

1 ANDREW L. PACKARD (State Bar No. 168690)
2 ERIK M. ROPER (State Bar No. 259756)
3 HALLIE B. ALBERT (State Bar No. 258737)
4 Law Offices of Andrew L. Packard
5 100 Petaluma Blvd. N., Suite 301
6 Petaluma, CA 94952
7 Tel: (707) 763-7227
8 Fax: (707) 763-9227
9 E-mail: Andrew@packardlawoffices.com
10 Erik@packardlawoffices.com
11 Hallie@packardlawoffices.com

12 ROBERT J. TUERCK (State Bar No. 255741)
13 Jackson & Tuerck
14 P. O. Box 148
15 429 W. Main Street, Suite C
16 Quincy, CA 95971
17 Tel: (530) 283-0406
18 E-mail: bob@jacksontuerck.com

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, and CHRIS
31 SKINNER, an individual,

32 Defendants.

Case No. 2:10-cv-01644-JAM-DAD

[PROPOSED] CONSENT AGREEMENT

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

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

36 WHEREAS, Defendant Sierra Pacific Industries (hereinafter "SPI") owns an approximately

1 60-acre sawmill facility located at 36336 State Highway 299 East, in Burney, California (the
2 “Facility”) and Defendant Chris Skinner is the Division Manager for SPI and that in this capacity he
3 directs the operations and maintenance of the Facility (collectively, “Defendants”);

4 **WHEREAS**, CSPA and Defendants collectively shall be referred to herein as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to Burney Creek and Canyon
6 Creek, both of which ultimately flow into the Sacramento River, and the Sacramento-San Joaquin
7 Delta (a map of the Facility is attached hereto as **Exhibit A** and incorporated herein by reference);

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

13 **WHEREAS**, on or about April 26, 2010, Plaintiff provided notice of Defendants’ alleged
14 violations of the Act (“CWA Notice Letter”) and of Plaintiff’s intention to file suit against Defendants
15 to the Administrator of the United States Environmental Protection Agency (“EPA”); the
16 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board
17 (“State Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley
18 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A)
19 (true and correct copies of CSPA’s CWA Notice Letter is attached as **Exhibit B** and incorporated
20 herein by reference);

21 **WHEREAS**, on or about October 22, 2010, Plaintiff provided notice of Defendant SPI’s
22 alleged violations of California Health & Safety Code Section 25249.5 (also referred to as
23 “Proposition 65”) (“Proposition 65 Notice Letter”) and of its intention to file suit against Defendant
24 SPI to the Proposition 65 Enforcement Reporting section of the office of the California Attorney
25 General (“California Attorney General”); the District Attorney of each California county containing
26 sources of drinking water potentially impacted by Defendant SPI’s alleged violations of Proposition
27 65; and, to Defendant SPI, as required by California Health & Safety Code Section 25249.5 *et seq.*

1 (true and correct copies of CSPA’s Proposition 65 Notice Letter is attached as **Exhibit C** and
2 incorporated herein by reference);

3 **WHEREAS**, CSPA’s CWA Notice Letter and its Proposition 65 Notice Letter shall be
4 collectively referred to herein as the “Notices;”

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

8 **WHEREAS**, CSPA filed a Complaint against Defendants in the United States District Court,
9 Eastern District of California, on June 28, 2010, and filed a First Amended Complaint on January 11,
10 2011 (“Complaint”);

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

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

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

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

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

27 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
28

1 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

2 **I. COMMITMENT OF DEFENDANTS**

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

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

10 (a) By September 1, 2011, Defendants shall implement an impervious berm along
11 the southern border of the Facility's truck parking area located between Facility sampling
12 location "SW-4" and the gated entrance near sampling location "SW-3". This impervious
13 berm shall be designed in a manner that directs storm water flowing over the Facility's truck
14 parking area to sampling location SW-4;

15 (b) By September 1, 2011, Defendants shall implement an impervious berm
16 adequate to ensure that there is a clear hydrologic separation between the Facility and SPI's
17 adjacent co-generation facility that is not a subject of this action. This approximately fifty-foot
18 berm will run west of and parallel to the north-south-running rail line that bisects the real
19 property upon which these two facilities are located adjacent to each other;

20 (c) Throughout the term of this Consent Agreement, Defendants shall collect
21 samples of storm water discharge at Facility sampling location SW-3 in a manner that ensures
22 that the samples collected have not been commingled with groundwater;

