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19 Attorneys for Plaintiff  
20 CALIFORNIA SPORTFISHING  
21 PROTECTION ALLIANCE

22 UNITED STATES DISTRICT COURT  
23 EASTERN DISTRICT OF CALIFORNIA

24 CALIFORNIA SPORTFISHING  
25 PROTECTION ALLIANCE, a non-profit  
26 corporation,

27 Plaintiff,

28 vs.

29 SIERRA PACIFIC INDUSTRIES, a  
30 California corporation, ROBERT TAYLOR,  
31 an individual, and ROBERT ZELWICK, an  
32 individual,

33 Defendants.

Case No. 2:10-cv-03405-FCD-GGH

**[PROPOSED] CONSENT AGREEMENT**

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

34 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “Plaintiff” or  
35 “CSPA”) is a non-profit public benefit corporation dedicated to the preservation, protection, and  
36 defense of the environment, wildlife, and natural resources of California’s waters;

37 **WHEREAS**, Defendant Sierra Pacific Industries (hereinafter “SPI”) owns an approximately

1 40-acre millwork and window manufacturing facility located at 11605 Reading Road, in Red Bluff,  
2 California (the "Facility"), Defendant Robert Taylor is the Manager of the Facility for SPI and that in  
3 this capacity he directs the operations and maintenance of the Facility, and Defendant Robert Zelwick  
4 is the safety and environmental coordinator for the Facility and that in this capacity he directs  
5 Defendants' management of storm water at the Facility (collectively, "Defendants");

6 **WHEREAS**, CSPA and Defendants shall be collectively referred to herein as the "Parties;";

7 **WHEREAS**, the Facility collects and discharges storm water to an unnamed ditch that  
8 ultimately discharges to the Sacramento River, and the Sacramento-San Joaquin Delta (a map of the  
9 Facility is attached hereto as **Exhibit A** and incorporated herein by reference);

10 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
11 to National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001,  
12 State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Water  
13 Quality Order 92-12 DWQ and 97-03-DWQ, issued pursuant to Section 402 of the Clean Water Act,  
14 33 U.S.C. § 1342, (hereinafter "General Permit");

15 **WHEREAS**, on or about October 22, 2010, Plaintiff provided notice of Defendants' alleged  
16 violations of the Act ("CWA Notice Letter") and of Plaintiff's intention to file suit against Defendants  
17 to the Administrator of the United States Environmental Protection Agency ("EPA"); the  
18 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board  
19 ("State Board"); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
20 Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A)  
21 (true and correct copies of CSPA's CWA Notice Letter is attached as **Exhibit B** and incorporated  
22 herein by reference);

23 **WHEREAS**, on or about December 20, 2010, Plaintiff provided notice of Defendant SPI's  
24 alleged violations of California Health & Safety Code Section 25249.5 (also referred to as  
25 "Proposition 65") ("Proposition 65 Notice Letter") and of its intention to file suit against Defendant  
26 SPI to the Proposition 65 Enforcement Reporting section of the office of the California Attorney  
27 General ("California Attorney General"); the District Attorney of each California county containing  
28

1 sources of drinking water potentially impacted by Defendant SPI's alleged violations of Proposition  
2 65; and, to Defendant SPI, as required by California Health & Safety Code Section 25249.5 *et seq.*  
3 (true and correct copies of CSPA's Proposition 65 Notice Letter is attached as **Exhibit C** and  
4 incorporated herein by reference);

5 **WHEREAS**, CSPA's CWA Notice Letter and its Proposition 65 Notice Letter shall be  
6 collectively referred to herein as the "Notices;"

7 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
8 maintains that they have complied at all times with the provisions of the General Permit and California  
9 Health & Safety Code sections 25249.5 *et seq.*;

10 **WHEREAS**, CSPA filed a Complaint against Defendants in the United States District Court,  
11 Eastern District of California, on December 21, 2010 ("Complaint");

12 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper  
13 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this  
14 Consent Agreement;

15 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
16 Justice and United States Environmental Protection Agency for the 45-day statutory review period,  
17 pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. §135.5, which shall be referred to herein as the  
18 "**Agency Review Period**"; and shall thereafter be submitted for approval by the District Court;

19 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the District  
20 Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall stipulate  
21 and request that the Court retain jurisdiction for the enforcement of this Consent Agreement as  
22 provided herein;

23 **WHEREAS**, the date of the District Court's Order granting dismissal of CSPA's Complaint  
24 and retaining jurisdiction for the enforcement of this Consent Agreement shall be referred to herein as  
25 the "**Court Approval Date**";

26 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
27 without further litigation.

1           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
2 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

3 **I.       COMMITMENT OF DEFENDANTS**

4           **1.       Compliance With General Permit & Clean Water Act.** Throughout the term of this  
5 Consent Agreement, Defendants agree to operate the Facility in compliance with the applicable  
6 requirements of the General Permit and the Clean Water Act, subject to any defenses available under  
7 the law.

8           **2.       Defendants' Implementation of Specific Storm Water Best Management Practices.**  
9 Defendants shall complete the implementation of the following storm water control measures/best  
10 management practices ("BMPs"):

11                   (a)       By September 1, 2011, Defendants shall revise the Facility's SWPPP and  
12 SWPPP site map to clearly depict where samples of storm water discharged from the Facility  
13 are to be collected at all designated storm water discharge and sampling locations (*i.e.*,  
14 Sampling Locations A, B, C, D and E) to ensure that storm water samples collected have not  
15 been commingled with run-on storm water from neighboring properties or from the drainage  
16 ditch that runs along Reading Road on the eastern border of the Facility;

17                   (b)       By September 1, 2011, Defendants shall install an impervious berm on the  
18 entire southern border of the Facility designed to prevent run-on of storm water and non-storm  
19 water from the south of the Facility;

20                   (c)       By September 1, 2011, Defendants shall paint the galvanized metal roof and  
21 associated storm water appurtenances (*i.e.*, downspouts) of the specialty shop building and will  
22 replace galvanized metal storm water culverts in order to control the discharge of zinc from  
23 such surfaces and thereby reduce the concentration of zinc found in the Facility's storm water  
24 discharges. Thereafter, Defendants shall routinely inspect painted galvanized metal roofs and  
25 appurtenances and repair/re-paint as necessary;

