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17 Attorneys for Plaintiff
18 CALIFORNIA SPORTFISHING
19 PROTECTION ALLIANCE

20 **UNITED STATES DISTRICT COURT**
21 **EASTERN DISTRICT OF CALIFORNIA**

22 CALIFORNIA SPORTFISHING
23 PROTECTION ALLIANCE, a non-profit
24 corporation,

25 Plaintiff,

26 vs.

27 BUTTE COUNTY DEPARTMENT OF
28 PUBLIC WORKS, *et. al.*

Defendants.

Case No. 2:10-CV-03203-LKK-KJM

[PROPOSED] CONSENT AGREEMENT

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

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

32 **WHEREAS**, Defendant Butte County Department of Public Works (hereinafter “DPW”), a
33 department of the County of Butte, a political subdivision organized under the laws of the State of

1 California which owns an approximately one hundred and eighty nine (189) acre landfill facility
2 located at 1023 Neal Road, in Chico, California (the “Facility”), and Defendant Mike Crump, is the
3 Director of DPW, which operates the Facility, and that Defendant Shawn H. O’Brien is the Assistant
4 Director of Public Works and is listed as the Facility Operator in the Complaint;

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

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

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

14 **WHEREAS**, on or about September 29, 2010, Plaintiff provided notice of Defendants’
15 violations of the Act, and of its intention to file suit against Defendants, to the Administrator of the
16 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
17 Executive Director of the State Water Resources Control Board (“State Board”); the Executive Officer
18 of the Regional Water Quality Control Board, Central Valley Region (“Regional Board”); and to
19 Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA’s
20 notice letter are attached as Exhibit B and incorporated herein by reference);

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

24 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States
25 District Court, Eastern District of California, on November 11, 2010, creating the present lawsuit
26 (hereinafter “the action”);

27 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper
28

1 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this
2 Consent Agreement;

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

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

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

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

15 **I. COMMITMENT OF DEFENDANTS**

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

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

23 (a) Defendants shall construct an interceptor ditch that would flow to the main
24 discharge point west of the Primary Sediment Basin (hereinafter “PSB”). The ditch
25 would run along existing perimeter access roadway and would discharge to main
26 discharge point. The west side of ditch would include native grasses, above ground
landscaping soil berms with trees and monitoring wells. This area would be kept free of
industrial activity;

27 (b) Defendants shall divert storm water from grassy swales along the main
28 stockpile to the interceptor ditch;

1 (c) Defendants shall designate consistent sampling locations, one of which
2 will be at the fence point closest to the concrete weir of the PSB;

3 (d) Defendants shall visually monitor grassy swales for discharges;

4 (e) Defendants shall collect and analyze storm water samples from the
5 interceptor ditch, which includes runoff from the grassy swales adjacent to the soil
6 stockpile east of the access road, on the condition that CSPA agrees to remove this
7 condition upon a satisfactory showing that the samples do not contain concentrations of
8 pollutants in excess of EPA Benchmarks;

9 (f) Defendants shall employ the use of anchored geo-textiles, or equivalent
10 best management practices (BMP), in ditches as necessary in order to prevent erosion;

11 (g) Defendants shall update the measuring rods in the basins so that they
12 reflect depth and discharge values. CSPA is open to the Defendants continuing to
13 manually monitor the capacity so long as commit to doing so on a daily basis, incorporate
14 this into the facility's SWPPP, and keep a daily record of these activities; and

15 (h) Defendants shall update the SWPPP and Facility Map annually to reflect
16 total existing storage capacity of basins and graphically show the flow between the
17 various basins. Defendants shall also incorporate the locations of items 2(a) – 2(g) on the
18 Facility Map.

19 (i) Defendants will construct an additional storm water basin prior to
20 commencement of the 2011-2012 Wet Season, which begins on October 1, 2011. The
21 Parties acknowledge that Defendants' installation of some of the storm water basin may
22 be subject to various constraints that are beyond the Defendants' control (project bidding,
23 construction permits, weather, etc.). Defendants agree to submit any and all construction
24 plans and / or applications to obtain necessary approvals to construct the basin to the
25 appropriate agencies and land use authorities within seven (7) days of the Court Approval
26 Date. Defendants shall notify CSPA pursuant to the Notice provisions herein (at ¶ 24)
27 within seven (7) days of any delay in the construction of the basin. If Defendants are
28 unable to complete the basin prior to October 31, 2011, or the first significant
precipitation falling on or after October 1, 2011, whichever comes first, then the term of
this agreement shall be extended by one calendar year in accordance with the terms of
paragraph 18 herein. Under no circumstances shall Defendants complete construction of
the basin at the earliest possible date, but in no case later than October 1, 2012.
However, if the basin is completed prior to October 31, 2011 or the first significant
precipitation, whichever comes first, the termination date of this agreement shall remain
September 30, 2014. For purposes of this paragraph, the first significant precipitation is
defined as any storm event(s) that result in a storm water discharge from the Facility.

