

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between Northern California River Watch ("NCRW") and the City of Santa Rosa ("CITY") (collectively, the "SETTLING PARTIES") with respect to the following facts and objectives:

RECITALS

1. NCRW 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, and tributaries of Northern California;

2. CITY is a municipality organized under the laws of the State of California that operates the Laguna Subregional Wastewater Collection, Treatment, Conveyance, Reuse, and Disposal Facilities pursuant to State Water Resources Control Board Order No. 2000-03, National Pollutant Discharge Elimination System ("NPDES") permit No. CA0022764 (the "NPDES Permit");

3. On June 15, 2004, NCRW provided CITY with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365.

4. On October 4, 2004, NCRW filed its Complaint in the United States District Court for the Northern District of California against the CITY (*Northern California River Watch v. City of Santa Rosa*, Case No. C04-4195 WHA). NCRW's Complaint incorporates by reference all of the allegations contained in NCRW's 60-Day Notice Letter;

5. On April 15, 2005, NCRW provided the CITY with a Supplemental Notice of Violations and Intent to File Suit Under the Clean Water Act ("Supplemental Notice Letter") under Section 505 of the Act;

6. NCRW and the CITY, through their authorized representatives and without either adjudication of NCRW's claims or admission by the CITY of any alleged violation or other wrongdoing, have chosen to resolve in full NCRW's allegations in the 60-Day Notice Letter,

Supplemental Notice Letter, and Complaint through settlement and avoid the cost and uncertainties of further litigation;

7. NCRW and the CITY have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving NCRW's allegations set forth in the 60-Day Notice Letter, Supplemental Notice Letter, and Complaint.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NCRW and the CITY hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF NCRW

2. **Stipulation to Dismiss With Prejudice and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies' review period specified in Paragraph 12 below, NCRW shall file a Stipulation to Dismiss With Prejudice and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(ii) with the United States District Court for the Northern District of California specifying that NCRW is dismissing with prejudice all claims in NCRW's Complaint. NCRW is responsible for notifying the CITY of the District Court's entry of the Order dismissing with prejudice. If the District Court chooses not to enter the Order, this AGREEMENT is null and void.

3. NCRW is responsible for notifying the CITY of the District Court's entry of the Order dismissing with prejudice.

4. NCRW and CITY agree that the District Court for the Northern District of California shall retain jurisdiction to enforce the terms of this AGREEMENT.

COMMITMENTS OF CITY

5. **Supplemental Environmental Projects.** In recognition of the good-faith efforts by CITY to comply with all aspects of the NPDES Permit and the Clean Water Act, and in lieu of the payment by CITY of any penalties and costs which may have been assessed in this action if it had proceeded to trial, CITY agrees to place the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) into a fund for a grant program to provide grant funding for environmental or educational projects that focus on nutrient removal, revegetation and/or restoration in the Laguna de Santa Rosa and its tributaries. The fund will be administered by a committee consisting of three members approved by NCRW and three members approved by the CITY.

Subject to approval by the committee, CITY shall publish a notice in *The Press Democrat* soliciting grant applications. The notice shall provide that all grant applications must be submitted within ninety (90) days after the last date the notice is published. The notice shall be published for a period of time to be determined by the committee. CITY shall pay up to One Thousand Dollars (\$1,000.00) in publication costs. Any additional publication costs shall be paid by the fund. Except as provided herein, CITY agrees not to charge any fee for administration of the grant process.

Copies of all grant applications shall be provided to each committee member two weeks prior to the committee meeting(s) at which applications are to be reviewed. The committee shall meet within thirty (30) days of the close of the submittal period. Grant funding for projects shall be contingent upon approval of the grant application by not less than four (4) of the six (6) members.

If the grant funds are not completely allocated at the conclusion of the grant application and approval process, the entire grant application and approval process will be repeated. There shall be a good faith effort to complete the grant application and approval process within one (1) year of the Effective Date of this AGREEMENT, but, in any event, the grant application and approval process set forth herein shall be repeated as many times as necessary in order to exhaust the full sum of the \$250,000.00 grant. If the full sum of the \$250,000.00 grant is not exhausted at the end of eighteen (18) months from the Effective Date of this AGREEMENT, the committee shall deposit the remaining grant funds with the Russian River Watershed Council for its

administration of a grant program to provide grant funding for environmental or educational projects that focus on nutrient removal, revegetation and/or restoration in the Laguna de Santa Rosa and its tributaries, consistent with the grant program requirements contained herein.

6. **Monitoring Well.** CITY agrees to install one (1) groundwater monitoring well in the vicinity of Alpha Pond upgradient or downgradient of the existing monitoring well. CITY agrees to sample the one (1) additional groundwater monitoring well and the existing groundwater monitoring well twice each year between May 15th and October 1st for the same constituents the Regional Water Quality Control Board requires the CITY to monitor for when the CITY discharges from its recycled water storage ponds to receiving waters, including coliform but excluding acute or chronic bioassay toxicity tests.

7. **Recommended Ordinance.** Utilities Department staff will recommend for adoption by the City Council an ordinance requiring the inspection of private sewer laterals prior to the sale of property.