26                   (d)       By July 1, 2011, Defendants shall remove all the uncovered, inutile metal parts  
27 and materials in the northwest corner of the Facility (on the unpaved areas near the Facility's  
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1 Holding Pond);

2 (e) During the Wet Season (Oct. 1 – May 30), Defendants shall sweep all  
3 impervious Facility surfaces noted on **Exhibit E** attached hereto on a weekly basis;

4 (f) By September 1, 2011, Defendants shall create, use and maintain a visual  
5 inspection checklist for use during visual inspections of storm water and non-storm water  
6 discharges from the Facility;

7 (g) Defendants shall maintain the Facility’s storm water drainage system, BMPs,  
8 and drop inlets in a manner that feasibly ensures that wood waste, metal waste, asphalt,  
9 concrete and any other materials unrelated to the control or treatment of storm water are kept  
10 out of the Facility’s storm water drainage system, BMPs and drop inlets;

11 (h) Defendants shall regularly monitor and maintain the Facility’s storm water  
12 drainage system, BMPs, and drop inlets, document such maintenance, and maintain records  
13 thereof with the Facility’s SWPPP in accordance with the terms of the General Permit.  
14 Further, Defendants shall ensure that appropriate Facility personnel are properly trained in  
15 storm water management and records of any such storm water management training shall be  
16 maintained along with the Facility’s SWPPP.

17 **3. SWPPP Amendments/Additional BMPs.** By September 1, 2011, Defendants shall  
18 amend the SWPPP for the Facility and the Facility SWPPP site map to incorporate all of the relevant  
19 requirements of this Consent Agreement.

20 **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)  
21 storm events, as qualified in the General Permit<sup>1</sup> for sampling purposes, in each of the two Wet  
22 Seasons occurring during the term of this Consent Agreement (2011-2012 and 2012-2013). The storm  
23 water sample results shall be compared with the values set forth in **Exhibit D**, attached hereto, and  
24 incorporated herein by reference. If the results of any such samples exceed the parameter values set

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26 \_\_\_\_\_  
27 <sup>1</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are  
28 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 forth in **Exhibit D**, Defendants shall comply with the “Action Memorandum” requirements set forth  
2 below. If the sampling results for the first Wet Season (2011-2012) from Sampling Point A for each  
3 individual pollutant set forth in **Exhibit D** are within fifteen percent (15%) of the sampling results  
4 obtained for Sampling Point B during the same timeframe, Defendants can discontinue sampling from  
5 Sampling Point A in the second Wet Season (2012-2013).

6 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
7 listed in **Exhibit D** by a laboratory accredited by the State of California. All samples collected from  
8 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is  
9 not exceeded. Sampling results shall be provided to CSPA within seven (7) business days of  
10 Defendants’ receipt of the laboratory report from each sampling event pursuant to the Notice  
11 provisions below (§ 27).

12 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”; Meet-**  
13 **and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4 above  
14 exceeds the evaluation levels set forth in **Exhibit D**, or if Defendants fail to collect and analyze  
15 samples from four (4) storm events, as qualified in the General Permit, Defendants shall prepare a  
16 written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four  
17 (4) qualified storm events, the possible cause and/or source of the exceedance(s), and additional  
18 measures that will be taken to reduce or eliminate future exceedances (“Action Memorandum”). The  
19 Action Memorandum shall be provided to CSPA not later than July 15 following the conclusion of  
20 each Wet Season pursuant to the Notice provisions below (§ 27). The Parties agree that preparation  
21 and implementation of an Action Memorandum by Defendants shall not give rise to any presumption  
22 that Defendants have failed to comply with any obligations under the General Permit or the Clean  
23 Water Act. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative  
24 BMPs, such additional measures may include, but are not limited to, further material improvements to  
25 the storm water collection and discharge system, changing the frequency of Facility sweeping,  
26 changing the type and extent of storm water filtration media or modifying other industrial activities or  
27 management practices at the Facility. Within fifteen (15) days of receipt of an Action Memorandum,  
28

1 CSPA may provide comment on an Action Memorandum and suggest any additional pollution  
2 prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed  
3 to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by  
4 CSPA, Defendants agree to meet and confer in good faith regarding the contents and sufficiency of the  
5 Action Memorandum. Additional measures identified by Defendants in an Action Memorandum, or  
6 identified as a result of the meet and confer process described above, will be implemented within sixty  
7 (60) days after the due date of the Action Memorandum, or the conclusion of the meet and confer  
8 process, unless a longer timeframe is identified by Defendants in an Action Memorandum as necessary  
9 to implement the measure, or agreed to by the Parties during the meet and confer process. Within  
10 thirty (30) days of implementation, the Facility SWPPP and/or site map shall be amended to include all  
11 additional BMP measures.

12 **7. Inspections During The Term Of This Consent Agreement.** Defendants shall permit  
13 representatives of CSPA to perform one (1) physical inspection of the Facility during normal business  
14 hours during the term of this Consent Agreement. This inspection shall be performed by CSPA's  
15 counsel and consultant(s) and may include sampling, photographing, and/or videotaping and CSPA  
16 shall provide Defendants with a copy of all sampling reports, photographs and/or video. CSPA shall  
17 provide at least three (3) business days advance notice of such physical inspection, except that  
18 Defendants shall have the right to deny access if circumstances would make the inspection unduly  
19 burdensome and pose significant interference with business operations of any party/attorney, or the  
20 safety of individuals. In such case, Defendants shall specify at least three (3) dates, if possible, within  
21 the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. Defendants  
22 shall not make any alterations to Facility conditions during the period between receiving CSPA's three  
23 (3) business days advance notice and the start of CSPA's inspection that Defendants would not  
24 otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of  
25 the Facility, excepting any actions taken in compliance with any applicable laws or regulations.  
26 Nothing herein shall be construed to prevent Defendants from continuing to implement any BMPs  
27 identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

1           **8. Defendants' Communications To/From Regional and State Boards.** During the  
2 term of this Consent Agreement, Defendants shall provide CSPA with copies of all documents  
3 submitted to or received from the Regional Board or the State Board concerning storm water  
4 discharges from the Facility, including, but not limited to, all documents and reports submitted to the  
5 Regional Board and/or State Board as required by the General Permit. Such documents and reports  
6 shall be provided to CSPA pursuant to the Notice provisions herein (at ¶ 27) within fourteen (14)  
7 calendar days of their production or receipt by Defendants.

