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16 Attorneys for Plaintiff  
17 CALIFORNIA SPORTFISHING  
18 PROTECTION ALLIANCE

19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA

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

24 Plaintiff,

25 vs.

26 BALDWIN CONTRACTING COMPANY,  
27 INC., a California corporation, BCJ SAND  
28 AND ROCK, INC., a California corporation,  
J. BRAD SLENDER, an individual, TED  
HALE, an individual, MASON  
RICHARDSON, an individual, and RENE  
VERCRUYSEN, an individual,

Defendants.

Case No. 2:10-cv-00879-GEB-DAD

**(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 BALDWIN CONTRACTING COMPANY, INC. (hereinafter

1 “BCCI”) owns an approximately 60-acre construction sand and gravel facility located at  
2 4970 Wheelock Road, in Oroville, California (the “Facility”), Defendant René Vercruyssen is the  
3 General Manager/VP of BCCI, Defendant BCJ Sand and Rock, Inc. (“BCJ”) leases the Facility from  
4 BCCI, Defendant J. Brad Slender is the Operator of the Facility for BCJ, and Defendant Ted Hale is  
5 the Plant Manager of the Facility;

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

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

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

15 **WHEREAS**, on or about February 12, 2010, and again on or about April 26, 2010, Plaintiff  
16 provided notice of Defendants’ violations of the Act, and of its intention to file suit against  
17 Defendants, to the Administrator of the United States Environmental Protection Agency (“EPA”); the  
18 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board  
19 (“State Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
20 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A)  
21 (true and correct copies of CSPA’s notice letters are attached as Exhibit B and incorporated herein by  
22 reference);

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

26 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
27 District Court, Eastern District of California, on April 13, 2010 and filed a First Amended Complaint  
28

1 on June 28, 2010;

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

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

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

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

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

17 **I.     COMMITMENT OF DEFENDANTS**

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

22       **2.     Defendants’ Implementation of Specific Storm Water Best Management Practices**  
23 **On Or Before October 1, 2010.** On or before October 1, 2010, Defendants shall complete the  
24 implementations of the following storm water control measures/best management practices (“BMPs”):

25             (a)     Defendants shall conform all BMPs to handbooks for Caltrans or California  
26 Stormwater Quality Association (“CASQA”; see complete listings for industrial Storm water  
27 at: <http://www.cabmphandbooks.com/Industrial.asp>);

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1 (b) Defendants shall not mine within the active streambed, nor cross the active  
2 streambed, unless applicable permits are timely obtained from the relevant governmental  
3 agencies, and timely courtesy copied to Plaintiff pursuant to the Notice provisions set forth  
4 herein below;

5 (c) Defendants shall limit its mining activities to no more than three active mining  
6 areas during the Wet Season, except to the extent that Defendants are engaging in reclamation  
7 in one area while mining in another;

8 (d) Defendants agree to construct and maintain a continuous berm, at least three  
9 feet in height and constructed out of on-site native materials, along the entire boundary  
10 between the Facility and the active stream channel;

11 (e) Defendants agree to install a silt fence running along this entire boundary  
12 between the Facility and the berm and directly adjacent to the berm, as set forth on Exhibit A  
13 hereto;

14 (f) Defendants shall construct and maintain BMPs at the active process ponds that  
15 are sized to control a 25 year/24-hour storm event, as set forth on Exhibit A hereto;

16 (g) Defendants shall undertake BMPs to eliminate surface runoff from the  
17 freshwater pond to the active stream bed, including but not limited to increasing the freeboard  
18 to not less than three feet high and sloping the freeboard to ensure stormwater flows toward the  
19 ponds and away from the active stream channel;

20 (h) Defendants shall ensure that all storage containers are properly labeled and,  
21 where appropriate, Defendants shall utilize secondary containment BMPs;

22 (i) Defendants shall maintain the Facility so as to protect against fluid leakage  
23 (e.g., from equipment, stored lubricants, etc.), increase the number of spill kits readily  
24 available to at least three (3), and, when necessary, employ reasonable steps to clean up any  
25 spills;

26 (j) Defendants shall develop and implement an Erosion & Sediment Control Plan  
27 for the entire Facility and incorporate same as part of the SWPPP.  
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1           **3. SWPPP Amendments/Additional BMPs.** Within thirty (30) days of mutual execution  
2 of this Consent Agreement, Defendants shall formally amend the SWPPP for the Facility to  
3 incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility  
4 map attached hereto as Exhibit A, and the Erosion & Sediment Control Plan described above, and  
5 provide a courtesy copy of the amended SWPPP to Plaintiff pursuant to the Notice provisions set forth  
6 herein below.