23 (d) By July 1, 2011 Defendants shall remove from the Facility's "boneyard" (as that
24 term is used in the Facility's SWPPP site map) all uncovered, inutile metal parts and materials
25 not subject to regular use by Facility personnel and smaller metal parts and materials used by
26 Facility personnel. Materials that may remain uncovered in the boneyard as subject to regular
27 use include: spare tractor buckets/forks, large piping or columns, conveyors, stanchions, large
28

1 rotors, and other large mechanical components that may not be practicably stored under cover
2 elsewhere at the Facility;

3 (e) During the Wet Season (Oct. 1 – May 30) Defendants shall daily sweep all of
4 the Facility’s impervious surfaces;

5 (f) During the Dry Season (June 1 – Sept. 30), Defendants shall weekly sweep all
6 of the Facility’s impervious surfaces;

7 (g) By September 1, 2011, Defendants shall create, use and maintain a visual
8 inspection checklist for use during visual inspections of storm water and non-storm water
9 discharges from the Facility;

10 (h) Throughout the term of this Consent Agreement, Defendants shall maintain the
11 Facility’s storm water drainage system, BMPs and drop inlets in a manner that feasibly ensures
12 that wood waste, metal, asphalt, concrete and any other materials unrelated to the control or
13 treatment of storm water are kept out of the Facility’s storm water drainage system, BMPs and
14 drop inlets;

15 (i) Throughout the term of this Consent Agreement, Defendants shall regularly
16 monitor and maintain the Facility’s storm water drainage system, BMPs and drop inlets,
17 document such maintenance and maintain records thereof with the Facility’s SWPPP in
18 accordance with the terms of the General Permit. Further, Defendants shall ensure that
19 appropriate Facility personnel are properly trained in storm water management and records of
20 any such storm water management training shall be maintained along with the Facility’s
21 SWPPP.

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

25 **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)
26 storm events, as qualified in the General Permit¹ for sampling purposes, in each of the two Wet
27

28 ¹ “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are

1 Seasons occurring during the term of this Consent Agreement (2011-2012 and 2012-2013). The storm
2 water sample results shall be compared with the values set forth in **Exhibit D**, attached hereto, and
3 incorporated herein by reference. If the results of any such samples exceed the parameter values set
4 forth in **Exhibit D**, Defendants shall comply with the “Action Memorandum” requirements set forth
5 below.

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 _____
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have
28 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 changing the type and extent of storm water filtration media or modifying other industrial activities or
2 management practices at the Facility. Within fifteen (15) days of receipt of an Action Memorandum,
3 CSPA may provide comment on an Action Memorandum and suggest any additional pollution
4 prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed
5 to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by
6 CSPA, Defendants agree to meet and confer in good faith regarding the contents and sufficiency of the
7 Action Memorandum. Additional measures indentified by Defendants in an Action Memorandum, or
8 identified as a result of the meet and confer process described above, will be implemented within sixty
9 (60) days after the due date of the Action Memorandum, or the conclusion of the meet and confer
10 process, unless a longer timeframe is identified by Defendants in an Action Memorandum as necessary
11 to implement the measure, or agreed to by the Parties during the meet and confer process. Within
12 thirty (30) days of implementation, the Facility SWPPP and/or site map shall be amended to include all
13 additional BMP measures.

14 **7. Inspections During The Term Of This Consent Agreement.** Defendants shall permit
15 representatives of CSPA to perform one (1) physical inspection of the Facility during normal business
16 hours during the term of this Consent Agreement. This inspection shall be performed by CSPA's
17 counsel and consultant(s) and may include sampling, photographing, and/or videotaping and CSPA
18 shall provide Defendants with a copy of all sampling reports, photographs and/or video. CSPA shall
19 provide at least three (3) business days advance notice of such physical inspection, except that
20 Defendants shall have the right to deny access if circumstances would make the inspection unduly
21 burdensome and pose significant interference with business operations of any party/attorney, or the
22 safety of individuals. In such case, Defendants shall specify at least three (3) dates, if possible, within
23 the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. Defendants
24 shall not make any alterations to Facility conditions during the period between receiving CSPA's
25 initial three (3) business days advance notice and the start of CSPA's inspection that Defendants would
26 not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection
27 of the Facility, excepting any actions taken in compliance with any applicable laws or regulations.

