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10 CALIFORNIA SPORTFISHING
11 PROTECTION ALLIANCE

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 CALIFORNIA SPORTFISHING
15 PROTECTION ALLIANCE,

16 Plaintiff,

17 vs.

18 FOREVER RESORTS, LLC, LAKE
19 OROVILLE MARINA, LLC, BILL
20 HARPER AND REX MAUGHAN,

21 Defendants.

Case No. No. 2:16-CV-01595-MCE-EFB

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

**(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251-1387; and, California Health &
Safety Code § 25249.5 et seq.)**

22 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and through its
23 counsel, hereby alleges:

24 **I. JURISDICTION AND VENUE**

25 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal
26 Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (the “Clean Water Act”, the “CWA” or “the
27 Act”) and the California Safe Drinking Water & Toxic Enforcement Act (“Proposition 65”) against
28 Forever Resorts, LLC, Lake Oroville Marina, LLC, Bill Harper and Rex Maughan (“Defendants”).

This Court has subject matter jurisdiction over the parties and the subject matter of this action

1 and lead compounds into sources of drinking water in violation of California Health & Safety Code
2 Section 25249.5. Defendants, through their operation of the marina and boat shop at issue, have
3 knowingly discharged or released lead and lead compounds into water or onto land where it will
4 pass or probably will pass into a source of drinking water, Lake Oroville.

5 5. Lead and lead compounds are chemicals known to the State of California to cause
6 cancer and reproductive toxicity.
7

8 6. On or about May 27, 2016, Plaintiff provided notice of the Proposition 65
9 Defendants' violations of Proposition 65 ("Proposition 65 Notice Letter"), and of its intention to file
10 suit against the Proposition 65 Defendants to the Proposition 65 Enforcement Reporting section of
11 the office of the California Attorney General ("California Attorney General"); the District Attorney
12 of the California county containing sources of drinking water potentially impacted by Defendants'
13 violations of Proposition 65; and, to the Proposition 65 Defendants, as required by California Health
14 & Safety Code Section 25249.7(d). A true and correct copy of CSPA's Proposition 65 Notice Letter
15 is attached hereto as Exhibit B and is incorporated by reference.
16

17 7. Venue is proper in the Eastern District of California pursuant to Section 505(c)(1) of
18 the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this District.
19 Venue is also proper under 28 U.S.C. § 1391(b) because Defendants reside in this District and a
20 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.
21 Intra-district venue is proper in Sacramento, California, because the sources of the violations are
22 located within Butte County.
23

24 **II. INTRODUCTION**
25

26 8. This First Amended Complaint seeks relief for Defendants' violations of the CWA
27 and Proposition 65 at the approximately 4-acre marina owned and/or operated by Defendants (the
28 "Facility"). The Facility is located at 801 Bidwell Canyon Road, in Oroville, California.

1 Defendants discharge pollutant-contaminated storm water from the Facility into Lake Oroville.
2 Defendants are operating in violation of both the substantive and procedural requirements of the
3 CWA and Proposition 65's prohibition against the discharge of lead to sources of drinking water.

4 9. Defendants' discharges of pollutant-contaminated storm water from the Facility
5 violate the Act and the State of California's General Industrial Permit for storm water discharges,
6 State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as
7 amended by Water Quality Order No. 92-12-DWQ, Water Quality Order No. 97-03-DWQ, and
8 Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System
9 ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or "Permit").

10 Defendants' violations of the filing, monitoring, reporting, discharge and management practice
11 requirements, and other procedural and substantive requirements of the General Permit and the Act
12 are ongoing and continuous.
13

14 10. The failure on the part of industrial facility operators such as Defendants to comply
15 with the General Permit is recognized as a significant cause of the continuing decline in water
16 quality of receiving waters, such as Lake Oroville. The general consensus among regulatory
17 agencies and water quality specialists is that storm water pollution amounts to more than half the
18 total pollution entering the marine environment each year. With every rainfall event, hundreds of
19 thousands of gallons of polluted storm water originating from industrial facilities discharge to Lake
20 Oroville.
21

22
23 **III. PARTIES**

24 11. CSPA is a non-profit public benefit corporation organized under the laws of
25 California, with its main office in Stockton, California. CSPA is dedicated to the preservation,
26 protection, and defense of the environment, wildlife, and natural resources of California waters,
27 including the waters into which Defendants discharge polluted storm water. To further its goals,
28

1 CSPA actively seeks federal and state agency implementation of state and federal water quality
2 laws, including the CWA, and as necessary, directly initiates enforcement actions on behalf of itself
3 and its members.

4 12. Members of CSPA, including citizens, taxpayers, property owners, and residents,
5 live, work, travel and recreate on and near Lake Oroville, into which Defendants cause pollutants to
6 be discharged. These CSPA members use and enjoy the impacted waters for recreational,
7 educational, scientific, conservation, aesthetic and spiritual purposes. Defendants' discharge of
8 storm water containing pollutants impairs each of those uses. Thus, the interests of CSPA's
9 members have been, are being, and will continue to be adversely affected by Defendants' failure to
10 comply with the Clean Water Act and the General Permit.
11

12 13. Members of CSPA reside in California and use and enjoy California's numerous
13 rivers for recreation and other activities. Members of CSPA use and enjoy the waters of Lake
14 Oroville, into which Defendants have caused, are causing, and will continue to cause, pollutants to
15 be discharged. Members of CSPA use these areas to fish, sail, boat, kayak, swim, bird watch, view
16 wildlife, and engage in scientific study, including monitoring activities, among other things.
17 Defendants' discharges of pollutants threaten or impair each of those uses or contribute to such
18 threats and impairments. Thus, the interests of CSPA's members have been, are being, and will
19 continue to be adversely affected by Defendants' ongoing failure to comply with the Clean Water
20 Act. The relief sought herein will redress the harms to Plaintiff caused by Defendants' activities.
21

22 14. Plaintiff brings its Proposition 65 claim herein in the public interest pursuant to
23 California Health & Safety Code Section 25249.7(d).
24

25 15. Plaintiff is informed and believes, and thereupon alleges that Defendants own
26 and/or operate the Facility and that the Proposition 65 Defendants are "persons doing business"
27 within the meaning of California Health & Safety Code Section 25249.11.
28

1 16. Continuing commission of the acts and omissions alleged above will irreparably
2 harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy or
3 adequate remedy at law.

