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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA NCRW, a non-profit corporation,)	CASE NO. C 04-04670 JCS
)	
Plaintiff,)	SETTLEMENT AGREEMENT
)	
v.)	
)	
CANYON ROCK COMPANY, INC.; RIVER READY MIX, INC.; and DOES 1 through 10, inclusive,)	
)	
Defendants.)	

This SETTLEMENT AGREEMENT (hereafter, "AGREEMENT") is made and entered into by and between Northern California River Watch, a non-profit corporation, on and behalf of itself and its members (hereafter, "NCRW"), and Canyon Rock Company, Inc., a corporation organized and existing under the laws of the State of California, also d/b/a "River Ready Mix, Inc.," (hereafter, "CANYON ROCK"). NCRW and CANYON ROCK are collectively referred to below as the "PARTIES" and individually as a "PARTY."

1 WHEREAS, on or about May 21, 2004, NCRW sent a notice letter to
2 CANYON ROCK of alleged violations of the Clean Water Act, 33 U.S.C. § 1251 et seq.,
3 and notice of intent to file suit;

4 WHEREAS, on or about November 3, 2004, NCRW filed this action alleging
5 that defendant CANYON ROCK was in violation of the Clean Water Act, 33 U.S.C. § 1251
6 et seq.;

7 WHEREAS, the Complaint seeks declaratory and injunctive relief, the
8 imposition of civil penalties for each violation of the Clean Water Act, and an award of
9 litigation costs, including reasonable attorneys fees and costs;

10 WHEREAS, CANYON ROCK denies that it violated or is in violation of the
11 Clean Water Act, and CANYON ROCK asserted a counterclaim against NCRW, seeking,
12 among other things, a declaratory judgment that its operations do not violate the Clean
13 Water Act (collectively, the notice letter, the Complaint and Counterclaim are referred to
14 as "the lawsuit");

15 WHEREAS, each PARTY desires to resolve the issues regarding the lawsuit,
16 and agrees that it is in their mutual interests to enter into this Agreement setting forth
17 the terms and conditions agreed upon for resolving the lawsuit; and

18 WHEREAS, without admitting any issue of fact, causation, responsibility,
19 liability or fault, the PARTIES agree as follows.

20
21 NOW THEREFORE, for good and valuable consideration, including the
22 releases, covenants and conditions contained in this AGREEMENT, as hereinafter defined,
23 each of the PARTIES hereto agrees and covenants as follows:

24
25 **1. CANYON ROCK Measures.**

26 A. CANYON ROCK agrees to comply with the following requirements of
27 the Region I Basin Plan and the following EPA benchmarks in the draft stormwater
28 permit:

- 1 (1) pH: 8.5
- 2 (2) TSS: 100 mg/L
- 3
- 4 B. CANYON ROCK agrees to undertake the following measures:
- 5 (1) Hydro seed and/or apply soil binders as needed and where feasible,
- 6 in areas not subject to mining operations (including overburdens and high walls, roads,
- 7 yards, and berms).
- 8 (2) Within six months, remove the existing cement batch plant and bins
- 9 from the present location and re-locate to an area farther from Green Valley Creek.
- 10 (a) Within one year, pave the cement batch plant area and parking lot.
- 11 (b) Until the existing cement batch plant is relocated, install a bigger
- 12 pump or initiate a process to reduce excess turbidity and sediment.
- 13
- 14 (3) Review and update the SWPPP as necessary by July 1 of each year.
- 15 (a) Incorporate into the SWPPP the following mitigation measure:
- 16 "Mining activities and the operation of heavy equipment on site shall be done in such a
- 17 manner as to avoid repeated crossing of drainage ways or puddles that are actively
- 18 flowing into the sediment pond/traps and offsite."
- 19 (b) Attach as an appendix to the SWPPP the Material Safety Data Sheet
- 20 for cement.
- 21
- 22 (4) Within one year, increase the width and height of the berm between
- 23 the yard and Green Valley Creek.
- 24
- 25 (5) Without waiving or compromising in any respect its rights to well-
- 26 water on its property, Canyon Rock agrees not to substantially increase its use of the
- 27 well at the facility nearest Green Valley Creek for its day-to-day operations, unless no
- 28 alternative source of water is available at reasonable cost.

1 (6) For two seasons, monitor four storms that generate discharge to
2 Green Valley Creek (one at first flush and, thereafter, sampling at least two weeks apart).
3 CANYON ROCK will notify NCRW representatives as soon as reasonably possible, but no
4 less than two (2) hours, of its plans to sample. At reasonable times, NCRW
5 representatives may contact CANYON ROCK representatives to ask if sampling is likely.

