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10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

12  
13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

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

17 Plaintiff,

18 vs.

19 NORTH STATE RENDERING, CO., INC.,  
20 et al.,

21 Defendants.  
22

Case No. 2:10-CV-01428-GEB-EFB

**[PROPOSED] CONSENT AGREEMENT**

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

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

26 **WHEREAS**, Defendant North State Rendering, Co., Inc., (hereinafter "North State") owns an  
approximately thirteen (13) acre rendering facility located at 15 Shippee Road, in Oroville, California

1 (the "Facility"), and Defendant Christopher J. Ottone is the President of North State and operator of  
2 the Facility;

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

4 **WHEREAS**, the Facility collects and discharges storm water to an unnamed tributary to Gold  
5 Run, which flows into Dry Creek and Dry Creek is a tributary to Butte Creek, which ultimately flows  
6 into the Sacramento River, and the Sacramento-San Joaquin Delta (a map of the Facility is attached  
7 hereto as Exhibit A and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
9 to the 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 8, 2010, Plaintiff provided notice of Defendants' violations of  
14 the Act, and of its intention to file suit against Defendants, to the Administrator of the United States  
15 Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive  
16 Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the  
17 Regional Water Quality Control Board, Central Valley Region ("Regional Board"); and to Defendants,  
18 as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA's notice letter are  
19 attached as Exhibit B and incorporated herein by reference);

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

23 **WHEREAS**, CSPA filed a complaint ("Complaint") against Defendants in the United States  
24 District Court, Eastern District of California, on June 10, 2010, creating the present lawsuit  
25 (hereinafter "the action");

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

2       **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
3 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be  
4 submitted for approval by the Court, the date of which approval shall be referred to herein as the  
5 “Court Approval Date;”

6       **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
7 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall  
8 stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement as  
9 provided herein;

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

12       **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling**  
13 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

14 **I.       COMMITMENT OF DEFENDANTS**

15       **1.       Compliance With General Permit & Clean Water Act.** Beginning immediately, and  
16 throughout the term of this Consent Agreement, Defendants shall commence all measures needed to  
17 operate the Facility in full compliance with the requirements of the General Permit and the Clean  
18 Water Act, subject to any defenses available under the law.

19       **2.       Defendants’ Implementation of Specific Storm Water Best Management Practices**  
20 **On or Before October 1, 2011.** Defendants shall complete the implementation of the following storm  
21 water control measures/best management practices (“BMPs”):

22               (a)    On or before October 1, 2011, Defendants shall inspect the perimeter of the  
23 Facility for any existing or potential storm water discharge locations;

24               (b)    On or before October 1, 2011, Defendants shall inspect outside slopes of the  
25 irrigation field and each settling pond for any existing or potential storm water discharge  
26 locations or breaches;

27               (c)    On or before October 1, 2011, Defendants shall eliminate all storm water  
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1 discharge locations other than the sole discharge location designated as Outfall #1 on Exhibit A  
2 attached hereto.

3 (d) On or before October 1, 2011, Defendants shall plant and maintain appropriate  
4 vegetation along the outside slopes of the irrigation field to prevent erosion;

5 (e) On or before October 1, 2011, Defendants shall re-grade the area adjacent to the  
6 diesel storage tank to direct flows towards the Facility's drainage containment system;

7 (f) On or before October 1, 2011, Defendants shall install and maintain a cement  
8 berm adjacent to the diesel storage tank to prevent any storm water runoff from discharging  
9 from the Facility to the south;

10 (g) On or before October 1, 2011, Defendants shall establish a spill prevention and  
11 response program to clean any oil and/or grease spills promptly (within 12 hours) and shall  
12 keep and maintain spill kits at the Facility to accomplish this task;

13 (h) On or before October 1, 2011, Defendants shall remove all scrap metal from  
14 uncovered areas of the Facility, including but not limited to any metal parts, vehicle engines,  
15 empty oil drums being stored on site;

16 (i) On or before October 1, 2011, Defendants shall repair and maintain all pond  
17 aerators in working order;

18 (j) On or before October 1, 2011, Defendants shall install and maintain a drainage  
19 inlet sock at the drop inlet located at the entrance to the Facility on Shippee Road;<sup>1</sup>

20 (k) On or before October 1, 2011, Defendants shall limit irrigation activities to the  
21 interior of the irrigation field ensure that no irrigation water comes in contact with any portion  
22 of the perimeter berms to the east, north, or west of the field;

23 (l) On or before October 1, 2011, Defendants shall remove sludge and/or sediment  
24 build up from the settling pond as needed, and any materials removed from the ponds shall be  
25 appropriately disposed of in accordance with both Federal and California State regulations and  
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27 <sup>1</sup> The drop inlet is owned and operated by Butte County; Defendants have communicated their intent to install  
28 the drainage inlet sock and have been granted approval to install the device. Defendants agree to acquire any  
and permits required to install and maintain the sock in the outlet.