3. **SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this
Consent Agreement, Defendants shall formally amend the SWPPP for the Facility to incorporate all of

1 the relevant requirements of this Consent Agreement, as well as the revised Facility map attached
2 hereto as Exhibit A.

3 **4. Sampling Frequency.** Defendants shall collect and analyze samples from at least four
4 (4) storm events, as qualified in the General Permit¹ for sampling purposes, in the 2011-2012 Wet
5 Season, three (3) storm events in the 2012-2013 Wet Season, and three (3) storm events in the 2013-
6 2014 Wet Season. If sufficient rainfall does not result in the requisite number of storm water
7 discharges for sampling in any given year, Defendants shall be required to sample and analyze storm
8 water from each of the Facility’s actual discharges during that year. The storm water sample results
9 shall be compared with the values set forth in Exhibit C, attached hereto, and incorporated herein by
10 reference. If the results of any such samples exceed the parameter values set forth in Exhibit C,
11 Defendants shall comply with the “Action Memorandum” requirements set forth below.

12 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents
13 listed in Exhibit C by a laboratory accredited by the State of California. All samples collected from
14 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is
15 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual
16 constituents at or below the values specified on Exhibit C. Sampling results shall be provided to
17 CSPA within seven (7) working days of Defendants’ receipt of the laboratory report from each
18 sampling event pursuant to the Notice provisions below.

19 **6. “Action Memorandum” Trigger; CSPA Review of “Action Memorandum”; Meet-**
20 **and-Confer.** If any sample taken during the three (3) Wet Seasons referenced in Paragraph 4 above
21 exceeds the evaluation levels set forth in Exhibit C, Defendants shall prepare a written statement
22 discussing the exceedance(s), the possible cause and/or source of the exceedance(s), and additional
23 measures that will be taken to address and eliminate the problem and future exceedances (“Action
24 Memorandum”). The Action Memorandum shall be provided to CSPA upon completion and in any
25 case no later than 30 days after Defendants’ receipt of the sample results at issue. Recognizing that a

26 ¹ “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 SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional
2 measures may include, but are not limited to, taking confirmation samples, further material
3 improvements to the storm water collection and discharge system, installation of a storm water
4 filtration system, and/or modifying other industrial activities or management practices at the Facility.
5 Such additional measures, to the extent feasible, shall be implemented immediately and in no event
6 later than 60 days after the due date of the Action Memorandum. Within seven (7) days of
7 implementation, the Facility SWPPP shall be amended to include all additional BMP measures
8 designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum
9 and suggest any additional pollution prevention measures it believes are appropriate; however,
10 CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the
11 Action Memorandum. Upon request by CSPA, Defendants agree to meet and confer in good faith (at
12 the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action
13 Memorandum.

14 **7. Inspections During the Term of This Agreement.** In addition to any site inspections
15 conducted as part of the meet-and-confer process concerning an Action Memorandum as set forth
16 above, Defendants shall permit representatives of CSPA to perform up to three (3) physical
17 inspections of the Facility during operating hours on weekdays during the term of this Consent
18 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may
19 include sampling, photographing, and/or videotaping and CSPA shall provide Defendants with a copy
20 of all sampling reports, photographs and/or video within fourteen (14) business days of CSPA's site
21 inspection. CSPA shall provide at least two working days' advance written² notice of such physical
22 inspection, except that Defendants shall have the right to deny access if circumstances would make the
23 inspection unduly burdensome and pose significant interference with business operations or any
24 party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3)
25 dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.
26 Defendants shall not make any alterations to Facility conditions during the period between receiving

27 _____
28 ² For purposes of the inspection notice, written notice may be sent to the email addresses listed in Paragraph 24
of this agreement.