6
7 (7) For two years in a row, sample water in the ponds at first flush and
8 once during the summer, and provide notice to NCRW and allow NCRW to take split
9 samples (at its own expense) if it chooses to do so. The samples will be analyzed for the
10 following compounds: arsenic, cadmium, total chromium copper, lead, mercury, nickel,
11 zinc, total aluminum, TPHg, TPHd and MTBE.

12
13 **2. Mitigation and Fees and Costs.**

14
15 A. CANYON ROCK shall pay the sum of eight thousand dollars (\$ 8,000)
16 to the Redwood Empire Environmental Center, with the funds dedicated to restoration
17 activities related to Austin Creek and/or the Russian River. CANYON ROCK shall deliver
18 the funds to the Office of Jack Silver at the same time it delivers the check for fees and
19 costs pursuant to paragraph 2.C. below.

20
21 B. As a Supplement Environmental Project, CANYON ROCK agrees to
22 install a treatment system to treat the discharge from CANYON ROCK's pond (in the
23 former Ready Mix area) to Green Valley Creek. CANYON ROCK agrees to investigate and
24 install a treatment system to most efficiently reduce sediment to Green Valley Creek, at
25 an anticipated total cost of \$50,000 or less.

26 C. CANYON ROCK shall reimburse NCRW in the amount of forty-eight
27 thousand dollars (\$ 48,000) to help defray NCRW's investigation fees and costs, expert
28 fees and costs, reasonable attorneys' fees, and all other costs incurred as a result of

1 investigating the activities of CANYON ROCK and negotiating a resolution of the lawsuit.
2 Such payment shall be made to the Law Office of Jack Silver no later than eighteen (18)
3 days after this AGREEMENT has been approved by the Court and the case has been
4 dismissed with prejudice.

5

6 **3. Releases.**

7

8 A. Release of CANYON ROCK by NCRW.

9 In exchange for the consideration set forth herein, NCRW covenants not to
10 sue and hereby releases and discharges CANYON ROCK from (1) any and all claims,
11 costs, expenses, damages or losses arising from or relating to the lawsuit, and (2) any
12 and all claims, costs, expenses damages or losses which NCRW could have asserted or
13 could now assert.

14

15 B. Release of NCRW by CANYON ROCK.

16 In exchange for the consideration set forth herein, CANYON ROCK
17 covenants not to sue and hereby releases and discharges NCRW from (1) any and all
18 claims, costs, expenses, damages or losses arising from or relating to the lawsuit, and
19 (2) any and all claims, costs, expenses damages or losses which CANYON ROCK could
20 have asserted or could now assert.

21

22 C. Intended Scope of Releases. To the fullest extent possible, this
23 AGREEMENT shall act as a full and final resolution of any7 and all claims, actions, causes
24 of action based on any statute or provisions of common law, whether legal or equitable,
25 and all liability arising out of, or in any way related to, claims arising out of the operation
26 of or discharges from CANYON ROCK's facility at any time up to the effective date of this
27 AGREEMENT, which were raised or could have been raised in this litigation.

28

1 D. Excepted Claims from Releases. The PARTIES acknowledge and
2 agree that the releases set out above do not apply to any action or claim by either
3 PARTY to enforce the terms of this AGREEMENT.

4
5 E. Waiver of Rights Under California Civil Code Section 1542. With
6 respect to the claims released under this Paragraph, each PARTY expressly and
7 specifically waives any rights and benefits available to it under California Civil Code
8 Section 1542, which provides:

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

13
14 **4. Good Faith Settlement.** This AGREEMENT is contingent upon a
15 court determination that this AGREEMENT between the PARTIES is in good faith under
16 applicable laws. Within one week after receipt of notice of execution of this
17 AGREEMENT, the PARTIES shall cooperate in the preparation and filing of a joint motion
18 for a determination that this settlement between the PARTIES is in good faith. If the
19 motion for good faith settlement is approved, NCRW shall submit a request for dismissal
20 of the lawsuit with prejudice, with each PARTY waiving its right to recover costs and
21 attorneys' fees except as provided under this Agreement.