7           **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)  
8 storm events, as qualified in the General Permit<sup>1</sup> for sampling purposes, in each of the two Wet  
9 Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm  
10 water sample results shall be compared with the values set forth in Exhibit C, attached hereto, and  
11 incorporated herein by reference. If the results of any such samples exceed the parameter values set  
12 forth in Exhibit C, Defendants shall comply with the “Action Memorandum” requirements set forth  
13 below.

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

21           **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**  
22 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4  
23 above exceeds the evaluation levels set forth in Exhibit C, Defendants shall prepare a written  
24 statement discussing the exceedance(s), the possible cause and/or source of the exceedance(s), and  
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26 \_\_\_\_\_  
27 <sup>1</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are are  
28 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 additional measures that will be taken to address and eliminate the problem and future exceedances  
2 (“Action Memorandum”). The Action Memorandum shall be provided to CSPA upon completion and  
3 in any case no later than thirty (30) days after Defendants’ receipt of the sample results at issue.  
4 Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such  
5 additional measures may include, but are not limited to, taking samples, further material improvements  
6 to the storm water collection and discharge system, changing the frequency of Facility sweeping,  
7 changing the type and extent of storm water filtration media or modifying other industrial activities or  
8 management practices at the Facility. Such additional measures, to the extent feasible, shall be  
9 implemented immediately and in no event later than sixty (60) days after the due date of the Action  
10 Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to  
11 include all additional BMP measures designated in the Action Memorandum. CSPA may review and  
12 comment on an Action Memorandum and suggest any additional pollution prevention measures it  
13 believes are appropriate; however, CSPA’s failure to do so shall not be deemed to constitute  
14 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,  
15 Defendants agree to meet and confer in good faith regarding the contents and sufficiency of the Action  
16 Memorandum.

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

7 **8. Defendants' Communications with Regional and State Boards.** During the term of  
8 this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to  
9 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
10 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
11 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
12 the Notice provisions herein and contemporaneously with Defendants' submission to such 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. Mitigation.** As mitigation of the Clean Water Act violations alleged in CSPA  
18 Complaint, Defendants agree to pay CSPA the sum of \$30,000 which CSPA shall remit to the Rose  
19 Foundation for Communities and the Environment for projects relating to the reduction, prevention or  
20 mitigation of, or research on, the effects of discharges of pollutants in storm water to the Sacramento  
21 River and the Sacramento-San Joaquin River Delta.

22 **11. Reimbursement of Fees & Costs.** Defendants agree to reimburse CSPA in the amount  
23 of \$32,500 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs,  
24 and all other costs incurred as a result of investigating the activities at the Facility, bringing the Action  
25 and negotiating a resolution in the public interest.

26 **12. Payment Schedule.** Pursuant to Paragraphs 10 and 11 herein, Defendants are jointly  
27 and severally liable for a total payment of \$62,500, all of which shall made payable to the "Law  
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1 Offices of Andrew L. Packard Attorney-Client Trust Account” and delivered to Plaintiff’s counsel’s  
2 address pursuant to the Notice provisions herein upon the following schedule: (a) an initial payment in  
3 the amount of \$22,500 shall be due within twenty-one (21) days of the mutual execution of this  
4 Consent Agreement; (b) a second payment in the amount of \$20,000 shall be due within forty-five  
5 (45) days of the Court Approval Date; and (c) a third payment in the amount of \$20,000 shall be due  
6 within one hundred thirty-five (135) days of the Court Approval Date.

7 **13. Compliance Monitoring Funding.** To defray CSPA’s reasonable investigative,  
8 expert, consultant and attorneys’ fees and costs associated with monitoring Defendants’ compliance  
9 with this Consent Agreement, Defendants agree to contribute \$5,000 for each of the two (2) years  
10 covered by this Consent Agreement, to a compliance monitoring fund maintained by CSPA.  
11 Compliance monitoring activities may include but shall not be limited to, site inspections, review of  
12 water quality sampling reports, review of annual reports, discussions with representatives of  
13 Defendants concerning the Action Memoranda referenced above, and potential changes to compliance  
14 requirements herein, preparation for and participation in meet-and-confer sessions, water quality  
15 sampling and analysis, and compliance-related activities. The first such payment in the amount of  
16 \$5,000 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust  
17 Account within forty-five (45) days of the Court Approval Date, with the second installment due on  
18 June 1, 2011.

19 **14. Late Payments.** In the event that any payment owed by Defendants under this Consent  
20 Agreement is not remitted or post-marked on or before its due date, Defendants shall be deemed to be  
21 in default of their obligations under this Consent Agreement. Plaintiff shall provide written notice to  
22 Defendants of any default; if Defendants fail to remedy the default within five (5) business days of  
23 such notice, then all future payments due hereunder shall become immediately due and payable, with  
24 the prevailing federal funds rate applying to all interest accruing on unpaid balances due hereunder,  
25 beginning on the due date of the funds in default.