1 laws. The material shall not be spread on the Facility's irrigation pasture, and any material  
2 kept onsite shall be stored under cover so that it is not exposed to precipitation or rainfall;

3 (m) On or before October 1, 2011, Defendants shall design and install two (2)  
4 additional storage ponds as indicated on attached Exhibit A;

5 (n) Beginning on the first day of rainfall after October 1<sup>st</sup> of each year, Defendants  
6 shall discontinue irrigation for the remainder of the wet season (until May 30<sup>th</sup>). Defendants  
7 shall also discontinue irrigation on any day on which there is rainfall, even during dry seasons  
8 (June 1 – September 30);

9 (o) Defendants shall conduct monthly perimeter inspections of the perimeter of the  
10 Facility for any existing or potential storm water discharge locations;

11 (p) Defendants shall conduct monthly inspections of the outside slopes of the  
12 irrigation field and each settling pond for any existing or potential storm water discharge  
13 locations or breaches;

14 (q) Defendants shall clean all of the paved areas of the Facility monthly using a  
15 steam cleaning and/or power washing system, directing all surface flow to the existing  
16 treatment system;

17 **3. SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this  
18 Consent Agreement, Defendants shall formally amend the SWPPP for the Facility to incorporate all of  
19 the relevant requirements of this Consent Agreement, as well as the revised Facility map attached  
20 hereto as Exhibit A.

21 **4. Sampling Frequency.** Defendants shall collect and analyze samples from at least five  
22 (5) storm events, as qualified in the General Permit<sup>2</sup> for sampling purposes, in the 2011-2012 Wet  
23 Season, four (4) storm events in the 2012-2013 Wet Season, and three (3) storm events in the 2013-  
24 2014 Wet Season. If sufficient rainfall does not result in the requisite number of storm water  
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26 <sup>2</sup> "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are  
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 discharges for sampling in any given year, Defendants shall be required to sample and analyze storm  
2 water from each of the Facility’s actual discharges during that year. The storm water sample results  
3 shall be compared with the values set forth in Exhibit C, attached hereto, and incorporated herein by  
4 reference. If the results of any such samples exceed the parameter values set forth in Exhibit C,  
5 Defendants shall comply with the “Action Memorandum” requirements set forth below.

6 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
7 listed in Exhibit C 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. Analytical methods used by the laboratory shall be adequate to detect the individual  
10 constituents at or below the values specified on Exhibit C. Sampling results shall be provided to  
11 CSPA within seven (7) days of Defendants’ receipt of the laboratory report from each sampling event  
12 pursuant to the Notice provisions below.

13 **6. “Action Memorandum” Trigger; CSPA Review of “Action Memorandum”; Meet-**  
14 **and-Confer.** If any sample taken during the four (4) Wet Seasons referenced in Paragraph 4 above  
15 exceeds the evaluation levels set forth in Exhibit C, Defendants shall prepare a written statement  
16 discussing the exceedance(s), the possible cause and/or source of the exceedance(s), and additional  
17 measures that will be taken to address and eliminate the problem and future exceedances (“Action  
18 Memorandum”). The Action Memorandum shall be provided to CSPA upon completion and in any  
19 case no later than 30 days after Defendants’ receipt of the sample results at issue. Recognizing that a  
20 SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional  
21 measures may include, but are not limited to, taking confirmation samples, further material  
22 improvements to the storm water collection and discharge system, sweeping the Facility with a  
23 regenerative sweeper, changing the type and extent of storm water filtration media or modifying other  
24 industrial activities or management practices at the Facility. Such additional measures, to the extent  
25 feasible, shall be implemented immediately and in no event later than 60 days after the due date of the  
26 Action Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be  
27 amended to include all additional BMP measures designated in the Action Memorandum. CSPA may  
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1 review and comment on an Action Memorandum and suggest any additional pollution prevention  
2 measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to  
3 constitute agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,  
4 Defendants agree to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding  
5 the contents and sufficiency of the Action Memorandum.

6 **7. Inspections During the Term of This Agreement.** In addition to any site inspections  
7 conducted as part of the meet-and-confer process concerning an Action Memorandum as set forth  
8 above, Defendants shall permit representatives of CSPA to perform up to three (3) physical inspections  
9 of the Facility during the term of this Consent Agreement. These inspections shall be performed by  
10 CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping and  
11 CSPA shall provide Defendants with a copy of all sampling reports, photographs and/or video. CSPA  
12 shall provide at least forty-eight (48) hours advance notice of such physical inspection, except that  
13 Defendants shall have the right to deny access if circumstances would make the inspection unduly  
14 burdensome and pose significant interference with business operations or any party/attorney, or the  
15 safety of individuals. In such case, Defendants shall specify at least three (3) dates within the two (2)  
16 weeks thereafter upon which a physical inspection by CSPA may proceed. Defendants shall not make  
17 any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight  
18 (48) hour advance notice and the start of CSPA's inspection that Defendants would not otherwise have  
19 made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility,  
20 excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein  
21 shall be construed to prevent Defendants from continuing to implement any BMPs identified in the  
22 SWPPP during the period prior to an inspection by CSPA or at any time.