1 Nothing herein shall be construed to prevent Defendants from continuing to implement any BMPs
2 identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

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

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

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

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

25 **11. Attorneys' Fees And Costs.** Defendants agree to reimburse CSPA in the amount of
26 \$26,250 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs,
27 and all other costs incurred as a result of investigating the activities at the Facility, bringing the
28

1 Complaint and negotiating a resolution in the public interest. Such payment shall be made out to the
2 Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent to the Law Offices of
3 Andrew Packard, 100 Petaluma Boulevard North, Suite 301, Petaluma, CA 94952 within fifteen (15)
4 calendar days after the Court Approval Date.

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

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

19 **13.** With the exception of the timelines set forth above for addressing exceedances of
20 values specified on **Exhibit D** and Action Memoranda, if a dispute under this Consent Agreement
21 arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet
22 and confer within ten (10) calendar days of receiving written notification from the other Party of a
23 request for a meeting to determine whether a violation has occurred and/or to develop a mutually
24 agreed upon plan, including dates for further discussion activities, to resolve the dispute. If the Parties
25 fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7)
26 calendar days have passed after the meet-and-confer occurred or should have occurred, either Party
27 shall be entitled to all rights and remedies under the law, including filing a motion with the District
28

1 Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited
2 purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek
3 fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the
4 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case
5 law interpreting such provision.

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

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

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

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

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

26 **16. Covenant Not to Sue.** From the Court Approval Date and ending on the termination
27 date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor
28

1 any organization under the control of CSPA, its officers, executive staff, or members of its governing
2 board, will file any lawsuit against Defendants seeking relief for alleged violation of the Clean Water
3 Act, Proposition 65, or the General Permit or any revisions, amendments, or successors to the General
4 Permit, arising out of Defendants' operation of the Facility, nor will CSPA support such lawsuits
5 against the Defendants brought by other groups or individuals by providing financial assistance,
6 personnel time, or any other affirmative actions.

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

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

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

15 **V. MISCELLANEOUS PROVISIONS**

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

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

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

27 **21. Severability.** In the event that any one of the provisions of this Consent Agreement is
28

1 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
2 affected.

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

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

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

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

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

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

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

26 With copies sent to:

27 Andrew L. Packard
28 Erik M. Roper
29 Law Offices of Andrew L. Packard
30 100 Petaluma Boulevard North, Suite 301
31 Petaluma, CA 94952
32 Tel: (707) 763-7227

1 E-mail: Andrew@packardlawoffices.com
Erik@packardlawoffices.com

2 And to:

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

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

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

22 With copies sent to:

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

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

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

29. Force Majeure. No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the Party's control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm

1 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of
2 establishing that it could not reasonably have been expected to avoid, and which by exercise of due
3 diligence has been unable to overcome, the Force Majeure.

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

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

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

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

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

22 **35. Cure.** Except in case of an emergency but subject to the regulatory authority of any
23 applicable governmental authority, any breach of or default under this Consent Agreement capable of
24 being cured shall be deemed cured if, within five (5) business days of first receiving notice of the
25 alleged breach or default, or within such other period approved in writing by the Party making such
26 allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default
27 has completed such cure or, if the breach or default can be cured but is not capable of being cured
28

1 within such five (5) business day period, has commenced and is diligently pursuing to completion such
2 cure.

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

5
6 Dated: 14 March 2011 California Sportfishing Protection Alliance

7
8 By: Bill Jennings
9 Bill Jennings, Executive Director

10 Dated: _____ Sierra Pacific Industries and Chris Skinner

11
12 By: _____
13 George Emmerson

14
15 **APPROVED AS TO FORM:**

16 Law Offices of Andrew L. Packard

17 Dated: _____ By: _____
18 Erik M. Roper
19 Attorneys for Plaintiff

20 Downey Brand LLP

21 Dated: _____ By: _____
22 Nicole E. Granquist
23 Attorneys for Defendants

24
25
26
27
28

1 within such five (5) business day period, has commenced and is diligently pursuing to completion such
2 cure.

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

5

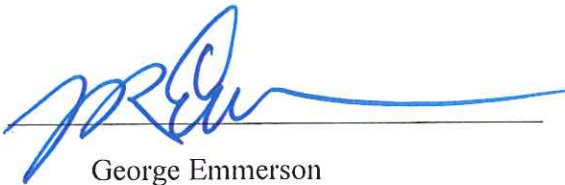
6 Dated: _____ California Sportfishing Protection Alliance

7

8 By: _____
9 Bill Jennings, Executive Director

10 Dated: 3/18/2011 Sierra Pacific Industries and Chris Skinner

11

12 By: 
13 George Emmerson

14

15 **APPROVED AS TO FORM:** Law Offices of Andrew L. Packard

16

17 Dated: _____ By: _____
18 Erik M. Roper
19 Attorneys for Plaintiff

20

Downey Brand LLP

21

22 Dated: _____ By: _____
23 Nicole E. Granquist
24 Attorneys for Defendants

25

26

27

28

1 within such five (5) business day period, has commenced and is diligently pursuing to completion such
2 cure.

