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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER WATCH, a non-profit Corporation,

Plaintiff,

v.

CITY OF FORTUNA,

Defendant.

CASE NO. C00-3318 CAL

CONSENT DECREE

WHEREAS:

1. Plaintiff NORTHERN CALIFORNIA RIVER WATCH ("River Watch") is a 501(c)(3) non-profit public benefit corporation that is dedicated to protecting, enhancing and restoring the rivers, creeks and tributaries of Northern California.
2. Defendant CITY OF FORTUNA ("City") is a charter city and municipal corporation organized and existing under California law, located in Humboldt County, California. The City owns and operates a sewage collection system and wastewater treatment plant.
3. The City has the authority to discharge effluent from its wastewater treatment plant into the Eel River pursuant to and subject to the terms and conditions of National Pollution Discharge Elimination System (NPDES) permits issued by the California Regional Water Quality Control Board for the North Coast Region ("Regional Board"), pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. and Waste Discharge Requirements ("WDR's") issued by the Regional Board pursuant to the California Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq. ("Porter Cologne Act").
4. The City is presently subject to an NPDES permit and WDR's which is Order No. R1-2001-41 issued by the Regional Board on April 26, 2001. Said order

replaced the prior NPDES permit and WDR's which was Order No. 94-24, previously issued by the Regional Board.

5. On or about June 30, 2000, River Watch caused to be served on the City a Notice of Intent to Sue ("Notice of Intent") under Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b). Said Notice of Intent cited numerous alleged violations of the City's NPDES permit over the preceding five (5) years.

6. Thereafter on September 13, 2000, River Watch commenced this citizen's suit pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1265(a) by the filing of its Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation ("Complaint").

7. The Regional Board has advised the City that it intends to impose administrative civil liability penalties against the City pursuant to Water Code Section 13385 for some of the same permit violations alleged by River Watch in this lawsuit.

8. The City has a program of public works projects to improve its sewer collection system and wastewater treatment plant and has prepared a 5-year budget for Capital Improvement Projects to further improve its facilities, and the successful implementation of such projects will require that the budget not be adversely affected by litigation costs, fees and facilities while the projects are completed.

9. River Watch and the City desire to compromise and settle all claims over violations of the Clean Water Act or state law which are or could have been the subject of the Notice of Intent or this lawsuit and to provide for the orderly implementation of the City's Capital Improvement Projects, on the terms and conditions hereinafter set forth.

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. This Consent Decree and the agreements, releases, covenants and undertakings set forth herein shall take effect when signed by the Court and filed in this lawsuit. The date of filing of a signed original of this Consent Decree in this lawsuit shall be deemed the effective date hereof.

2. In consideration of the releases and covenants set forth hereinbelow, the City shall pay, \$75,000 less offsets as defined below, in settlement of River Watch's claims. The City's payment shall be made in annual installments of \$15,000 per year, provided that if the Regional Board assesses discretionary administrative civil liability penalties against the City for violations of the Porter Cologne Act which occurred prior to January 1, 2000, and the City is required to and does in fact pay those penalties, the City may, at any time prior to the due date of the third annual payment, elect to set off the amount of such discretionary penalties against any further annual payments. If the City elects to set off such discretionary penalties, the maximum amount of such set off shall not exceed \$45,000 (or \$75,000 less \$30,000). Annual payments shall be made commencing thirty (30) days after the effective date of the Consent Decree, and shall thereafter be made on or before the successive anniversaries of such payment date.

3. All payments under Paragraph 2 hereinabove shall be made to the Communities for Clean Water Institute ("CCWI"), P.O. Box 1005, Occidental, California 95465, a non-profit corporation duly organized and existing under California law. Such payments will be deemed paid upon receipt by the CCWI. On behalf of the CCWI, River Watch covenants and agrees that all monies paid to the CCWI shall not be used in any fashion to support litigation. The CCWI shall use the monies to redress the underlying harm allegedly caused by the City's alleged violations by identifying pollution sources through research, education and testing programs. As the City discharges to the Eel River, these programs shall be directed toward the Eel River Watershed. If such monies are used contrary to the terms of this Consent Decree, the City

may move the Court pursuant to this Consent Decree for an order directing the recovery of all such monies paid. In consideration of the City's agreement as set forth in Paragraph 2 hereinabove, River Watch hereby, with effect as of the effective date of this Consent Decree, on behalf of itself, its attorneys, members, successors and assigns, releases, acquits, and forever discharges the City, its City Council and all employees thereof, from all claims, rights, liabilities and causes of action arising from or connected with the events referred to, or which could have been referred to, in River Watch's Notice of Intent or the Complaint in this lawsuit, including without limitation, all claims for violations of the Clean Water Act or the Porter Cologne Act, or any other federal or state law, which occurred at any time up to and including the effective date of this Consent Decree.

