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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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**Re: Notice of Violation and Intent To Seek a Peremptory Writ of Mandate
Ordering Siskiyou County to Immediately Act to Comply With Its Mandatory Duties
Under Porter-Cologne Act Section 13260**

To the above-listed notice recipients:

Klamath Riverkeeper ("KRK") hereby provides notice of KRK's intent to seek a peremptory writ of mandate for the County's violation of its mandatory duties under the Porter Cologne Act.

I. ORGANIZATION GIVING NOTICE OF PORTER COLOGNE ACT VIOLATION

KRK is a non-profit organization with over 3,500 supporters and 300 members. We use grassroots, regulatory, legal and scientific tools to restore water quality and fisheries in our watershed, bringing vitality and abundance back to the river and its people.

KRK's contact information is as follows:

Klamath Riverkeeper
Attn: Erica Terence, Riverkeeper
P. O. Box 751
Somes Bar, CA 95568
Telephone/Fax: (530)627-3311

KRK's members depend on a healthy Klamath River watershed for a wide variety of activities such as commercial, recreational and subsistence fishing, swimming, boating, and religious purposes, including prayer. Probable groundwater contamination from the Siskiyou Airport septage pond threatens the quality of nearby water sources, including the nearby Oregon Slough and the Shasta River, that eventually drain to the Klamath River, thereby threatening our members use and enjoyment of the river and thus the quality of life for our members. Probable groundwater contamination also threatens drinking water supplies for residents of the Shasta River Watershed via private wells or spring flows.

II. THE ENTITIES RESPONSIBLE FOR THE ILLEGAL SEPTAGE POND

Siskiyou County owns and operates the open-air septage pond adjacent to Siskiyou County Airport. The private company Siskiyou Sanitary Service has sometimes performed maintenance services on the pond, according to County records. Siskiyou County was incorporated in 1852. Siskiyou County General Services, the county division now charged with oversight of the septage pond, has an office at 1312 Fairlane Rd. in Yreka, California. Siskiyou County Public Health Department, the county division that tracks gallons dumped in the pond, collects septage dumping fees and conducts site inspections, has an office at 806 S. Main St. in Yreka, California.

III. BACKGROUND ON THE ILLEGAL SEPTAGE POND

Despite later permitting requirements in the Porter Cologne Water Quality Control Act, no permit was ever or has yet been obtained to operate the pond, which now accepts more than a million gallons of off-site waste disposal per year, possibly including hazardous materials such as leachate from a nearby landfill.

The Siskiyou Airport was built for use by the United States Air Force, but was turned over to Siskiyou County in 1972. A letter from the airport coordinator to the Yreka dump, dated October 3, 1972, indicates that the septage pond there was intended at that time as a temporary solution only. In the spring of 1979, the North Coast Regional Water Quality Control Board corresponded with Siskiyou County to waive California Environmental Quality Act requirements and grant approval of the septage pond. Oddly, records indicate that the Water Board approved the pond a month before exempting the pond from Porter Cologne waste-discharge reporting requirements and CEQA review.

An undated Siskiyou Airport Infrastructure Improvement Plan ("Plan") on file at County offices describes the pond's physical characteristics. The "shallow" pond covers about 2 acres on the southwest corner of the Siskiyou County Airport property, surrounded by low berms.

Page 2 of the Plan explains that trucks back down a ramp to discharge waste into the pond. While liquids discharged into the pond evaporate during the summer months, "It is suspected that liquids also percolate from the bottom of the pond, although that has not been investigated, monitored or measured. The pond collects rainwater during the winter, but winter storage volume has not been a problem," according to the Plan at page 2.

IV. GROUNDWATER CONTAMINATION RISKS OF THE ILLEGAL SEPTAGE POND

"The pond may be lined, but it appears that the drains are open. Groundwater is known to be very shallow in the area, and groundwater monitoring is not performed," page 2 of the Plan describes. A single, loose page in the Siskiyou County Public Health file, labeled 1987 Environmental Impact Report/ Environmental Assessment on the Siskiyou County Airport, describes a high water table.

USGS groundwater information indicates the Shasta River watershed is largely composed of highly permeable quarternary volcanoclastic material (avalanche deposits filled with air pockets).

The Plan also provides that wastes in the pond have never been dredged or removed. Because more than a million gallons of sludge are added to the pond each year, and none of it is being hauled away and none of it overflows, it is highly probable that wastes are contaminating nearby groundwater supplies. Since no NPDES permit or WDR requires monitoring, the impacts and extent of impacts to groundwater is unknown.

V. ILLEGAL DUMPING IN THE ILLEGAL SEPTAGE POND

The pond is gated and locked, but unfenced and unattended. While 1999 county record suggests that pond security has been adequate, inspection reports document security violations on a near-monthly basis in recent years. In addition, in 1999, Siskiyou County solid waste manager Roger Cummins documented an incident witnessed by a road crew foreman where an unidentified orange truck spilled septage at the pond, then left without reporting it or cleaning it up. Another county record indicates that hundreds of thousands of gallons of waste dumped at the pond probably went unreported in 2006.

The Plan reports that local septage haulers are given a key to the lock on the "honor system." This enables dumpers to dispose of waste there without paying fees, accounting for the waste, or following best management practices or safety procedures. An e-mail from airport investor Dean Gradwell in February of 2006, on file at the County Public Works Department, complains of "unsafe and I'm sure illegal dumping still going on." According to Mr. Gradwell's complaint, "Every day that I'm there, I see several trucks backing up and unloading. I have been there at night and have witnessed large (18 wheeler) trucks unloading perhaps thousands of gallons." Mr. Gradwell's e-mail urges immediate closure of the pond, and expresses frustration that "someone at the County doesn't seem to get it."