4 **IV. LEGAL BACKGROUND**

5 **A. Clean Water Act**

6 17. Congress enacted the CWA to “restore and maintain the chemical, physical, and
7 biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA establishes an “interim
8 goal of water quality which provides for the protection and propagation of fish, shellfish, and
9 wildlife and provides for recreation in and on the water” 33 U.S.C. § 1251(a)(2). To these
10 ends, Congress developed both a water quality-based and technology-based approach to regulating
11 discharges of pollutants from point sources into waters of the United States.
12

13 18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any
14 pollutant from a point source into waters of the United States, unless such discharge is in compliance
15 with various enumerated sections of the Act. Among other things, Section 301(a) prohibits
16 discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to
17 Section 402 of the Act, 33 U.S.C. § 1342.
18

19 19. The term “discharge of pollutants” means “any addition of any pollutant to
20 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include,
21 among other examples, industrial waste, chemical wastes, biological materials, heat, rock, and sand
22 discharged into water. 33 U.S.C. § 1362(6).
23

24 20. A “point source” is defined as “any discernible, confined and discrete conveyance,
25 including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants
26 are or may be discharged.” 33 U.S.C. § 1362(14).
27

28 21. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
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1 1362(7). Waters of the United States includes, among others things, waters that are, were, or are
2 susceptible to use in interstate commerce, and tributaries to such waters. 40 C.F.R. § 230.3 (2015).

3 22. Section 402(p) of the Act establishes a framework for regulating municipal and
4 industrial storm water discharges under the NPDES program, 33 U.S.C. § 1342(p), and, specifically,
5 requires an NPDES permit for storm water discharges associated with industrial activity. *Id.* §
6 1342(p)(2)(B).
7

8 23. Section 505(a)(1) provides for citizen enforcement actions against any “person,”
9 including individuals, corporations, or partnerships, 33 U.S.C. § 1362(5), for violations of NPDES
10 permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §1365(a)(1)
11 (authorizing actions against any person alleged to be in violation of an effluent standard or
12 limitation); *id.* § 1365(f) (defining “effluent limitation” broadly to include “a permit or condition
13 thereof issued under [section 402] of this title,” and “any unlawful act under subsection (a) of
14 [section 301] of this title”).
15

16 24. An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a).
17 Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day for
18 violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C.
19 §§ 1319(d), 1365, and 40 C.F.R. §§ 19.1–19.4 (2008).
20

21 **B. State Regulations**

22 25. Lake Oroville is heavily degraded from pollutant loading. This is officially
23 recognized by the EPA, the State Board and the Regional Board, which have placed the waterbody
24 on the CWA section 303(d) list of waters that are so polluted that they do not meet applicable water
25 quality standards. The Regional Board's Water Quality Control Plan for the Sacramento River and
26 San Joaquin River Basin (hereafter referred to as the “Basin Plan”) is the master policy document
27 setting forth the legal, technical, and programmatic bases of water quality regulation in the region.
28

1 Among other things, the Basin Plan includes the water quality objectives needed to protect the
2 designated beneficial water uses. The Basin Plan sets forth narrative water quality objectives for
3 sediment, settleable and suspended materials, as well as narrative objectives for preventing the
4 impairment of water quality with oil sheens, turbidity or other nuisance conditions. The Basin Plan
5 also includes numeric water quality standards for pH, dissolved oxygen and toxic pollutants as well
6 as site specific objectives for certain pollutants of concern, such as zinc and aluminum.
7

8 26. In addition, a rule promulgated by EPA known as the California Toxics Rule
9 ("CTR"), discussed further below, sets Water Quality Standards ("WQS") for 126 toxic priority
10 pollutants in California's rivers, lakes, enclosed bays, and estuaries. The CTR applies to Lake
11 Oroville, and includes limits for several toxic metals, including zinc.
12

13 **C. Proposition 65**

14 27. The People of the State of California have declared in Proposition 65 their right "[t]o
15 be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
16 harm." Section 1(b) of Initiative Measure, Proposition 65.
17

18 28. To effectuate this goal, Proposition 65 strictly prohibits persons from knowingly
19 discharging chemicals listed by the State of California as causing cancer or reproductive toxicity
20 "into water or onto or into land where it will pass or will probably pass into any source of drinking
21 water." California Health & Safety Code Section 25249.5.
22

23 29. Proposition 65 provides that any person "violating or threatening to violate" the
24 statute may be enjoined in a court of competent jurisdiction. California Health & Safety Code
25 Section 25249.7. The phrase "threaten to violate" is defined to mean "to create a condition in which
26 there is a substantial likelihood that a violation will occur." California Health & Safety Code
27 Section 25249.11(e). Violators are liable for civil penalties of up to "\$2,500 per day for each
28 violation." California Health & Safety Code Section 25249.7.

D. California Industrial Storm Water General Permit

1
2 30. Section 402 authorizes states with approved NPDES permit programs to regulate
3 industrial storm water discharges through individual permits issued to dischargers and/or through the
4 issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33
5 U.S.C. § 1342(b).

6
7 31. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of EPA has
8 authorized California's State Board to issue NPDES permits including general NPDES permits in
9 California.

10 32. The State Board elected to issue a statewide general permit for industrial
11 discharges. The State Board issued the General Permit on or about November 19, 1991, modified
12 the General Permit on or about September 17, 1992, and reissued the General Permit on April 17,
13 1997 and again on April 1, 2014 (effective July 1, 2015), pursuant to Section 402(p) of the Clean
14 Water Act, 33 U.S.C. § 1342(p).

15
16 33. Facilities discharging, or having the potential to discharge, storm water associated
17 with industrial activity that have not obtained an individual NPDES permit must apply for coverage
18 under the State's General Permit by filing a Notice of Intent ("NOI"). The General Permit requires
19 facilities to file their NOIs before the initiation of industrial operations.

20
21 34. Once regulated by an NPDES permit, facilities must strictly comply with all of the
22 terms and conditions of that permit. A violation of the General Permit is a violation of the Act. *See*
23 General Permit, Section XXI.A.

24
25 35. In order to discharge storm water lawfully in California, industrial dischargers must
26 comply with the terms of the General Permit or have obtained and complied with an individual
27 NPDES permit.

