

1 William W. Funderburk, Jr. (Bar No. 176244)
 2 wfunderburk@candffirm.com
 3 Anna L. Cole (Bar No. 258312)
 4 acole@candffirm.com
 5 Castellón & Funderburk LLP
 6 811 Wilshire Boulevard, Suite 1025
 7 Los Angeles, California 90017
 8 Tel: (213) 623-7515
 9 Fax: (213) 532-3984
 10 Attorneys For Defendants

JS-6

8 Jason Weiner (Bar No. 259264)
 9 jweiner.venturacoastkeeper@wishtoyo.org
 10 Wishtoyo Foundation/Ventura Coastkeeper
 11 3875-A Telegraph Road #423
 12 Ventura, CA 93003
 13 Tel: (805) 823-3301
 14 Fax: (805) 258-5135
 15 Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

17 VENTURA COASTKEEPER, a program
 18 of THE WISHTOYO FOUNDATION,
 19 and THE WISHTOYO FOUNDATION, a
 20 non-profit corporation,
 21 Plaintiffs,

v.

21 E.J. HARRISON & SONS, INC.;
 22 NEWBURY DISPOSAL COMPANY,
 23 INC.; SANTA CLARA VALLEY
 24 DISPOSAL, INC.; RJM COLLECTION
 25 SERVICE; HARRISON BROTHERS
 26 ENTERPRISES, LLC; American
 27 RESOURCE RECOVERY, INC.; E.J.
 28 HARRISON & SONS RENTALS, INC.;
 E.J. HARRISON & SONS RENTALS,
 Defendants.

Case No. CV10-10042 AHM VBKx
 Hon. A.Howard Matz

CONSENT DECREE

**(Federal Water Pollution Control
 Act, 33 U.S.C. § 1251 et seq.)**

1 **WHEREAS**, Ventura Coastkeeper is a program of the Wishtoyo Foundation,
2 a non-profit public benefit corporation. Ventura Coastkeeper’s mission is to protect,
3 preserve, and restore the ecological integrity and water quality of Ventura County’s
4 inland water bodies, coastal water and watersheds. The Wishtoyo Foundation’s
5 mission is to preserve, protect and restore Chumash culture, the culture and history
6 of the coastal communities, cultural resources and the environment;

7 **WHEREAS**, Ventura Coastkeeper and Wishtoyo Foundation are referred to
8 herein as “Coastkeeper” or “Plaintiff”;

9 **WHEREAS**, E.J. Harrison & Sons, Inc. is referred to herein as “Harrison” or
10 “Defendant”;

11 **WHEREAS**, Defendant is the owner and/or operator of the refuse vehicle
12 and refuse container maintenance and storage facility (SIC Code 4212) located at
13 1589 Lirio Avenue, Ventura, California, 93004 (“Facility”);

14 **WHEREAS**, the following entities do not conduct and have never conducted
15 activities at the Facility that are regulated by the California General Industrial
16 Stormwater Permit: Newbury Disposal Company, Inc.; Santa Clara Valley
17 Disposal, Inc.; RJM Collection Service; Harrison Brothers Enterprises, LLC;
18 American Resource Recovery, Inc; E.J. Harrison & Sons Rentals, Inc.; and E.J.
19 Harrison & Sons Rentals. As such the listed entities in this paragraph do not
20 discharge and have never discharged storm water associated with industrial activity
21 at the Facility;

22 **WHEREAS**, based on the representation of the entities listed in the
23 paragraph above, Coastkeeper dismisses Newbury Disposal Company, Inc.; Santa
24 Clara Valley Disposal, Inc.; RJM Collection Service; Harrison Brothers Enterprises,
25 LLC; American Resource Recovery, Inc.; E.J. Harrison & Sons Rentals, Inc.; and
26 E.J. Harrison & Sons Rentals with prejudice for claims alleged in the Complaint and
27 first amended Complaint through the Effective Date;

28 **WHEREAS**, on October 26, 2010 and January 13, 2011, Coastkeeper served

1 Defendants, the United States Environmental Protection Agency (“EPA”), EPA
2 Region IX, the State Water Resources Control Board (“State Board”) and the
3 Regional Water Quality Control Board (“Regional Board”), with notices of intent to
4 file suit for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§
5 1251, *et seq.* (“Clean Water Act” or “CWA”) and the State of California’s General
6 Industrial Storm Water Permit¹ (“Storm Water Permit”);