VI. FEES COLLECTED TO CLOSE THE POND

An ordinance passed by the Siskiyou County supervisors in June of 1996 instituted a dumping fee of \$.05/gallon. Previously, septage hauling trucks were charged \$7.50 per load, with a several-year lapse in fee collection in the 1980s exposed by a grand jury investigation in 1992. Fees collected accrue in an account dedicated to implementing an alternative to the current septage infrastructure, infrastructure that the county admits poses a "seepage concern." According to a note filed following a county meeting in response to a letter from the Regional Water Quality Control Board, in 2003, the account contained \$173,548.00. That note also reports that an average of \$24,700.00 is added to the account each year from fees collected. An engineering firm contracted by the county estimates that simply closing the pond would cost about \$51,000.

Investigations on alternative solutions have been ongoing since at least 1995, when the County concluded that a Cease and Desist Order issued to the neighboring Butte Valley septage facility would increase the need for waste capacity elsewhere in the county. Septage facilities near Happy Camp, Dorris and Tule Lake were also shut down, again narrowing the list of options, and increasing the volume of septage sent to the Siskiyou Airport pond significantly.

IV. WARNINGS AND COMPLAINTS

In a letter to Siskiyou County dated October 7, 2003, the North Coast Regional Board reported random samples showing that the Dorris septage pond had Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and heavy metals concentrations outside acceptable levels set in environmental guidelines and minimum standards, and ordered Dorris to cease accepting and disposing of septage in their facility.¹ Lower levels of volatile organic compounds were also

¹ Dorris now sends its septage to the Siskiyou County Airport pond.
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detected there, the letter said. The letter also noted that other septage disposal facilities in Siskiyou County are similarly problematic, and notified the county of the water board's intent to develop waste discharge requirements (WDRs) for the Siskiyou County Airport septage pit in Montague. The letter encouraged Siskiyou County to develop a long-term, county-wide septage management plan, and asked the County to come up with tasks/milestones and target dates for such a plan.

More recently, in a letter to Siskiyou County dated October 30, 2008, the North Coast Regional Board warned that "continued use of this uncontrolled, poorly designed facility adjacent to the Siskiyou County Airport near Montague presents a huge liability to the County in the event that groundwater contamination occurs." As such, the letter said, the County should cease accepting septage at the airport pond and develop a plan for closing the pond "in a way that protects groundwater into the future."

In light of investigations showing that the most feasible alternative is to transfer the septage to the Lake Shastina wastewater treatment facility after that facility undergoes a yet-unfinished upgrade, the Siskiyou County Board of Supervisors elected to close the airport septage pond in July, 2009.

Shortly after the county received the water board's October 30, 2008 letter, in a letter dated November 20, 2008, Airport Advisory Committee Chairman Vernon Fueston voiced growing concern over the septage pit as a potential breeding ground for disease vectors such as mosquitoes and a high risk of groundwater contamination.

"Everything pumped from septic tanks in the county is being pumped into this pond. In addition, other materials including bio waste, hazardous chemicals, etc. are being dumped into this pond. To the committees knowledge there has not been any groundwater testing ever performed, so we have no idea of the hazards," Fueston's letter stated.

In that letter, Fueston also recommended to the county that it stop accepting waste there and close the pond.

IV. PORTER-COLOGNE ACT VIOLATIONS

California's Porter-Cologne Water Quality Control Act § 13260 provides that " Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.... shall file with the appropriate regional board a report of waste discharge..." Dumping and/or allowing the dumping of an estimated 1.5 million gallons of septic and other waste each year into an open pit dangerously close to the water table constitutes a discharge of waste into a region that could affect quality waters of the state. Accordingly, the County, as owner and operator of the septage pond has a mandatory duty to immediately file a report of waste discharge for the septage pond. However, County records indicate that the County has never filed a report of waste discharge for the Siskiyou septage pond. Failure to file a report of waste discharge and obtain a WDR constitutes a failure by the County to act as required by the Porter Cologne Water Quality Control Act.

V. CONCLUSION

KRK recognizes that Siskiyou County's board of supervisors decided July 14, 2009 to close the pond and transfer wastes contained therein to the Lake Shastina waste treatment plant. However, that facility is currently undergoing an upgrade and cannot presently accept the wastes from the septage pond. Thus the County is required to file a report of waste discharge pursuant to section 13260. Moreover, even after the septage pond is no longer accepting waste, it still constitutes a discharge of waste that must be permitted under waste discharge requirements until final cleanup and closure has been completed. Accordingly, KRK demands that the County immediately comply with its mandatory duties under section 13260 and submit a report of waste discharge to the Regional Board. KRK also requests that the County take all necessary steps to ensure that the illegal and potentially unsafe problem is dealt with in a timely and responsible manner.

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

Daniel Cooper
Lawyers for Clean Water, Inc.
1004-A O'Reilly Avenue
San Francisco, CA 94129
Telephone: (415) 440-6520
Email: cleanwater@sfo.com

If you intend to fully comply with all duties set forth in this letter by November 14, 2009, please contact Riverkeeper's legal counsel immediately. Likewise, if you disagree with any of the allegations in this letter, we request that you contact Riverkeeper's legal counsel immediately to discuss the matter.

Sincerely,



Erica Terence, Riverkeeper
Klamath Riverkeeper