28 36. The General Permit contains three primary and interrelated categories of

1 requirements: 1) discharge prohibitions; 2) Storm Water Pollution Prevention Plan (“SWPPP”)
2 requirements; and 3) monitoring and reporting requirements, including the requirement to prepare an
3 annual report.

4 37. Discharge Prohibition III.B of the General Permit prohibits the direct or indirect
5 discharge of materials other than storm water (“non-storm water discharges”), which are not
6 otherwise regulated by an NPDES permit, to the waters of the United States. Discharge Prohibition
7 III.C of the General Permit prohibits storm water discharges and authorized non-storm water
8 discharges that cause or threaten to cause pollution, contamination or nuisance as defined in section
9 13050 of the California Water Code. Receiving Water Limitation VI.A of the General Permit
10 prohibits storm water discharges that cause or contribute to an exceedance of any applicable water
11 quality standards in any affected receiving water. Receiving Water Limitation VI.B of the General
12 Permit prohibits storm water discharges to any surface or ground water that adversely impact human
13 health or the environment.

14 38. Effluent Limitation V.A of the General Permit requires dischargers to reduce or
15 prevent pollutants in their storm water discharges through implementation of the Best Available
16 Technology Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the
17 Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.
18

19 39. EPA has established Benchmark Levels as guidelines for determining whether a
20 facility discharging industrial storm water has implemented the requisite BAT and BCT standards.
21 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been established for
22 pollutants discharged by Defendants: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L;
23 Magnesium – 0.064 mg/L; Iron – 1.00 mg/L; Lead – 0.014 – 0.262 (hardness dependent); and,
24 Aluminum – 0.75 mg/L.
25
26
27

28 40. The Regional Board has established water quality standards for Lake Oroville in the
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1 Basin Plan.

2 41. The Basin Plan includes a toxicity standard which states that “[a]ll waters shall be
3 maintained free of toxic substances in concentrations which are toxic to or which produce
4 detrimental physiological responses in, human, plant, animal, or aquatic life.” III-8.01 Basin Plan.

5 42. The Basin Plan provides that “[w]aters shall not contain concentrations of chemical
6 constituents known to be deleterious to fish or wildlife.” III-3.00 Basin Plan.

7
8 43. The Basin Plan provides that “[a]t a minimum, water designated for use as domestic
9 or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of
10 the maximum contaminant levels (MCLs).” *Id.*

11 44. EPA issued the CTR in 2000, establishing numeric receiving water limits for
12 certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38 (2013). The CTR
13 establishes the following applicable numeric limit for freshwater surface waters: zinc – 0.12 mg/L
14 (maximum concentration), subject to water hardness.

15
16 45. The General Permit requires dischargers to develop and implement a site-specific
17 SWPPP. General Permit, Section X.A. The SWPPP must include, among other elements: (1) the
18 facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a
19 description of potential pollution sources; (5) an assessment of potential pollutant sources; (6)
20 minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) an
21 annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially
22 prepared and the date of each SWPPP amendment, if applicable.

23
24 46. Dischargers must revise their SWPPP whenever necessary and certify and submit
25 via the Regional Board’s Storm Water Multiple Application and Report Tracking System
26 (“SMARTS”) their SWPPP within 30 days whenever the SWPPP contains significant revisions(s);
27 and, certify and submit via SMARTS their SWPPP not more than once every three (3) months in the

1 reporting year for any non-significant revisions. General Permit, Section X.B.

2 47. Dischargers must implement the minimum BMPs identified in Section X.H.1. of
3 the General Permit. In addition to the minimum BMPs identified in Section X.H.1, advanced BMPs
4 must be implemented if necessary to reduce or prevent discharges of pollutants in storm water
5 dischargers in a manner that reflects best industry practice. General Permit, Section X.H.2.

6 48. Special Conditions Section XX.B of the General Permit require a discharger to
7 prepare and submit documentation to the Regional Board upon determination that storm water
8 discharges are in violation of Receiving Water Limitations, Section VI. The documentation must
9 describe changes the discharger will make to its current BMPs in order to prevent or reduce any
10 pollutant in its storm water discharges that is causing or contributing to an exceedance of water
11 quality standards. General Permit, Section XX.B.

12 49. Section XV of the General Permit requires an annual evaluation of storm water
13 controls including the preparation of an evaluation report and implementation of any additional
14 measures in the SWPPP to respond to the monitoring results and other inspection activities within 90
15 days of the annual evaluation.

16 50. The General Permit requires dischargers to eliminate all non-storm water
17 discharges to storm water conveyance systems other than those specifically set forth in Section IV of
18 the General Permit unless authorized by another NPDES permit. General Permit, Section III. B.

19 51. The General Permit requires dischargers to implement a Monitoring
20 Implementation Plan. General Permit, Section X.I. As part of their monitoring plan, dischargers
21 must identify all storm water discharge locations. General Permit, Section X.I.2. Dischargers must
22 then conduct monthly visual observations of each drainage area, as well as visual observations
23 during discharge sampling events. General Permit, Section XI.A.1 and 2. Dischargers must also
24 collect and analyze storm water samples from two (2) storm events within the first half of each
25

1 reporting year (July 1 to December 31) and two (2) storm events during the second half of each
2 reporting year (January 1 to June 3). General Permit, Section XI.B. Section XI.B requires
3 dischargers to sample and analyze during the wet season for basic parameters such as pH, total
4 suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters, and any
5 other pollutants likely to be in the storm water discharged from the facility base on the pollutant
6 source assessment. General Permit, Section XI.B.6.

7
8 52. Dischargers must submit all sampling and analytical results via SMARTS within
9 thirty (30) days of obtaining all results for each sampling event. Section XI.B.11. Sampling results
10 must be compared to the two types of Numeric Action Level (“NAL”) values set forth at Table 2 of
11 the General Permit. General Permit, Section XII. An annual NAL exceedance occurs when the
12 average of the results for a parameter for all samples taken within a reporting year exceeds the
13 annual NAL value. General Permit, Section XII.A.1. An instantaneous NAL exceedance occurs
14 when two (2) or more results from samples taken for any single parameter within a reporting year
15 exceed the instantaneous maximum NAL value. General Permit, Section XII.A.2. If a discharger
16 has an NAL exceedance during a reporting year, the discharger’s status changes to Level 1 status
17 under the General Permit and the discharger must comply with the requirements set forth for Level 1
18 status operators set forth at Section XII.C. The discharger’s status shall change to Level 2 status if
19 sampling results indicated an NAL exceedance for a parameter while the discharger is in Level 1
20 status. If a discharger becomes Level 2 status it must comply with the obligations set forth at
21 Section XII.D of the General Permit.