23 **8. Defendants' Communications with Regional and State Boards.** During the term of  
24 this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to  
25 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
26 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
27 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
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1 the Notice provisions herein (at ¶ 24) and contemporaneously with Defendants' submission to such  
2 agencies.

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

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

7 **10.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,  
8 Defendants agree to pay the sum of \$37,500 to the Rose Foundation for Communities and the  
9 Environment for projects to improve water quality in Gold Creek and downstream watersheds,  
10 including, but not limited to: Dry Creek, Butte Creek, and the Sacramento River and Sacramento River  
11 and/or Sacramento-San Joaquin River Delta. The funds shall not be used to fund the California public  
12 benefit corporation "AquaAlliance" based in Chico, California. The mitigation payment shall be made  
13 in three installments. The first installment payment of \$15,000 shall be made within seven (7) days  
14 after the Court Approval Date. The second installment payment of \$15,000 shall be made on or before  
15 June 1, 2012. The third installment payment of \$7,500 shall be made on or before June 1, 2013. Each  
16 installment payment shall be sent directly to the Rose Foundation, who shall provide an annual update  
17 to the parties describing how fund disbursements are made until all of the funds have been disbursed.

18 **11.** Defendants agree to reimburse CSPA in the amount of \$24,180 to defray CSPA's  
19 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred  
20 as a result of investigating the activities at the Facility, bringing the Action and negotiating a resolution  
21 in the public interest. Such payment shall be made to the Jackson & Tuerck Attorney-Client Trust  
22 Account within seven (7) days after the Court Approval Date.

23 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
24 expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance  
25 with this Consent Agreement, Defendants agree to contribute \$5,000 for each of the three (3) years  
26 covered by this Consent Agreement to a compliance monitoring fund maintained by CSPA.  
27 Compliance monitoring activities may include, but shall not be limited to, site inspections, review of

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1 water quality sampling reports, review of annual reports, discussions with representatives of  
2 Defendants concerning the Action Memoranda referenced above, and potential changes to compliance  
3 requirements herein, preparation for and participation in meet-and-confer sessions, water quality  
4 sampling and analysis, and compliance-related activities. The first such payment in the amount of  
5 \$5,000 shall be made payable to the Jackson & Tuerck Attorney-Client Trust Account within seven (7)  
6 days of the Court Approval Date. The second and third installments of \$5,000 each shall be made  
7 payable to the Jackson & Tuerck Attorney-Client Trust Account on June 1, 2012 and 2013,  
8 respectively. Plaintiff shall provide Defendants with a general accounting statement of Compliance  
9 Expenditures made during the term of the Consent Agreement on or before September 1, 2014. The  
10 accounting shall not require the release of any information protected by attorney-client privilege and/or  
11 the work product doctrine. If the reasonable cost of monitoring Defendants' compliance with its  
12 obligations hereunder is less than the amount paid for compliance monitoring, Plaintiff shall refund the  
13 excess on or before October 1, 2014.

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

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

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1           **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
2 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
3 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
4 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
5 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
6 representatives (each a “Released Defendant Party”) from, and waives all claims which arise from or  
7 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,  
8 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
9 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged  
10 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of  
11 this Consent Decree.

12           **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of  
13 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,  
14 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and  
15 its agents, attorneys, and other representative) from, and waives all claims and cross-claims which may  
16 arise from or pertain to the Action, including all claims for fees (including fees of attorneys, experts,  
17 and others), costs, expenses or any other sum incurred or claimed or which could have been claimed  
18 for matters associated with or related to the Action.

19           **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
20 Order that shall provide that:

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

23           b. the Court shall retain and have jurisdiction over the Parties with respect to  
24 disputes arising under this Agreement. Nothing in this Consent Agreement shall be construed  
25 as a waiver of any party’s right to appeal from an order that arises from an action to enforce the  
26 terms of this Consent Agreement.

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1 **IV. MISCELLANEOUS PROVISIONS**

2 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
3 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
4 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
5 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
6 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
7 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
8 this Consent Agreement.

9 18. The term of this Consent Agreement shall conclude on September 30, 2014.

10 19. The Consent Agreement may be executed in one or more counterparts which, taken  
11 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
12 Agreement shall be valid as an original.

13 20. In the event that any of the provisions of this Consent Agreement is held by a court to  
14 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
16 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
17 pursuant to California law, without regarding to conflict of law principles.

