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12 NORTHERN CALIFORNIA RIVER WATCH

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

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17 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit Corporation,

CASE NO: C 03 04552 MJJ

18 Plaintiff,

SETTLEMENT AGREEMENT

19 v.

20 LAKE COUNTY SANITATION
DISTRICT, et al,

21 Defendants.
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23 WHEREAS, on or about October 8, 2003 plaintiff Northern California River Watch, a
24 non profit corporation, on behalf of itself and its members, ("RIVER WATCH") filed this
25 action alleging that defendant Lake County Sanitation District, a governmental entity,
26 ("LACOSAN") was in violation of the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq
27 and,
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1 management tool. The CMMS will utilize the data contained in the geo-database to
2 LACOSAN's GIS "platform". The CMMS will include a database map showing the locations
3 of known sanitary sewer overflows within the NRWS and SRWS collection systems. The
4 CMMS will also provide inventory management, support service requests and work orders, track
5 and schedule asset inspections, and will assist in complying with reporting requirements. The
6 CMMS described herein shall be implemented within the SRWS system within twelve (12)
7 months of the effective date of this Agreement, and within the NRWS system within eighteen
8 (18) months of the effective date of this Agreement.

9 Asset Inspection Program: The asset inspection program is a key to asset maintenance
10 and management. The program will reveal early stages of problems that could lead to accidental
11 spills to ensure that preventive maintenance is scheduled. Inspections will also be conducted to
12 provide the opportunity to evaluate the physical condition of each asset. This inspection
13 information assists in overall condition assessment to identify causes for underperforming
14 assets, predict when failure is likely to occur and determine appropriate corrective actions in
15 advance. The asset inspection program described herein shall be implemented within twelve (12)
16 months of the effective date of this Agreement.

17 Preventive Maintenance: In conjunction with onsite inspection data and asset
18 information, LACOSAN will update the maintenance program for the assets currently in place
19 and utilized in the collection systems. Areas with chronic problems resulting from system age,
20 design, breakdowns, grease, seasonal impacts of infiltration/inflow (I/I), or capacity problems will
21 be identified with additional effort to prevent problems from escalating into permit violations.
22 The preventive maintenance program will be modified to forecast and schedule infrastructure
23 maintenance, repair or replacement of system components based on equipment operational data,
24 historical data, manufacturer's recommendations, or known maintenance needs. The program
25 will track and identify trends within the system, and encompass all assets within each of the
26 collection systems. Initially, the emphasis will be on components deemed critical to the
27 successful and continued availability within each system including pump station components,
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1 controls, valves, actuators, emergency generators, supervisory control and data acquisition
2 systems (SCADA); gravity lines, force mains including integrity, grease, roots and debris;
3 manholes including integrity, grease and debris. This will also improve LACOSAN's Injury &
4 Illness Prevention Plan for service and safety equipment including vehicles and personal safety
5 equipment. The preventive maintenance program described herein shall be implemented for the
6 SRWS within eighteen (18) months of the effective date of this Agreement and for the NRWS
7 within twenty four (24) months of the effective date of this Agreement.

8 Hydraulic Modeling: To ensure adequate capacity to convey base and peak flows, a
9 network hydraulic model is being developed. The model will be used by LACOSAN in
10 determining the peak capacity of each system, examining the current status, evaluating the
11 potential for impacts of future development (new connections), identifying and locating
12 undersized areas or components of the system, and locating sources of I/I. The hydraulic model
13 will also identify areas of the system where the effective capacity is less than the designed
14 capacity, indicating possible damage, debris, sediment, roots or grease entrained in the system.
15 LACOSAN agrees to have the hydraulic model operational in Spring of 2005 for the SRWS and
16 by Spring of 2006 for the NRWS.