22
23
24 53. Dischargers must submit an Annual Report no later than July 15th following each
25 reporting year certifying compliance with the Permit and/or an explanation for any non-compliance.
26 General Permit, Section XVI.

1 **V. STATEMENT OF FACTS**

2 54. The Facility is classified as conforming to Standard Industrial Classification (“SIC”)
3 Code 4493 (“Marinas”). Industrial activities occur throughout the Facility. CSPA’s investigation
4 into the industrial activities at Defendants’ approximately 4-acre facility indicates that the Facility is
5 used to repair and store boats. Moreover, the Facility is used, or has been used in the past, for
6 equipment storage, boat painting and restoring, boat fueling and boat waste removal.
7

8 55. Most of these activities occur outside in areas that are exposed to storm water and
9 storm flows due to the lack of overhead coverage, functional berms and other storm water controls.
10 Plaintiff is informed and believes that Defendants’ storm water controls, to the extent any exist, fail
11 to achieve BAT and BCT standards.
12

13 56. The management practices at the Facility are wholly inadequate to prevent the
14 sources of contamination described above from causing the discharge of pollutants to waters of the
15 United States and fail to meet BAT and BCT standards. The Facility lacks essential structural
16 controls such as grading, berming and roofing to prevent rainfall and storm water flows from coming
17 into contact with these and other sources of contaminants, thereby allowing storm water to flow over
18 and across these materials and become contaminated prior to leaving the Facility. In addition, the
19 Facility lacks structural controls to prevent the discharge of water once contaminated. The Facility
20 also lacks an adequate filtration system to treat water once it is contaminated.
21

22 57. During rain events, storm water laden with pollutants discharges from the Facility to
23 Lake Oroville, which is both a “water of the united States” under the Clean Water Act and a source
24 of public drinking water within the meaning of Proposition 65.
25

26 58. Information available to Plaintiff indicates that as a result of these practices, storm
27 water containing pollutants harmful to fish, plant and bird life, and human health are being
28 discharged from the Facility directly to these waters during significant rain events.

1 course of doing business within the meaning of Health & Safety Code Section 25249.11, discharges
2 or releases of the Proposition 65-Listed Chemicals into sources of drinking water in violation of
3 Proposition 65 have occurred and continue to occur since at least August 5, 2013.

4 67. The Proposition 65 Defendants knew at all times relevant to this action that the acts
5 and omissions causing the discharges or releases of lead and lead compounds were occurring.

6 68. The Proposition 65 Defendants' discharges or releases of lead and lead compounds
7 have caused, are causing and will continue to cause a significant amount of these substances to be
8 discharged or released to sources of drinking water within the meaning of California Health &
9 Safety Code Section 25249.9(b)(1).
10

11 69. Lead affects almost every organ and system in the human body. The most sensitive
12 is the central nervous system, particularly in children. Lead also damages the kidneys and the
13 immune system. The health effects are the same whether it is breathed or swallowed. Lead is
14 known to cross the placental barrier and cause damage to the developing fetus. Harmful effects
15 include premature births, smaller babies, decreased mental ability in the infant, learning difficulties,
16 hearing loss, tendencies toward violence and reduced growth in young children. In adults, exposure
17 to lead decreases cognitive ability and reaction time, causes weakness in fingers, wrists, or ankles,
18 and decreases memory abilities. Exposure to lead also causes spontaneous abortions and anemia. It
19 also permanently damages the male reproductive system even at very low levels.
20
21

22 70. Plaintiff is informed and believes, and thereupon alleges, that all of the violations
23 alleged in this First Amended Complaint are ongoing and continuing.
24

25 **VI. CLAIMS FOR RELIEF**

26 **FIRST CLAIM FOR RELIEF**

27 **Discharges of Contaminated Storm Water From The Facility
28 in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

71. Plaintiff incorporates the allegations contained in the above paragraphs as though

1 fully set forth herein.

2 72. Receiving Water Limitations VI.A and VI.B of the General Permit require that storm
3 water discharges and authorized non-storm water discharges shall not adversely impact human health
4 or the environment, and shall not cause or contribute to a violation of any water quality standards in
5 any affected receiving water. Discharge Prohibition III.C of the General Permit requires that storm
6 water discharges and authorized non-storm water discharges shall not cause or threaten to cause
7 pollution, contamination, or nuisance.
8

9 73. Plaintiff is informed and believes, and thereupon alleges, that since at least May 13,
10 2011, Defendants have been discharging polluted storm water from the Facility into Lake Oroville in
11 violation of the General Permit.
12

13 74. During every significant rain event, storm water flowing over and through materials
14 at the Facility becomes contaminated with pollutants, flowing untreated from the Facility into Lake
15 Oroville.
16

17 75. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
18 contaminated storm water are causing pollution and contamination of waters of the United States in
19 violation of Discharge Prohibition III.C of the General Permit.
20

21 76. Plaintiff is informed and believes, and thereupon allege, that these discharges of
22 contaminated storm water are adversely affecting human health and the environment in violation of
23 Receiving Water Limitations VI.A and VI.B of the General Permit.
24

25 77. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
26 contaminated storm water are contributing to violations of applicable water quality standards in the
27 Statewide Water Quality Control Plan, the applicable Regional Board's Basin Plan, and/or the CTR, in
28 violation of Receiving Water Limitation VI.A of the General Permit.

78. Plaintiff is informed and believes, and thereupon alleges, that every day since May
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1 11, 2011, Defendants have discharged and continue to discharge polluted storm water from the Facility
2 in violation of the General Permit. These violations are ongoing and continuous.

3 79. Every day Defendants have discharged and continue to discharge polluted storm
4 water from the Facility in violation of the General Permit is a separate and distinct violation of Section
5 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants are subject to civil penalties for each and every
6 violation of the Act since May 13, 2011. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).
7

8 **SECOND CLAIM FOR RELIEF**

9 **Failure to Develop and Implement an Adequate**
10 **Storm Water Pollution Prevention Plan For the Facility**
11 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12 80. Plaintiff incorporates the allegations contained in the above paragraphs as though
13 fully set forth herein.

