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NORTHERN CALIFORNIA RIVER WATCH

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Attorney for Defendants
SONOMA COUNTY WATER AGENCY, ET AL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA
RIVER WATCH,

Plaintiff,

v.

SONOMA COUNTY WATER
AGENCY, SONOMA VALLEY
COUNTY SANITATION DISTRICT,
COUNTY OF SONOMA, and
DOES 1 - 10, INCLUSIVE,

Defendants.

CASE NO: C 97-4263 CRB

CONSENT DECREE

WHEREAS Plaintiff Northern California River Watch ("River Watch") is a 501(c)(3) non-profit public benefit corporation that is dedicated to protecting, enhancing, and helping to restore the rivers, creeks, and tributaries of Northern California; and,

WHEREAS Defendant County of Sonoma ("County") is a County located in the State of California which is governed by a board of supervisors; and,

WHEREAS Defendant Sonoma Valley County Sanitation District ("District") owns the municipal wastewater treatment plan ("Plant") located at 22675 Eighth Street in Sonoma, Sonoma County, California; and,

WHEREAS Defendant Sonoma County Water Agency ("Agency") operates the Plant, is an agency of the County, and the County's board of supervisors comprises the Agency's board of directors; and,

WHEREAS on September 16, 1997, after numerous member complaints and an extensive investigation, River Watch gave 60 days advanced notice of its intent to sue named Defendants for violations of the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq ("Notice"). In its Notice River Watch alleged numerous violations of the National Pollutant Discharge Elimination System ("NPDES") permit issued to the County for the District's publicly owned treatment works ("POTW"); and,

WHEREAS on November 14, 1997, the Regional Quality Control Board for the San Francisco Bay Region ("RWQCB"), initiated an administrative action by issuing an Administrative Civil Liability ("ACL") complaint alleging 383 separate violations of the applicable NPDES permit. The ACL covered all violations from July 1995 through July of 1997. The ACL resulted in the payment of \$8,000.00 in administrative costs to the RWQCB, \$15,000.00 to Fish and Game and a commitment by the County to build a fish ladder estimated to cost approximately \$60,000.00; and,

WHEREAS on November 24, 1997, River Watch filed the Complaint in this case seeking declaratory and injunctive relief, civil penalties, fees and costs; and,

WHEREAS on April 10, 1998, the Court heard Defendants' 12(b)(6) motion to dismiss River Watch's Complaint and granted said motion as to penalties and denied the motion as to injunctive and declarative relief; and,

WHEREAS on July 9, 1998, River Watch filed a Second Amended Complaint which complied with the Court's ruling of April 20, 1998. As part of that Amended Complaint River Watch sought penalties for all Permit violations occurring after July of 1997 up to the day of trial; and,

WHEREAS on December 4, 1998, the Court heard Defendants' second 12(b)(6) motion to dismiss as to penalties on River Watch's Amended Complaint. In a published decision the Court denied said motion and determined that River Watch was free to seek penalties for all violations of Defendants' Permit occurring after July of 1997; and,

WHEREAS on December 31, 1998, River Watch filed a Motion for Partial Summary Judgment as to liability. On May 5, 1999, the Court granted River Watch's Summary Judgment Motion with respect to Defendants' alleged violations of the Permit's effluent limitations to the extent that those violations are explicitly indicated in the self monitoring reports including all copper violations. The Court also granted summary judgment with respect to the alleged violations of the Permit's monitoring and reporting requirements with the exception of Defendants' failure to increase testing for certain constituents after a violation; and,

WHEREAS the parties desire to resolve their differences and attended a mediation session on Wednesday, July 28, 1999 in an attempt to resolve their differences relating to the Plant; and,

WHEREAS the District has taken and will take the following steps to resolve the violations complained of by the RWQCB and River Watch:

- Will implement a sewer line replacement program designed to decrease problems created by wet weather, with a budgeted expenditure of \$2.2 million in the 1999-2000 fiscal year alone;
- Will upgrade its enforcement program in order to minimize the amount of grease and other undesirable substances that are dumped into the District's collection system;
- Will treat grease and oil accumulations in the collection system with a bacterial additive, which has reduced stoppages and overflows in the past two years;
- Will negotiate a contract to evaluate the collection system by identifying and prioritizing upgrade projects necessary to bring portions of the collection system into compliance with the wet weather overflow policy described in the 1995 San Francisco Bay Basin Plan; and
- Will budget over \$250,000.00 for a new vacuum truck, which will dramatically improve the ability to respond to collection system overflow;
- Has spent about \$1.2 million to build a new chlorine contact chamber to replace the old undersized equipment in order to eliminate coliform violations;
- Has installed new equipment to improve its dechlorination of post-treatment water;
- Has negotiated a contract for a re-design of the Plant headworks, including influent screens, influent pumps, grit chamber, and effluent pumps to improve their ability to handle peak wet weather flows, the cost for design and construction work of which is estimated to be \$2.25 million;
- Has spent over \$675,000.00 improving its aeration system, which should help alleviate any BOD problems;
- Is pilot-testing a chemical additive to alleviate any pH problems, and to improve the removal of metals constituents;
- Has contracted with a consultant to investigate the bio-availability and toxicity of copper, mercury, and other constituents in the receiving water and to identify sources of toxic constituents in the collection system and improve their control; and ,