7 **WHEREAS**, on December 29, 2010, Coastkeeper filed a complaint against
8 Defendants in the United States District Court, Central District of California (Civil
9 Case No. CV 10 10042 entitled *Ventura Coastkeeper, et al. v. E.J. Harrison &*
10 *Sons, Inc., et al.* (“Complaint”);

11 **WHEREAS**, on March 18, 2011, Coastkeeper filed a first amended Complaint
12 in this action;

13 **WHEREAS**, Harrison denies all allegations of the Complaint and first
14 amended Complaint;

15 **WHEREAS**, Coastkeeper and Harrison (collectively referred to herein as the
16 “Settling Parties” or “Parties”) have agreed that it is in the Parties' mutual interest to
17 enter into a Consent Decree setting forth terms and conditions appropriate to
18 resolving the allegations set forth in the Complaint and first amended Complaint
19 without further proceedings;

20 **WHEREAS**, Defendant does not admit that the Volume-Based Compliance
21 Requirement, as set forth in Paragraph 8, is indicative of compliance with BAT/BCT
22 standards. However, in the spirit of cooperation to settle this matter, Defendant has
23 compromised, and has agreed to enter into this Consent Decree and to comply with
24 the provisions of this Consent Decree;

25 _____
26 ¹ National Pollution Discharge Elimination System (“NPDES”) General
27 Permit No. CAS000001 [State Board] Water Quality Order No. 92-12-DWQ, as
28 amended by Order No. 97-03-DWQ (“Storm Water Permit”).

1 **WHEREAS**, Defendant does not admit that the E. coli numeric limit, as set
2 forth in Paragraph 12, is the proper limit to be applied to the Facility’s storm water
3 discharge. However, in the spirit of cooperation to settle this matter, Defendant has
4 compromised, and has agreed to enter into this Consent Decree and to comply with
5 the provisions of this Consent Decree;

6 **WHEREAS**, Coastkeeper and Harrison agree that the Consent Decree is an
7 actual agreement that is the product of good faith, arms-length negotiations;

8 **WHEREAS**, all actions taken by Harrison pursuant to this Consent Decree
9 shall be made in compliance with all applicable federal, state and local rules and
10 regulations;

11 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
12 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT**
13 **AS FOLLOWS:**

14 **1.** The Court has jurisdiction over the subject matter of this action
15 pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

16 **2.** Venue is appropriate in the Central District Court pursuant to Section
17 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the
18 alleged violations took place is located within this District;

19 **3.** The Complaint and first amended Complaint state a claim upon which
20 relief may be granted against Harrison pursuant to Section 505 of the CWA, 33
21 U.S.C. § 1365;

22 **4.** Plaintiff has standing to bring this action;

23 **5.** The Court shall retain jurisdiction over this matter for purposes of
24 interpreting, modifying or enforcing the terms of this Consent Decree, or as long
25 thereafter as is necessary for the Court to resolve any motion to enforce this Consent
26 Decree.

27
28

1 **I. OBJECTIVES**

2 **6.** It is the express purpose of the Parties entering into this Consent
3 Decree to further the objectives set forth in Section 101 *et seq.* of the CWA, 33
4 U.S.C. §§ 1251, *et seq.*, and to resolve those issues alleged by Coastkeeper in its
5 Complaint and first amended Complaint. In light of these objectives and as set forth
6 fully below, Defendant agrees, *inter alia*, to comply with the provisions of this
7 Consent Decree and to comply with the requirements of the Storm Water Permit and
8 all applicable provisions of the CWA. Specifically, Receiving Water Limitation
9 C(2) in the Storm Water Permit requires that the Facility “not cause or contribute to
10 the exceedance of an applicable water quality limit.” Effluent Limitation B(3) of the
11 Storm Water Permit requires that Best Management Practices (“BMPs”) be
12 developed and implemented to achieve Best Available Technology (“BAT”) and the
13 Best Conventional Pollutant Control Technology (“BCT”). Defendant is required to
14 develop and implement BMPs necessary to comply with the Storm Water Permit’s
15 requirement to achieve compliance with Water Quality Standards and BAT/BCT
16 standards. BMPs must be developed and implemented to prevent discharges or to
17 reduce contamination in storm water discharged from the Facility sufficient to
18 achieve the numeric limits detailed in Table 1 below.