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

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

13 **16. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
14 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
15 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
16 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
17 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
18 representatives (each a "Released Defendant Party") from, and waives all claims which arise from or  
19 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,  
20 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
21 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged  
22 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of  
23 this Consent Decree. In addition, for the period beginning on the Effective Date and ending on  
24 September 30, 2012, CSPA agrees that neither CSPA, its officers, executive staff, members of its  
25 governing board nor any organization under the control of CSPA, its officers, executive staff, or  
26 members of its governing board, will file any lawsuit against Defendants seeking relief for the alleged  
27 violations of the Clean Water Act or violations of the General Permit. CSPA further agrees that,  
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1 beginning on the Effective Date and ending on September 30, 2012, CSPA will not support other  
2 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against  
3 Defendants that may be proposed by other groups or individuals who would rely upon the citizen suit  
4 provision of the Clean Water Act to challenge Defendants' compliance with the Clean Water Act or  
5 the General Permit.

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

13       **18.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
14 Order that shall provide that:

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

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

21 **IV. MISCELLANEOUS PROVISIONS**

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

2 20. The Consent Agreement shall terminate on September 30, 2012.

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

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

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

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

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

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

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

28 With copies sent to:

1 Andrew L. Packard  
2 Law Offices of Andrew L. Packard  
3 100 Petaluma Boulevard North, Suite 301  
4 Petaluma, CA 94952  
5 Tel: (707) 763-7227  
6 E-mail: Andrew@packardlawoffices.com

7 And to:

8 Michael R. Lozeau  
9 Lozeau Drury LLP  
10 1516 Oak Street, Suite 216  
11 Alameda, CA 94501  
12 Tel: (510) 749-9102  
13 E-mail: Michael@LozeauDrury.com

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

18 Brad Slender  
19 BCJ Unlimited  
20 3388 Regional Parkway, Suite A  
21 Santa Rosa, CA 95403  
22 Tel: (707) 544-0303

23 And to:

24 René Vercruyssen  
25 Baldwin Contracting Company, Inc.  
26 1764 Skyway  
27 Chico, CA 95928  
28 Tel: (530) 891-6555

With copies sent to:

Michael E. Vinding  
Scharff, Brady & Vinding  
400 Capitol Mall, Ste. 2640  
Sacramento, CA 94814  
Tel: (916) 446-3400  
E-mail: mvinding@scharff.us

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

27. Signatures of the Parties transmitted by facsimile shall be deemed binding.

28. No Party shall be considered to be in default in the performance of any of its

1 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any  
2 circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,  
3 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not  
4 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm  
5 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
6 establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
7 diligence has been unable to overcome, the Force Majeure.

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

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

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

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


24  
25 Dated: 22 August 2010 California Sportfishing Protection Alliance

26  
27 By: Bill Jennings  
28 Bill Jennings, Executive Director

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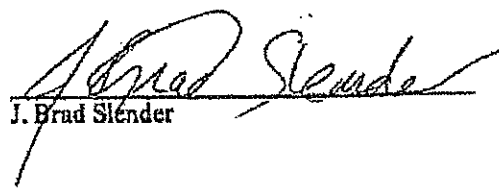
Dated: 8/20/10

Baldwin Contracting Company, Inc., a California corporation

By:   
René Verduyssen *GM/VP*

Dated: 8-20-10

BCJ Sand and Rock, Inc., a California corporation

By:   
J. Brad Slender

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ted Hale

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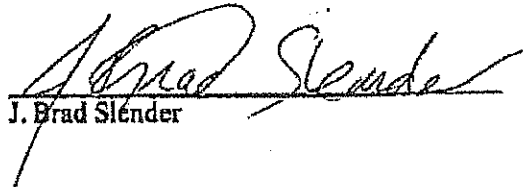
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Baldwin Contracting Company, Inc., a California corporation