4. The releases set forth in this Consent Decree are not conditioned upon timely compliance by the City with the payment and other obligations of this Consent Decree, and River Watch agrees that its exclusive remedies for a breach of this Consent Decree by the City shall be to move the Court for specific performance, contempt and any other remedies available under law. The releases set forth in this Consent Decree extend to unknown as well as known claims. River Watch hereby waives the benefits of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected the settlement with debtor.

5. In further consideration of the City's agreement to pay the sums set forth in Paragraph 2 hereinabove, River Watch, for itself, its attorneys, members, successors and assigns, covenants and agrees not to sue or take any other steps to enforce any claims, rights, liabilities, or causes of action released hereby. In further consideration of the City's agreement to pay the sums set forth in Paragraph 2 hereinabove, River Watch, for itself and its attorneys, members, successors and assigns, agrees and covenants that it will not file any lawsuits for any violations of the Clean Water Act or Porter Cologne Act committed by the City during the five (5) year period from the effective date of this Consent Decree, and that River Watch's sole remedy against the City during this period shall be to enforce this Consent Decree by motion for court order. River Watch further covenants and agrees that, at least sixty (60) days before filing any such motion with the Court, it shall notify the City in writing of what actions or inactions by the City it deems to be in violation of this Consent Decree. Thereafter, the parties will meet and confer in a good faith attempt to resolve their disputes hereunder. If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the case under the ADR Rules of the Northern District of California prior to the filing of any motion to enforce this Consent Decree. The auspices of the ADR office of this Court may be used to effectuate such mediation.

6. The City further covenants and agrees that, for a period of five (5) years from the effective date of this Consent Decree, it will exercise its best efforts to commence and complete the Capital Improvement Projects listed in Exhibit A hereto to improve its sewer collection system and wastewater treatment plant in accordance with the schedule set forth therein. The City further agrees and stipulates that the Court may enter this Consent Decree as an injunction directing the City to exercise such best efforts to commence and complete such projects, and the Court may retain jurisdiction thereafter to enforce this Consent Decree. For purposes of this Consent Decree, the City shall not be deemed to have violated this Paragraph 7 to the extent that compliance has been prevented by Acts of God (including, without limitation, floods and storms), plant upsets justifying permit violations under the Clean

Water Act or Porter Cologne Act, actions of the Federal or State Government (including without limitation, the U.S. Environmental Protection Agency, the Regional Board or any state or federal court), delays by contractors, subcontractors and suppliers, provided that such delays are not caused by the City, or lack of available City monies to design or construct such Capital Improvement Projects in accordance with Exhibit A.

7. This Consent Decree may be pleaded as a full and complete defense to, and may be used as the basis for any injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Consent Decree, whether by the parties hereto, any of River Watch's attorneys, members, successors or assigns, or any third party seeking to assert rights held by the public or any member thereof, whether under the doctrines of res judicata, collateral estoppel, breach of contract or any other law applicable to consent decrees. River Watch and its attorneys covenant and agree not to cause any third party to commence a citizen's suit under the Clean Water Act for any permit violations which occurred prior to the effective of the Consent Decree or at any time while this Court retains jurisdiction to enforce this Consent Decree. River Watch and its attorneys further covenant and agree that if such a third party citizen's suit is commenced, they will supply the City with declarations attesting to the adequacy of their representation of the public interest herein, in support of any motion by the City based on the pendency of this Consent Decree, to dismiss such third-party suit or compel the plaintiffs therein to intervene in this action.

8. The City further undertakes and agrees that it will pay attorneys fees for River Watch's counsel of record in this matter. The total in attorneys fees payable hereunder shall be \$100,000, payable in two equal installments of \$50,000 each, the first of which shall be due and payable thirty (30) days after the effective date of this Consent Decree, and the second of which shall be due and payable six (6) months after the first installment is due and payable.

9. All communications between River Watch and Defendant shall be made as follows:

a. To Defendant: Dale W. Neiman
City Manager
City of Fortuna
621 11th Street
P.O. Box 545
Fortuna, CA 95540

b. To River Watch: Jack Silver, Esq.
Northern California Environmental
Defense Center
2312 Bethards Drive, Suite 5
Santa Rosa, CA 95405

10. This Consent Decree and its terms shall inure to the benefit of and be binding upon each of the parties and each and all of their respective predecessors, successors, assignees, buyers, grantees, vendees or transferees and their past or present, direct or indirect, partners, parents, subsidiaries or divisions as though they were parties to this action.