19 **II. COMMITMENTS OF THE PARTIES**

20 **A. Industrial Storm Water Pollution Control Measures**

21 **7.** Defendant shall implement the following BMPs to comply with the
22 provisions of this Consent Decree and to comply with the requirements of the Storm
23 Water Permit and all applicable provisions of the CWA at the Facility: (1) divert
24 roof rain gutters from commingling with industrial runoff from the following areas:
25 warehouse #1, mechanic shop, front office, welding shop, paint booth, warehouse
26 #2, and warehouse #5; (2) treat catch basin numbers 3, 5, and 6 with a treatment
27 control that complies with all regulatory requirements; and (3) eliminate SW-2 by
28 connecting SW-2 and SW-3 in the employee parking lot. Defendant is not limited

1 to implementing these BMPs, and shall amend its Storm Water Pollution Prevention
2 Plan (“SWPPP”) in accordance with paragraph 19 of this consent decree to include
3 these BMPs. If the SWPPP does not effectively prevent discharges or reduce
4 contamination in storm water discharged from the Facility in a manner sufficient to
5 achieve the Numeric Limits detailed in paragraph 12, below, Defendant shall
6 implement additional BMPs developed pursuant to this Consent Decree. The
7 SWPPP site map for the Facility is attached hereto as **Appendix A.**

8 **8.** The storm water pollution control measures required by this Consent
9 Decree and the Storm Water Permit shall be designed and operated to manage
10 through treatment and/or diversion at least 95% of the average annual runoff
11 volume (“Volume-Based Compliance Requirement”). The storm water pollution
12 control measures shall be operated throughout the entire year. The Volume-Based
13 Compliance Requirement will be based on an assumed runoff coefficient of 0.9 and
14 the 20-year rainfall record from 1990 - 2010 recorded by Ventura County
15 Watershed Protection District rainfall gauges: 175 (Saticoy Fire Station), 132B
16 (Saticoy-County Yard), and 175A (Saticoy-County Yard). For the purpose of this
17 Consent Decree, properly documented discharges of storm water and/or storm water
18 pollutants from the Facility in connection with rainfall events that cause runoff
19 volume to exceed the Volume-Based Compliance Requirement is not a violation of
20 this Consent Decree.

21 **9.** As described in paragraph 15,17, and 18 below, for each Wet Season
22 (the Wet Season is defined in the Storm Water Permit and for purposes of this
23 Consent Decree as October 1st through May 31st), beginning with the 2011/2012
24 wet season, and for each year thereafter during the term of this Consent Decree,
25 Harrison shall sample storm water discharges from the Facility for five (5) storm
26 events per Wet Season, during the first hour of the discharge from the storm event if
27 the discharge occurs during the Facility operating hours in paragraph 17 below, or
28 within the first hour of Facility operating hours in paragraph 17 below if the storm

1 event commences before these hours and a discharge from the storm event occurs
2 during the Facility operating hours (to the extent there are at least five (5) storm
3 events during a particular Wet Season).

4 **10.** As described in paragraphs 12, 13, and 14 below, beginning with the
5 2011/2012 Wet Season, and for each year thereafter during the term of this Consent
6 Decree, storm water discharges from the Facility (except storm water discharges in
7 a storm that causes runoff volume to exceed the Volume-Based Compliance
8 Requirement) shall require Harrison to submit an Action Plan by June 30 of each
9 year if any pollutant concentration in any such storm water discharge exceeds any
10 one of the Numeric Limits set forth in Table 1 below.

11 **11.** Non-stormwater discharges from the Facility not authorized by the
12 Storm Water Permit shall be considered a breach of this Consent Decree.

13 **B. Reduction of Pollutants in Discharges**

14 **12.** Numeric Limits and Contaminant Reduction. Contaminants in
15 discharges from Facility discharge points shall not exceed the limits (“Numeric
16 Limits”) in Table 1.

17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
Table 1

Contaminant	Limit (All but pH and E. coli, expressed as milligrams per liter (mg/l); E. coli, expressed as Most Probable Number per 100 milliliters (MPN/100 ml))
pH	6.5-8.5
Oil and Grease	15
Total Suspended Solids ("TSS")	100
E. coli density	235 MPN /100 ml
Biochemical Oxygen Demand ("BOD")	30 mg/l
Chemical Oxygen Demand ("COD")	120 mg/l

19 **13.**Action Plan for Table 1 Exceedances. Defendant shall submit a plan
20 for reducing and/or eliminating the discharge of pollutants ("Action Plan") if any
21 sampling for any parameter during the wet season demonstrates that any parameter
22 in any discharge from the Facility exceed the applicable limit for any parameter
23 found in Table 1. In any year that an Action Plan is required, it shall be submitted
24 by June 30 following the Wet Season.

