



# COSTA MESA SANITARY DISTRICT

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**FOR IMMEDIATE RELEASE**  
February 17, 2021

**CONTACT:** Noelani Middenway,  
District Clerk & Public Information Officer  
**TELEPHONE:** (949) 645-8400 ext. 227  
**EMAIL:** nmiddenway@cmsdca.gov

## **COSTA MESA SANITARY DISTRICT SUCCESSFULLY DEFENDS CLEAN WATER ACT LAWSUIT**

**(Costa Mesa – CA)** Costa Mesa Sanitary District (CMSD) Board of Directors announced today that it has successfully defended itself in a federal lawsuit filed by a group that accused CMSD of violating the Clean Water Act.

On May 11, 2020, California River Watch (CRW), a non-profit organization located in Sebastopol, California, served CMSD with a 60-day Notice of Violations and Intent to File lawsuit, alleging violations of the Clean Water Act. CRW asserted that CMSD’s sewer system was leaking and causing environmental harm to the Fairview and Greenville Banning Channels in Costa Mesa. CMSD staff responded to the suit and cooperated with CRW’s attorneys by producing a variety of requested documents related to the operation and maintenance of the sewer system. CRW offered to settle the case for \$45,000, with \$20,000 going to local environmental group, Heal the Bay, and \$25,000 going to the CRW’s attorneys.

On August 24, 2020, the CMSD Board of Directors rejected CRW’s settlement offer because the allegations contained inaccurate data and lacked evidence of CMSD’s sewer system causing environmental damage to the channels. On September 25, 2020, CRW filed a federal lawsuit against CMSD, claiming that the agency violated the Clean Water Act. CRW also sought to obtain an injunction for a judge to monitor CMSD operations.

“Filing federal lawsuits is a common practice for CRW. They have filed nearly 100 lawsuits, Notices of Violations and reached settlements against many different California public agencies for alleged violations of the Clean Water Act,” CMSD President Bob Ooten said. “Most public agencies pay settlements in order to avoid lengthy and costly legal battles to defend themselves.”

Ooten stated that only one other public agency besides CMSD has successfully convinced CRW to drop litigation, Eastern Municipal Water District in 2016. “The District will own up to its mistakes if it’s warranted, but we will not give in to frivolous lawsuits as an attempt to unjustly take money from our ratepayers by trying to compel us into a quick settlement,” President Ooten said. “Our management and Board are committed to fighting on behalf of our ratepayers based on sound

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*“Protecting public health and the environment for current and future generations.”*

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principle. We are extremely pleased that we prevailed.”

Clean Water Act cases are historically settled without regard to their merits for several reasons. The fee-shifting provision in the statute has been interpreted by the courts to unilaterally favor prevailing plaintiffs. The Clean Water Act is a strict liability statute (no fault is needed to determine liability) and even hyper-technical paperwork violations are enough to establish liability.

CMSD successfully defend itself by providing extensive documentation that discredited CRW’s claims, which alleged that CMSD’s sewer system was leaking and harming the environment.

“Our mission is to protect the public health and the environment for current and future generations, and we take our mission very seriously,” said CMSD General Manager Scott Carroll. “We spent more than \$7 million in the last five years and plan on spending another \$5 million in the next five years on capital improvements. In addition, we cleaned the entire system, over 224 miles of pipeline, in just 18 months and we implemented a very successful preventive maintenance program for all twenty sewer-lift stations to ensure they are running at optimum levels and preventing any costly unplanned downtime from unexpected equipment failure.” CMSD continues to evaluate ways to improve the overall sewer system, most notably via the use of artificial intelligence technology to detect dilapidated manhole covers and street surfaces.

The Clean Water Act provides a Citizen’s Suit provision that allows for individuals or organizations to file lawsuits alleging damages if an agency’s actions result in any harm to the environment or waterways. CMSD’s Board believed it was important to show that CRW’s allegations were baseless.

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**About CMSD:** Formed in 1944, CMSD is an independent special district that provides solid waste and wastewater collection services to a population of approximately 116,700 in Costa Mesa, Newport Beach, and unincorporated Orange County. For more information and the latest CMSD news, visit [www.cmsdca.gov](http://www.cmsdca.gov) and follow CMSD on [Facebook](#), [Twitter](#), and [Instagram](#). To get in touch with CMSD staff, email [info@cmsdca.gov](mailto:info@cmsdca.gov) or call (949) 645- 8400.