1 CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants
2 would not otherwise have made but for receiving notice of CSPA's request to conduct a physical
3 inspection of the Facility, excepting any actions taken in compliance with any applicable laws or
4 regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement
5 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

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

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

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

17 **10.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,
18 Defendants agree to pay the sum of \$40,000 to the Rose Foundation for Communities and the
19 Environment for projects to improve water quality in Butte Creek and downstream watersheds,
20 including, but not limited to Butte Creek, and the Sacramento River and Sacramento River and/or
21 Sacramento-San Joaquin River Delta. The mitigation payment shall be made directly to the Rose
22 Foundation at 6008 College Avenue, Oakland, CA 94618 (Attn: Tim Little), within seven (7) days
23 after the Court Approval Date.

24 **11.** Defendants agree to reimburse CSPA in the amount of \$37,500 to defray CSPA's
25 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred
26 as a result of investigating the activities at the Facility, bringing the Action and negotiating a
27 resolution in the public interest. Such payment shall be made to the Jackson & Tuerck Attorney-
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1 Client Trust Account within seven (7) days after the Court Approval Date.

2 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
3 expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance
4 with this Consent Agreement, Defendants agree to contribute \$4,000 for each year covered by this
5 Consent Agreement to a compliance monitoring fund maintained by CSPA. Compliance monitoring
6 activities may include, but shall not be limited to, site inspections, review of water quality sampling
7 reports, review of annual reports, discussions with representatives of Defendants concerning the
8 Action Memoranda referenced above, and potential changes to compliance requirements herein,
9 preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and
10 compliance related activities. The first such payment in the amount of \$4,000 shall be made payable
11 to the Jackson & Tuerck Attorney-Client Trust Account within seven (7) days of the Court Approval
12 Date. The second and third installments of \$4,000 each shall be made payable to the Jackson &
13 Tuerck Attorney-Client Trust Account on June 1, 2012 and 2013, respectively. In the event that the
14 term of this agreement is extended to accommodate construction of the storm water basin described in
15 Paragraph 2(i), a fourth installment of \$4,000 shall be made to the Jackson & Tuerck Attorney-Client
16 Trust Account on June 1, 2014. If the reasonable cost of monitoring Defendants' compliance with its
17 obligations hereunder is less than the total fees and costs for compliance monitoring, Plaintiff shall
18 refund the excess within fourteen (14) business days of the conclusion of the term of this agreement.

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

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

6 **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent
7 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,
8 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their
9 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their
10 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other
11 representatives (each a “Released Defendant Party”) from, and waives all claims which arise from or
12 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,
13 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or
14 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged
15 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of
16 this Consent Decree. In addition, for the period beginning on the Effective Date and ending on
17 September 30, 2014, CSPA agrees that neither CSPA, its officers, executive staff, members of its
18 governing board nor any organization under the control of CSPA, its officer, executive staff, or
19 members of its governing board, will file any lawsuit against Defendants seeking relief for the alleged
20 violations of the Clean Water Act or violations of the General Permit at the Neal Road Landfill
21 facility. CSPA further agrees that, beginning on the Effective Date and ending on September 30,
22 2014, CSPA will not support other lawsuits, by providing financial assistance, personnel time or other
23 affirmative actions, against Defendants that may be proposed by other groups or individuals who
24 would rely upon the citizen suite provision of the Clean Water Act to challenge Defendant’s
25 compliance with the Clean Water Act or the General Permit at the Neal Road Landfill facility.

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

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

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

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

14 **IV. MISCELLANEOUS PROVISIONS**

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

22 **18.** The term of this Consent Agreement shall conclude on September 30, 2014, unless
23 construction of the basin described in Paragraph 2(i) is delayed for reasons beyond Defendants'
24 control. If construction of the basin described in Paragraph 2(i) of this Consent Agreement is not
25 completed prior to October 31, 2011, or the first significant precipitation falling on or after October 1,
26 2011, whichever comes first, then the term of this agreement shall be extended by one calendar year to
27 September 30, 2015.

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

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

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

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

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

17 **24. 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 Robert J. Tuerck, Esq.
28 Jackson & Tuerck
 P.O. Box 148
 429 W. Main Street, Suite C

1 Quincy, CA 95971
2 Tel: 530-283-0406
3 Fax: 530-283-0416
4 E-mail: Bob@JacksonTuerck.com

5 And to:

6 Andrew L. Packard
7 Law Offices of Andrew L. Packard
8 100 Petaluma Boulevard North, Suite 301
9 Petaluma, CA 94952
10 Tel: (707) 763-7227
11 E-mail: Andrew@packardlawoffices.com

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

16 Mike Crump, Director
17 Department of Public Works
18 7 County Center Drive
19 Oroville, California 95965
20 Tel: (530) 538-7681
21 Fax: (530) 538-7171
22 E-mail: mcrump@buttecounty.net

23 With copies sent to:

24 Bruce S. Alpert, County Counsel
25 Office of the County Counsel
26 25 County Center Drive, Suite 210
27 Tel: (530) 538-7621
28 Fax: (530) 538-6891
E-mail: balpert@buttecounty.net

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

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

26. 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

1 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm
2 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of
3 establishing that it could not reasonably have been expected to avoid, and which by exercise of due
4 diligence has been unable to overcome, the Force Majeure.

