

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between Northern California River Watch ("River Watch") and the Novato Sanitary District ("the District") (collectively "the Parties") as of the last date executed below (the "Effective Date"), with respect to the following facts and objectives.

RECITALS

A. River Watch is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement and restoration of the rivers, creeks, streams, tributaries and groundwater of Northern California.

B. The District is a special district of the State of California authorized under the Sanitary District Act of 1923, Chapter 1, Division 6, of the Health and Safety Code of the State of California. The District operates wastewater collection, treatment, and discharge facilities under a National Pollution Discharge Elimination System ("NPDES") Permit issued by the San Francisco Bay Regional Quality Control Board, adopted by Order No. R2-2004-0093 as amended by Order R2-2008-0026.

C. On January 29, 2008, River Watch provided the District with a Notice of Violations and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365, a copy of which is attached hereto as Exhibit A.

D. On February 29, 2008, the Parties met for an initial settlement conference, during which the District's strategic plans for a new treatment facility and other measures to abate Clean Water Act violations and bring the District's operations into substantial compliance with applicable regulations were discussed. The District agreed to provide River Watch with various documents containing information relevant to the claims of Clean Water Act violations in River Watch's 60-Day Notice Letter. River Watch has reviewed the documents provided by the District, as well as documents on file at the Regional Water Quality Control Board, San Francisco Bay Region.

E. River Watch and the District, through their authorized representatives and without either adjudication of River Watch's claims as set forth in the 60-Day Notice Letter or admission by the District of any alleged violation or other wrongdoing, have chosen to resolve in full River Watch's allegations against the District as set forth in the 60-Day Notice Letter with respect to the facilities owned and/or operated by the District. In mutual consideration for the resolution of River Watch's allegations, the Parties agree to the following:

AGREEMENT

I. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A. GIS Map/Model. Within twenty-four (24) months of the approval of this Agreement, the District shall prepare a GIS map/model with the following information as to the District's collection system area:

1. Collection system components, including age and composition of pipeline sections;
2. Proximity of collection system components to the Petaluma River and its tributaries, San Pablo Bay, Novato Creek and its tributaries;
3. Soil type information for collection system areas potentially affecting waters identified under item 2 above as being proximate to sewer lines; and
4. Land use in the collection system area adjacent to potentially affected waters.

The District will use information on soil type that is available in Marin County's GIS; the District shall not be required to independently prepare a GIS layer of soil types or test soils to determine soil type where the information is already available from other reliable sources.

B. Private Lateral Replacement Program. Within one (1) year of the approval of this Agreement, the District shall provide funding of Fifty Thousand Dollars (\$50,000) for grants or loans to private property owners for testing, repair and replacement of laterals which fail to meet applicable District standards and are potentially subject to increased groundwater inflow and infiltration. The intention of the program is to focus on repair and replacement of laterals within the watershed areas which are planned for sewer main renovation during the construction season of 2009. The selection of the targeted sewer and lateral replacement areas will be based on existing condition assessment information indicating high inflow and infiltration within the watershed area. The intention of the program is to incentivize the repair and replacement of a number of sewer laterals within a high infiltration and inflow watershed to enable evaluation of the effectiveness of a focused private lateral replacement and repair program in conjunction with sewer main renovations.

This funding of Fifty Thousand Dollars (\$50,000) for grants or loans to private property owners shall be in addition to activities undertaken pursuant to Section III (Private Sewer Lateral Inspection) below. The specifics of this program shall be provided to River Watch within sixty (60) days of approval of this Agreement for its review and comment.

C. Inflow and Infiltration ("I/I") Study.

1. Within twenty-four (24) months of the Effective Date of this Agreement, the District shall complete an addendum to its Flow Monitoring Study and RDII analysis, using flow meters to determine I/I "hot spots", i.e., segments of sewage pipelines where structural damage allows significant infiltration and inflow of storm water and ground water into the District's sewer pipelines. The additional, more section specific study will focus on monitored catchments identified in the primary Study as having the highest I/I rates.

2. Within seven (7) years of the Effective Date of this Agreement the District shall complete a video inspection of all sewage collection pipelines owned or maintained by the District, which have not been video inspected during the five (5) years prior to the Effective Date of this Agreement.

D. Prioritize Maintenance. Information obtained from the GIS Map/Model, and I/I Study will be used to evaluate and re-prioritize, if necessary, the District's current computerized maintenance management system ("CMMS") to schedule expedited CCTV inspection and repairs of segments of the collection system identified in the GIS Map/Model, and I/I Studies as having a higher potential to contaminate adjacent waters. Within sixty (60) days of the completion of any of the above referenced studies, the District shall provide River Watch a copy of the final report and a written discussion of whether and in what manner the District intends to use the information provided by the Study to re-prioritize its CMMS and associated Capital Improvements Program.