14 81. Section X of the General Permit require dischargers of storm water associated with
15 industrial activity to develop and implement an adequate SWPPP prior to commencement of
16 industrial activities.

17 82. Defendants have failed to develop and implement an adequate SWPPP for the
18 Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the Facility
19 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials without appropriate best
20 management practices; the continued exposure of significant quantities of industrial materials to storm
21 water flows; the failure to either treat storm water prior to discharge or to implement effective
22 containment practices; and the continued discharge of storm water pollutants from the Facility at
23 levels in excess of EPA benchmark values and other applicable water quality standards.

24 83. Defendants have further failed to update the Facility's SWPPP in response to the
25 analytical results of the Facility's storm water monitoring as required by the General Permit. General
26 Permit, Sections X.B.1 and X.C.1.b. Defendants continue to be in violation of the Act each day that
27 they fail to develop and fully implement an adequate SWPPP for the Facility. These violations are
28 ongoing and continuous.

84. Each day that Defendants have failed to develop and implement an adequate SWPPP

1 for the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a)
2 of the Act, 33 U.S.C. § 1311(a). Defendants are subject to civil penalties for each and every
3 violation of the Act since May 13, 2011. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

4 **THIRD CLAIM FOR RELIEF**

5 **Failure to Develop and Implement the Best Available**
6 **And Best Conventional Treatment Technologies at the Facility**
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 85. Plaintiff incorporates the allegations contained in the above paragraphs as though
9 fully set forth herein.

10 86. The General Permit's SWPPP requirements and Effluent Limitation D.32 require
11 dischargers to reduce or prevent pollutants in their storm water discharges through implementation
12 of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants.

13 87. Defendants have failed to implement BAT and BCT at the Facility for their
14 discharges of TSS, zinc, aluminum, iron, and magnesium in violation of Effluent Limitation D.32 of
15 the General Permit.

16 88. Each day that Defendants have failed to develop and implement BAT and BCT at the
17 Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the
18 Act, 33 U.S.C. § 1311(a).

19 89. Defendants continue to be in violation of the BAT and BCT requirements each day
20 that it fails to develop and fully implement BMPs meeting the BAT and BCT standards. These
21 violations are ongoing and continuous.

22 90. Defendants have been in violation of the BAT and BCT requirements at the Facility
23 every day since at least May 13, 2011. Defendants are subject to civil penalties for each and every
24 violation of the Act since May 13, 2011. *See* 33 U.S.C. §§1319 (d), 1365; 40 C.F.R. §19.4 (2008).

25 **FOURTH CLAIM FOR RELIEF**

26 **Failure to Develop and Implement an Adequate**
27 **Monitoring Implementation Plan for the Facility**
28 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

89. Plaintiff incorporates the allegations contained in the above paragraphs as though
fully set forth herein.

1 65 Notice Letter”) was issued pursuant to, and in compliance with, the requirements of California
2 Health & Safety Code Section 25249.7(d) and the statute's implementing regulations regarding the
3 notice of the violations to be given to certain public enforcement agencies and to the violator. The
4 Proposition 65 Notice Letter included, *inter alia*, the following information: the name, address, and
5 telephone number of the noticing individual; the name of the alleged violator; the statute violated; the
6 approximate time period during which violations occurred; and descriptions of the violations,
7 including the chemicals involved, a general identification of the discharge or release and of the sources
8 of drinking water into which the discharges are alleged to have occurred, to be occurring or to be likely
9 to occur. The Proposition 65 Defendants and the California Attorney General were provided copies of
10 the 60-Day Notice by Certified Mail. Additionally, the Proposition 65 Defendants were provided a
11 copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986
12 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR § 25903.
13
14

15 98. The appropriate public enforcement agencies have failed to commence and diligently
16 prosecute a cause of action under California Health & Safety Code Section 25249.5 against the
17 Proposition 65 Defendants based on the allegations contained in the Proposition 65 Notice Letter and
18 the related claims asserted herein.
19

20 99. By committing the acts alleged in this First Amended Complaint, the Proposition 65
21 Defendants at all times relevant to this action and continuing throughout the present, have violated
22 California Health & Safety Code Section 25249.5 by, in the course of doing business, knowingly
23 discharging or releasing the Proposition 65-Listed Chemicals into sources of drinking water within the
24 meaning of California Health & Safety Code Sections 25249.5, 25249.9 and 25249.11.
25

26 100. By the above-described acts, Defendants are liable, pursuant to California Health &
27 Safety Code Section 25249.7(b), for civil penalties of up to \$2,500 per day for each discharge or
28 release of Proposition 65-Listed Chemicals in violation of the statute since at least August 5, 2013.

1 101. An action for injunctive relief under Proposition 65 is specifically authorized by
2 California Health & Safety Code Section 25249.7(a).

3 102. Continuing commission by Defendants of the acts alleged above will irreparably
4 harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate
5 remedy at law.

6 **VII. RELIEF REQUESTED**
7

8 Wherefore, CSPA respectfully requests that this Court grant the following relief:

9 a. Declare Defendants to have violated and to be in violation of CWA section 301(a),
10 33 U.S.C. § 1311(a), for discharging pollutants from its the Facility in violation of a permit issued
11 pursuant to CWA section 402, 33 U.S.C. § 1342 and for failing to comply with all substantive and
12 procedural requirements of the General Permit and the CWA as alleged herein;

13 b. Declare Defendants to have violated and to be in violation of Proposition 65 as
14 alleged herein;

15 c. Enjoin Defendants from discharging pollutants from the Facility and to the
16 surface waters surrounding and downstream from the Facility in violation of the Act and the
17 General Permit;

18 d. Enjoin Defendants from further violating the substantive and procedural
19 requirements of the General Permit;

20 e. Order Defendants to pay civil penalties of \$37,500 per day per violation for all
21 violations occurring after May 13, 2011, pursuant to Sections 309(d) and 505(a) of the Act, 33
22 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1–19.4 (2008);

23 f. Order Defendants to pay \$2,500 per day per violation for all violations occurring
24 after August 5, 2015, pursuant to Section 25249.7(b)(1) of the California Health & Safety Code;

25 g. Order Defendants to take appropriate actions to restore the quality of navigable
26
27
28

1 waters impaired by their activities;

2 h. Award Plaintiff's costs and fees (including reasonable attorney, witness, and
3 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