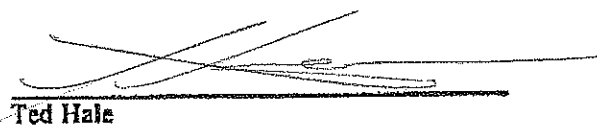
By: \_\_\_\_\_  
René Verduyssen

Dated: 8-20-10

BCJ Sand and Rock, Inc., a California corporation

By:   
J. Brad Slender

Dated: 8-20-2010

By:   
Ted Hale

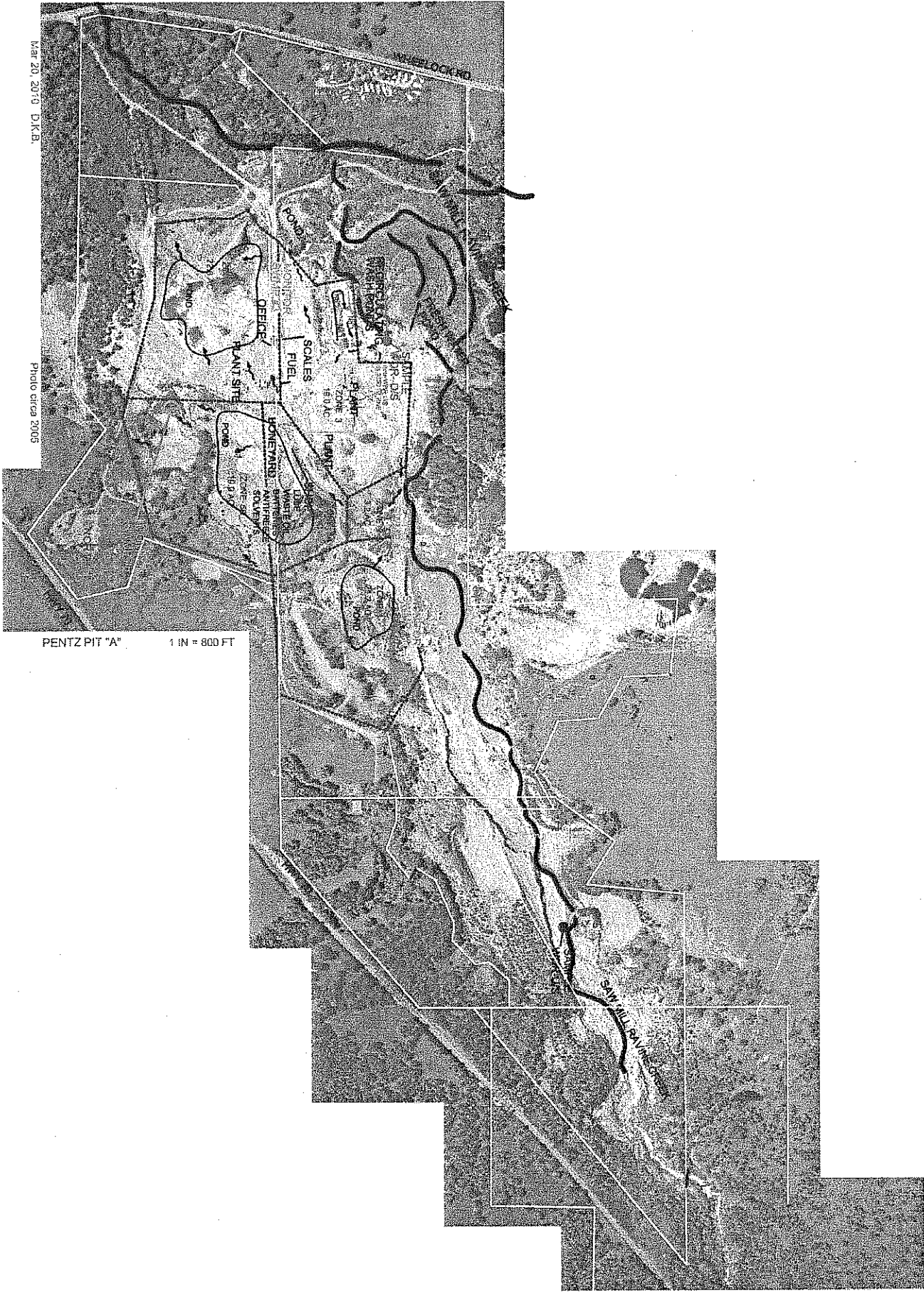
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**EXHIBIT A – Facility Site Map**