22
23 **5. Non-Participation in Future Actions.** NCRW agrees that neither
24 NCRW (including, without limitations, its officers, executive staff, members of its governing
25 board), nor any organization under control of NCRW, its officers, executive staff, or
26 members of its governing board, will file any suit, claim or action against CANYON ROCK
27 for violations that were subject of the lawsuit. NCRW further agrees that NCRW will not
28 support other suits, claims or actions, by providing financial assistance, personnel time or

1 other affirmative actions against CANYON ROCK that may be proposed by other groups or
2 individuals with regard to the kinds of claims or violations that were subject of this lawsuit.
3 NCRW further agrees not to file any suit, claim or action against CANYON ROCK or support
4 other suits, claims or actions, by providing financial assistance, personnel time or other
5 affirmative actions against CANYON ROCK that may be proposed by other groups or
6 individuals, without implementing the following disputes resolution procedures:

7 A. If NCRW believes CANYON ROCK is in violation of any environmental
8 law, NCRW shall notify CANYON ROCK of the alleged violation(s) in writing. CANYON
9 ROCK shall then have twenty (20) days from receipt of the notice to respond to the
10 allegations.

11 B. If CANYON ROCK responds to the claim of violation and proceeds to
12 commence remedial actions within forty (40) days of NCRW's notice of the alleged
13 violation, and diligently pursues completion, NCRW shall take no further action against
14 CANYON ROCK.

15 C. If CANYON ROCK denies or does not acknowledge the claim of
16 violation, the parties shall meet and confer within thirty (30) days of the date for CANYON
17 ROCK's response pursuant to paragraph 5.A. in an effort to mediate the dispute.

18 D. If the parties cannot informally resolve the conflict the parties shall
19 submit the matter to mediation within thirty (30) days or as soon as reasonable possible
20 after the date they informally met and conferred.

21 E. Should mediation fail, either PARTY may apply to a court of competent
22 jurisdiction for relief.

23

24 **6. Dispute Resolution.**

25

26 A. Should the implementation by CANYON ROCK of the conditions set
27 forth above not take place within the deadlines set despite the timely good faith efforts
28 of CANYON ROCK to acquire the necessary permit(s), approval(s), review or other

1 necessary steps by the supervising Federal, State, or Local agency or agencies, or due to
2 factors unforeseen at the time this AGREEMENT was entered into by the parties,
3 CANYON ROCK agrees to meet and confer with NCRW to discuss modifying, by written
4 agreement, the deadlines or conditions set forth above to reflect the necessary
5 permitting process(es) or other basis for delay. CANYON ROCK shall notify NCRW in
6 writing as soon as the potential failure to comply becomes apparent, and in any case not
7 less than twenty (20) days prior to any deadline set forth above, and shall describe the
8 reasons for the potential delay.

9

10 B. If NCRW believes CANYON ROCK is in violation of this AGREEMENT,
11 NCRW shall notify CANYON ROCK of the alleged violation(s) in writing. CANYON ROCK
12 shall then have twenty (20) days from receipt of that notice to respond to the
13 allegations.

14

15 C. If CANYON ROCK responds to the claim of violation and proceeds to
16 commence remedial actions within forty (40) days of NCRW's notice of the alleged
17 violation, and diligently pursues completion, NCRW shall take no further action against
18 CANYON ROCK.

19

20 D. If CANYON ROCK denies or does not acknowledge the claim of
21 violation, the parties shall meet and confer within thirty (30) days of date for CANYON
22 ROCK's response pursuant to paragraph 6.B. in an effort to mediate the dispute.

23

24 E. If the PARTIES cannot informally resolve the conflict they shall
25 submit the matter to mediation within thirty (30) days, or as soon as reasonably possible,
26 after the date they informally met and conferred.

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1 F. Should mediation fail, any PARTY to this AGREEMENT may apply to
2 this Court for relief.

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4 **7. No Admissions.** This AGREEMENT shall not constitute, and no
5 action taken pursuant to this AGREEMENT shall constitute, any admission of fact, liability,
6 causation, responsibility or fault, or proportionate share thereof, by any PARTY with
7 respect to any matter referred to herein. This AGREEMENT shall not be used by any
8 PARTY in any administrative or judicial action or proceeding, or in any arbitration or
9 alternative dispute resolution proceeding for any purpose, except for the purpose of
10 establishing its terms in an action to enforce or otherwise arising out of this AGREEMENT.

11

12 **8. Authority of Representative.** Each of the PARTIES represents and
13 warrants that the person(s) executing this AGREEMENT on its behalf is a representative
14 duly authorized to bind it and empowered to enter into this AGREEMENT on its behalf.

15

16 **9. Notices.** Any notice required or permitted to be given pursuant to
17 this AGREEMENT shall be in writing and shall be deemed to be given when served
18 personally or by facsimile, or on the tenth (10th) day after mailing if mailed by United
19 States mail, postage prepaid, return receipt requested, and addressed to the address for
20 each PARTY set forth below.