17 Capital Improvement Program: The CIP will be used to establish long term planning
18 options, which when implemented will prioritize and address potential problems before they
19 evolve into emergencies, or unpermitted discharges. The results of the Healthy Waterways
20 Study described in paragraph I.G. of this agreement will be used in conjunction with other
21 information in establishing priorities for sewer repair and replacement. Candidate improvements
22 will be scoped and cost-estimated at a planning level, then prioritized using criteria that address
23 regulatory and customer service standards. The prioritized list of improvement projects will then
24 be scheduled using revenue projections (and other available funds) over a 10-15 year
25 programming horizon. LACOSAN shall provide to RIVER WATCH a copy of the relevant
26 sections of the annual Budget(s) that prospectively integrate in LACOSAN's CIP the results of
27 the Healthy Waterways Study, as described in paragraph G below.

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1 C. **Master Planning:** LACOSAN will prepare master facility plans for the
2 SRWS and NRWS. This will include an assessment of system capacity and proposed
3 improvements to maintain long term regulatory compliance. The recommendations from these
4 plans will be incorporated into the CIP discussed above. The master plans for both the SRWS
5 and NRWS will be completed in 2005.

6 D. **Pre-treatment Facility Feasibility Study:** By August 2005, LACOSAN
7 will conduct a feasibility study to address pretreatment needs for sewer line cleanings, grease,
8 septage, winery waste and other similar wastes. The feasibility study will evaluate whether or not
9 such a facility can be economically constructed and operated given the economic realities faced
10 by the rural business community in Lake County. It is important to prevent these types of
11 wastes from entering the treatment process directly due to their impacts on the system. Also,
12 providing a facility that can handle grease would minimize it from entering the collection system
13 and plugging lines/causing spills.

14 E. **Hydraulic Capacity Analysis & Modeling Program:** LACOSAN will
15 develop and implement a model that will be used to assess the capacity of the sewer system and
16 capital improvements needed. The model will also be used to forecast impacts from new
17 development, and provide a hydraulic analysis of system improvements. The program described
18 herein shall be implemented for the SRWS within twelve (12) months of the effective date of this
19 Agreement and for the NRWS within eighteen (18) months of the effective date of this
20 Agreement.

21 F. **Public Education Program Enhancements:** LACOSAN will enhance its
22 public information and outreach programs, including maintaining a website for public
23 information and education. In addition, special informational topics will be addressed in the bi-
24 monthly billing statements to all customers. LACOSAN will expand its programs to educate all
25 members of the public of the importance of maintaining a healthy wastewater collection system
26 and its relationship to keeping Clear Lake clean. LACOSAN has surveyed food service
27 establishments, especially restaurants, and will develop a grease education program. Proper
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1 management of grease and preventing it from entering the collection system is an essential
2 component in reducing spills. LACOSAN will also undertake a public information campaign to
3 educate property owners and realtors about the importance of periodic inspection and proper
4 maintenance of private sewer laterals associated with the NRWS and SRWS collection systems.
5 The enhancements described herein shall be implemented within twelve (12) months of the
6 effective date of this Agreement.