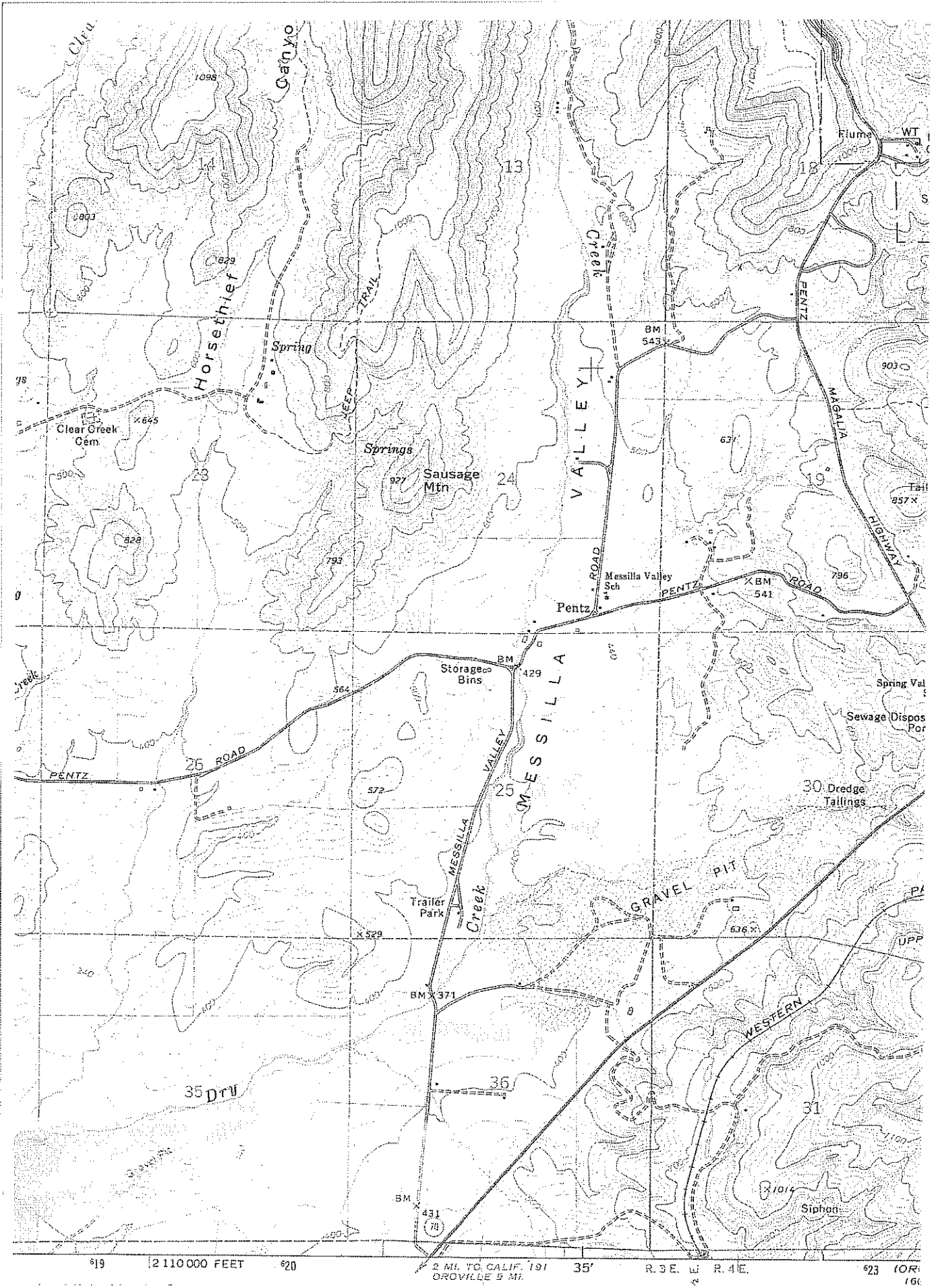


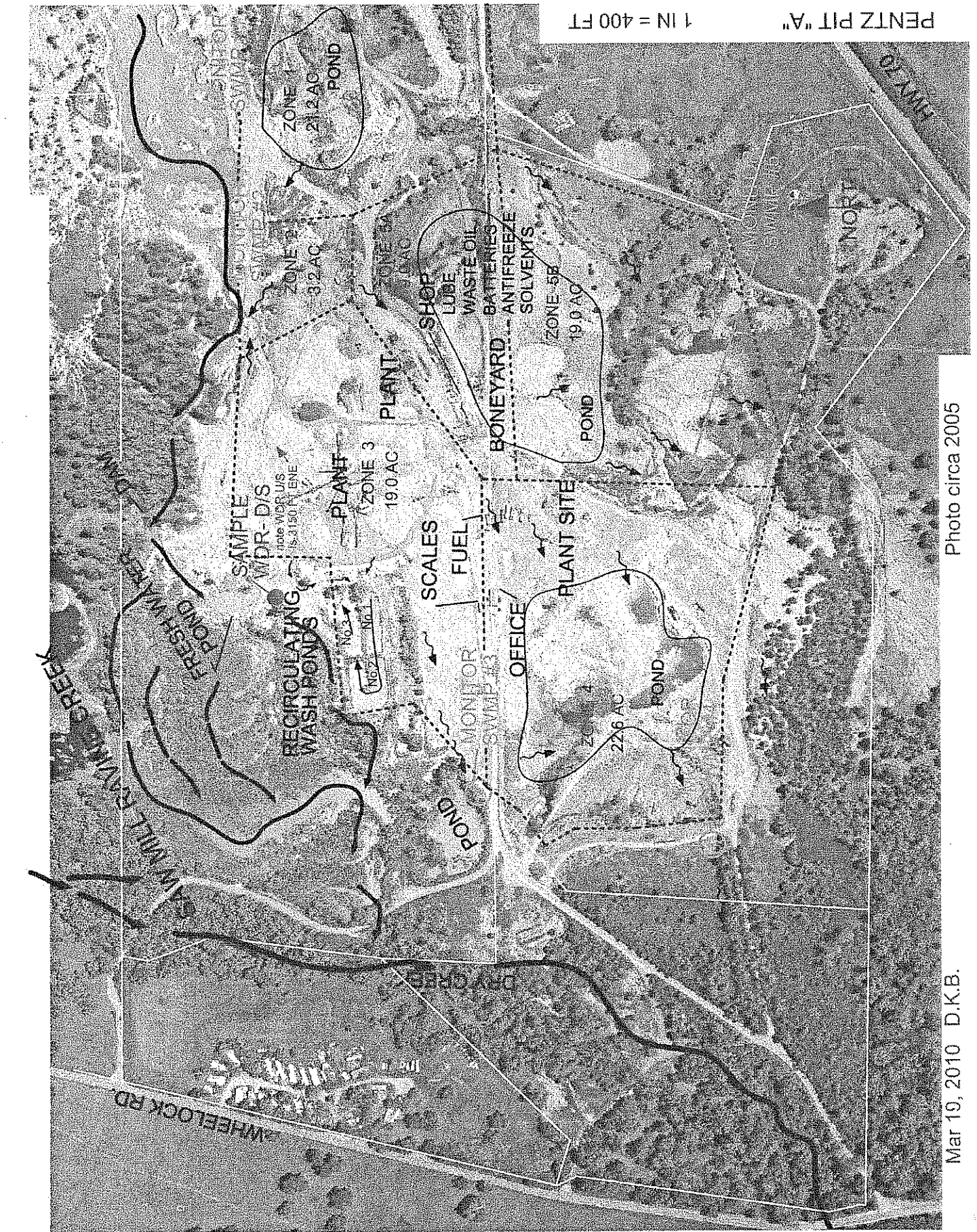
Mar 20, 2019 D.K.B.

