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9 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 CALIFORNIA SPORTFISHING PROTECTION  
13 ALLIANCE, a non-profit corporation,

14 Plaintiff,

15 v.

16 FOUNDATION CONSTRUCTORS, INC., a  
17 California corporation,

18 Defendant.

Civil Case No.:

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

**(Federal Water Pollution Control Act, 33  
U.S.C. §§ 1251 *et seq.*)**

19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA” or “Plaintiff”), by and  
20 through its counsel, hereby alleges:

21 **I. JURISDICTION AND VENUE**

22 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal  
23 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”). *See* 33 U.S.C.  
24 § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C.  
25 § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising  
under the Constitution and laws of the United States).

26 2. On November 22, 2019, CSPA issued a 60-day notice letter (“Notice Letter”) to  
27 Foundation Constructors, Inc. (“Defendant” or “Foundation”), for the industrial facility in Oakley,

1 General Permit for Discharges of Storm Water Associated with Industrial Activities (*National Pollutant*  
2 *Discharge Elimination System (NPDES) General Permit No. CAS000001, State Water Resources*  
3 *Control Board Water Quality Order No. 97-03-DWQ*) (“1997 Permit”), as superseded by Order No.  
4 2014-0057-DWQ and amended by Order No. 2015-0122 –DWQ (“2015 Permit”) (collectively,  
5 hereinafter referred to as the “Storm Water Permit”), recently amended but not yet adopted Order No.  
6 20XX-XXX-DWQ incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2) TMDL  
7 Implementation Requirements; and 3) Statewide Compliance Options Incentivizing On-Site or Regional  
8 Storm Water Capture and Use (“2018 Permit”), and the Clean Water Act at Foundation’s large-scale  
9 industrial fabrication and construction facility located at 81 Big Break Road, Oakley, CA 94561 with  
10 Waste Discharger Identification Number (WDID) 5S07I021633 (“Foundation Facility” or “Facility”).  
11 The Notice Letter informed Defendant of CSPA’s intent to file suit against Defendant to enforce the  
12 Storm Water Permit and the Clean Water Act.

13 3. The Notice Letter was sent to Defendant’s current President and Chief Executive Officer,  
14 Derek Halecky, registered agent for service of process, Nikki Sjoblom, and the General Manager David  
15 Quist, as required by 40 C.F.R. § 135.2(a)(2). The Notice Letter was also sent to the Administrator of  
16 the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the  
17 Executive Director of the State Water Resources Control Board (“State Board”), and the Executive  
18 Officer of the Regional Water Quality Control Board, San Francisco Bay Region, (“Regional Board”) as  
19 required by Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice Letter is attached hereto  
20 as **Exhibit A** and is incorporated herein by reference.

21 4. On January 22, 2020, CSPA and Foundation entered into a tolling agreement to reserve  
22 certain rights regarding time period in which to file a complaint and to allow for preliminary settlement  
23 discussions. That agreement expired following February 24, 2020.

24 5. More than sixty (60) days have passed since the Notice Letter was served on the  
25 Defendant and the State and Federal agencies. CSPA is informed and believes, and thereon alleges, that  
26 neither the EPA nor the State of California has commenced or is diligently prosecuting an action to  
27 redress the violations alleged in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B).

1 U.S.C. § 1319(g).

2 6. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the  
3 CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial  
4 district.

5 **II. INTRODUCTION**

6 7. With every rainfall event, hundreds of millions of gallons of polluted rainwater,  
7 originating from industrial operations such as the Facility referenced herein, pour into the storm drains  
8 and local waterways. The consensus among regulatory agencies and water quality specialists is that  
9 storm water pollution accounts for more than half of the total pollution entering marine and river  
10 environments each year. These surface waters, known as Receiving Waters, are ecologically sensitive  
11 areas. Although pollution and habitat destruction have drastically diminished once abundant and varied  
12 fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-  
13 invertebrate and invertebrate species. Storm water and non-storm water contain sediment, heavy metals,  
14 such as aluminum, iron, chromium, copper, lead, mercury, nickel, and zinc, as well as, high  
15 concentrations of nitrate and nitrite, and other pollutants. Exposure to polluted storm water harms the  
16 special aesthetic and recreational significance that the surface waters have for people in the surrounding  
17 communities. The public's use of the surface waters exposes many people to toxic metals and other  
18 contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic  
19 opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving  
20 Waters.