18 22. The undersigned are authorized to execute this Consent Agreement on behalf of their  
19 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
20 of this Consent Agreement.

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

26 24. **Notices.** Any notices or documents required or provided for by this Consent  
27 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement

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1 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
2 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

3 Bill Jennings, Executive Director  
4 California Sportfishing Protection Alliance  
5 3536 Rainier Avenue  
6 Stockton, CA 95204  
E-mail: DeltaKeep@aol.com

7 With copies sent to:

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

13 And to:

14 Andrew L. Packard  
15 Law Offices of Andrew L. Packard  
16 100 Petaluma Boulevard North, Suite 301  
17 Petaluma, CA 94952  
Tel: (707) 763-7227  
18 E-mail: Andrew@packardlawoffices.com

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

23 North State Rendering  
24 15 Shippee Road  
Oroville, CA 95965  
25 Tel: (530) 343-6076  
26 Fax: (530) 343-0660  
E-mail: nrendering@aol.com

27 And to:

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1 Mr. Christopher Ottone  
2 P.O. Box 1478  
3 Chico, CA 95927-1478  
4 Tel: (530) 343-6076  
5 Fax: (530) 343-0660  
6 E-mail: nrendering@aol.com

7 With copies sent to:

8 Richard Leland  
9 Leland, Schultz & Morrissey  
10 1660 Humboldt Road, Suite 6  
11 Chico, CA 95928  
12 Tel: (530) 342-4500  
13 Fax: (530) 345-6836  
14 E-mail: rleland@lelandschultzmorrissey.com

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

16 25. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

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

25 27. If for any reason the Court should decline to approve this Consent Agreement in the  
26 form presented, the Parties shall use their best efforts to work together to modify the Consent  
27 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
28 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
become null and void.

29 28. This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
and shall not be interpreted for or against any Settling Party on the ground that any such party drafted  
it.

1           **29.**     This Consent Agreement and the attachments contain all of the terms and conditions  
2 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
3 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
4 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
5 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the  
6 Parties or their authorized representatives, and then by order of the Court.

7           **30.**     Except in case of an emergency but subject to the regulatory authority of any applicable  
8 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
9 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
10 or within such other period approved in writing by the Party making such allegation, which approval  
11 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or,  
12 if the breach or default can be cured but is not capable of being cured within such five (5) day period,  
13 has commenced and is diligently pursuing to completion such cure.

14           **31.**     The Parties recognize and acknowledge that this Consent Agreement, as filed with the  
15 Court, is a public record, and that Plaintiff may publish notice of this settlement on the CSPA website  
16 and/or newsletter. The notice will not disclose financial terms of this agreement, but may include a  
17 link to the Notice of Settlement and/or other documents filed with the Court in conjunction with this  
18 case. Notwithstanding the foregoing, neither Plaintiff nor Defendants shall issue a press release  
19 regarding this Consent Agreement or contact third party media to publish the terms of this Consent  
20 Agreement, except as reasonably necessary to perform the obligations of each hereunder.

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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: 17 May 2011 California Sportfishing Protection Alliance, Plaintiff