4 i. Award any such other and further relief as this Court may deem appropriate.
5

6 Dated: August 5, 2016

Respectfully Submitted,

7 LAW OFFICES OF ANDREW L. PACKARD

8 By: /s/ Andrew L. Packard

9 Andrew L. Packard
10 Attorneys for Plaintiff
11 CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE
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EXHIBIT A

LAW OFFICES OF

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May 11, 2016

VIA CERTIFIED MAIL

Bill Harper, General Manager
Lake Oroville Marina, LLC
801 Bidwell Canyon Road
Oroville, California 95966

Bill Harper, General Manager
Bidwell Canyon Marina
801 Bidwell Canyon Road
Oroville, California 95966

Matt Harvey, Agent for Service of Process
Lake Oroville Marina, LLC
7501 E. McCormick Parkway #1100LL
Scottsdale, Arizona 85258

Rex Maughan, President
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT (“CLEAN WATER ACT”)
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Harper and Mr. Maughan:

This firm represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit association, in regard to violations of the Clean Water Act (“CWA” or “the Act”) occurring at Bidwell Canyon Marina (“BCM”), located at 801 Bidwell Canyon Road, in Oroville, California (the “Facility”). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Mr. Harper, Mr. Maughan, Bidwell Canyon Marina, and Lake Oroville Marina, LLC shall hereinafter be collectively referred to as “BCM.” CSPA is dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which BCM discharges polluted storm water.

BCM is in ongoing violation of the substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 *et seq.* and California’s General Industrial Storm Water Permit, National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001 (“General Permit”), Water Quality Order No. 97-03-DWQ (“1997 General Permit”), as superseded by Order No. 2015-0057-DWQ (“2015 General Permit”).¹

¹ BCM submitted a Notice of Intent (NOI) to comply with the General Permit for the Facility on or about January 26, 2015.

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On July 1, 2015, the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

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 Bidwell Canyon Marina to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The CWA requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against BCM for violations of the Act and the Permit.

I. Background.

A. The Clean Water Act.

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Baykeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of an NPDES permit, is illegal. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing

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California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers, as well as through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA.

The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

C. BCM's Lake Oroville Facility

BCM's approximately 4-acre Facility is operated as a marina as well as a boat and maintenance shop. The industrial activities at the Facility fall under Standard Industrial Classification ("SIC") Code 4493 ("Marinas").

BCM collects and discharges storm water associated with industrial activities at the Facility through at least two (2) discharge points into Lake Oroville. Lake Oroville is a water of the United States within the meaning of the Clean Water Act.

The General Permit requires BCM to analyze storm water samples for Total Suspended Solids ("TSS"), pH, and Oil and Grease ("O&G"). 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Code 4493 must also analyze storm water

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samples for Aluminum (“Al”), Iron (“Fe”), Lead (“Pb”), and Zinc (“Zn”). 1997 General Permit, Tables 1-2; 2015 General Permit, Tables 1-2.

II. BCM’s Violations of the Act and Permit.

Based on its review of available public documents, CSPA is informed and believes that BCM is in ongoing violation of both the substantive and procedural requirements of the CWA and the Permit. BCM’s violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, BCM is subject to penalties for violations of the Act since May 11, 2011.

A. BCM Discharges Storm Water Containing Pollutants in Violation of the Permit’s Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

BCM’s storm water sampling results provide conclusive evidence of BCM’s failure to comply with the General Permit’s discharge prohibitions, receiving water limitations and effluent limitations. 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).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board’s Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit’s Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices (“BMPs”) in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule (“CTR”) is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v.*

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Chico Scrap Metal, Inc., 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes a numeric limit for at least two of the pollutants discharged by BCM: Zinc – 0.12 mg/L (maximum concentration) and Lead – 0.065 mg/L (maximum concentration).

The *Water Quality Control Plan, Fourth Edition (Revised August 2006), for the Sacramento and San Joaquin River Basins* (“Basin Plan”) also sets forth water quality standards and prohibitions applicable to BCM’s storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Sacramento River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by BCM: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L; Aluminum – 0.75 mg/L; Chemical Oxygen Demand – 120 mg/L; Iron – 1.0 mg/L; Magnesium – 0.0636 mg/L; Lead – 0.0816 mg/L; and Oil & Grease – 15.0 mg/L.

3. Bidwell Canyon Marina’s Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

- a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value**

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Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/3/2015	South Runoff	TSS	106	100
4/5/2015	North Runoff	TSS	128	100
4/5/2015	South Runoff	TSS	491	100
1/29/2014	South Runoff	TSS	444	100
10/05/2011	Shop	TSS	344	100

b. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
3/20/16	South Runoff	Zn	0.148	0.117	0.12
3/10/2016	South Runoff	Zn	0.163	0.117	0.12
12/3/2015	South Runoff	Zn	0.179	0.117	0.12
4/5/2015	South Runoff	Zn	0.69	0.117	0.12
3/26/2014	South Runoff	Zn	0.36	0.117	0.12
1/29/2014	South Runoff	Zn	1.42	0.117	0.12
2/19/2013	North Runoff	Zn	0.27	0.117	0.12
1/19/2012	Shop Runoff	Zn	1.51	0.117	0.12
1/19/2012	South Runoff	Zn	0.20	0.117	0.12
10/05/2011	Shop	Zn	1.02	0.117	0.12

c. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/2016	South Runoff	Al	2.87	0.75
3/10/2016	South Runoff	Al	1.46	0.75
12/9/2015	South Runoff	Al	1.68	0.75
12/3/2015	South Runoff	Al	2.25	0.75
4/5/2015	North Runoff	Al	1.2	0.75
4/5/2015	South Runoff	Al	8.7	0.75
3/26/2014	North Runoff	Al	1.1	0.75
3/26/2014	South Runoff	Al	6.1	0.75
1/29/2014	North Runoff	Al	1.6	0.75
1/29/2014	South Runoff	Al	11.3	0.75
2/19/2013	North Runoff	Al	2.1	0.75
1/19/2012	Shop Runoff	Al	3.9	0.75