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

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

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

19 **30.** Where implementation of the actions set forth in this Consent Decree, within the
20 deadlines set forth above becomes impossible, despite the timely good faith efforts of the Parties, the
21 Party who is unable to comply shall notify the other in writing within seven (7) days calendar days of
22 the date that the failure becomes apparent, and shall describe the reason for the non-performance. The
23 Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties
24 concur that the non-performance was or is impossible, despite the timely good faith efforts of one of
25 the Parties, new performance deadlines shall be established. In the event that the Parties cannot timely
26 agree upon the terms of such a stipulation, either of the Parties shall have the right to invoke the
27 dispute resolution procedure described herein.

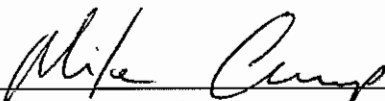
1 31. Except in case of an emergency but subject to the regulatory authority of any applicable
2 governmental authority, any breach of or default under this Consent Agreement capable of being cured
3 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,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

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

10
11 Dated: _____ California Sportfishing Protection Alliance

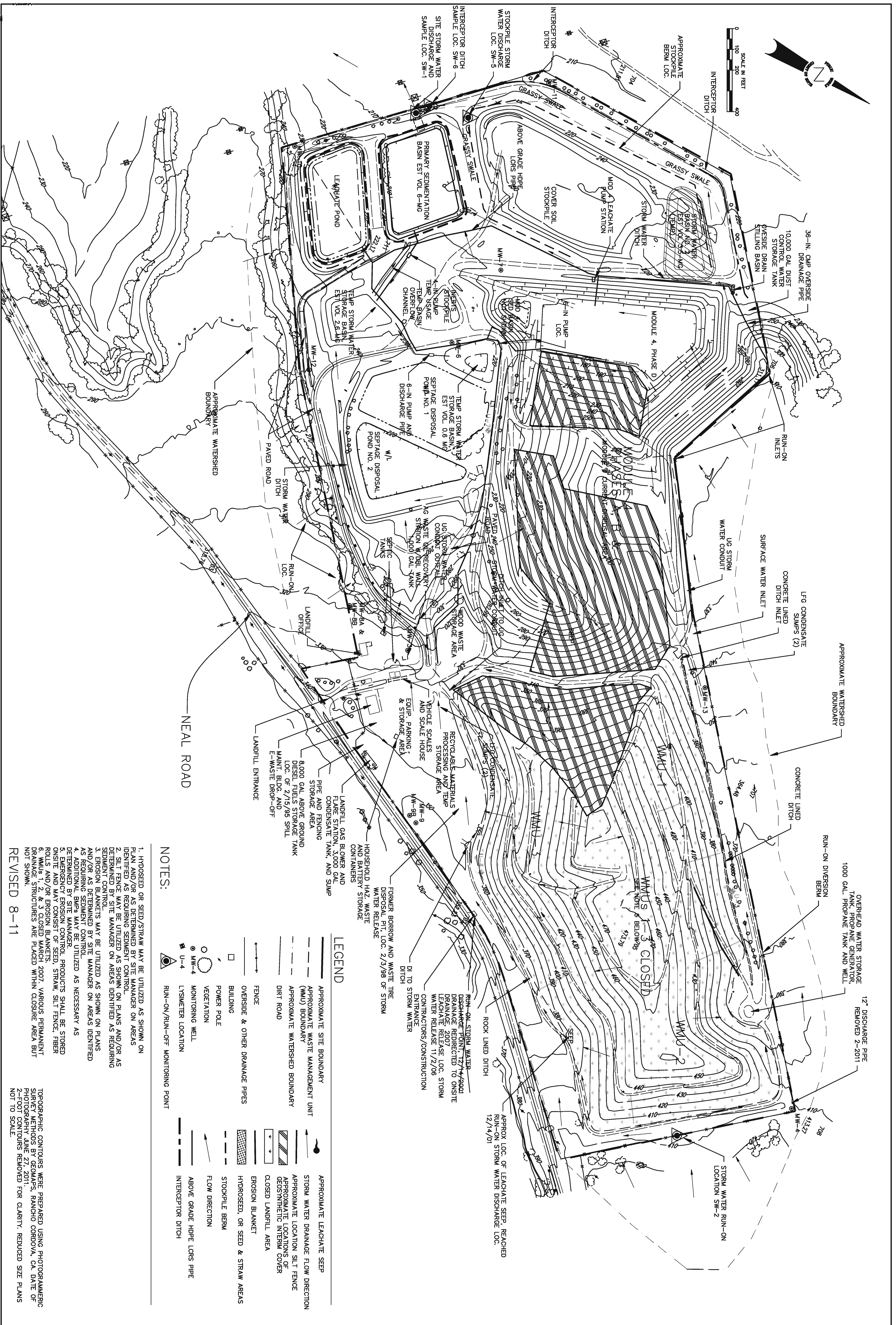
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13 By: _____
14 Bill Jennings, Executive Director