21 8. High concentrations of total suspended solids ("TSS") degrade optical water quality by  
22 reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to  
23 alter predator-prey relationships (for example, turbid water may make it difficult for fish to hunt prey).  
24 Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to  
25 aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons  
26 ("PAHs"), are absorbed onto TSS. Thus, higher concentrations of TSS result in higher concentrations of  
27 toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended

1 solids, have been shown to negatively impact species richness, diversity, and total biomass of filter  
2 feeding aquatic organisms on bottom surfaces.

3 9. Storm water discharged with high pH can damage the gills and skin of aquatic organisms  
4 and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a  
5 substance varies as a function of the pH of a solution. A one-whole-unit change in SU represents a  
6 tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic  
7 organisms living within it will become stressed or die.

8 10. This complaint seeks a declaratory judgment, injunctive relief, the imposition of civil  
9 penalties, and the award of costs, including attorney and expert witness fees, for Defendant's substantive  
10 and procedural violations of the Storm Water Permit and the Clean Water Act resulting from  
11 Defendant's operations at the Foundation Facility.<sup>1</sup>

12 11. CSPA specifically alleges violations regarding Defendant's discharge of pollutants from  
13 the Facility into waters of the United States; violations of the filing, monitoring and reporting, and best  
14 management practice requirements; and violations of other procedural and substantive requirements of  
15 the Storm Water Permit and the Clean Water Act, are ongoing and continuous.

16 **III. PARTIES**

17 **A. California Sportfishing Protection Alliance**

18 12. CSPA is a California non-profit 501(c)(3) public benefit conservation and research  
19 organization with its principal place of business in Stockton, California. CSPA's organizational purpose  
20 is the protection, preservation, and enhancement of fisheries and associated aquatic and riparian  
21 ecosystems of California's waterways, including the San Joaquin River and the greater Sacramento-San  
22 Joaquin River Delta ("Delta"), the Receiving Waters herein. This mission is implemented through active  
23 participation in water rights and water quality processes, education and organization of the fishing  
24 community, restoration efforts, and vigorous enforcement of environmental laws enacted to protect  
25 fisheries, habitat and water quality. Members of CSPA use and enjoy California's numerous rivers,  
26 creeks and waterways, including the San Joaquin River and the Delta, for recreational and scientific  
27

1 activities such as viewing and enjoying wildlife, boating, paddle boarding, fishing, birdwatching,  
2 engaging in scientific study to expand their understanding of various species and habitat health. CSPA's  
3 members derive significant and ongoing use and enjoyment from the aesthetic, recreational, and  
4 conservation benefits of the San Joaquin River watershed.

5 13. CSPA has approximately 2,000 members who live, recreate and work in and around  
6 waters of the State of California, including eastern Contra Costa county and the San Joaquin River  
7 watershed. CSPA is dedicated to the preservation, protection, and defense of the environment, and the  
8 wildlife and the natural resources of all waters of California. To further these goals, CSPA actively seeks  
9 federal and state agency implementation of the Clean Water Act and other laws and, where necessary,  
10 directly initiates citizen enforcement. As referenced in above, members of CSPA use and enjoy the  
11 Receiving Waters herein into which Defendant have caused, are causing, and will continue to cause,  
12 pollutants to be discharged. Defendant's discharges of pollutants threaten or impair each of those uses or  
13 contribute to such threats and impairments. Thus, the interests of CSPA's members have been, are  
14 being, and will continue to be adversely affected by Defendant's ongoing failure to comply with the  
15 Clean Water Act and/or the Storm Water Permit. The relief sought herein will redress the harms to  
16 Plaintiff caused by Defendant's activities.

17 14. Defendant's failure to comply with the procedural and substantive requirements of the  
18 Storm Water Permit and/or the Clean Water Act, including but not limited to Defendant's discharge of  
19 polluted stormwater and non-stormwater from the Foundation Facility, negatively impacts and impairs  
20 CSPA's members' use and enjoyment of these waters.

21 15. Continuing commission of the acts and omissions alleged herein will irreparably harm  
22 CSPA's members, for which harm they have no plain, speedy, or adequate remedy at law.

23 **B. The Owners and/or Operators of the Foundation Facility**

24 16. CSPA is informed and believes, and thereon alleges, that Foundation Company is  
25 headquartered at 81 Big Break Road, Oakley, California.

26 17. CSPA is informed and believes, and thereon alleges, that Defendant is the owner of the  
27 Foundation Constructors, Inc.

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