8           **9. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any  
9 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen  
10 (14) calendar days of such amendment.

11 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

12           **10. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation of the alleged Clean  
13 Water Act violations set forth in CSPA's Complaint and the alleged violations of Proposition 65 set  
14 forth in CSPA's Proposition 65 Notice Letter, Defendants agree to pay the sum of \$37,500 within  
15 fifteen (15) calendar days after the Court Approval Date to the Rose Foundation for Communities and  
16 the Environment to fund grant awards to projects that benefit water quality in the Sacramento River  
17 and/or the Sacramento-San Joaquin River Delta. The Rose Foundation shall not retain any portion of  
18 the funds, except for the normal cost necessary to cover its overhead, not to exceed 10% of the total  
19 project fund. The Rose Foundation shall provide notice to the Parties within thirty (30) calendar days  
20 of when the funds are dispersed by the Rose Foundation, setting forth the recipient and the purpose of  
21 the funds. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, Attn: Tim  
22 Little, 6008 College Avenue, Oakland, CA 94618.

23           **11. Attorneys' Fees And Costs.** Defendants agree to reimburse CSPA in the amount of  
24 \$26,250 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs,  
25 and all other costs incurred as a result of investigating the activities at the Facility, bringing the  
26 Complaint and negotiating a resolution in the public interest. Such payment shall be made out to the  
27 Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent to the Law Offices of  
28



1 Andrew Packard, 100 Petaluma Boulevard North, Suite 301, Petaluma, CA 94952 within fifteen (15)  
2 calendar days after the Court Approval Date.

3 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
4 expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance  
5 with this Consent Agreement, Defendants agree to contribute \$5,000 for each of the two Wet Seasons  
6 (*i.e.*, 2011-2012 and 2012-2013) covered by this Consent Agreement (\$10,000 total for the life of the  
7 Consent Agreement), to a compliance monitoring fund maintained by counsel for CSPA as described  
8 below. Compliance monitoring activities may include, but shall not be limited to, site inspections,  
9 review of water quality sampling reports, review of annual reports, review, comment, and discussions  
10 with representatives of Defendants concerning the Action Memoranda referenced above, and potential  
11 changes to Facility pollution prevention measures, preparation for and participation in meet-and-confer  
12 sessions, water quality sampling and analysis, and compliance-related activities. Payments of \$5,000  
13 shall be made out to the Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent no  
14 later than September 1, 2011 and September 1, 2012 to the Law Offices of Andrew Packard, 100  
15 Petaluma Boulevard North, Suite 301, Petaluma, CA 94952.

16 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

17 **13.** With the exception of the timelines set forth above for addressing exceedances of  
18 values specified on **Exhibit D** and Action Memoranda, if a dispute under this Consent Agreement  
19 arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet  
20 and confer within ten (10) calendar days of receiving written notification from the other Party of a  
21 request for a meeting to determine whether a violation has occurred and/or to develop a mutually  
22 agreed upon plan, including dates for further discussion or activities, to resolve the dispute. If the  
23 Parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven  
24 (7) calendar days have passed after the meet-and-confer occurred or should have occurred, either Party  
25 shall be entitled to all rights and remedies under the law, including filing a motion with the District  
26 Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited  
27 purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek  
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1 fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the  
2 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case  
3 law interpreting such provision.

4 **IV. MUTUAL RELEASE OF LIABILITY, COVENANT NOT TO SUE AND DISMISSAL**

5 **14. Waiver and Release.** As of the Court Approval Date, the Parties and their successors,  
6 assigns, directors, officers, agents, attorneys, representatives, and employees, hereby release all  
7 persons from any and all claims and demands of any kind, nature, or description, and from any and all  
8 liabilities, relief, damages, fees (including fees of attorneys, experts, and others), injuries, actions, or  
9 causes of action, either at law or in equity, whether known or unknown, arising from CSPA's  
10 allegations regarding Defendants' compliance with the General Permit, Clean Water Act, and  
11 Proposition 65, including all claims for fees, costs, expenses, or any other sum incurred or claimed or  
12 which could have been claimed, up to and including the Court Approval Date, except as provided for  
13 in Section II of this Consent Agreement.

14 **15.** The Parties acknowledge that they are familiar with section 1542 of the California Civil  
15 Code, which provides:

16 A general release does not extend to claims which the creditor does not know or  
17 suspect to exist in his or her favor at the time of executing the release, which if  
18 known by him or her must have materially affected his or her settlement with the  
debtor.

19 While CSPA asserts that California Civil Code section 1542 applies to general releases only, and that  
20 the release in Paragraph 14 above is a limited release, the Parties nonetheless hereby waive and  
21 relinquish any rights or benefits they may have under California Civil Code section 1542 with respect  
22 to any other claims against each other arising from the allegations and claims as set forth in the CWA  
23 Notice Letter, Proposition 65 Notice Letter, and/or the Complaint.

24 **16. Covenant Not to Sue.** From the Court Approval Date and ending on the termination  
25 date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor  
26 any organization under the control of CSPA, its officers, executive staff, or members of its governing  
27 board, will file any lawsuit against Defendants seeking relief for alleged violation of the Clean Water  
28

1 Act, Proposition 65, or the General Permit or any revisions, amendments, or successors to the General  
2 Permit, arising out of Defendants' operation of the Facility, nor will CSPA support such lawsuits  
3 against the Defendants brought by other groups or individuals by providing financial assistance,  
4 personnel time, or any other affirmative actions.

5 17. Upon expiration of the Agency Review Period, the Parties shall file with the District  
6 Court a Stipulation and Order that shall provide that:

7 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant  
8 to Federal Rule of Civil Procedure 41(a)(2); and

9 b. the Court shall retain and have jurisdiction over the Parties with respect to  
10 disputes arising under this Consent Agreement. Nothing in this Consent Agreement shall be  
11 construed as a waiver of any Party's right to appeal from an order that arises from an action to  
12 enforce the terms of this Consent Agreement.