7 **G. Healthy Waterways Study:** LACOSAN will conduct a Healthy Waterways
8 Study ("Study") to identify the occurrence of caffeine or other marker as an indicator of
9 organic wastewater contaminants (OWCs) in water resources. The primary objective of the
10 Study will be to indicate the occurrence of caffeine or other marker, which is associated with
11 human waste and can be accurately measured in environmental samples using available
12 technologies. Sampling sites may include creeks, streams, gullies and storm drains, and sample
13 sites will be selected within 100 feet of a sewer line. Samples will be taken upstream and
14 downstream of an intersecting sewer line whenever possible. The selection of sampling sites will
15 be biased toward streams susceptible to contamination from the sewer collection system (i.e.
16 downstream of areas of high population density where there are a higher number of connections
17 to a sewer line located in or adjacent to a creek or stream). Efforts will be made to assess the
18 portion of the population, if any, in the selected area on a septic system. The actual number of
19 sampling sites and locations will be a function of the available funding. Samples will be
20 collected once at first flush (first rainfall in excess of one-inch) and once during the dry season if
21 possible. Many of the creeks, streams, gullies and storm drains will not be flowing during the
22 dry season allowing for sampling purposes. That will be taken into consideration when
23 developing sampling locations. Sampling locations in Clear Lake may be located downstream of
24 the selected creek, stream, gully or storm drain study sites. Other sampling sites may be selected
25 as background sites or to indicate overall anthropogenic organic wastewater contaminant
26 influences on Clear Lake (including sewer systems and septic systems). LACOSAN may utilize
27 a consultant to conduct the Study. A further scope of work and sampling protocols will be
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1 developed for the Study within six (6) months of the effective date of this agreement and shall be
2 approved by both parties. Within the two-year period specified below and as part of the Study,
3 LACOSAN shall conduct follow-up sampling for fecal coliform when the initial samples indicate
4 the presence of caffeine or another human marker. The purpose of the follow up sampling will
5 be to determine whether and to what extent a public health risk exists in the waterways, and the
6 precise nature and type of follow up testing will be further defined in the scope of work and
7 sampling protocols. LACOSAN agrees to provide the Lake County Environmental Health
8 Department (EHD) with the Study sampling results.

9 LACOSAN shall provide RIVER WATCH with a schedule of all Study sampling at
10 least thirty (30) days before any sampling event. Included in the schedule will be information
11 identifying the exact location of the sampling. Upon request from RIVER WATCH, and notice
12 to LACOSAN a minimum of five (5) days before a scheduled sampling event, and River Watch
13 may collect a duplicate sample. The study shall be initiated within twelve (12) months of the
14 effective date of this Agreement. The total amount of funds to be expended for the Study,
15 including project scoping, design, sampling, analysis, review and write-up shall not exceed
16 \$40,000.

17 H. **Sewer Line Condition Assessment:** Within eight (8) years of the
18 effective date of this agreement, LACOSAN shall complete a comprehensive condition
19 assessment of the force mains and primary feeder lines within the NRWS and SRWS collection
20 systems, using TV technologies or other equally effective technologies in conjunction with the
21 SCADA flow monitoring system to identify sections of sewer pipeline in need of repair or
22 replacement.

23 I. **Documentation:** Within twelve (12) months of the effective date of this
24 Agreement, LACOSAN shall utilize comprehensive, informative protocols for the initial field
25 documentation of collection system overflows in the NRWS and SRWS systems. Information
26 from field documentation will be coordinated through the use of the Computerized Maintenance
27 Management System (CMMS). These protocols shall include the following:

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1. The name of the person who received the report of the incident and dispatched the response crew;
2. The location of the overflow;
3. The time of the response crew's arrival at the location, the estimated volume and duration of the overflow;
4. A summary of the measures taken to address the overflow, including remediation, cleanup and repair actions;
5. A summary of measures taken to assess risk to public health and the environment and any associated notification;
6. Sampling for total and fecal coliform in the receiving waters where an overflow reaches a flowing surface stream or Clear Lake.

J. **Monitoring Well Network:** Within three (3) years from the effective date of this Agreement, LACOSAN shall have in place a monitoring well network on its treatment plant properties at the NRWS and SRWS to allow for assessment of whether plant operations, including the effluent storage reservoirs, are resulting in degradation of groundwater quality beneath the facilities.

II. Within thirty (30) days from the effective date of this Agreement, LACOSAN will pay RIVER WATCH \$65,000.00 for its attorneys' fees and costs incurred in prosecuting this action.

III. Within ten (10) days of filing this agreement with the Court, RIVER WATCH shall file with the Court a Notice of Dismissal of this action with prejudice. The parties agree that the Court retains jurisdiction for purposes of enforcing the terms of this agreement, as stated in paragraph VI, *infra*.