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16 Dated: 8/10/11 Butte County Department of Public Works

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18 By: 
19 Mike Crump, Director

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EXHIBIT A – Facility Site Map



NOTES:

1. HYDROSEED OR SEED/STRAW MAY BE UTILIZED AS SHOWN ON PLAN AND/OR AS DETERMINED BY SITE MANAGER ON AREAS IDENTIFIED AS REQUIRING SEDIMENT CONTROL.
2. SILT FENCE MAY BE UTILIZED AS SHOWN ON PLANS AND/OR AS DETERMINED BY SITE MANAGER ON AREAS IDENTIFIED AS REQUIRING SEDIMENT CONTROL.
3. EROSION BLANKETS MAY BE UTILIZED AS SHOWN ON PLANS AND/OR AS DETERMINED BY SITE MANAGER ON AREAS IDENTIFIED AS REQUIRING SEDIMENT CONTROL.
4. ADDITIONAL BMPs MAY BE UTILIZED AS NECESSARY AS DETERMINED BY SITE MANAGER.
5. EMERGENCY EROSION CONTROL PRODUCTS SHALL BE STORED ON-SITE AND MAY CONSIST OF SEED, STRAW, SILT FENCE, FIBER ROLLS AND/OR EROSION BLANKETS.
6. MWs 1, 2, & 3 CLOSED MARCH 2007. VARIOUS PERMANENT DRAINAGE STRUCTURES ARE PLACED WITHIN CLOSURE AREA BUT NOT SHOWN.

REVISED 8-11

LEGEND

	APPROXIMATE SITE BOUNDARY		STORM WATER DRAINAGE FLOW DIRECTION
	APPROXIMATE WASTE MANAGEMENT UNIT (WMU) BOUNDARY		APPROXIMATE LOCATION OF GEOSYNTHETIC INTERIM COVER
	APPROXIMATE WATERSHED BOUNDARY		CLOSED LANDFILL AREA
	DIRT ROAD		EROSION BLANKET
	FENCE		HYDROSEED, OR SEED & STRAW AREAS
	OVERSIDE & OTHER DRAINAGE PIPES		STOCKPILE BERM
	BUILDING		FLOW DIRECTION
	POWER POLE		ABOVE GRADE HOPE LRMS PIPE
	VEGETATION		INTERCEPTOR DITCH
	MONITORING WELL		
	LYSIMETER LOCATION		
	RUN-ON/RUN-OFF MONITORING POINT		

STORM WATER POLLUTION PREVENTION PLAN
NEAL ROAD SANITARY LANDFILL
 BUTTE COUNTY, CALIFORNIA
 PLATE 3



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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

September 29, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Neal Road Recycling & Waste Facility
1023 Neal Road
Paradise, CA 95969

Neal Road Landfill
Butte County Public Works
7 County Center Drive
Oroville, CA 95965

Mike Crump, Director
Neal Road Landfill & Waste Facility
P.O. Box 5026
Chico, CA 95927

Shawn H. O'Brien, Facility Operator
Neal Road Recycling & Waste Facility
7 County Center Drive
Oroville, CA 95965

Eric Dugger, Facility Contact
Neal Road Recycling & Waste Facility
1023 Neal Road
Paradise, CA 95969

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

Dear Sir and Madam:

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 Neal Road Landfill facility located at 1023 Neal Road, Chico, CA 95927 ("the Facility"). The Facility is owned by Butte County and operated by the Department of Public Works collectively referred to herein as "DPW". The WDID identification number for the Facility is 5R04I000249. 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 owners, officers, or operators of the Neal Road Landfill facility.