13 **V. MISCELLANEOUS PROVISIONS**

14 18. **No Admission.** The Parties enter into this Consent Agreement for the purpose of  
15 avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as,  
16 and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or  
17 violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an  
18 admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law. However,  
19 this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the  
20 Parties under this Consent Agreement.

21 19. **Termination Date.** This Consent Agreement shall terminate on September 30, 2013.

22 20. **Counterparts.** The Consent Agreement may be executed in one or more counterparts  
23 which, taken together, shall be deemed to constitute one and the same document. An executed copy of  
24 this Consent Agreement shall be valid as an original.

25 21. **Severability.** In the event that any one of the provisions of this Consent Agreement is  
26 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
27 affected.

1           **22. Construction.** The language in all parts of this Consent Agreement, unless otherwise  
2 stated, shall be construed according to its plain and ordinary meaning.

3           **23. Choice of Law.** This Consent Agreement shall be governed by the laws of the United  
4 States, and where applicable, the laws of the State of California.

5           **24. Authority.** The undersigned representatives of CSPA and Defendants are authorized to  
6 execute this Consent Agreement on behalf of the Party or Parties whom he represents.

7           **25.** All agreements, covenants, representations and warranties, express or implied, oral or  
8 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
9 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
10 person or entity shall have any rights or remedies under or by reason of this Consent Agreement unless  
11 otherwise expressly provided for therein.

12           **26. Assignment.** Subject only to the express restrictions contained in this Consent  
13 Agreement, all of the rights, duties, and obligations contained in this Agreement shall inure to the  
14 benefit of and be binding upon the Parties, and their successors and assigns.

15           **27. Notices.** Any notices or documents required or provided for by this Consent  
16 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement  
17 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
18 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

19           Bill Jennings, Executive Director  
20           California Sportfishing Protection Alliance  
21           3536 Rainier Avenue  
22           Stockton, CA 95204  
23           E-mail: DeltaKeep@aol.com

24           With copies sent to:

25           Andrew L. Packard  
26           Erik M. Roper  
27           Law Offices of Andrew L. Packard  
28           100 Petaluma Boulevard North, Suite 301  
              Petaluma, CA 94952  
              Tel: (707) 763-7227  
              E-mail: Andrew@packardlawoffices.com  
                      Erik@packardlawoffices.com

              And to:

1 Robert J. Tuerck, Esq.  
2 Jackson & Tuerck  
3 P.O. Box 148  
4 429 W. Main Street, Suite C  
5 Quincy, CA 95971  
6 Tel: 530-283-0406  
7 Fax: 530-283-0416  
8 E-mail: Bob@JacksonTuerck.com

9 Any notices or documents required or provided for by this Consent Agreement or related thereto that  
10 are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S. Mail,  
11 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
12 transmission to the email addresses listed below:

13 David H. Dun  
14 Dun & Martinek  
15 P.O. Box 1266  
16 Eureka, CA 95502  
17 Tel: 707-442-3794  
18 Fax.: 707-442-9251  
19 E-mail: dhd@dunmartinek.com

20 With copies sent to:

21 Nicole E. Granquist  
22 Downey Brand LLP  
23 621 Capitol Mall, 18th Floor  
24 Sacramento, CA 95814-4601  
25 Tel: 916-444-1000  
26 Fax.: 916-444-2100  
27 E-mail: ngranquist@downeybrand.com

28 Each Party shall promptly notify the other of any change in the above-listed contact information.

29 **28. Electronic or Facsimile Signatures.** Telecopy, .pdf, and/or facsimile copies of  
30 original signatures shall be deemed to be originally executed.

31 **29. Force Majeure.** No Party shall be considered to be in default in the performance of  
32 any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is  
33 any circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,  
34 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not  
35 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm  
36 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
37 establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
38

1 diligence has been unable to overcome, the Force Majeure.

2 **30. Court Approval.** If for any reason the Court should decline to approve this Consent  
3 Agreement in the form presented, the Parties shall use their best efforts to work together to modify the  
4 Consent Agreement within thirty (30) calendar days so that it is acceptable to the Court. If the Parties  
5 are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent  
6 Agreement shall become null and void.

7 **31. Negotiated Agreement.** This Consent Agreement shall be deemed to have been  
8 drafted equally by the Parties, and shall not be interpreted for or against any Party on the ground that  
9 any such party drafted it.

10 **32. Full Settlement.** This Consent Agreement constitutes a full and final settlement of this  
11 matter. The Parties expressly understand and agree that each Party has freely and voluntarily entered  
12 into this Consent Agreement with and upon advice of counsel.

13 **33. Integration Clause.** This Consent Agreement and the attachments contain all of the  
14 final terms and conditions agreed upon by the Parties relating to the matters covered by the Consent  
15 Agreement, and supersede any and all prior and contemporaneous agreements, negotiations,  
16 correspondence, understandings, and communications of the Parties, whether oral or written,  
17 respecting the matters covered by this Consent Agreement.

18 **34. Modification.** This Consent Agreement may be amended or modified only by a writing  
19 signed by the Parties or their authorized representatives, and then by order of the Court.

20 **35. Cure.** Except in case of an emergency but subject to the regulatory authority of any  
21 applicable governmental authority, any breach of or default under this Consent Agreement capable of  
22 being cured shall be deemed cured if, within five (5) business days of first receiving notice of the  
23 alleged breach or default, or within such other period approved in writing by the Party making such  
24 allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default  
25 has completed such cure or, if the breach or default can be cured but is not capable of being cured  
26 within such five (5) business day period, has commenced and is diligently pursuing to completion such  
27 cure.

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The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for its approval and entry as an Order and Final Judgment.