WHEREAS River Watch and Defendants desire that the Plant be operated with minimal Permit violations;

NOW, THEREFORE River Watch and Defendants agree as follows:

1. The District will submit with its written report of collection system overflows a copy of a map marked to indicate the location of the overflow;
2. In order to resolve a perceived ambiguity in the Permit regarding certain provisions relating to sampling acceleration, the District and River Watch will jointly submit a question of permit interpretation to the RWQCB, asking it to decide whether the specific provision that states that sampling shall be accelerated on a constituent-by-constituent basis governs, or whether the general terms incorporated into the Permit

regarding the acceleration of sampling generally governs. The District and River Watch agree to abide by the RWQCB decision concerning this issue;

3. The District agrees to amend the scope of work for a proposed study of collection system overflows to require that the report on such study include a matrix showing locations of such overflows during the last five years (beginning _____) and the cause of each overflow. Furthermore, when public comment is solicited on such report, the District shall specifically request recommendations from the California Department of Health, the RWQCB, and River Watch concerning appropriate measures to remedy collection system overflows, including but not limited to whether monitoring devices should be installed at locations that regularly overflow and that raise public health risks;

4. In order to allow Defendants time to complete the upgrades to the POTW River Watch will not assert any claims relating to reporting violations, failure-to-accelerate sampling violations, treatment plant overflows, receiving water limitations violations, constituent exceedances, and/or staffing issues until after the Board of Supervisors ratifies the equipment expenditures described above, or after June 30, 2001, whichever occurs first;

5. In order to allow Defendants time to complete the upgrades to the POTW River Watch will not assert any claims relating to collection system violations that occur prior to September 30, 2002;

6. The Defendants further agree to implement a remediation project or projects. The projects may include watershed restoration, remediation and or habitat protection as well as educational projects designed to inform the public concerning watershed issues. However, in any case the remediation project(s) must relate to the underlying harm and must benefit the Sonoma Valley watershed directly. The Defendants agree to spend no less than \$83,000.00 on said projects.

7. The public shall be given 90 days following publication of an appropriate notice in two consecutive issues of the Sonoma Index Tribune and for 5 consecutive days in the Press Democrat to submit proposed projects. The parties themselves may also submit projects for consideration but are limited to no more than 10 projects each.

8. Within 60 days of the close of the public submittal period, a joint committee consisting of equal numbers of representatives of each party, each having one vote, shall select no more than 6 projects to be submitted to the District's Board for final selection. The District's Board shall select these projects within 60 days of submittal by the committee.

9. The Defendants agree that no more than 5% of the actual cost of the project(s) shall be paid to defendants.

10. The Defendants shall pay River Watch \$_____ in attorney's fees and costs including expert fees and costs.

11. River Watch will dismiss all claims against Defendants in the above-styled lawsuit, with prejudice.

12. Each party consents to the entry of this Consent Decree subject to the provisions of Clean Water Act § 505(c)(3) that "[n]o consent judgment shall be entered in an 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. § 1354(c)(3).

13. On _____, 1999, River Watch sent this proposed Agreement, signed by each of the parties, by mail to the Environmental Protection Agency ("EPA") and the Department of Justice ("DOJ"). Upon written notification by EPA and DOJ that those agencies' reviews have concluded, or the expiration of the 45 day period, whichever is the earlier, River Watch will request that the Court enter this Agreement.

14. This Court shall retain jurisdiction from the date of entry of this Consent Decree through the date of termination of this Consent Decree for the purposes of this Decree. In addition, following the date of termination of this Decree, this Court shall retain jurisdiction for the purposes of (1) resolving any dispute of this Decree, and (2) disposing of any motion to enforce this Decree, or of any contempt petition, filed on or before the date of termination.

15. This Consent Decree and agreement shall terminate as to each of its provisions one (1) year after the date this order is approved by the Court.

The undersigned agree to the foregoing:

Dated: _____

for Plaintiff Northern California River Watch

Dated: _____

for Defendant Sonoma Water Agency

Dated: _____

for Defendant Sonoma Valley County Sanitation

District

Dated: _____

for Defendant County of Sonoma

Agreed to as to form

Dated: _____
Jack Silver
Attorney for Plaintiff

Dated: _____
Vernon I. Zvoleff
Attorney for Defendants

ORDER

APPROVED AND SO ORDERED, this CONSENT DECREE in the case of
NORTHERN CALIFORNIA RIVER WATCH v SONOMA COUNTY WATER
AGENCY. ET AL, Case No: C99-4263 CRB

DATED: _____

CHARLES R. BREYER
UNITED STATES DISTRICT

JUDGE