Photo circa 2005



PENTZ PIT "A" 1 IN = 800 FT





Mar 19, 2010 D.K.B.

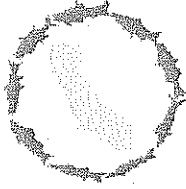
Photo circa 2005

PENTZ PIT "A"

1 IN = 400 FT

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**EXHIBIT B – Notices 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: deltukeep@aol.com

February 12, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Baldwin Contracting Co., Inc.  
c/o C T Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Mr. Ted Hale  
Plant Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Bryan Morgan  
Operations Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Mason Richardson  
Facility Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Rene Vercruyssen  
Facility Operator  
Baldwin Contracting Co., Inc.  
1764 Skyway  
Chico, CA 95928

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

Dear Messrs. Hale, Morgan, Richardson and Vercruyssen:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the Baldwin Contracting Co., Inc. ("BCCI") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owners, officers and/or operators of the Facility.

This letter addresses BCCI's unlawful discharges of pollutants from the Facility

to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the 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").

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, BCCI 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 BCCI 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.**

BCCI owns and operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

On May 16, 1997, BCCI submitted its notice of intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 ("Construction Sand & Gravel"). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek ("SRC") and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board ("Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative

toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

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

2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants CSPA believes are being discharged by BCCI: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

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

BCCI has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCCI to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the



mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCCI of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCCI failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCCI to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, its 2008-2009 Annual Report reveals BCCI has failed to comply to the extent it reported discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCCI has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCCI’s ongoing violations are discussed further below.

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

BCCI has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. BCCI’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 Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
2/17/2009	1	TSS	6200 mg/L	100 mg/L

CSPA’s investigation, including its review of BCCI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. BCCI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, BCCI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that BCCI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 12, 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 February 12, 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 BCCI has discharged storm water containing impermissible levels of TSS and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**B. BCCI 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 BCCI, designated under SIC 1442 are also required to sample for nitrates + nitrites (N+N). 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 BCCI has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCCI 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, BCCI has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005. These violations are set forth in greater detail below.

**1. BCCI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that BCCI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2004-2005, 2005-2006, 2006-2007 and 2007-2008 wet seasons, BCCI failed to collect any storm water samples from any discharge point. (*See, e.g.*, BCCI, 2005-2006 Annual Report, at p. 3). CSPA anticipates BCCI will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility’s topography and the above-discussed comments of the Board’s Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. Further, contrary to its affirmative response to item D.1. in Annual Reports filed for the 2004-2005, 2005-2006 and 2006-2007 wet seasons, BCCI was *not*

exempt from collecting and analyzing samples from two storm events in accordance with sections B.12 or B.15 of the General Permit. Notwithstanding BCCI's assertion, found in the 2005-2007 Annual Reports, that "sampling is not required [because] all water is contained on site," as amply demonstrated by the exempt categories presented by Annual Report item D.2(i)-(v), BCCI was not exempt from the sampling and analysis required under the General Permit. Moreover, this conclusion is compelled by BCCI's failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v). 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).