Dated: 14 March 2011 California Sportfishing Protection Alliance  
By: *Bill Jennings*  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_ Sierra Pacific Industries, Robert Taylor, and Robert Zelwick  
By: \_\_\_\_\_  
George Emmerson

**APPROVED AS TO FORM:**

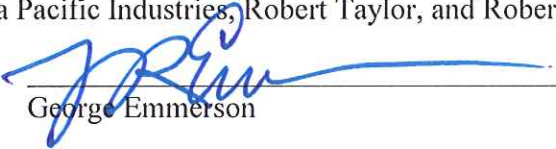
Law Offices of Andrew L. Packard  
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Erik M. Roper  
Attorneys for Plaintiff

Downey Brand LLP  
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Nicole E. Granquist  
Attorneys for Defendants

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance  
By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: 3/18/2011 Sierra Pacific Industries, Robert Taylor, and Robert Zelwick  
By:  \_\_\_\_\_  
George Emmerson

**APPROVED AS TO FORM:**

Law Offices of Andrew L. Packard

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Erik M. Roper  
Attorneys for Plaintiff

Downey Brand LLP

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Nicole E. Granquist  
Attorneys for Defendants



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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance  
By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_ Sierra Pacific Industries, Robert Taylor, and Robert Zelwick  
By: \_\_\_\_\_  
George Emmerson

**APPROVED AS TO FORM:**

Law Offices of Andrew L. Packard

Dated: 3/18/11 By: Erik Roper  
Erik M. Roper  
Attorneys for Plaintiff

Downey Brand LLP

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Nicole E. Granquist  
Attorneys for Defendants

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance  
By: \_\_\_\_\_  
Bill Jennings, Executive Director

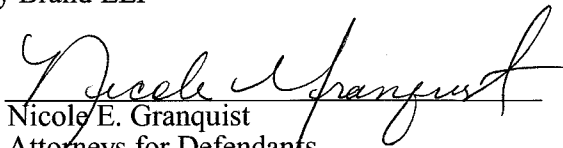
Dated: \_\_\_\_\_ Sierra Pacific Industries, Robert Taylor, and Robert Zelwick  
By: \_\_\_\_\_  
George Emmerson

**APPROVED AS TO FORM:**

Law Offices of Andrew L. Packard

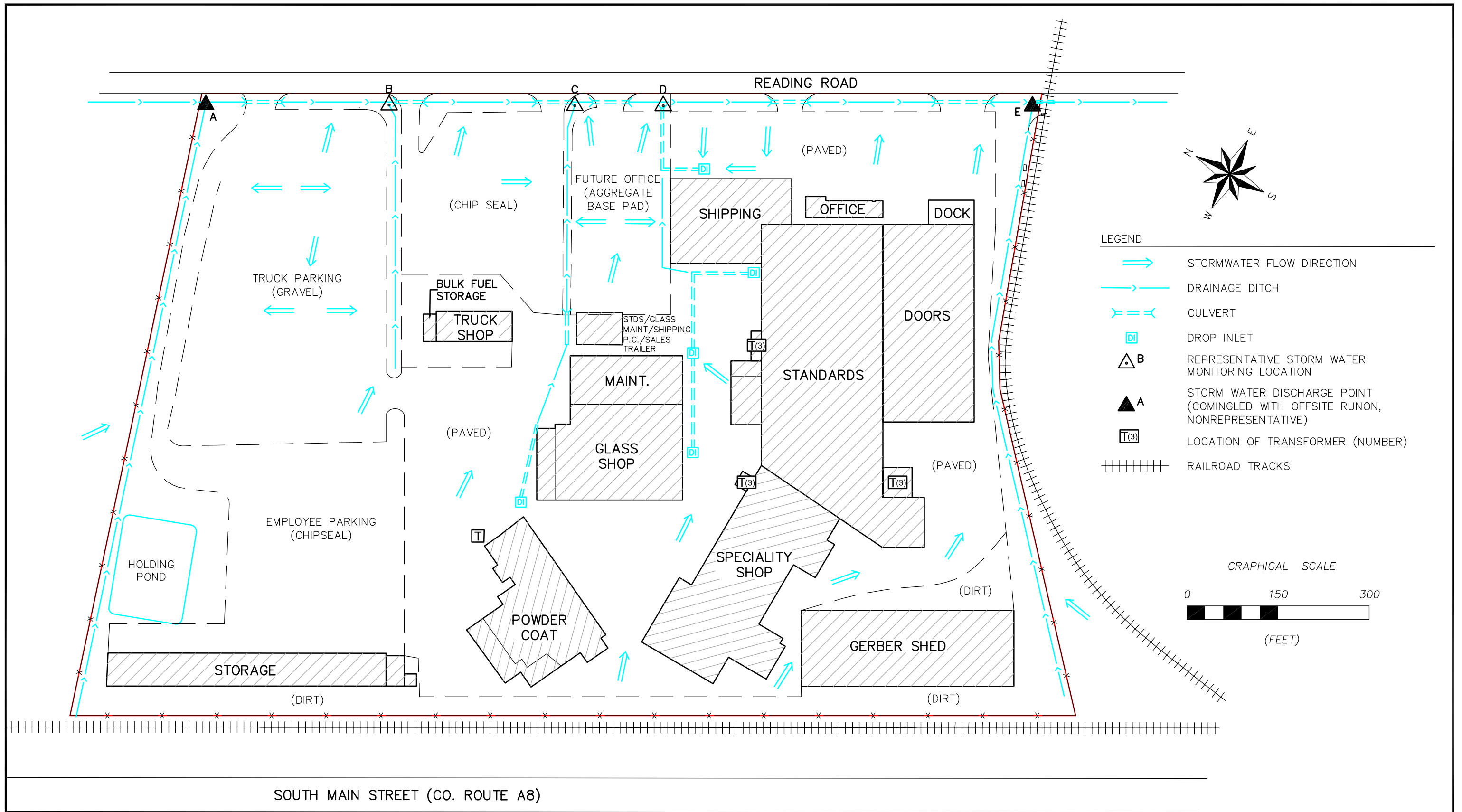
Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Erik M. Roper  
Attorneys for Plaintiff

Downey Brand LLP

Dated: March 18, 2011 By:   
Nicole E. Granquist  
Attorneys for Defendants

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**EXHIBIT A – Facility Site Map**