By: Bill Jennings  
Bill Jennings, Executive Director

Dated: 5-19-11 North State Rendering, Defendant

By: Christopher Ottone  
Christopher Ottone, President

Dated: 5-19-11 Christopher J. Ottone, Defendant

By: Christopher Ottone  
Christopher Ottone

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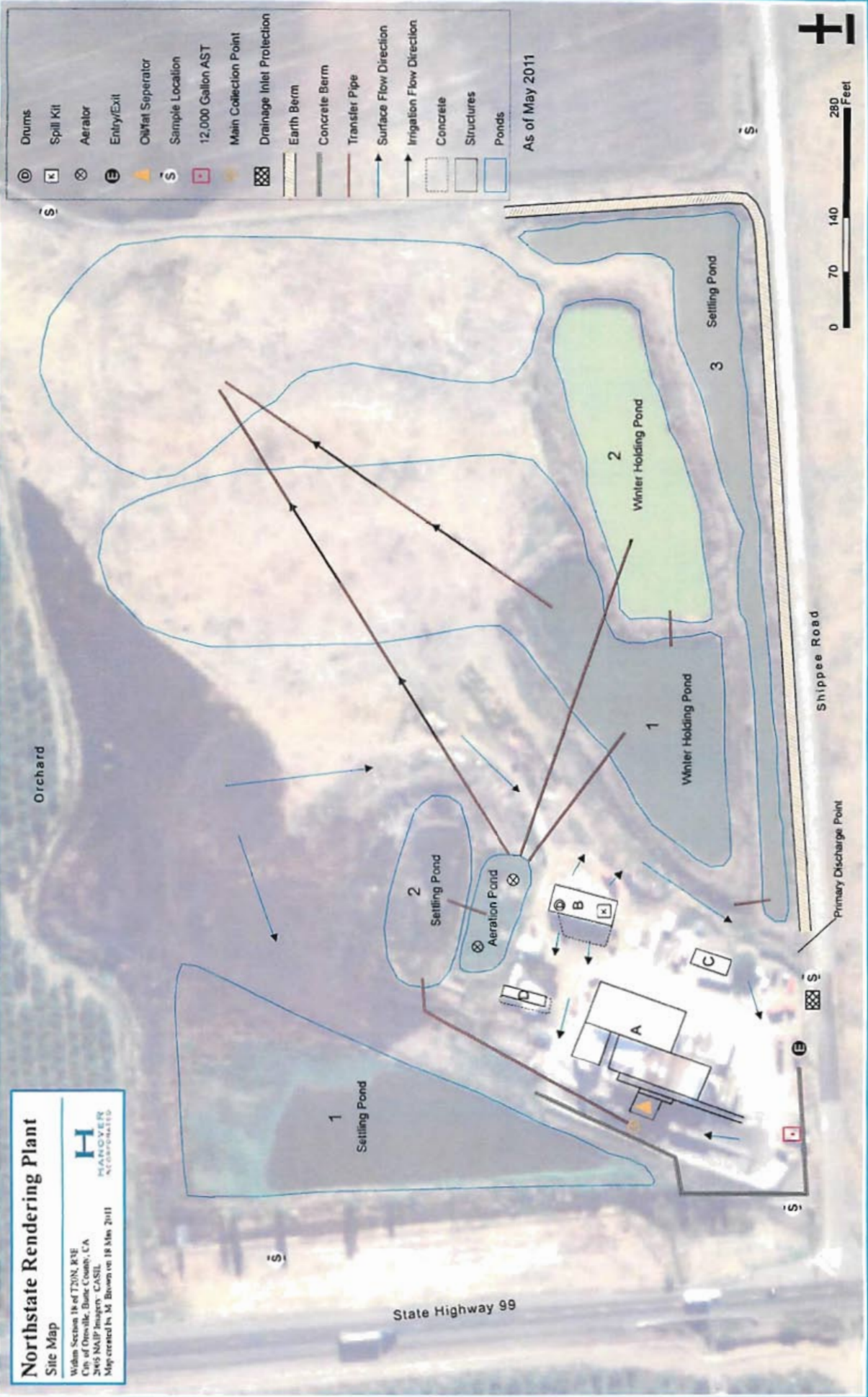
**EXHIBIT A – Facility Site Map**



# Northstate Rendering Plant

## Site Map

Within Section 18 of T20N, R3E  
 City of Oroville, Butte County, CA  
 2665 NARP Imagery, CASIL  
 Map created by M. Brown on 18 May 2011



Orchard

1 Settling Pond

2 Settling Pond

Aeration Pond

1 Winter Holding Pond

2 Winter Holding Pond

3 Settling Pond

Primary Discharge Point

Shippee Road

State Highway 99

As of May 2011

0 70 140 280 Feet



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**EXHIBIT B – 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 8, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Christopher J. Ottone, President  
North State Rendering  
15 Shippee Road  
Oroville, CA 95965

Christopher J. Ottone, President  
North State Rendering  
P.O. Box 1478  
Chico, CA 95927-1478

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

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Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the North State Rendering Tallow Plant facility owned and/or operated by Christopher J. Ottone, located at 15 Shippee Road, Oroville, CA 95965 ("the Facility"). The WDID identification number for the Facility is 5R04I004410. 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, its tributaries, and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the North State Rendering ("North State") Facility.

This letter addresses North State's unlawful discharges of pollutants from the Facility directly and indirectly through an unnamed tributary to Gold Run, which flows into Dry Creek and ultimately drains to 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. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit").

CSPA is particularly concerned about these ongoing unlawful discharges because North State has been repeatedly warned by the Regional Water Quality Control Board that storm water runoff from the Facility exceeds US EPA benchmark values for common storm water pollutants, and that the General Permit requires discharges to implement best management practices (BMPs) using best available pollutant control technology (BAT) and best available pollutant control technology (BCT) to reduce or eliminate the

discharge of pollutants.<sup>1</sup> It is CSPA's intention, through this letter, to bring these violations to North State's attention so that they may be resolved in a comprehensive and efficient manner.

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, North State is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against North State 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.**

On or about April 6, 1992, North State submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily used to manufacture tallow, grease, and other animal by-products to make soap, candles, and pet and livestock feed. Accordingly, the Facility is classified as a facility that processes "fats and oils" under Standard Industrial Classification ("SIC") Code 2077. North State is not a member of any monitoring group. The Facility collects and discharges storm water from its roughly 28-acre industrial site through at least one discharge point to storm water drains which drain through an unnamed tributary to Gold Run, which flows into Dry Creek and, ultimately, to the Delta.