11. Each of the parties have been fully advised by their attorney as to this Consent Decree and all provisions contained within it, or have decided voluntarily to forego such advice with the full understanding of the repercussions of so doing, and acknowledge signing this Consent Decree based solely upon the written representations contained in this Consent Decree and

not based on any inducement, promise or representation not expressly stated in this Consent Decree. Additionally, each of the parties acknowledges, in signing this Consent Decree, that constitutes the full, complete, and entirety of the terms and conditions agreed to by them in settling the dispute between them.

12. The prevailing party in any action brought to enforce the terms of this Consent Decree shall recover all costs and expenses incurred in such action, including reasonable attorneys fees. The City covenants and agrees that, before commencing any action or motion to enforce the terms of this Consent Decree, it will provide River Watch with the same 60-day notice, meet and confer procedure and mediation rights as are set forth in Paragraph 6 above.

13. This Consent Decree is made and entered into under the laws of the State of California and the United States and shall be interpreted, governed and enforced under any pursuant to these laws.

14. Should any provision of this Consent Decree be held invalid or illegal, such illegality shall not invalidate the remainder of this Consent Decree. In that event, this Consent Decree shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

15. The parties have mutually negotiated this Consent Decree and the doctrine of contra proferentum does not apply.

16. Each signatory of this Consent Decree signing on behalf of another, warrants that he or she has the authority to sign on behalf of said person or entity and all persons covered by this Consent Decree. This Consent Decree may be executed in counterparts with each counterpart being interpreted as an original.

17. Each party consents to the entry of this Consent Decree and Order subject to the provisions of Clean Water Act § 505(c)(3) that "[n]o consent judgment shall be entered in a action in which the United States is not a party, prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator [of the USEPA]." 33 U.S.C. § 1365(c)(3).

18. Pursuant to California SB1269 a copy of this Consent Decree shall be delivered to the California Attorney General's office who will then make the Consent Decree publicly available.

19. On _____, the City sent this proposed Consent Decree, signed by each of the parties, by mail, to the U.S. Environmental Protection Agency and the U.S. Department of Justice. Upon written notification that those agencies' reviews have concluded, or the expiration of the 45 day period, whichever is the earlier, the City will request that the Court enter this Consent Decree.

20. This Court shall retain jurisdiction from the date of entry of this Consent Decree for a period of five years thereafter. In addition, following the termination of such period, this Court shall retain jurisdiction for the purposes of disposing of any motion to enforce this Consent Decree, or of any contempt petition, filed on or before the expiration of five years after the entry of this Consent Decree by the Court.

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and Waste Discharge Requirements ("WDR's") issued by the Regional Board pursuant to the California Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq. ("Porter Cologne Act").

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limitation, all claims for violations of the Clean Water Act or the Porter Cologne Act, or any other federal or state law, which occurred at any time up to and including the effective date of this Consent Decree.

4. The releases set forth in this Consent Decree are not conditioned upon timely compliance by the City with the payment and other obligations of this Consent Decree, and River Watch agrees that its exclusive remedies for a breach of this Consent Decree by the City shall be to move the Court for specific performance, contempt and any other remedies available under law. The releases set forth in this Consent Decree extend to unknown as well as known claims. River Watch hereby waives the benefits of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected the settlement with debtor.

5. In further consideration of the City's agreement to pay the sums set forth in Paragraph 2 hereinabove, River Watch, for itself, its attorneys, members, successors and assigns, covenants and agrees not to sue or take any other steps to enforce any claims, rights, liabilities, or causes of action released hereby. In further consideration of the City's agreement to pay the sums set forth in Paragraph 2 hereinabove, River Watch, for itself and its attorneys, members, successors and assigns, agrees and covenants that it will not file any lawsuits for any violations of the Clean Water Act or Porter Cologne Act committed by the City during the five (5) year period from the effective date of this Consent Decree, and that River Watch's sole remedy against the City during this period shall be to enforce this Consent Decree by motion for court order. River Watch further covenants and agrees that, at least sixty (60) days before filing any such motion with the Court, it shall notify the City in writing of what actions or inactions by the City it deems to be in violation of this Consent Decree.

Thereafter, the parties will meet and confer in a good faith attempt to resolve their disputes hereunder. If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the case under the ADR Rules of the Northern District of California prior to the filing of any motion to enforce this Consent

Decree. The auspices of the ADR office of this Court may be used to effectuate such mediation.

6. The City further covenants and agrees that, for a period of five (5) years from the effective date of this Consent Decree, it will exercise its best efforts to commence and complete the Capital Improvement Projects listed in Exhibit A hereto to improve its sewer collection system and wastewater treatment plant in accordance with the schedule set forth therein. The City further agrees and stipulates that the Court may enter this Consent Decree as an injunction directing the City to exercise such best efforts to commence and complete such projects, and the Court may retain jurisdiction thereafter to enforce this Consent Decree. For purposes of this Consent Decree, the City shall not be deemed to have violated this Paragraph 7 to the extent that compliance has been prevented by Acts of God (including, without limitation, floods and storms), plant upsets justifying permit violations under the Clean Water Act or Porter Cologne Act, actions of the Federal or State Government (including without limitation, the U.S. Environmental Protection Agency, the Regional Board or any state or federal court), delays by contractors, subcontractors and suppliers, provided that such delays are not caused by the City, or lack of available City monies to design or construct such Capital Improvement Projects in accordance with Exhibit A.