P:\010127.00\_SPI-RB Windows Plant\swppp-nov10.dwg J.L.H. 11/24/2010

 <p><b>LAWRENCE &amp; ASSOCIATES</b> ENGINEERS &amp; GEOLOGISTS</p>	<p><b>SITE MAP</b></p>	<p><b>SWPPP</b></p>	
		<p><b>SIERRA PACIFIC INDUSTRIES RED BLUFF WINDOWS DIVISION PLANT</b></p>	
		<p>PROJECT NO: 010127.00</p> <p>DRAWN BY: J. HOLDEN</p> <p>CHECKED BY: B. GARTNER</p>	<p>SCALE: 1"=150'</p> <p>DATE: 11/22/10</p> <p><b>FIGURE 2</b></p>

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**EXHIBIT B – CWA Notice of Violation**



**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

October 22, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Robert "Bob" Taylor, Facility Manager

Mr. Robert "Bob" Zelwick, Safety/Environmental Coordinator

Sierra Pacific Industries

P.O. Box 8489

11605 Reading Road

Red Bluff, CA 96080

Mr. David H. Dun, Agent for Service of Process

Sierra Pacific Industries

2313 I Street

Eureka, CA 95501

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

Dear Sirs:

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 Sierra Pacific Industries ("SPI") millwork facility located at 11605 Reading Road in Red Bluff, California ("the Facility"). The WDID identification number for the Facility is 5R52I012189. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of 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 Facility. Unless otherwise noted, SPI, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick, shall hereinafter be collectively referred to as SPI.

This letter addresses SPI's unlawful discharges of pollutants from the Facility to storm water conveyances which in turn ultimately flow 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 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, SPI, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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 SPI, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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.**

SPI operates a millwork facility located in Red Bluff, California. The Facility receives, stores and processes wood-based products for commercial use. Other activities at the Facility include the use, storage, and maintenance of heavy machinery.

On or about April 8, 2008, SPI submitted its most recent notice of intent to comply with the terms of the General Permit (“NOI”).<sup>1</sup> The Facility is classified as a millwork facility under Standard Industrial Classification (“SIC”) Code 2431 (“Millwork”). The Facility collects and discharges storm water from its approximately 40-acre industrial site through at least five discharge points to storm water conveyances which in turn ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water 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;

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<sup>1</sup> SPI filed a NOI for the Facility previously on or about May 13, 1997.

iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 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 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 SPI at 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; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

SPI 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, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

### **A. SPI Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

SPI has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Zinc (Zn) and

Chemical Oxygen Demand (COD) 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 attached hereto as Attachment A. SPI'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, 1492 (9th Cir. 1988).

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

**1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	TSS	Outfall B	344 mg/L	100 mg/L
12/18/2007	TSS	Outfall B	635 mg/L	100 mg/L
12/18/2007	TSS	Outfall C	252 mg/L	100 mg/L
02/22/2007	TSS	Outfall B	444 mg/L	100 mg/L
02/22/2007	TSS	Outfall C	128 mg/L	100 mg/L
11/02/2006	TSS	Outfall B	667 mg/L	100 mg/L
11/02/2006	TSS	Outfall C	282 mg/L	100 mg/L
01/18/2006	TSS	"Ditch"	156 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
12/06/2007	SC	Outfall B	311 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	Zn	Outfall B	0.127 mg/L	0.117 mg/L
10/13/2009	Zn	Outfall C	0.304 mg/L	0.117 mg/L
10/13/2009	Zn	Outfall D	0.951 mg/L	0.117 mg/L

12/16/2009	Zn	Outfall C	0.188 mg/L	0.117 mg/L
12/16/2009	Zn	Outfall D	0.888 mg/L	0.117 mg/L
12/15/2008	Zn	Outfall C	0.201 mg/L	0.117 mg/L
12/15/2008	Zn	Outfall D	1.06 mg/L	0.117 mg/L
12/06/2007	Zn	Outfall C	0.129 mg/L	0.117 mg/L
12/06/2007	Zn	Outfall D	1.31 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall B	0.336 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall C	0.320 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall D	0.587 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall B	0.148 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall C	0.287 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall D	1.01 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall B	0.218 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall C	0.538 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall D	1.310 mg/L	0.117 mg/L
01/18/2006	Zn	"Ditch"	0.477 mg/L	0.117 mg/L
11/28/2005	Zn	"Ditch"	0.266 mg/L	0.117 mg/L

**4. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	COD	Outfall B	245 mg/L	120 mg/L
12/18/2007	COD	Outfall B	323 mg/L	120 mg/L
02/22/2007	COD	Outfall B	136 mg/L	120 mg/L
11/02/2006	COD	Outfall B	328 mg/L	120 mg/L

CSPA's investigation, including its review of SPI'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 SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 21, 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 October 21, 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 SPI has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), 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, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 21, 2005.

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

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as those operated by SPI in Red Bluff, designated under SIC Code 2431, are also required to sample for 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.”

Based on its investigation, CSPA is informed and believes that SPI has failed to develop and implement an adequate Monitoring & Reporting Plan. For example, notwithstanding the fact that the Facility has at least five storm water discharge points (i.e., Outfalls A, B, C, D and E), for the previous four Wet Seasons the annual reports filed by SPI for this Facility indicate that samples of storm water discharge have never been collected and analyzed from Outfalls A and E. CSPA notes that the factually unsupported explanation provided for this failure has been repeated verbatim in the annual reports for the 2006-2007, 2007-2008, 2008-2009 and 2009-2010 Wet Seasons (i.e., “[Outfall] A has significantly similar industrial processes to B, and the tributary

area of E has significantly similar industrial processes to D.”). While that assertion may be true, CSPA is informed and believes that it is false. Given the wide range of pollutant concentrations evidenced in the Facility’s annual reports as summarized in the above tables, it strains credulity for SPI to insist that the industrial processes near Outfalls A and B, and Outfalls D and E, are so similar as to warrant SPI’s failure to collect and analyze samples of storm water discharged from Outfalls A and E.

Moreover, SPI has failed to sample and analyze storm water discharges from two qualifying storm events per year as required by the General Permit. CSPA notes that entities subject to the General Permit are required to collect and analyze samples of storm water discharges from each discharge point from at least two qualifying storm events each wet season; and, for purposes of storm water sampling under the General Permit, the “Wet Season” runs from October 1<sup>st</sup> to May 31<sup>st</sup> of any given year. CSPA further notes that SPI’s 2008-2009 annual report asserts that SPI’s failure to sample storm water from two qualifying storm events that year may be explained away because “[o]nly one qualifying storm event occurred.” Nonsense.