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) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan states

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<sup>1</sup> CSPA is aware of at least five letters from the California Regional Water Quality Control Board, Central Valley Region, that were sent to the North State on August 8, 2001, August 14, 2002, August 24, 2004, May 18, 2007, and May 23, 2007, warning North State of benchmark exceedances in its storm water discharges and the need for the employment of BMPs, BATs, and BCTs.

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 the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 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 – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The 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 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) (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 also 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 North State: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; biochemical oxygen demand (“BOD”) – 30 mg/L; and nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200  $\mu\text{mhos/cm}$ .

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

North State has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further 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 North State failed to comply with the requirements of the General Permit

and has continued to operate in violation of the General Permit despite the Regional Board's repeated warnings and notices of violation issued to North State. North State's ongoing violations are discussed further below.

**A. North State Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

North State has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids, specific conductivity, chemical oxygen demand, and nitrate + nitrite nitrogen in violation of the General Industrial Storm Water 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. North State's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the North State Rendering 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 EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/04/2006	Shippee Road Manhole	TSS	180 mg/L	100 mg/L
02/28/2006	Shippee Road Manhole	TSS	140 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/04/2006	Shippee Road Manhole	SC	880 µmhos/cm	200 µmhos/cm
02/28/2006	Shippee Road Manhole	SC	610 µmhos/cm	200 µmhos/cm

12/27/2006	Shippee Road Manhole	SC	1080 µmhos/cm	200 µmhos/cm
02/28/2007	Shippee Road Manhole	SC	908 µmhos/cm	200 µmhos/cm
01/31/2008	Shippee Road Manhole	SC	1160 µmhos/cm	200 µmhos/cm
02/09/2008	Shippee Road Manhole	SC	1120 µmhos/cm	200 µmhos/cm
02/17/2009	Shippee Road Manhole	SC	1030 µmhos/cm	200 µmhos/cm
03/13/2009	Shippee Road Manhole	SC	983 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
12/27/2006	Shippee Road Manhole	COD	140 mg/L	120 mg/L
01/31/2008	Shippee Road Manhole	COD	150 mg/L	120 mg/L

**4. Discharges of Storm Water Containing Biochemical Oxygen Demand (BOD) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
02/17/2009	Shippee Road Manhole	BOD	60 mg/L	30 mg/L
03/13/2009	Shippee Road Manhole	BOD	35.7 mg/L	30 mg/L



**5. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/04/2006	Shippee Road Manhole	N+N	27 mg/L	0.68 mg/L
02/28/2006	Shippee Road Manhole	N+N	0.74 mg/L	0.68 mg/L
12/27/2006	Shippee Road Manhole	N+N	10.6 mg/L	0.68 mg/L
02/28/2007	Pasture Discharge #2	N+N	33.5 mg/L	0.68 mg/L
01/31/2008	Shippee Road Manhole	N+N	155 mg/L	0.68 mg/L
02/09/2008	Shippee Road Manhole	N+N	230 mg/L	0.68 mg/L
02/17/2009	Shippee Road Manhole	N+N	52.8 mg/L	0.68 mg/L
03/13/2009	Shippee Road Manhole	N+N	20.8 mg/L	0.68 mg/L

CSPA's investigation, including its review of North State's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the Basin Plan's benchmark for pH, indicates that North State has not implemented BAT and BCT at the Facility for its discharges of total suspended solids (TSS), specific conductivity (SC), chemical oxygen demand (COD), biochemical oxygen demand (BOD), nitrate + nitrite nitrogen (N+N), and other pollutants. North State was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. North State is discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT.

CSPA is informed and believes that North State has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 8, 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 8, 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 North State has discharged storm water containing impermissible levels of total suspended solids, specific

conductivity, chemical oxygen demand, and nitrate + nitrite nitrogen 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, North State is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 8, 2005.

**B. North State 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 North State, designated under SIC Code 2077 are also required to sample for chemical oxygen demand, biochemical oxygen demand, and nitrate + nitrite nitrogen. 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 North State has failed to develop and implement an adequate Monitoring & Reporting Plan. First, North State has failed to collect storm water samples from *each* discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, North State has failed to analyze its storm water for all pollutants likely to be present in significant quantities in its storm water discharge. 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, North State is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 8, 2005. These violations are set forth in greater detail below.