This letter addresses DPW's unlawful discharges of pollutants from the Facility directly and indirectly through unnamed streams into Butte Creek, all of which ultimately drain 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”).

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, DPW 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 DPW under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

I. Background.

The Neal Road Landfill is classified as a landfill facility under Standard Industrial Classification (“SIC”) code 4953. The Facility is a Class III landfill primarily used to dispose of municipal solid waste and inert industrial waste; other current activities at the Facility include recycling, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility. The Facility is not a member of any monitoring group. The Facility collects and discharges storm water from its roughly 189-acre industrial site through at least four discharge points to storm water drains which drain to Butte Creek and, ultimately, to the Delta. On March 6, 1992, and again on June 4, 1997, DPW submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit.

CSPA is informed and believes that DPW has failed to comply the terms of the General Permit by discharging storm water containing pollutants, failing to implement an adequate monitoring and reporting plan, failing to implement best management practices (“BMPs”) using best available technology (“BAT”) and best conventional technology (“BCT”), failing to develop and implement an adequate Storm Water Pollution Prevention Plan, failing to address discharges contributing to exceedances of Water Quality Standards, and failing to file timely, true and correct annual reports with the Regional Water Quality Control Board.

CSPA is particularly concerned about these ongoing unlawful discharges because DPW 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 using best available pollutant control technology and best available pollutant control technology to reduce or eliminate the discharge of pollutants.¹ It is CSPA's intention, through this letter, to bring these violations to DWP's attention so that they may be resolved in a comprehensive and efficient manner.

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 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.

¹ CSPA is aware of at least three letters from the California Regional Water Quality Control Board, Central Valley Region, that were sent to the DPW on September 24, 2004, May 23, 2007, and December 15, 2009, warning Neal Road of benchmark exceedances in its storm water discharges and the need for the employment of BMPs, BATs, and BCTs.

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 DPW: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; magnesium – 0.0636 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 µmho/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

DPW 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 DPW 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 DPW. DPW’s ongoing violations are discussed further below.

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

DPW has discharged and continues to discharge stormwater with unacceptable levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium 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. DPW’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 Neal Road 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 pH levels in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	pH	9.52	6.0-9.0

2. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	TSS	180 mg/L	100 mg/L
12/22/2005	SW-1	West Discharge	TSS	140 mg/L	100 mg/L
02/10/2007	SW-1	West Discharge	TSS	850 mg/L	100 mg/L
03/26/2007	SW-4	North Discharge	TSS	430 mg/L	100 mg/L
03/26/2007	MD4-S	Unknown	TSS	880 mg/L	100 mg/L
01/04/2008	SW-1	West Discharge	TSS	360 mg/L	100 mg/L
01/04/2008	SW-3A	North Discharge	TSS	550 mg/L	100 mg/L
01/12/2010	SW-5	Stockpile Discharge	TSS	560 mg/L	100 mg/L
01/12/2010	NR-SW05	Unknown	TSS	120 mg/L	100 mg/L

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

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/04/2008	SW-3	South Discharge	SC	560 µmho/cm	200 µmho/cm
02/09/2010	SW-5	Stockpile Discharge	SC	212 µmho/cm	200 µmho/cm

4. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
03/26/2007	MD4-S	Unknown	O&G	21 mg/L	15 mg/L

5. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	Fe	2.2 mg/L	1.0 mg/L
12/22/2005	SW-1	West Discharge	Fe	9.1 mg/L	1.0 mg/L
02/10/2007	SW-1	West Discharge	Fe	54 mg/L	1.0 mg/L
03/26/2007	SW-4	North Discharge	Fe	47 mg/L	1.0 mg/L
01/04/2008	SW-1	West Discharge	Fe	39 mg/L	1.0 mg/L
01/04/2008	SW-3	South Discharge	Fe	3.5 mg/L	1.0 mg/L
01/04/2008	SW-3A	North Discharge	Fe	36 mg/L	1.0 mg/L
02/17/2009	SW-1	West Discharge	Fe	5.2 mg/L	1.0 mg/L
01/12/2010	SW-5	Stockpile Discharge	Fe	51 mg/L	1.0 mg/L
01/12/2010	NR-SW01	Unknown	Fe	1.2 mg/L	1.0 mg/L
01/12/2010	NR-SW02	Unknown	Fe	2.9 mg/L	1.0 mg/L
01/12/2010	NR-SW03	Unknown	Fe	2.2 mg/L	1.0 mg/L
01/12/2010	NR-SW04	Unknown	Fe	2.5 mg/L	1.0 mg/L
01/12/2010	NR-SW05	Unknown	Fe	11 mg/L	1.0 mg/L
02/09/2010	SW-1	West Discharge	Fe	1.1 mg/L	1.0 mg/L
02/09/2010	SW-5	Stockpile Discharge	Fe	4.0 mg/L	1.0 mg/L
03/03/2010	SW-5	Stockpile Discharge	Fe	1.1 mg/L	1.0 mg/L