The First Storm Event sampled by SPI at the Facility in the 2008-2009 Wet Season as reflected on Form 1 of that year’s annual report occurred on December 15, 2008. Publicly available rainfall data for the area near the Facility indicates that on December 15, 2008, 0.31” (inches) of rain fell on the Facility. However, publicly available rainfall indicates that this was not a qualifying storm event within the meaning of the General Permit because the day prior, on December 14, 2008, 0.14” of rain was recorded as falling on or near the Facility. Further, assuming *arguendo* that 0.31” is the minimum amount of rainfall required to generate storm water discharges from the Facility, publicly available rainfall data indicates that there were at least three other dates within the 2008-2009 Wet Season during which storms of at least 0.31” of rainfall occurred and were preceded by three days without rain. To wit, on Friday, October 3, 2008, 0.44” of rainfall was recorded as falling on or near the Facility; on Thursday, April 9, 2009, 0.33” of rainfall was recorded as falling on or near the Facility; and, on Friday, May 1, 2009, 0.35” was recorded as falling on or near the Facility. Accordingly, SPI has no legitimate excuse for its failure to collect samples from two qualifying storm events per year as required by the General Permit. Moreover, this is but one example evidencing SPI’s pattern and practice of filing annual reports falsely certifying SPI’s compliance with the General Permit.

Given its well-documented failure to develop and implement an adequate Monitoring & Reporting Plan, and its pattern and practice of falsely certifying its compliance with the General Permit, CSPA is informed and believes SPI has committed and is continuing to commit ongoing violations of the Act and the General Permit. 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, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 22, 2005. These violations are set forth in greater detail below.

**1. SPI 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 SPI 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 five discharge points currently designated by SPI. 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. SPI 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 SPI to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as SPI which are designated as SIC Code 2421 to analyze its storm water discharge for Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that SPI 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: aluminum, ammonia, arsenic, biological oxygen demand, copper, iron, lead, mercury, nitrate + nitrite (N+N) and total phenols. SPI's failure to monitor these pollutants extends back to at least October 22, 2005. SPI's failure to monitor these other 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. SPI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since October 22, 2005.**

CSPA is informed and believes that available documents demonstrate SPI'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, SPI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since October 22, 2005.

**C. SPI 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 SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, Zinc (Zn) and Chemical Oxygen Demand (COD) 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, SPI 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 SPI 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. SPI has failed to adequately implement such measures.

SPI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPI 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 SPI fails to implement BAT and BCT. SPI is subject to penalties for violations of the Order and the Act occurring since October 22, 2005.

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

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

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

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

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

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that SPI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. SPI 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 SPI fails to develop and implement an effective SWPPP. SPI is subject to penalties for violations of the Order and the Act occurring since October 22, 2005.

**E. SPI 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, SPI is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity, Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPI was aware of high levels of these pollutants prior to October 22, 2005. Likewise, SPI 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). SPI 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 October 22, 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. SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since October 22, 2005.

**F. SPI Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.**

Based on its investigation, CSPA is informed and believes that SPI has discharged and continues to discharge unauthorized non-storm water from the Facility. CSPA notes that SPI's 2008 NOI and its accompanying map of the Facility reveal that vehicles are washed and/or rinsed within the Facility (i.e., see "Truck Wash Area"). Given the close proximity of the "Truck Wash Area" to the nearest discharge point and the Facility's internal storm water drainage system leading thereto, and its review of the Facility, CSPA is informed and believes that SPI is discharging unauthorized non-storm water to the extent any water used to wash or rinse vehicles, structures, equipment, and the like on site discharges from the Facility. SPI has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since October 22, 2005, and will continue to be in violation every day SPI fails to eliminate its discharges of unauthorized non-storm water or obtains a separate NPDES permit to authorize such discharges of non-storm water. Accordingly, SPI is subject to penalties for violations of the General Permit and the Act occurring since October 22, 2005.

**G. SPI Has Failed to File Timely, True and Correct Reports.**

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

As discussed above, CSPA's investigation indicates that SPI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, SPI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPI 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. SPI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since October 22, 2005.

**III. Persons Responsible for the Violations.**

CSPA puts Sierra Pacific Industries, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick 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 Sierra Pacific Industries, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick 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](mailto:Andrew@PackardLawOffices.com)  
[Erik@PackardLawOffices.com](mailto: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](mailto: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 Sierra Pacific Industries, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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.

Notice of Violation and Intent To File Suit

October 22, 2010

Page 15 of 15

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 Sierra Pacific Industries and its agents 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with a large initial "B" and "J".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, SPI (Red Bluff, CA)**  
**Significant Rain Events,\* October 22, 2005 – October 22, 2010**