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

5
6 Dated: _____ California Sportfishing Protection Alliance

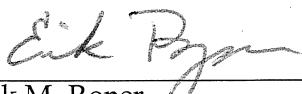
7
8 By: _____
9 Bill Jennings, Executive Director

10 Dated: _____ Sierra Pacific Industries and Chris Skinner

11
12 By: _____
13 George Emmerson

14
15 **APPROVED AS TO FORM:**

16 Law Offices of Andrew L. Packard

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

20 Downey Brand LLP

21 Dated: _____ By: _____
22 Nicole E. Granquist
23 Attorneys for Defendants

24
25
26
27
28

1 within such five (5) business day period, has commenced and is diligently pursuing to completion such
2 cure.

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

5
6 Dated: _____ California Sportfishing Protection Alliance

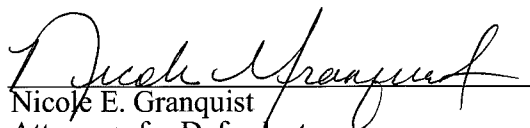
7
8 By: _____
9 Bill Jennings, Executive Director

10 Dated: _____ Sierra Pacific Industries and Chris Skinner

11
12 By: _____
13 George Emmerson

14
15 **APPROVED AS TO FORM:** Law Offices of Andrew L. Packard

16
17 Dated: _____ By: _____
18 Erik M. Roper
19 Attorneys for Plaintiff

20 Downey Brand LLP
21 Dated: March 18, 2011 By: 
22 Nicole E. Granquist
23 Attorneys for Defendants

24
25
26
27
28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

EXHIBIT A – Facility Site Map

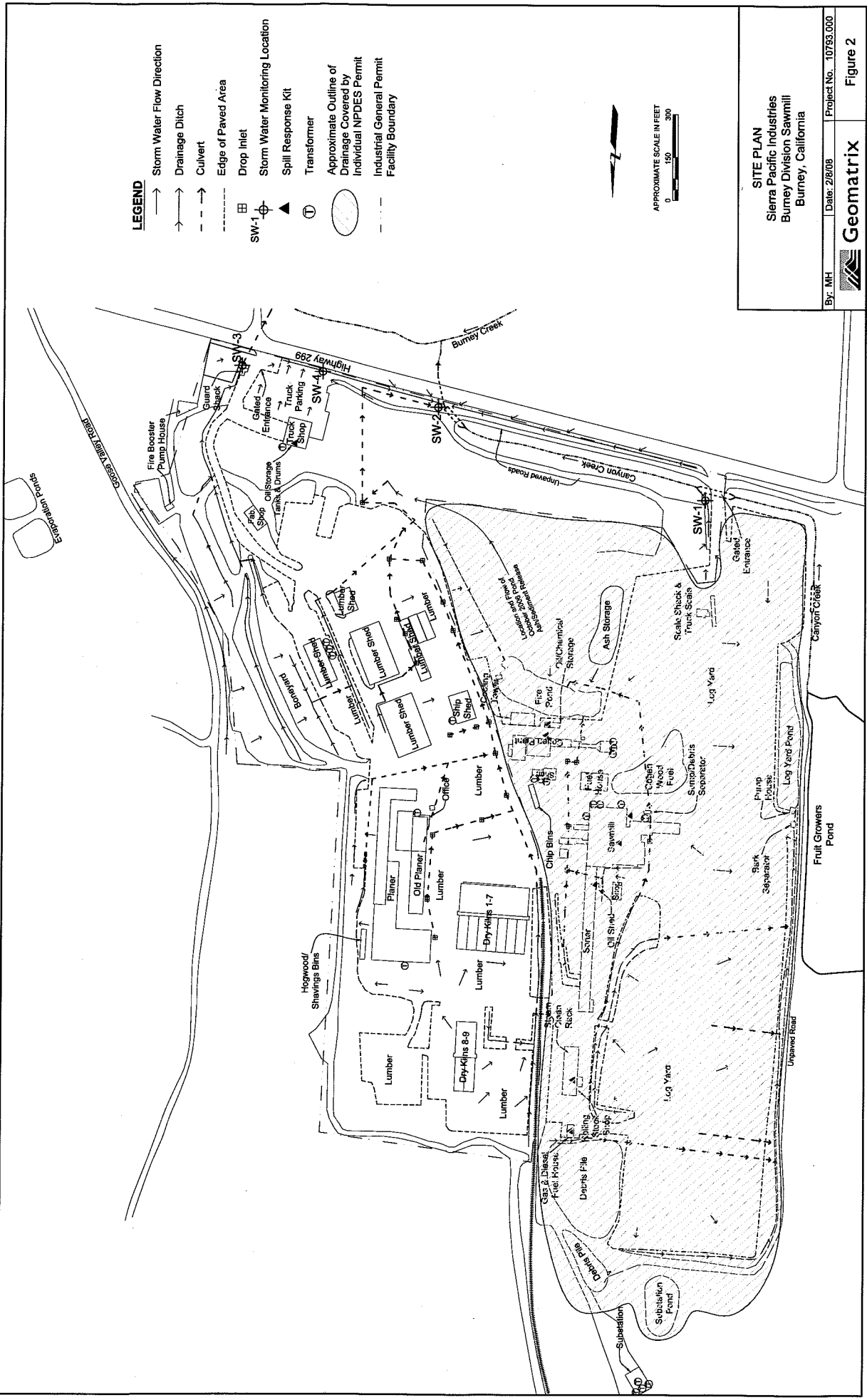
28

S:\17081572\BURNBY\BURNBY Site Plan.dwg, 28/02/08 2:31:40 PM, mjb@si

LEGEND

- Storm Water Flow Direction
- Drainage Ditch
- - - - - Culvert
- - - - - Edge of Paved Area
- ⊕ Drop Inlet
- ⊕ Storm Water Monitoring Location
- ⊕ Spill Response Kit
- ⊕ Transformer
- Approximate Outline of Drainage Covered by Individual NPDES Permit
- ⊕ Industrial General Permit Facility Boundary

APPROXIMATE SCALE IN FEET
 0 150 300



SITE PLAN
 Sierra Pacific Industries
 Burney Division Sawmill
 Burney, California

By: MH Date: 2/8/08 Project No.: 10793.000

Geomatrix Figure 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
28

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

April 26, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chris Skinner, Division Manager
Sierra Pacific Industries
P.O. Box 2677