**1. North State Has Failed to Collect at Least Two Storm Water Samples From Each Facility Discharge Point During Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that North State has failed to collect storm water samples from all discharge points at the Facility for at least two storm events during each Wet Season as required by Section B(5)(a). Based on the annual reports, and attached laboratory testing documents filed by North State over the past five years, the Facility has made a practice of reporting the existence of fewer discharge points than actually exist at the Facility. For example, each of the annual reports filed by North State over the past five years state that there is only one storm water discharge location at the Facility, designated as “Shippee Road Manhole” in the annual reports. However, according to the lab report from Monarch Laboratory, Inc., dated March 19, 2007, which North State attached to the 2007 Annual Report filed with the regional board, a storm water discharge sample was taken from “Pasture Discharge #2” on February 28, 2007, thereby indicating that at least two known discharge locations exist at the Facility. North State has routinely failed to collect and analyze samples from more than one discharge location during the past five years. Based on CSPA’s review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, any assertion that there were less than two qualifying storm producing a discharge from each of the Facility’s discharge locations during any of the wet seasons over the past five years is quite simply very difficult to believe. North State’s failure to comply with the sampling requirements of the Act and the Permit constitute separate and ongoing violations of the Permit and the Act.

**2. North State Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.**

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 North State, designated under SIC Code 2077 are also required to sample for chemical oxygen demand, biochemical oxygen demand, and nitrate + nitrite nitrogen. 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 a review of North State’s Annual Reports submitted to the Regional Board over the past five years, CSPA believes that North State has failed to monitor for at least seven pollutants likely to be present in storm water discharges in significant quantities – chloride, magnesium, ammonia, copper, nickel, zinc, and lead. Moreover, North State failed to monitor its storm water for total suspended solids, pH, and chemical oxygen during the 2008 – 2009 wet season. Each failure to monitor for each separate parameter constitutes a separate violation of the General Industrial Storm

Water Permit and the Act. The Facility's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and Act.

**3. North State Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 8, 2005.**

CSPA is informed and believes that available documents demonstrate North State'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, North State is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 8, 2005.

**C. North State 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 North State has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, specific conductivity, chemical oxygen demand, nitrate + nitrite nitrogen, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On August 8, 2001, August 14, 2002, August 24, 2004, May 18, 2007, and again on May 23, 2007, an agent from the Storm Water and Water Certification Unit of the Regional Board sent letters to North State warning it that U.S. EPA benchmarks had been exceeded at the Facility. The Regional Board noted that the "storm water samples indicate that the current BMPs implemented at the site are not sufficient to reduce pollutant concentrations below benchmark levels." The Regional Board ordered that additional BMPs must be implemented to reduce or eliminate the discharge of pollutants from the site. The Board further ordered North State to modify its existing Storm Water Pollution Prevention Plan ("SWPPP"). Based on available documents, CSPA is informed and believes that North State failed to implement any additional BMPs and/or to inform the Regional Board of any such improvements or revisions to the SWPPP.

To meet the BAT/BCT requirement of the General Permit, North State 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 North State 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. North State has failed to implement such measures adequately.

North State was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, North State 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 North State fails to implement BAT and BCT. DWP is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**D. North State 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 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 waterbodies, 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 North State has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. North State has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. North State 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 North State fails to develop and implement an effective SWPPP. North State is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**E. North State 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, North State is discharging elevated levels of total suspended solids, specific conductivity, chemical oxygen demand, and nitrate + nitrite nitrogen that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, North State 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. North State has failed to do so.

Based on CSPA's review of available documents, North State was aware of high levels of these pollutants prior to April 8, 2005. Likewise, North State has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). North State 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 8, 2005, and will continue to be in violation every day that North State fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. North State is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 8, 2005.

**F. North State 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 North State 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, North State has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, North State has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time North State submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past years. North State's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. North State is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 8, 2005.

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

CSPA puts Mr. Christopher J. Ottone and North State 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 North State 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:

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

Andrew L. Packard  
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

**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 Mr. Christopher J. Ottone and North State to civil penalties 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. 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 North State 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



Notice of Violation and Intent To File Suit  
April 8, 2010  
Page 15 of 15

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 written in a cursive, flowing style with a large initial "B".

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

Christopher J. Ottone, President  
North State Rendering  
15 Shippee Road  
Oroville, CA 95965

Christopher J. Ottone, President  
North State Rendering  
P.O. Box 1478  
Chico, CA 95927-1478

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**North State Rendering Co.**  
**Significant Rain Events, April 8, 2005 – April 8, 2010**