8. **Collection System Cleaning and Inspection.** Every five (5) years, CITY agrees to clean and visually document through the use of sonar or closed circuit television ("CCTV") the condition of those portions of its collection system that cross rivers, creeks or streams, including the Laguna de Santa Rosa and Santa Rosa Creek, or within two hundred (200) feet of said rivers, creeks or streams. CITY agrees to use the information obtained through the use of the agreed upon sonar or CCTV'ing in prioritizing any necessary repairs in an effort to protect the environment.

9. **Delta Pond Improvement Project.** CITY agrees to install valving improvements at Delta Pond no later than January 30, 2006.

10. **Continuous Sampling Data.** CITY agrees to add directions on its website to allow the public to more easily obtain copies of CITY's continuous sampling data.

11. **Fees, Costs, and Expenses.** CITY shall pay NCRW the sum of One Hundred Seventy-Five Thousand Dollars (\$175,000.00). Payment shall be made by the CITY within fifteen (15) calendar days after receiving notice by NCRW of the District Court's entry of the

Order dismissing with prejudice described in paragraph 2 of this AGREEMENT. Payment by the CITY to NCRW shall be made in the form of a single check payable to "Northern California River Watch," and shall constitute full payment for all costs of litigation, including attorney's fees, incurred by NCRW that have or could have been claimed in connection with NCRW's claims, up to and including the Effective Date of this AGREEMENT.

12. **Review by Federal Agencies.** CITY shall submit this AGREEMENT to EPA and the U.S. Department of Justice ("DOJ") no later than September 23, 2005 for review consistent with 40 C.F.R. § 135.5. The review period expires 45 days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided to NCRW upon receipt by CITY. In the event that EPA or DOJ comments negatively on the provisions of this AGREEMENT, NCRW and CITY agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ (hereinafter the "Agencies"). If NCRW and CITY are unable to resolve the issue(s) raised by the Agencies in their comments, the NCRW and CITY agree to return to mediation before Martin Quinn, Esq., through JAMS. CITY agrees to pay for up to eight (8) hours of mediation.

13. **Press Release.** NCRW and CITY agree to issue the following joint press release ten (10) days after the District Court's entry of the Order dismissing with prejudice: "The City of Santa Rosa and Northern California River Watch announces today the federal lawsuit regarding the Laguna de Santa Rosa has been settled on terms that both parties believe will advance the continuing efforts of the City and Northern California River Watch to enhance the environment of the Laguna de Santa Rosa. The terms of the settlement agreement are available upon request."

NO ADMISSION OR FINDING

14. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

15. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the SETTLING PARTIES have against each other arising from NCRW's allegations and claims as set forth in the 60-Day Notice Letter, Supplemental Notice Letter, and Complaint.

16. For the period beginning on the Effective Date and ending nine (9) years after the Effective Date, NCRW agrees that neither NCRW, its officers, executive staff, members of its governing board nor any organization under the control of NCRW, its officers, executive staff, or members of its governing board, will file any lawsuit against CITY seeking relief for alleged violation of the Clean Water Act or violation of the CITY's current or future NPDES Permit. NCRW further agrees that NCRW will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against CITY that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the CITY's compliance with the Clean Water Act or the CITY's current or future NPDES Permit.

GENERAL PROVISIONS

17. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the NPDES Permit, Clean Water Act or specifically herein.

18. **Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

19. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

20. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, or overnight mail as follows:

If to NCRW:

Jack Silver, Esq.
Law Office of Jack Silver
PO Box 5469
Santa Rosa, CA 95402-5469

If to the CITY:

Brien J. Farrell
City Attorney
City of Santa Rosa
100 Santa Rosa Avenue, Room 8
Santa Rosa, CA 95404

And to:

Stephen J. Meyer, Esq.
Nicole E. Granquist, Esq.
Downey Brand LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814

Notifications of communications shall be deemed submitted on the date that they are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices. In addition, the SETTLING PARTIES may agree to transmit documents electronically or by facsimile.

21. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, .pdf, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

22. **Modification of the Agreement:** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

23. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

24. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements, covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

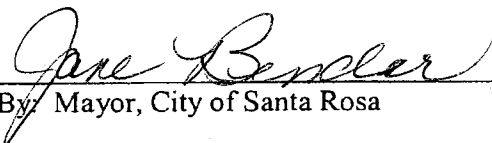
25. **Negotiated Agreement.** The SETTLING PARTIES have negotiated this AGREEMENT, and the doctrine of *contra proferentum* does not apply.

26. **Authority.** The undersigned representatives for NCRW and CITY each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.


Date: October 11, 2005

CITY OF SANTA ROSA


By: Mayor, City of Santa Rosa

Date: 9/27, 2005

NORTHERN CALIFORNIA RIVER WATCH


By:
Title: Robert W. Rawson, Vice Pres.

APPROVED AS TO FORM:

Date: Oct. 11, 2005

For DEFENDANT

DOWNEY BRAND LLP

Nicole E. Granquist
By: Nicole E. Granquist, Esq.

Date: Oct. 7, 2005

For PLAINTIFF

LAW OFFICE OF JACK SILVER

Jack Silver
By: Jack Silver, Esq. and Member, NCRW

Taxpayer I.D. #: 680297197