With respect to the Annual Report filed by BCCI for the 2008-2009 wet season, CSPA is informed and believes that February 17, 2009 was not the first qualifying storm event for the 2008-2009 wet season. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCCI's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by BCCI. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

**2. BCCI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

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 BCCI has failed to monitor for at least eleven other 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. BCCI's failure to monitor these pollutants extends back at least until February 12, 2005. BCCI's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. BCCI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 12, 2005.**

CSPA is informed and believes that available documents demonstrate BCCI's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI "must modify [its] existing...Monitoring Plan...." Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its Monitoring Plan as requested by the Board and required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**C. BCCI 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 BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCCI 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 current internal structure and operations of the Facility, CSPA believes that at a minimum BCCI 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, through infiltration and evaporation measures. BCCI has failed to implement such measures adequately.

BCCI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCCI 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 BCCI fails to implement BAT and BCT. BCCI is subject to penalties for violations of the General Permit and the Act occurring since February 12, 2005.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit

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

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

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

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

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that BCCI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCCI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI

“must modify [its] existing Storm Water Pollution Prevention Plan (SWPPP)...” Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its SWPPP or Monitoring Plan as requested by the Board and required by the General Permit. BCCI 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 BCCI fails to develop and implement an effective SWPPP. BCCI is subject to penalties for violations of the Order and the Act occurring since February 512 2005.

**E. BCCI 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, BCCI is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCCI 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. It has not done so.

Based on CSPA's review of available documents, BCCI was aware of high levels of these pollutants prior to February 12, 2005. Likewise, BCCI 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). BCCI 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 February 12, 2005, and will continue to be in violation every day that BCCI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

**F. BCCI 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 BCCI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, based on its review of publicly available documents, CSPA is informed and believes that BCCI submitted an incomplete Annual Report for the 2008-2009 wet season. To wit, on December 15, 2009, the Board sent BCCI a Notice of Violation indicating BCCI is "in violation of the General Permit (Section B-16), the California Water Code, and the federal Clean Water Act, for failure to submit a complete 2008-2009 annual report."

As discussed further above, BCCI's pattern and practice of submitting incomplete reports is further evidenced by its repeated and ongoing failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v).

As indicated above, BCCI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, BCCI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time BCCI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. BCCI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. BCCI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

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

CSPA hereby puts BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercreyssen 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 BCCI on notice that it intends to include those persons in this enforcement action.



**IV. Name and Address of Noticing Party.**

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

**V. Counsel.**

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

Andrew L. Packard, Esq.  
Erik M. Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

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

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen to civil penalties of \$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 BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen for

Notice of Violation and Intent To File Suit  
February 12, 2010  
Page 14 of 14

the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

## ATTACHMENT A

### Notice of Intent to File Suit, BCCI (Oroville, CA) Significant Rain Events,\* February 12, 2005-February 12, 2010

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

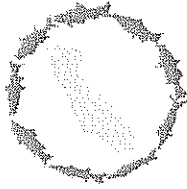
\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, BCCI (Oroville, CA)  
Significant Rain Events,\* February 12, 2005-February 12, 2010**

Jan.	12	2010	Jan.	19	2010	Jan.	25	2010	Feb.	06	2010
Jan.	13	2010	Jan.	20	2010	Jan.	26	2010	Feb.	09	2010
Jan.	17	2010	Jan.	21	2010	Jan.	30	2010			
Jan.	18	2010	Jan.	24	2010	Feb.	04	2010			

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



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

April 26, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

J. Brad Slender, Facility Manager  
BCJ Sand And Rock, Inc.  
4970 Wheelock Rd.  
Oroville, CA 95969

BCJ Sand And Rock, Inc.  
c/o J. Brad Slender, Agent For Service Of Process  
3388 Regional Pkwy., Ste. A  
Santa Rosa, CA 95403

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

Dear Mr. Slender:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the BCJ Sand And Rock, Inc. ("BCJ") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757.<sup>1</sup> CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible officer and/or operators of the Facility.

This letter addresses BCJ's unlawful discharges of pollutants from the Facility to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act

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<sup>1</sup> The WDID identification number for the Facility was generated by the Regional Board on or about May 16, 1997, when the putative former operator of the Facility, Baldwin Contracting Company, Inc., filed a Notice of Intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit.

and the 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").

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

BCJ operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

Based on its review of available documents, CSPA is informed and believes that BCJ has never submitted a notice of intent ("NOI") to comply with the terms of the General Industrial Storm Water Permit despite being a facility that is covered under the auspices of the Permit. On May 16, 1997, Baldwin Contracting Company, Inc. ("BCCI") submitted its notice of intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit. Based on its investigation, CSPA is informed and believes that BCCI no longer operates the Facility, but rather, that BCJ is the current operator of the Facility. However, BCJ has never filed with the Regional Board a NOI for the Facility.