Oct. 26 2005	April 02 2006	Dec. 20 2007	Oct. 19 2009
Nov. 03 2005	April 03 2006	Dec. 28 2007	Nov. 17 2009
Nov. 07 2005	April 05 2006	Dec. 29 2007	Nov. 20 2009
Nov. 25 2005	April 07 2006	Jan. 03 2008	Dec. 11 2009
Nov. 28 2005	April 09 2006	Jan. 04 2008	Dec. 12 2009
Nov. 29 2005	April 11 2006	Jan. 08 2008	Dec. 15 2009
Nov. 30 2005	April 12 2006	Jan. 10 2008	Dec. 16 2009
Dec. 01 2005	April 15 2006	Jan. 12 2008	Dec. 20 2009
Dec. 17 2005	April 16 2006	Jan. 24 2008	Dec. 21 2009
Dec. 18 2005	April 21 2006	Jan. 25 2008	Dec. 27 2009
Dec. 19 2005	April 22 2006	Jan. 26 2008	Dec. 29 2009
Dec. 20 2005	May 19 2006	Jan. 27 2008	Jan. 01 2010
Dec. 21 2005	Nov. 02 2006	Jan. 31 2008	Jan. 12 2010
Dec. 22 2005	Nov. 11 2006	Feb. 02 2008	Jan. 17 2010
Dec. 25 2005	Nov. 12 2006	Feb. 21 2008	Jan. 18 2010
Dec. 26 2005	Nov. 13 2006	Feb. 22 2008	Jan. 19 2010
Dec. 27 2005	Nov. 26 2006	Feb. 23 2008	Jan. 20 2010
Dec. 28 2005	Dec. 08 2006	Feb. 24 2008	Jan. 21 2010
Dec. 29 2005	Dec. 09 2006	May 26 2008	Jan. 23 2010
Dec. 30 2005	Dec. 11 2006	Oct. 03 2008	Jan. 24 2010
Dec. 31 2005	Dec. 12 2006	Oct. 04 2008	Jan. 25 2010
Jan. 01 2006	Dec. 13 2006	Oct. 30 2008	Jan. 30 2010
Jan. 03 2006	Dec. 21 2006	Oct. 31 2008	Feb. 01 2010
Jan. 04 2006	Dec. 26 2006	Nov. 01 2008	Feb. 04 2010
Jan. 07 2006	Feb. 07 2007	Nov. 03 2008	Feb. 06 2010
Jan. 14 2006	Feb. 08 2007	Dec. 14 2008	Feb. 08 2010
Jan. 17 2006	Feb. 09 2007	Dec. 15 2008	Feb. 09 2010
Jan. 18 2006	Feb. 10 2007	Dec. 21 2008	Feb. 20 2010
Jan. 20 2006	Feb. 22 2007	Dec. 24 2008	Feb. 21 2010
Jan. 28 2006	Feb. 24 2007	Jan. 21 2009	Feb. 23 2010
Jan. 30 2006	Mar. 20 2007	Jan. 22 2009	Feb. 24 2010
Feb. 01 2006	Mar. 26 2007	Jan. 24 2009	Feb. 26 2010
Feb. 26 2006	April 11 2007	Feb. 08 2009	Mar. 02 2010
Feb. 27 2006	April 14 2007	Feb. 11 2009	Mar. 03 2010
Mar. 02 2006	April 21 2007	Feb. 13 2009	April 02 2010
Mar. 03 2006	May 01 2007	Feb. 14 2009	April 04 2010
Mar. 05 2006	May 03 2007	Feb. 15 2009	April 11 2010
Mar. 06 2006	Oct. 09 2007	Feb. 16 2009	April 12 2010
Mar. 10 2006	Oct. 10 2007	Feb. 17 2009	April 14 2010
Mar. 12 2006	Oct. 12 2007	Feb. 18 2009	April 20 2010
Mar. 13 2006	Nov. 10 2007	Feb. 22 2009	May 10 2010
Mar. 20 2006	Nov. 19 2007	Feb. 23 2009	May 17 2010
Mar. 23 2006	Dec. 03 2007	Mar. 01 2009	May 21 2010
Mar. 24 2006	Dec. 04 2007	Mar. 04 2009	May 25 2010
Mar. 27 2006	Dec. 06 2007	April 09 2009	May 27 2010
Mar. 29 2006	Dec. 07 2007	April 10 2009	
Mar. 31 2006	Dec. 18 2007	May 01 2009	
April 01 2006	Dec. 19 2007	Oct. 13 2009	

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

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**EXHIBIT C – Proposition 65 Notice of Violation**

LAW OFFICES OF  
**ANDREW L. PACKARD**

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

December 20, 2010

*(See attached Certificate of Service)*

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies and Sierra Pacific Industries:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including the Sacramento River, the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code Section 25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violator with CSPA's notification of these violations. Pursuant to Section 25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **SIERRA PACIFIC INDUSTRIES** (hereinafter referred to as “the Violator”). These violations involve the discharge of arsenic, lead, lead compounds and polychlorinated biphenyls (“PCBs”) to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from its facility located at the following address: 11605 Reading Road in Red Bluff, California (“the Violator’s Facility”).

The Violator is discharging arsenic, lead, lead compounds and PCBs from the Violator’s Facility to designated sources of drinking water in violation of Proposition 65. The Violator is allowing storm water contaminated with arsenic, lead, lead compounds and PCBs to discharge from the Violator’s Facility into the Sacramento River and the Sacramento-San Joaquin Delta.



The Sacramento River and the Sacramento-San Joaquin Delta are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA’s address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

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

Sincerely,



Erik M. Roper  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

## **CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On December 20, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

David H. Dun, Agent for Service of Process  
Sierra Pacific Industries  
2313 “I” Street  
Eureka, CA 95501

Proposition 65 Enforcement Reporting  
California Attorney General's Office  
1515 Clay Street, Ste. 2000  
Oakland, CA 94612

On December 20, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a US Postal Service Office for delivery by First Class Mail:

The Honorable Michael L. Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Jan Scully  
Sacramento County District Attorney  
901 “G” Street  
Sacramento, CA 95814

The Honorable Robert Kochly  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable David W. Paulson  
Solano County District Attorney  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Jeff W. Reisig  
Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

The Honorable Robert Holzapfel  
Glenn County District Attorney  
540 West Sycamore Street  
Willows, CA 95988

The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

Executed on December 20, 2010, in Petaluma, California.



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Erik M. Roper  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

**WHAT DOES PROPOSITION 65 REQUIRE?**

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

**DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

## **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

**EXHIBIT D**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Aluminum (total)	0.75 mg/L
Chemical Oxygen Demand	120 mg/L
Zinc (total)	0.117 mg/L

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**EXHIBIT E – Facility Sweeping Areas**

*Specific Sweeping*



<p><b>LAWRENCE &amp; ASSOCIATES</b> ENGINEERS &amp; GEOLOGISTS</p>	<p><b>SITE MAP</b></p>		<p>SWPPP</p>	<p>P:\01027100_591-00\Workshop\Drawings\02.dwg J.L.H. 11/24/2010</p>
	<p>SIERRA PACIFIC INDUSTRIES RED BLUFF WINDOWS DIVISION PLANT</p>		<p>PROJECT NO. 010127.00 SCALE: 1"=150'</p>	<p>DATE: 11/22/10 DRAWN BY: J. HOLDEN CHECKED BY: B. GARTNER</p>

**SITE MAP**

**FIGURE 2**