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1/19/2012	South Runoff	Al	1.1	0.75
10/05/2011	Shop	Al	12.5	0.75
10/05/2011	South Runoff	Al	3.1	0.75

d. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/2016	South Runoff	Fe	4.02	1.0
3/10/2016	South Runoff	Fe	2.16	1.0
12/9/2015	South Runoff	Fe	2.93	1.0
12/3/2015	South Runoff	Fe	3.82	1.0
4/5/2015	North Runoff	Fe	2.27	1.0
4/5/2015	South Runoff	Fe	10.8	1.0
3/26/2014	North Runoff	Fe	1.59	1.0
3/26/2014	South Runoff	Fe	8.76	1.0
1/29/2014	North Runoff	Fe	2.68	1.0
1/29/2014	South Runoff	Fe	14.8	1.0
2/19/2013	North Runoff	Fe	2.27	1.0
1/19/2012	Shop Runoff	Fe	4.39	1.0
1/19/2012	South Runoff	Fe	1.63	1.0
10/05/2011	Shop	Fe	18.4	1.0
10/05/2011	South Runoff	Fe	3.96	1.0

d. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/20/16	South Runoff	Mg	1.56	0.0636
12/9/2015	South Runoff	Mg	1.3	0.0636
12/3/15	South Runoff	Mg	1.72	0.0636

e. Discharges of Storm Water Exceeding the Basin Plan Standards for pH

Date	Discharge Point	Parameter	Concentration in Discharge (pH units)	Basin Plan (pH units)
4/5/2015	North Runoff	pH	4.7	6.5 – 8.5
4/5/2015	South Runoff	pH	5.7	6.5 – 8.5
3/26/2014	North Runoff	pH	6.1	6.5 – 8.5
1/29/2014	North Runoff	pH	5.8	6.5 – 8.5
1/29/2014	South Runoff	pH	5.7	6.5 – 8.5

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2/19/2013	South Runoff	pH	6.3	6.5 – 8.5
1/19/2012	Shop Runoff	pH	6.0	6.5 – 8.5
1/19/2012	South Runoff	pH	5.5	6.5 – 8.5

f. BCM’s Sample Results Are Evidence of Violations of the General Permit

BCM’s sample results demonstrate violations of the General Permit’s discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that BCM has known that its storm water contains pollutants at levels exceeding General Permit standards since at least May 9, 2011.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that BCM has discharged storm water containing impermissible levels of TSS, Zn, Al, Fe, and Mg in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

4. BCM Has Failed to Implement BAT and BCT.

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit’s SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

BCM has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. 1997 General Permit, Sections A.8.a(i-x); 2015 General Permit, Sections X.H.1(a-g).

BCM has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit’s effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day the Owners/Operators have failed to develop and implement BAT and BCT at the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the CWA (33 U.S.C. § 1311(a)). The violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit.

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Accordingly, the Owners/Operators have been in violation of the BAT and BCT requirements at the Facility every day since at least May 11, 2011.

5. BCM Has Failed to Implement an Adequate Monitoring Implementation Plan.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters set forth in Table 1 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. Permit, Section XI.B.6. The General Permit requires that the Discharger shall ensure that all laboratory analyses are conducted according to test procedures under 40 CFR 136. Permit, Section XI.B.10. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. Section XI.B.11.

BCM has failed to develop and implement an adequate Monitoring Implementation Plan by failing to sample all discharge locations during each qualifying storm event and using incorrect test methods when analyzing certain parameters.

Each day that BCM has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. BCM has been in violation of the Monitoring Implementation Plan requirements every day since at least May 13, 2011.

6. BCM Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

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Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that BCM has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. BCM has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations.

Each day BCM has failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. BCM has been in violation of these requirements at the Facility every day since at least May 11, 2011.

III. Persons Responsible for the Violations.

CSPA puts BCM on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts BCM on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
(209) 464-5067

V. Counsel.

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

May 11, 2016

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Andrew L. Packard
Megan E. Truxillo
William N. Carlon
Law Offices Of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
(707) 763-7227
Andrew@PackardLawOffices.com

VI. Conclusion

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 CWA against Bidwell Canyon Marina and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next twenty (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,



Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for California Sportfishing Protection Alliance

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SERVICE LIST

VIA CERTIFIED MAIL

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

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA, 94105

Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

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

ATTACHMENT A

**Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016**

May	15	2011	March	18	2012	December	26	2012
May	16	2011	March	19	2012	January	5	2013
May	17	2011	March	25	2012	January	6	2013
May	18	2011	March	26	2012	January	9	2013
May	23	2011	March	28	2012	January	10	2013
May	26	2011	March	30	2012	January	23	2013
May	29	2011	April	1	2012	January	24	2013
June	1	2011	April	4	2012	January	27	2013
June	2	2011	April	11	2012	February	7	2013
June	4	2011	April	12	2012	February	8	2013
June	5	2011	April	13	2012	February	19	2013
June	6	2011	April	14	2012	February	20	2013
June	7	2011	April	26	2012	March	3	2013
June	29	2011	June	5	2012	March	4	2013
October	4	2011	October	22	2012	March	5	2013
October	5	2011	October	23	2012	March	6	2013
October	6	2011	October	24	2012	March	7	2013
October	7	2011	November	1	2012	March	19	2013
October	10	2011	November	17	2012	March	20	2013
October	11	2011	November	18	2012	March	21	2013
November	4	2011	November	20	2012	March	30	2013
November	6	2011	November	21	2012	March	31	2013
November	12	2011	November	28	2012	April	1	2013
November	20	2011	November	29	2012	April	4	2013
November	21	2011	November	30	2012	April	5	2013
November	24	2011	December	1	2012	April	7	2013
November	25	2011	December	2	2012	April	8	2013
December	15	2011	December	3	2012	May	5	2013
January	20	2012	December	4	2012	May	6	2013
January	21	2012	December	5	2012	May	7	2013
January	23	2012	December	6	2012	May	16	2013
January	24	2012	December	11	2012	May	27	2013
January	27	2012	December	12	2012	May	28	2013
February	8	2012	December	13	2012	June	10	2013
February	11	2012	December	16	2012	June	11	2013
February	13	2012	December	17	2012	June	18	2013
February	29	2012	December	20	2012	June	24	2013
March	13	2012	December	21	2012	June	25	2013
March	14	2012	December	22	2012	June	26	2013
March	15	2012	December	23	2012	August	20	2013
March	16	2012	December	24	2012	September	21	2013
March	17	2012	December	25	2012	September	22	2013
September	24	2013	August	5	2014	February	6	2015