The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 ("Construction Sand & Gravel"). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek ("SRC") and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive

storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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



The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants CSPA believes are being discharged by BCJ: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. Failure to Obtain Coverage Under the General Industrial Storm Water Permit.**

BCJ has violated the Clean Water Act<sup>2</sup> by discharging pollutants to waters of the United States from the Facility without a National Pollutant Discharge Elimination System (“NPDES”) permit as required by the Act. The Clean Water Act provides that, absent a permit and subject to certain limitations, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. §1311(a). A review of available public records indicates that you have failed to file a Notice of Intent to Comply with the General Permit (“NOI”). BCJ was required to file an NOI by no later than March 30, 1992. Therefore, BCJ has been in continuous, daily violation of the General Permit and the Act since at least March 30, 1992 and is subject to penalties for these violations occurring since April 26, 2005.

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

BCJ has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with

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<sup>2</sup> Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCJ to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCJ of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete

apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCJ failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCJ to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, the 2008-2009 Annual Report for the Facility filed at the Regional Board reveals that BCJ has failed to comply to the extent the 2008-2009 Annual Report evidences that the Facility is discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCJ has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCJ’s ongoing violations are discussed further below.

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

BCJ has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The Facility’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

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

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
2/17/2009	1	TSS	6200 mg/L	100 mg/L

CSPA’s investigation, including its review of the analytical results in the Facility’s Annual Reports documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that BCJ has not implemented BAT and BCT at the Facility for its discharges of TSS and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. BCJ was required to have

implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, BCJ is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that BCJ has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 26, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 26, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that BCJ has discharged storm water containing impermissible levels of TSS and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**B. BCJ 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 BCJ, designated under SIC Code 1442 are also required to sample for nitrates + nitrites (N+N). 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 BCJ has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCJ 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, BCJ has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Act, BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005. These violations are set forth in greater detail below.

**1. BCJ Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that BCJ has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. CSPA anticipates BCJ will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility's topography and the above-discussed comments of the Board's Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCJ's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by BCJ. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

**2. BCJ Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

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 BCJ has failed to monitor for at least eleven other 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. BCJ's failure to monitor these pollutants extends back at least until April 26, 2005. BCJ's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. BCJ Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 26, 2005.**

CSPA is informed and believes that available documents demonstrate BCJ's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Based on its review of publicly available documents, CSPA is informed and believes BCJ has failed to implement an adequate Monitoring Plan as required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCJ is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**C. BCJ 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 BCJ has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCJ 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 current internal structure and operations of the Facility, CSPA believes that at a minimum BCJ 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, through infiltration and evaporation measures. BCJ has failed to implement such measures adequately.

BCJ was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCJ 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 BCJ fails to implement BAT and BCT. BCJ is subject to penalties for violations of the General Permit and the Act occurring since April 26, 2005.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop,

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

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

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

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

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that BCJ has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCJ has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Based on its review of publicly available documents, CSPA is informed and believes BCJ has failed to update its SWPPP or Monitoring Plan as required by the General Permit. BCJ 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 BCJ fails to develop and implement an effective SWPPP. BCJ is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

**E. BCJ 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, BCJ is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCJ 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. It has not done so.

Based on CSPA's review of available documents, BCJ was aware of high levels of these pollutants prior to April 26, 2005. Likewise, BCJ 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). BCJ has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 26, 2005, and will continue to be in violation every day that BCJ fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

**F. BCJ 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 BCJ has never filed an Annual Report with the Regional Board in violation of the General Industrial Storm Water Permit. BCJ's failure to file Annual Reports are continuous and ongoing violations. BCJ is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

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

CSPA hereby puts BCJ and J. Brad Slender 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 BCJ and J. Brad Slender on notice that it intends to include those persons in this enforcement action.

### **IV. Name and Address of Noticing Party.**

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

### **V. Counsel.**

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

Andrew L. Packard, Esq.  
Erik M. Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.  
Jackson & Tuerck  
P.O. Box 148

Notice of Violation and Intent To File Suit  
April 26, 2010  
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429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects BCJ and J. Brad Slender to civil penalties of \$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 BCJ and J. Brad Slender for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, BCJ (Oroville, CA)  
Significant Rain Events, \* April 26, 2005-April 26, 2010**

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, BCJ (Oroville, CA)  
Significant Rain Events, \* April 26, 2005-April 26, 2010**

Feb.	26	2010	Mar.	12	2010
Mar.	03	2010	April	20	2010

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

**EXHIBIT C**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 $\mu$ mho/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Total Nitrates/Nitrites	0.677 mg/l

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