36336 Highway 299 East
Burney, CA 96013

Sierra Pacific Industries
c/o Mr. David H. Dun, Agent for Service
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") sawmill facility located at 36336 Highway 299 East in Burney, California ("the Facility"). The WDID identification number for the Facility is 5R45I021356. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Canyon Creek, Burney Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility.

This letter addresses SPI's unlawful discharges of pollutants from the Facility to Canyon Creek and/or Burney Creek, which in turn ultimately flow(s) 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 and Mr. Chris Skinner 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 and Mr. Chris Skinner 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 sawmill facility located in Burney, 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 December 20, 2007, SPI belatedly submitted its notice of intent to comply with the terms of the General Permit (“NOI”). The Facility is classified as a sawmill facility under Standard Industrial Classification (“SIC”) Code 2421 (“General Sawmills and Planing Mills”). The Facility collects and discharges storm water from its approximately 60-acre industrial site through at least four discharge points to Canyon Creek and/or Burney Creek, 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; 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.

On December 15, 2009, a representative of the Regional Water Quality Control Board, Region 5, sent SPI a letter entitled “Storm Water Sampling and Analysis Results.” The letter requested additional information relating to the Facility’s storm water discharges exceeding US EPA benchmarks for certain pollutants and what actions SPI planned to take to reduce or eliminate the discharge of such pollutants. Specifically, the Regional Board’s letter instructed SPI to: (1) identify sources of pollutants at the Facility which contribute to the exceedances reported in the 2008-2009 Annual Report; (2) review current BMPs; and, (3) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of new pollutants.