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

ATTACHMENT A

**Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016**

October	27	2013	September	24	2014	February	7	2015
October	28	2013	September	25	2014	February	8	2015
November	19	2013	September	26	2014	February	9	2015
November	20	2013	October	14	2014	February	10	2015
November	21	2013	October	15	2014	February	27	2015
December	6	2013	October	16	2014	February	28	2015
December	7	2013	October	20	2014	March	11	2015
January	29	2014	October	21	2014	March	22	2015
January	30	2014	October	24	2014	March	23	2015
February	5	2014	October	25	2014	April	5	2015
February	6	2014	October	26	2014	April	6	2015
February	7	2014	October	31	2014	April	7	2015
February	8	2014	November	1	2014	April	8	2015
February	9	2014	November	12	2014	April	23	2015
February	10	2014	November	13	2014	April	24	2015
February	16	2014	November	14	2014	April	25	2015
February	26	2014	November	19	2014	June	6	2015
February	27	2014	November	20	2014	June	7	2015
February	28	2014	November	21	2014	July	8	2015
March	1	2014	November	22	2014	July	9	2015
March	2	2014	November	28	2014	September	16	2015
March	3	2014	November	29	2014	September	17	2015
March	4	2014	November	30	2014	October	16	2015
March	5	2014	December	1	2014	October	17	2015
March	6	2014	December	2	2014	November	2	2015
March	9	2014	December	3	2014	November	3	2015
March	10	2014	December	4	2014	November	9	2015
March	25	2014	December	5	2014	November	10	2015
March	26	2014	December	6	2014	November	14	2015
March	27	2014	December	10	2014	November	15	2015
March	28	2014	December	11	2014	November	16	2015
March	29	2014	December	12	2014	November	25	2015
March	30	2014	December	13	2014	December	3	2015
March	31	2014	December	14	2014	December	4	2015
April	1	2014	December	15	2014	December	5	2015
April	5	2014	December	16	2014	December	6	2015
April	25	2014	December	17	2014	December	9	2015
April	26	2014	December	18	2014	December	10	2015
May	5	2014	December	19	2014	December	11	2015
May	6	2014	December	20	2014	December	13	2015
August	4	2014	December	21	2014	December	14	2015
December	19	2015	March	21	2016	December	21	2015
December	20	2015	March	22	2016	December	22	2015

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

ATTACHMENT A

**Notice of Intent to File Suit, BCM
Significant Rain Events,* May 11, 2011 – May 11, 2016**

January	4	2016	April	23	2016
January	5	2016			
January	6	2016			
January	7	2016			
January	8	2016			
January	9	2016			
January	10	2016			
January	12	2016			
January	13	2016			
January	14	2016			
January	15	2016			
January	16	2016			
January	17	2016			
January	18	2016			
January	19	2016			
January	20	2016			
January	22	2016			
January	23	2016			
January	28	2016			
January	29	2016			
January	30	2016			
February	2	2016			
February	17	2016			
February	18	2016			
February	19	2016			
February	20	2016			
March	3	2016			
March	4	2016			
March	5	2016			
March	6	2016			
March	7	2016			
March	8	2016			
March	10	2016			
March	11	2016			
March	12	2016			
March	13	2016			
March	14	2016			
March	20	2016			
April	14	2016			
April	22	2016			

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

EXHIBIT B

LAW OFFICES OF

ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

May 27, 2016

VIA CERTIFIED MAIL

Public Enforcement Agencies
(See attached Certificate of Service)

Bill Harper, General Manager
Lake Oroville Marina, LLC
Bidwell Canyon Marina
801 Bidwell Canyon Road
Oroville, California 95966

Matt Harvey, Agent for Service of Process
Lake Oroville Marina, LLC
7501 E. McCormick Parkway #1100LL
Scottsdale, Arizona 85258

Rex Maughan, President
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

Darin Reber, Agent for Service of Process
Forever Resorts, LLC
7501 E. McCormick Parkway
Scottsdale, Arizona 85258

**NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER HEALTH &
SAFETY CODE § 25249.5 *et seq.* (California Safe Drinking Water and Toxic
Enforcement Act, a.k.a. “Proposition 65”)**

Dear Public Enforcement Agencies, Mr. Harper and Mr. Maughan:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to safeguarding the public from health hazards, reducing the use and misuse of toxic substances, encouraging corporate responsibility, and ensuring safe drinking water for consumers. CSPA brings this action in the public interest, pursuant to Health & Safety Code § 25249.7(d). Unless otherwise noted, Lake Oroville Marina, LLC shall hereinafter be referred to as the “Violator.”

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code § 25249.5 *et seq.* (also commonly referred to as “Proposition 65” or “Prop. 65”). This letter serves to provide the public prosecutors and the Violator with CSPA's notification of these violations and intent to sue.

May 27, 2016

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Pursuant to Health & Safety Code § 25249.7(d), CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public prosecutors commence and diligently prosecute an action against the Violator for the same alleged violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Identity of Chemicals

The Violator is a “person[s] in the course of doing business” as defined in Health & Safety Code § 25249.11, that discharges, deposits, or releases Proposition 65-listed chemicals into existing sources of drinking water not designated as exempt by the Safe Drinking Water Act of 1974 (42 U.S.C. § 300(f) *et seq.*).

These violations involve the discharge and/or release of lead and lead compounds to sources of drinking water. Lead and lead compounds have been on the Proposition 65 list for more than the twenty months grace period provided under Health & Safety Code § 25249.9(a). These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from the Bidwell Canyon Marina facility located at 801 Bidwell Canyon Road Oroville, California 95965 (“Facility”).

Sources of Drinking Water

The Violator is discharging lead and lead compounds from the Facility to designated sources of drinking water in violation of Proposition 65. A “source of drinking water” means either a present source of drinking water or water which is identified or designated in a Water Quality Control Plan adopted by a Regional Water Quality Control Board as being suitable for domestic or municipal uses. Health & Safety Code § 25249.11(d).

The Violator is allowing storm water contaminated with lead and lead compounds to discharge and/or release from the Facility into Lake Oroville. Lake Oroville is designated as an existing source of municipal and domestic drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.” Basin Plan, II-6.00.

Approximate Time Period of Violations

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2011. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

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CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. However, CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard
Megan E. Truxillo
William N. Carlon
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Andrew@PackardLawOffices.com

Sincerely,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: Certificate of Service