April 8, 2005	January 14, 2006	November 11, 2006
April 23, 2005	January 17, 2006	November 12, 2006
May 4, 2005	January 28, 2006	November 13, 2006
May 5, 2005	January 30, 2006	November 14, 2006
May 8, 2005	February 1, 2006	November 16, 2006
May 9, 2005	February 4, 2006	November 26, 2006
May 16, 2005	February 26, 2006	December 8, 2006
May 17, 2005	February 27, 2006	December 9, 2006
May 18, 2005	March 2, 2006	December 10, 2006
June 8, 2005	March 3, 2006	December 11, 2006
June 16, 2005	March 5, 2006	December 12, 2006
June 17, 2005	March 6, 2006	December 13, 2006
October 3, 2005	March 7, 2006	December 15, 2006
October 15, 2005	March 9, 2006	December 21, 2006
October 26, 2005	March 10, 2006	December 26, 2006
October 28, 2005	March 12, 2006	December 27, 2006
November 3, 2005	March 13, 2006	February 7, 2007
November 7, 2005	March 14, 2006	February 8, 2007
November 8, 2005	March 16, 2006	February 9, 2007
November 25, 2005	March 17, 2006	February 10, 2007
November 28, 2005	March 20, 2006	February 11, 2007
November 29, 2005	March 24, 2006	February 12, 2007
November 30, 2005	March 25, 2006	February 22, 2007
December 1, 2005	March 27, 2006	February 24, 2007
December 18, 2005	March 28, 2006	February 26, 2007
December 19, 2005	March 31, 2006	February 27, 2007
December 20, 2005	April 2, 2006	March 26, 2007
December 21, 2005	April 3, 2006	April 11, 2007
December 22, 2005	April 4, 2006	April 14, 2007
December 25, 2005	April 5, 2006	April 21, 2007
December 26, 2005	April 7, 2006	April 22, 2007
December 27, 2005	April 10, 2006	May 1, 2007
December 28, 2005	April 11, 2006	May 2, 2007
December 29, 2005	April 12, 2006	May 4, 2007
December 30, 2005	April 15, 2006	June 5, 2007
December 31, 2005	April 16, 2006	July 18, 2007
January 1, 2006	April 22, 2006	September 22, 2007
January 3, 2006	May 19, 2006	September 23, 2007
January 7, 2006	October 5, 2006	September 28, 2007
January 11, 2006	November 2, 2006	October 5, 2007

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**North State Rendering Co.**  
**Significant Rain Events, April 8, 2005 – April 8, 2010**

October 10, 2007	October 4, 2008	May 2, 2009
October 16, 2007	October 30, 2008	May 3, 2009
October 19, 2007	October 31, 2008	May 4, 2009
November 10, 2007	November 1, 2008	May 5, 2009
November 11, 2007	November 3, 2008	June 3, 2009
December 3, 2007	December 14, 2008	June 4, 2009
December 4, 2007	December 15, 2008	September 14, 2009
December 6, 2007	December 18, 2008	October 13, 2009
December 7, 2007	December 21, 2008	October 19, 2009
December 16, 2007	December 24, 2008	November 17, 2009
December 17, 2007	December 25, 2008	November 20, 2009
December 19, 2007	January 2, 2009	November 27, 2009
December 20, 2007	January 22, 2009	December 11, 2009
December 28, 2007	January 23, 2009	December 12, 2009
December 29, 2007	January 24, 2009	December 13, 2009
January 3, 2008	January 25, 2009	December 16, 2009
January 4, 2008	February 5, 2009	December 20, 2009
January 5, 2008	February 6, 2009	December 21, 2009
January 6, 2008	February 8, 2009	December 27, 2009
January 8, 2008	February 9, 2009	December 29, 2009
January 10, 2008	February 10, 2009	December 30, 2009
January 12, 2008	February 11, 2009	January 1, 2010
January 21, 2008	February 12, 2009	January 12, 2010
January 24, 2008	February 13, 2009	January 13, 2010
January 25, 2008	February 15, 2009	January 17, 2010
January 26, 2008	February 16, 2009	January 18, 2010
January 27, 2008	February 17, 2009	January 19, 2010
January 29, 2008	February 18, 2009	January 20, 2010
January 31, 2008	February 22, 2009	January 21, 2010
February 2, 2008	February 23, 2009	January 22, 2010
February 19, 2008	February 24, 2009	January 23, 2010
February 20, 2008	February 25, 2009	January 24, 2010
February 21, 2008	February 26, 2009	January 25, 2010
February 22, 2008	March 1, 2009	January 30, 2010
February 23, 2008	March 2, 2009	February 4, 2010
February 24, 2008	March 3, 2009	February 5, 2010
March 19, 2008	March 21, 2009	February 6, 2010
March 29, 2008	March 22, 2009	February 8, 2010
April 22, 2008	April 9, 2009	February 9, 2010
April 23, 2008	April 10, 2009	February 20, 2010
October 3, 2008	May 1, 2009	February 23, 2010

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**North State Rendering Co.**  
**Significant Rain Events, April 8, 2005 – April 8, 2010**

February 24, 2010  
February 26, 2010  
February 27, 2010  
March 2, 2010

March 3, 2010  
March 9, 2010  
March 10, 2010  
March 12, 2010

March 24, 2010  
March 30, 2010  
April 2, 2010  
April 4, 2010

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**EXHIBIT C – Sampling Parameters**

<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
Chemical Oxygen Demand	120 mg/L
Biochemical Oxygen Demand	30 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L