7. This Consent Decree may be pleaded as a full and complete defense to, and may be used as the basis for any injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Consent Decree, whether by the parties hereto, any of River Watch's attorneys, members, successors or assigns, or any third party seeking to assert rights held by the public or any member thereof, whether under the doctrines of res judicata, collateral estoppel, breach of contract or any other law applicable to consent decrees. River Watch and its attorneys covenant and agree not to cause any third party to commence a citizen's suit under the Clean Water Act for any permit violations which occurred prior to the effective of the Consent Decree or at any time while this Court retains jurisdiction to enforce this Consent Decree. River Watch and its attorneys further covenant and agree that if such a third party citizen's suit is commenced, they will supply the City with declarations attesting to the adequacy of their

representation of the public interest herein, in support of any motion by the City based on the pendency of this Consent Decree, to dismiss such third-party suit or compel the plaintiffs therein to intervene in this action.

8. The City further undertakes and agrees that it will pay attorneys fees for River Watch's counsel of record in this matter. The total in attorneys fees payable hereunder shall be \$100,000, payable in two equal installments of \$50,000 each, the first of which shall be due and payable thirty (30) days after the effective date of this Consent Decree, and the second of which shall be due and payable six (6) months after the first installment is due and payable.

9. All communications between River Watch and Defendant shall be made as follows:

a. To Defendant: Dale W. Neiman
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b. To River Watch: Jack Silver, Esq.
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2312 Bethards Drive, Suite 5
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10. This Consent Decree and its terms shall inure to the benefit of and be binding upon each of the parties and each and all of their respective predecessors, successors, assignees, buyers, grantees, vendees or transferees and their past or present, direct or indirect, partners, parents, subsidiaries or divisions as though they were parties to this action.

11. Each of the parties have been fully advised by their attorney as to this Consent Decree and all provisions contained within it, or have decided voluntarily to forego such advice with the full understanding of the repercussions of so doing, and acknowledge signing this Consent Decree based solely upon the written representations contained in this Consent Decree and not based on any inducement, promise or representation not expressly stated in this Consent Decree. Additionally, each of the parties acknowledges, in signing this Consent Decree, that constitutes the full, complete, and entirety of the terms and

conditions agreed to by them
in settling the dispute between them.

12. The prevailing party in any action brought to enforce the terms of this Consent Decree shall recover all costs and expenses incurred in such action, including reasonable attorneys fees. The City covenants and agrees that, before commencing any action or motion to enforce the terms of this Consent Decree, it will provide River Watch with the same 60-day notice, meet and confer procedure and mediation rights as are set forth in Paragraph 6 above.

13. This Consent Decree is made and entered into under the laws of the State of California and the United States and shall be interpreted, governed and enforced under any pursuant to these laws.

14. Should any provision of this Consent Decree be held invalid or illegal, such illegality shall not invalidate the remainder of this Consent Decree. In that event, this Consent Decree shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

15. The parties have mutually negotiated this Consent Decree and the doctrine of contra proferentum does not apply.

16. Each signatory of this Consent Decree signing on behalf of another, warrants that he or she has the authority to sign on behalf of said person or entity and all persons covered by this Consent Decree. This Consent Decree may be executed in counterparts with each counterpart being interpreted as an original.

17. Each party consents to the entry of this Consent Decree and Order subject to the provisions of Clean Water Act 505(c)(3) that "[n]o consent judgment shall be entered in a action in which the United States is not a party, prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator [of the USEPA]." 33 U.S.C. 1365(c)(3).

18. Pursuant to California SB1269 a copy of this Consent Decree shall be delivered to the California Attorney General's office who will then make the Consent Decree publicly available.

19. On _____, the City sent this proposed Consent Decree, signed by each of the parties, by mail, to the U.S. Environmental Protection Agency and the U.S. Department of Justice. Upon written notification that those agencies' reviews have concluded, or the expiration of the 45 day period,

whichever is the earlier, the City will request that the Court enter this Consent Decree.

20. This Court shall retain jurisdiction from the date of entry of this Consent Decree for a period of five years thereafter. In addition, following the termination of such period, this Court shall retain jurisdiction for the purposes of disposing of any motion to enforce this Consent Decree, or of any contempt petition, filed on or before the expiration of five years after the entry of this Consent Decree by the Court.