21

22

23 If to NCRW: Project Manager
24 River Watch
25 6741 Sebastopol Ave., Suite 140
26 Sebastopol, CA 95472
27 Phone: 707-824-4372
28 Fax: 707-824-4372

26 With a copy to: Jack Silver, Esq.
27 Law Offices of Jack Silver
28 P.O. Box 5469
Santa Rosa, CA 95402-5469
Phone: 707-528-8175
Fax: 707-528-8675

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If to CANYON ROCK: Wendel Trappe
Canyon Rock Co., Inc.
P.O. Box 639
Forestville, CA 95436
Phone: 707-887-2207
Fax: 707-887-9258

With a copy to: William D. Wick, Esq.
Wactor & Wick LLP
180 Grand Avenue
Suite 950
Oakland, CA 94612
Phone: 510-465-5750
Fax: 510-465-5697

10. Counterparts and Facsimile Signatures. This AGREEMENT shall be executed in two counterpart originals. When each PARTY has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to both PARTIES. No counterpart shall be effective until both PARTIES hereto have executed and exchanged an executed counterpart thereof. Any PARTY may transmit its execution page of this AGREEMENT by facsimile, in which case such PARTY shall provide the original execution page within three (3) business days to the other PARTY. A PARTY'S execution page transmitted by facsimile may be used as though it were an original signature notwithstanding the fact that the PARTY did not provide a signed original.

11. Advice of Attorneys. Each PARTY has evaluated its respective position with regard to this matter through its own investigation and through its attorneys. Each PARTY acknowledges that it makes this AGREEMENT upon the advice of its respective attorneys, that it has read this AGREEMENT, discussed it with its attorneys, that the terms and conditions of this AGREEMENT are fully understood and that it freely and voluntarily enters into this AGREEMENT.

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12. Construction of Agreement. The PARTIES acknowledge that this AGREEMENT is the product of informed negotiating among the PARTIES, and if any part of this AGREEMENT is deemed ambiguous or in conflict, it shall be construed as if it were drafted jointly by all the PARTIES.

13. Entire Agreement. The PARTIES warrant and agree that this AGREEMENT constitutes the entire agreement between them concerning the subject matter hereof and that this AGREEMENT supersedes all prior or contemporaneous agreements, whether oral or written, concerning the subject matter hereof. Each PARTY represents, warrants and agrees that no promise or agreement not expressed herein has been made to it; that in executing this AGREEMENT, no PARTY is relying on any statement or representation made by any other PARTY, or any other PARTY'S representatives, concerning the subject matter, basis or effect of this AGREEMENT other than as set forth herein; and that each PARTY is relying solely on its own judgment and knowledge.

14. Headings. The headings in this AGREEMENT are descriptive only and do not constitute any portion of the terms of this AGREEMENT.

15. Severability. Except for Paragraph 4 ("RELEASES"), each provision of this AGREEMENT is intended to be severable. If any provision (or the application of any provision to any PARTY or circumstance) of this AGREEMENT other than Paragraph 4 is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity shall not affect the balance of the terms and

1 provisions hereof or the application of the provision in question to any other PARTY or
2 circumstance, all of which shall continue in full force and effect. If any portion of
3 Paragraph 3 is declared invalid or unenforceable in any material respect, the affected
4 PARTY shall have the right to rescind this AGREEMENT.

5

6

7

16. Modification. Each PARTY warrants and agrees that this
8 AGREEMENT may not be altered, amended, modified or otherwise changed except by a
9 writing which expressly states that it is a modification of this AGREEMENT and which is
10 duly executed by an authorized representative of each PARTY.

11

12

17. No Waiver. In the absence of an agreement of waiver in writing,
13 the failure of any PARTY to insist upon strict adherence to any term of this AGREEMENT
14 on any occasion shall not be deemed a waiver or deprive that PARTY of the right
15 thereafter to insist upon strict adherence to that term or any other term of this
16 AGREEMENT.

17

18

19 IN WITNESS WHEREOF, each of the PARTIES hereto has executed this
20 AGREEMENT as of the date(s) set forth below.

21

NORTHERN CALIFORNIA RIVER WATCH

22

By:

23

ame: 

24

itle: Vice-President

25

ate: December 2, 2005

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Approved as to form:

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Law Offices of Jack Silver

By: King Orr

Date: December 2, 2005

CANYON ROCK CO., INC.

By: Wendel Trappe

Name: Wendel Trappe

Title: Pres.

Date: 12/15/05

Approved as to form:

WACTOR & WICK LLP

By: William D. Wick
William D. Wick

Date: 12-9-05

WACTOR & WICK LLP
100 Grand Avenue, Suite 150
Canyon, Arizona