IV. RIVER WATCH and its members agree not to file a suit or action in a court of competent jurisdiction against LACOSAN for Clean Water Act violations or any other legal theory relating to LACOSAN and its collection /treatment systems or alleged discharges therefrom that occur for an eight (8) year period from the effective date of this Agreement.

1 V. This Court shall retain jurisdiction of this action for the purposes of (1) resolving any
2 dispute regarding compliance with the terms of this Agreement, and (2) disposing of any motion
3 to enforce this Agreement or of any contempt petition. The parties may seek compliance with
4 this Agreement through properly noticed motions with this Court. However, prior to filing any
5 motion to compel compliance, either party must give thirty (30) days notice to the other and
6 allow the other party an additional thirty (30) days to respond. The Court's jurisdiction to
7 enforce the terms of this Agreement will expire on March 31, 2013.

8 VI. Good faith and best efforts are an implied term regarding each party's duty to comply
9 with the terms of this Agreement. If LACOSAN is unable to perform any of the terms in
10 Paragraphs I and II by the stated dates for reasons outside LACOSAN's control, LACOSAN
11 shall provide notice to RIVER WATCH and the parties shall modify the deadlines as appropriate
12 based upon the circumstances.

13 VII. Within thirty (30) days of a written request by RIVER WATCH for documentation of
14 LACOSAN's compliance with the terms of this Agreement, LACOSAN agrees to respond in
15 writing to the request. LACOSAN shall provide RIVER WATCH with non-privileged
16 documents regarding its compliance with the terms of this Agreement. If LACOSAN determines
17 that the production of the requested documents would be unduly burdensome, the parties shall
18 meet and confer regarding the scope of the response. Any reasonable costs associated with
19 providing verification of compliance shall be borne by LACOSAN.

20 VIII. Should any provision of this Agreement be held invalid or illegal, such illegality shall
21 not invalidate the remainder of this Agreement. In that event, this Agreement shall be construed
22 as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall
23 be construed and enforced accordingly.

24 IX. To the fullest extent possible, this Agreement shall act as a full and final resolution of
25 any and all claims, actions, causes of action based on any statute or provision of common law,
26 whether legal or equitable, and all liability arising out of, or in any way related to, claims arising
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1 out of the operation of or discharges from LACOSAN's SRWS and NRWS at any time up to
2 the effective date of this Agreement, which were raised or could have been raised in this litigation.

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

7 XI. This Agreement shall be effective on the date approved and ordered
8 by the Court.

9 The undersigned agree to the foregoing:

10 Dated: January 31, 2005 Northern California River Watch,
11 Plaintiff

12 By: /s/ Marylyn Chiang
13 Marylyn Chiang

14 Dated: January 25, 2005 Lake County Sanitation District,
15 Defendant

16 By: /s/ Ed Robey
17 Ed Robey, Chair, Board of Directors

18 APPROVED AS TO FORM:

19 Dated: February 1, 2005 /s/ Jack Silver
20 Jack Silver, Esq.
21 Attorney for Plaintiff
22 Northern California River Watch

23 Dated: February 2, 2005 /s/ Roberta L. Larson
24 Roberta L. Larson, Esq.
25 Attorney for Defendant
26 Lake County Sanitation District

27 ORDER

28 APPROVED AND SO ORDERED,

DATED: 2/4/2005

Martin J. Jenkins
Honorable Martin J. Jenkins
United States District Judge

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I, ROBERTA L. LARSON, declare as follows:

1. I am an attorney with the law firm of Somach, Simmons & Dunn, attorneys of record in the above-entitled action for Defendant Lake County Sanitation District.

2. I can attest from my conversations with the parties that they concur with the Settlement Agreement and that they have signed the original copy of this Settlement Agreement. The original Settlement Agreement with each party's holographic signature is in my office should the Court require it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 2, 2005 at Sacramento, California.

By: /s/ Roberta L. Larson

Roberta L. Larson