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

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/22/2005	SW-1	West Discharge	N+N	1.5 mg/L	0.68 mg/L
02/10/2007	SW-1	West Discharge	N+N	0.74 mg/L	0.68 mg/L

7. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	Mg	7.1 mg/L	0.0636 mg/L
12/22/2005	SW-1	West Discharge	Mg	5.8 mg/L	0.0636 mg/L
02/17/2009	SW-1	West Discharge	Mg	5.5 mg/L	0.0636 mg/L
02/17/2009	MD4-S	Unknown	Mg	7.6 mg/L	0.0636 mg/L
01/12/2010	SW-5	Stockpile Discharge	Mg	27 mg/L	0.0636 mg/L
02/09/2010	SW-1	West Discharge	Mg	6.5 mg/L	0.0636 mg/L
02/09/2010	SW-5	Stockpile Discharge	Mg	20 mg/L	0.0636 mg/L

CSPA's investigation, including its review of DPW'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 DPW has not implemented BAT and BCT at the Facility for its discharges of pH, total suspended solids (TSS), specific conductivity (SC), oil and grease (O&G), iron (Fe), nitrate + nitrite nitrogen (N+N), and magnesium (Mg), and other pollutants. DPW was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. DPW 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 DPW has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 29, 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 September 29, 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 DWP has discharged storm water containing impermissible levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium 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, DWP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 29, 2005.

B. DPW 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 DPW, designated under SIC 4953 are also required to sample for iron. 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 DPW has failed to develop and implement an adequate Monitoring & Reporting Plan. First, DPW 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, DPW 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, DPW is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 29, 2005. These violations are set forth in greater detail below.

1. DPW 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 DPW 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 DWP 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, in its 2009 and 2008 annual reports, DWP reported that there is only one storm water discharge location at the facility, and attached laboratory reports showing that samples were collected and analyzed from at least four locations (SW-1, SW-2, SW-3, and MD4-s in 2009 and SW-1, SW-2, SW-3, and SW-3A in 2008). Likewise DWP reported having only 3 discharge locations at the Neal Road facility in its 2007 annual report, and 2 in the 2006 report, while the attached laboratory reports show samples were collected and analyzed from four and two locations respectively. Moreover, DWP has routinely failed to collect and analyze more than one sample from any given discharge location in the past five years. For example, the 2006 annual report shows that for the “first storm event” on November 11, 2005 samples were collected and analyzed from SW-2 and SW-3, but not from SW-1, whereas a sample was collected and analyzed for SW-1, but not SW-2 and SW-3 for the second event on December 22, 2005. Notably, no samples were ever collected or analyzed for discharge location SW-4 during the 2005-2006 wet season, but samples were collected from that location for the second event of the 2006-2007 wet season (March 26, 2007). Similar omissions are found in DWP’s 2007, 2008, 2009 and 2010 annual reports. 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, particularly considering that in DPW admits in the 2010 annual report that even though only one sample was collected and analyzed, “a second storm water discharge did follow the initial discharge... [but] a sample was not collected”. DWP’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. DWP 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) 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 DPW, designated under SIC 4953 are also required to sample for iron. Based on a review of DWP's Annual Reports submitted to the Regional Board, DWP has failed to test storm water samples for all of the required constituents. For example, the storm water sample collected from discharge location SW-4 during the 2006-2007 Wet Season was not tested for pH and specific conductivity.