II. SEWAGE SYSTEM OVERFLOW REPORTING

Within twelve (12) months of the Effective Date of this Agreement, the District shall develop a link on its web site where private citizens can review reports on sewage system overflows. The web site location will contain a list of all sewage system overflows in the District's service area for the previous twelve (12) months, including volume, location, any discharge to a storm drain or directly to surface water, and action taken to avoid another overflow at the same location. The web site will inform private citizens how to report an overflow both during work hours and after hours. It will explain that members of the public are entitled to a response to any reported overflow.

III. PRIVATE SEWER LATERAL INSPECTION

River Watch is aware that Novato Sanitary District, through Beverly James, the District Manager-Engineer, is cooperating in the development of a Marin County Model Ordinance for mandatory private sewer lateral inspection and repair. Within twelve (12) months of the Effective Date of this Agreement, the District shall either adopt the model County Ordinance or amend its current Ordinance No. 70 to include a section setting forth the conditions for the mandatory inspection of privately owned lateral sewers and repairs to same as may be needed. Such conditions triggering an inspection may include events such as change of service or transfer of the property ownership, but will not necessarily require any needed repairs to be complete prior to the close of escrow. If such an inspection shows that repair or replacement is necessary to comply with applicable District standards, the repair or replacement will be required within a stated period of time.

As an alternative to a mandatory inspection and repair ordinance, the District may adopt a voluntary upgrade program whereby the District would negotiate for a reduced group rate for repair of private laterals in coordination with rehabilitation of the main to which they are connected. Such an alternative program may include provisions for financing or financial incentives, but no specific provision is mandated by this Section. Any alternative private sewer lateral program will be provided to River Watch for comment if it is intended as the sole means of compliance with this Section III.

IV. INCREASED RECLAMATION

The Parties understand that the District currently recycles all of its effluent during the dry weather irrigation season pursuant to the terms of its NPDES Permit. However, the District shall

continue to explore options for increased recycled water use of its effluent, in cooperation with the North Marin Water District ("NMWD") and the North Bay Water Reuse Authority ("NBWRA"). The District shall continue to implement the Recycled Water Master Plan jointly with the NMWD and shall cooperate with the NBWRA in developing plans for a regional reclaimed water system. For a period of five (5) years from the Effective Date of this Agreement, the District shall provide River Watch with documentation, on at least a yearly basis, of the percentage of its effluent disposed of by recycling rather than direct discharge to San Pablo Bay.

V. ATTORNEYS' FEES AND COSTS

Within thirty (30) days of the Effective Date of this Agreement, the District shall pay River Watch the sum of Fifty Thousand Dollars (\$50,000.00) in full satisfaction of all claims by River Watch for consultant's fees, attorneys' fees and costs incurred in this matter, and for any fees and costs associated with enforcement and monitoring of this Agreement, with the exception of any action taken to enforce this Agreement by formal arbitration pursuant to Section VII of this Agreement. Payment is to be made payable to Northern California River Watch.

VI. SETTLEMENT AND RELEASE OF CLAIMS

Upon execution of this Agreement, River Watch and its successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases all persons, including the District and its officers, directors, employees, shareholders, agents, attorneys, representatives, contractors, predecessors, successors and assigns, past and present, from, and waives all claims, for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed in this action, or which was alleged in the 60-Day Notice Letter, including but not limited to the alleged failure of the District to comply with the Clean Water Act (33 U.S.C. § 1251, et seq.), the Porter-Cologne Water Quality Control Act (Water Code, § 13000, et seq.) and the Resources Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) (hereinafter "Claims"), up to the Effective Date of this Agreement and that may occur within the period of five (5) years thereafter. This release includes a release, and covenant not to sue, for any claims of injunctive relief, damage, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts and others), costs, expenses or any other sum incurred or claimed or which could have been claimed with respect to any activities in alleged violation of, or claims arising under, the Clean Water Act, the Porter-Cologne Water Quality Control Act, or the Resource Conservation and Recovery Act, that may arise during the five (5) year term of this Agreement. The Parties further expressly waive any rights or benefits available to them under the provisions of California Civil Code § 1542 as related to any potential Clean Water Act, Porter-Cologne Water Quality Act, or Resource Conservation and Recovery Act violations or claims through the term of this Agreement, which Section 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 his settlement with the debtor.

VII. FORCE MAJEURE

A. Separate from, and in addition to any other limitations on the District's obligations under this Agreement, the District's obligation to comply with one or more of the provisions of this Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstance beyond the reasonable control of the District or any entity controlled by the District, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by the District. Delays due to unanticipated or increased costs or expenses associated with the completion of any work or activity under this Agreement, changed financial circumstances, or the District's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits, or normal inclement weather shall not, in any event, be considered to be circumstances beyond the District's control.