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), Oil and Grease (O&G), 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 at Concentrations in Excess of Applicable EPA Benchmarks

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
10/03/2008	TSS	SW-002	115 mg/L	100 mg/L
01/04/2009	TSS	SW-003	204 mg/L	100 mg/L
01/06/2009	TSS	SW-004	1490 mg/L	100 mg/L
01/22/2009	TSS	SW-004	6580 mg/L	100 mg/L
01/22/2009	TSS	SW-002	1550 mg/L	100 mg/L

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

Date	Parameter	Discharge Point	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Spec. Con.	SW-002	545 µmhos/cm	200 µmhos/cm
01/04/2009	Spec. Con.	SW-003	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-004	208 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-001	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-002	487 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-001	368 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-004	254 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-002	488 µmhos/cm	200 µmhos/cm

3. Discharges of Storm Water Containing Oil and Grease at Levels in Excess of EPA Benchmark

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/22/2009	O&G	SW-004	18.8 mg/L	15 mg/L
01/22/2009	O&G	SW-002	79.2 mg/L	15 mg/L

4. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/06/2009	Zn	SW-004	0.19 mg/L	0.117 mg/L
01/22/2009	Zn	SW-004	0.792 mg/L	0.117 mg/L
01/22/2009	Zn	SW-002	0.827 mg/L	0.117 mg/L

5. Discharges of Storm Water with Chemical Oxygen Demand (COD) in Excess of Applicable EPA Benchmark

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/06/2009	COD	SW-004	220 mg/L	120 mg/L
01/06/2009	COD	SW-001	177 mg/L	120 mg/L
01/22/2009	COD	SW-001	256 mg/L	120 mg/L
01/22/2009	COD	SW-004	1170 mg/L	120 mg/L
01/22/2009	COD	SW-002	632 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, Oil and Grease (O&G), 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 April 26, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 26, 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), Oil and Grease (O&G), 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 April 26, 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 SPI, designated under SIC Code 2421 are also required to sample for Zinc (Zn) and Chemical Oxygen Demand (COD). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that SPI has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA’s review of publicly available records reveals that there is no 2007-2008 Annual Report for SPI on file at the Regional Board office. This suggests that SPI failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. CSPA notes that SPI filed its NOI for the Facility on December 20, 2007. 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 1st to May 31st of any given year. Accordingly, SPI's failure to file a 2007-2008 Annual Report, and its failure to sample and analyze the Facility's discharges of storm water from all discharge points from two qualifying storm events at any time from December 21, 2007 through May 31, 2008 constitute violations of the Act and the General Permit.

Similarly, the absence of the 2007-2008 Annual Report suggests that SPI failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 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 four 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 Zinc (Zn) and 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 and nitrate + nitrite (N+N). SPI's failure to monitor these pollutants extends back to at least April 26, 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 April 26, 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 April 26, 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, Oil and Grease (O&G), 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 April 26, 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 April 26, 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, Oil and Grease (O&G), 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 April 26, 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 April 26, 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 April 26, 2005.

F. 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).

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. For example, in its 2008-2009 Annual Report, in response to item E.7. SPI reported that all storm water sampling was preceded by three (3) working days without a storm water discharge. However, a cursory glance at the dates of storm water discharge sampling as reported in SPI's 2008-2009 Annual Report reveal that assertion to be patently false. To wit, in its 2008-2009 Annual Report SPI reported that it collected storm water discharge samples on January 4, 2009 and then again on January 6, 2009. Clearly, January 4th is less than three (3) working days prior to January 6th. 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 April 26, 2005.

III. Persons Responsible for the Violations.

CSPA puts Sierra Pacific Industries and Mr. Chris Skinner 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 and Mr. Chris Skinner on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

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

V. Counsel.

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

Andrew L. Packard
Erik M. Roper
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227

Fax. (707) 763-9227

E-mail: Andrew@PackardLawOffices.com
Erik@PackardLawOffices.com

And to:

Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Sierra Pacific Industries and Mr. Chris Skinner to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against 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,



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 (Burney, CA)
Significant Rain Events,* April 23, 2005 – April 23, 2010

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

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

ATTACHMENT A
Notice of Intent to File Suit, SPI (Burney, CA)
Significant Rain Events,* April 23, 2005 – April 23, 2010

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

October 22, 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 Canyon Creek, Burney Creek, the Pit River, the Sacramento River, the San Joaquin River and 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 lead, lead compounds and arsenic 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: 36336 Highway 299 East in Burney, California (“the Violator’s Facility”).

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

Canyon Creek, Burney Creek, the Pit River and the Sacramento River 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,



Andrew L. Packard
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 October 22, 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 October 22, 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 2nd Street
Woodland, CA 95695

The Honorable Gerald C. Benito
Shasta County District Attorney
1355 West Street
Redding, CA 96001

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 October 22, 2010, in Petaluma, California.



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

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Iron	1.0 mg/L
Arsenic	0.16854 mg/L
Lead	0.0816 mg/L

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
28