requires dischargers commencing industrial activities before  
8 October 1, 1992 to develop and implement an adequate written Monitoring and Reporting  
9 Program no later than October 1, 1992. Existing facilities covered under the General Permit  
10 must implement all necessary revisions to their monitoring programs no later than August 1,  
11 1997.

12 23. The General Permit also requires dischargers to submit yearly "Annual Reports"  
13 to the Regional Board. As part of their monitoring program, dischargers must identify all storm  
14 water discharge locations that produce a significant storm water discharge, evaluate the  
15 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
16 measures set out in the SWPPP are adequate and properly implemented. Dischargers must then  
17 conduct visual observations of these discharge locations for at least one storm per month during  
18 the wet season (October through May) and record their findings in their Annual Report.  
19 Dischargers must also collect and analyze storm water samples from at least two storms per  
20 year. Section B requires dischargers to sample and analyze during the wet season for basic  
21 parameters such as pH, total suspended solids ("TSS"), specific conductance, and total organic  
22 content ("TOC") or oil and grease, certain industry-specific parameters, and toxic chemicals  
23 and other pollutants likely to be in the storm water discharged from the facility. Section B(5)  
24 and Table D of the General Permit requires dischargers whose industrial activities fall within  
25 SIC Code 5093 to analyze their storm water discharge samples for chemical oxygen demand,  
26 iron, lead, aluminum, copper, and zinc. Dischargers must also conduct dry season visual  
27 observations to identify sources of non-storm water pollution. The monitoring and reporting  
28

1 program requires dischargers to certify, based upon the annual site inspections, that the facility  
2 is in compliance with the General Permit and report any non-compliance, and contains  
3 additional requirements as well.

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

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

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

14 27. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
15 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
16 Waters of the United States also include man-made water bodies that are tributary to waters  
17 that are navigable in fact, as well as ephemeral waters that are tributary to waters that are  
18 navigable in fact.

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

28

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

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

7           31.     The Basin Plan establishes a standard for electrical conductivity in the Delta of  
8 0.7 µmhos/cm from April 1 through August 31 and 1.0 µmhos/cm from September 1 through  
9 March 31.

10          32.     The Basin Plan provides that “[w]aters shall not contain chemical constituents in  
11 concentrations that adversely affect beneficial uses.”

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

17     **V.     STATEMENT OF FACTS**

18          34.     Defendants operate an approximately thirteen-acre recycling facility located at  
19 2720 S. 5<sup>th</sup> Avenue, in Oroville, California (the "Facility"). The Facility discharges surface  
20 water to the Feather. The Feather River is a tributary to the Sacramento River, and the  
21 Sacramento-San Joaquin Delta.

22          35.     The Facility is classified under Standard Industrial Classification (“SIC”) Code  
23 4953 (“Landfills and Land Application Sites”), 5093 (“Scrap Recycling Facilities”), and 4212  
24 (“Land Transportation Facilities That Have Vehicle and Equipment Maintenance Shops and/or  
25 Equipment Cleaning operations”). The main industrial activities occurring at the Facility  
26 involve the disposal of municipal solid waste and recycling. Other activities at the Facility  
27 include the use, storage, and maintenance of motorized vehicles, including trucks used to haul  
28

1 materials to and from the Facility. Many of these activities occur outside in areas that are  
2 exposed to storm water and storm flows due to the lack of overhead coverage, functional berms  
3 and other storm water controls. Plaintiff is informed and believes that Defendants' storm water  
4 controls, to the extent any exist, fail to achieve BAT and BCT standards.

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

14       37. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the  
15 discharges of polluted water and mud into waters of the United States.

16       38. During rain events storm water laden with pollutants flows from the Facility into  
17 the Feather River, which ultimately flows to the Sacramento River, and the Sacramento-San  
18 Joaquin Delta.

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

22       40. The Feather River, the Sacramento River, and the Sacramento-San Joaquin  
23 Delta are waters of the United States.

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

27  
28



1 the Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta in violation of  
2 the General Permit.

3 49. During every significant rain event, storm water flowing over and through  
4 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
5 Facility to the Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

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

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

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

23 **SECOND CAUSE OF ACTION**  
24 **Failure to Develop and Implement an**  
25 **Adequate Storm Water Pollution Prevention Plan**  
26 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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



1 g. Order Defendants to provide Plaintiff with reports documenting the quality and  
2 quantity of their discharges to waters of the United States and their efforts to comply with the  
3 Act and the Court's orders;

4 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for all  
5 violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations  
6 occurring after January 12, 2009, for each violation of the Act pursuant to Sections 309(d) and  
7 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-  
8 202) (Dec. 31, 1996);

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

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

13 k. Award any such other and further relief as this Court may deem appropriate.  
14

15 Dated: May 19, 2010

16 Respectfully submitted,

17 **JACKSON & TUERCK**

18  
19 By: 

20 Robert J. Tuerck  
21 Attorneys for Plaintiff  
22 CALIFORNIA SPORTFISHING  
23 PROTECTION ALLIANCE  
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25  
26  
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