B. If any event or circumstance occurs which causes or may cause a delay in the District's compliance with any provision of this Agreement and the District seeks relief as set forth in Paragraph VII.A. above, the District shall comply with the following provisions:

1. The District shall provide written notice to River Watch within thirty (30) days of the date that the District first knew of the event or circumstance or should have known of the event or circumstance by the exercise of due diligence;

2. The District's notice shall specifically refer to this Section of this Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the District to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The District shall adopt all reasonable measures to avoid and minimize such delays;

3. If River Watch disagrees with the District's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that the delay was or is impossible to avoid, despite the good faith efforts of the District; and

4. If agreement can not be reached between the Parties through the meet and confer process as to excused performance, either Party shall have the right to invoke the arbitration process set forth below under Section VII (Enforcement) of this Agreement.

VII. ENFORCEMENT

A. The Parties covenant and agree that, if either Party determines the other is in violation of one or more terms of this Agreement, they shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the Party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional thirty (30) days, the Parties will meet and confer in a good faith attempt to resolve their dispute. If the Parties cannot informally resolve the dispute, they will enter into binding arbitration, conducted by an arbitrator agreed upon by both Parties. Either Party may request that the presiding judge of the Marin County Superior Court may select an arbitrator if the Parties cannot reach an agreement. The arbitration shall be binding and not subject to ordinary judicial appeal, however, it shall be

subject to the procedural provisions provided for under California Civil Code of Civil Procedure § 1280 et seq.. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Service) to the extent other conventional rules are not promptly agreed to by the Parties. The arbitrator shall be empowered to determine a prevailing Party and may award payment of reasonable attorneys' fees and costs to a prevailing Party. To the extent there are multiple issues with a different prevailing Party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs.

B. If River Watch asserts the District is in violation of this Agreement and the District corrects the action or inaction within sixty (60) days of written notice from River Watch describing the asserted violations, no further enforcement action under the terms of this Agreement shall be taken by either Party. To the extent an alleged violation can not reasonably be cured within the sixty (60) day period and the District undertakes all reasonable efforts to begin the cure of such asserted violation within that period, similarly no further enforcement action under the terms of this Agreement shall be taken by either Party.

VIII. GENERAL PROVISIONS

A. Notice. Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be through the following addresses:

Novato Sanitary District:
General Manager/Engineer
500 Davidson Street
Novato, CA 94945
Phone: (415)892-1694
Facsimile: (415)898-2279

Northern California River Watch:
6741 Sebastopol Avenue, Suite 140
Sebastopol, CA 95472
Phone: (707) 824-4372
Facsimile: (707) 824-4372

cc:

cc:

Kenton L. Alm, Esquire
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
Phone: (510) 808-2000
Facsimile: (510) 444-1108

Jerry Bernhaut, Esquire
c/o Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Phone: (707) 528-8175
Facsimile: (707) 528-8675

B. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. This Agreement shall supersede all previous agreements whether written or oral, that may have been reached between the Parties in connection with this matter and provides the sole remedy for any Party as to any other Party regarding all matters addressed in the 60-Day Notice and this Agreement as

encompassed by the Settlement and Release of Claims set forth in Section VI.

C. Voluntary. This Agreement is entered into by each Party freely and voluntarily. Each of the Parties has had the benefit of advice of counsel of their choice in the negotiating, drafting and executing of this Agreement and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a Party or construed against any Party.

D. Governing Law; Severable Enforceability. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

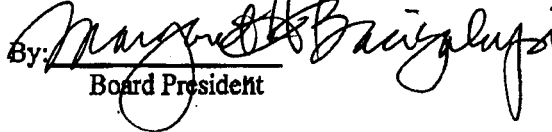
E. Authority. Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute this Agreement and bind said Party to the terms hereof.

F. Counterparts. This Agreement may be executed by facsimile and in counterparts, and each counterpart shall be considered an original, and all of which, taken together shall constitute one and the same instrument.

SO AGREED:

Dated: 11-14-08

Northern California River Watch

By: 
Board President

Dated: _____

Novato Sanitary District

By: _____
Board President

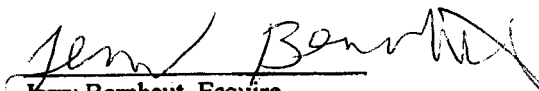
ATTEST:

Dated: _____

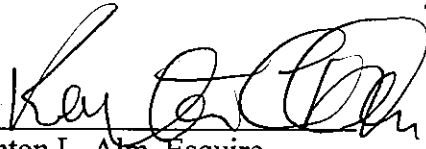
By: _____
District Secretary

APPROVED AS TO FORM:

Dated: 11/17/08


Jerry Bernhaut, Esquire
Attorney for Northern California River Watch

Dated: 11/10/07


Kenton L. Alm, Esquire
Attorney for the Novato Sanitary District

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