In addition to the constituents that Section B(5)(c)(i) requires dischargers to test for, Section B(5)(c)(ii) of the General Permit also requires dischargers to analyze storm water 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 DWP's Annual Reports submitted to the Regional Board over the past five years, CSPA believes that DWP has failed to monitor for at least nine pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. This belief is supported by the fact that in 2005, 2007, 2009, and 2010 magnesium and nitrate+nitrite were found in the Facility's storm water at levels in excess of applicable EPA benchmarks.

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. DWP Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 29, 2005.

CSPA is informed and believes that available documents demonstrate DWP'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, DWP is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since September 29, 2005.

C. DWP 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 DWP has not implemented BAT and BCT at the Facility for its discharges of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, magnesium and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On September 24, 2004, May 23, 2007, and December 15, 2009, the Storm Water and Water Certification Unit of the Regional Board sent letters to DWP 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 DWP to modify its existing Storm Water Pollution Prevention Plan ("SWPPP"). Based on available documents, CSPA is informed and believes that DWP 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, DWP 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 DWP 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. DWP has failed to implement such measures adequately.

DWP was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, DWP 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 DWP fails to implement BAT and BCT. DWP is subject to penalties for violations of the Order and the Act occurring since September 29, 2005.

D. DWP 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 DWP has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. DWP has failed to

evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. DWP 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 DWP fails to develop and implement an effective SWPPP. DWP is subject to penalties for violations of the Order and the Act occurring since September 29, 2005.

E. DWP 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, DWP is discharging elevated levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, DWP 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. DWP has failed to do so.

Based on CSPA's review of available documents, DWP was aware of high levels of these pollutants prior to September 29, 2005. Nevertheless, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). DWP 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 September 29, 2005, and will continue to be in violation every day that DWP fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. DWP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 29, 2005.

F. DWP 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 DWP 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, DWP has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, DWP has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time DWP submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past years. DWP's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. DWP is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since September 29, 2005.

III. Persons Responsible for the Violations.

CSPA puts Mr. Mike Crump, Shawn H. O'Brien, Eric Dugger, and the Department of Public Works on notice that they are the persons or parties responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts DWP 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:

Notice of Violation and Intent To File Suit
September 29, 2010
Page 16 of 16

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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. Joe Matz, and DWP 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 DWP 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

Neal Road Landfill
Butte County Public Works
7 County Center Drive
Oroville, CA 95965

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

Mike Crump, Director
Neal Road Landfill
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Chico, CA 95927

Eric Holder, U.S. Attorney General
U.S. Department of Justice
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Shawn H. O'Brien, Facility Operator
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Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Eric Dugger, Facility Contact
Neal Road Recycling & Waste Facility
1023 Neal Road
Paradise, CA 95969

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
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Rancho Cordova, CA 95670-6114

Neal Road Landfill
1023 Neal Road
Paradise, CA 95969

ATTACHMENT A
Notice of Intent to File Suit
Butte County Department of Public Works, Neal Road Landfill
Significant Rain Events, September 29, 2005 – September 29, 2010

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

ATTACHMENT A
Notice of Intent to File Suit
Butte County Department of Public Works, Neal Road Landfill
Significant Rain Events, September 29, 2005 – September 29, 2010

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

ATTACHMENT A
Notice of Intent to File Suit
Butte County Department of Public Works, Neal Road Landfill
Significant Rain Events, September 29, 2005 – September 29, 2010

January 13, 2010	February 6, 2010	March 30, 2010
January 17, 2010	February 8, 2010	April 2, 2010
January 18, 2010	February 9, 2010	April 4, 2010
January 19, 2010	February 20, 2010	April 11, 2010
January 20, 2010	February 23, 2010	April 12, 2010
January 21, 2010	February 24, 2010	April 13, 2010
January 22, 2010	February 26, 2010	April 20, 2010
January 23, 2010	March 2, 2010	April 21, 2010
January 24, 2010	March 3, 2010	April 27, 2010
January 25, 2010	March 9, 2010	April 28, 2010
January 30, 2010	March 10, 2010	May 10, 2010
February 4, 2010	March 12, 2010	May 25, 2010
February 5, 2010	March 24, 2010	May 27, 2010

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EXHIBIT C – Sampling Parameters

Parameter	Value
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
Iron*	1.0 mg/L
Copper*	0.0636 mg/L
Cadmium*	0.0159 mg/L
Lead*	0.0816 mg/L
Nickel*	1.417 mg/L
Mercury*	0.0024 mg/L

* If the storm water samples demonstrate that concentration levels of these identified pollutants are below the sampling values specified in the Exhibit C for three (3) consecutive sampling events, then they may be removed from the monitoring program.