25 a. Action Plan Requirements. Any Action Plan submitted shall
26 include at a minimum (1) the identification of the pollutant(s) discharged in excess
27 of the Numeric Limit(s), (2) an assessment of the source of each pollutant
28

1 exceedance, (3) the identification of additional BMPs that will be implemented to
2 achieve compliance with the Numeric Limit(s), and (4) time schedules for
3 implementation of the proposed BMPs. The time schedule(s) for implementation
4 shall require that all BMPs are implemented before October 1 of the year the Action
5 Plan is submitted. Anytime an Action Plan is submitted it shall also include a
6 revised monitoring & reporting plan (“M&RP”). However, failure to implement the
7 proposed BMPs due to the provisions outlined in the force majeure clause of this
8 Consent Decree, shall not be considered a breach of this Consent Decree. The
9 Action Plan must address treating runoff discharging from the site.

10 b. Action Plan Review. Coastkeeper shall have thirty (30) days
11 upon receipt of Defendant’s Action Plan to provide Defendant with comments.
12 Defendant shall have till October 1 to implement any additional non-structural or
13 structural BMPs agreed upon by Defendant and Coastkeeper, subject to the force
14 majeure provision of this Consent Decree. Within thirty (30) days from the date
15 Coastkeeper comments on Defendant’s Action Plan, Defendant shall provide a
16 written explanation if Defendant refuses to develop and/or implement any of
17 Coastkeeper’s recommended additional BMPs. If any structural BMPs require any
18 agency approval, then Defendant shall contact Coastkeeper to request an extension
19 of the deadline, if necessary, to implement the structural BMPs requiring agency
20 approval. Coastkeeper’s consent to Defendant’s requested extension shall not be
21 unreasonably withheld. Defendant shall notify Coastkeeper in writing when the
22 Action Plan has been implemented.

23 **14.** Action Plan for Year 3 Wet Season. If at the end of the 2013/2014 Wet
24 Season, storm water sample results demonstrate that Defendant continues to
25 discharge storm water containing pollutants exceeding the limits set forth in Table 1,
26 the Parties shall meet and confer by June 30, 2014 to (1) discuss the sample results,
27 (2) discuss current BMPs, and (3) devise a mutually agreeable action plan (“Year 3
28 Action Plan”). The Year 3 Action Plan shall include time schedule(s) for

1 implementing any proposed BMPs, with all proposed BMPs to be implemented no
2 later than October 1, 2014. Within thirty (30) days of meeting and conferring,
3 Defendant will develop and submit the Year 3 Action Plan to Coastkeeper.
4 Coastkeeper will provide comments on the Year 3 Action Plan within thirty (30)
5 days of receipt of the plan. Defendant shall revise the Year 3 Action Plan to include
6 Coastkeeper's comments.

7 **C. Sampling, Monitoring, Inspecting, and Reporting**

8 **15. Sampling Program.** Within thirty (30) days of the Effective Date,
9 Defendant shall implement a revised Monitoring & Reporting Plan ("M&RP") for
10 the Facility, as well as begin to conduct all sampling and monitoring required by this
11 Consent Decree and/or the Storm Water Permit. The revised M&RP shall require
12 that the samples taken from the Facility's storm water discharges pursuant to the
13 Storm Water Permit are analyzed for the constituents identified in Table 1 in
14 addition to any other constituents required by the Storm Water Permit.

15 **16. Coastkeeper's Review of Revised M&RP and SWPPP Site Map.** If,
16 after the Effective Date but prior to the Termination Date, Defendant anticipates any
17 changes in the Facility's storm water discharge point(s), or either Defendant or
18 Coastkeeper discovers a change in the Facility's storm water discharge point(s),
19 Defendant shall submit a revised M&RP and SWPPP site map to Coastkeeper for
20 review and comment as soon as it is completed but in any event no later than thirty
21 (30) days prior to the creation or discovery of the new discharge point. If
22 Coastkeeper discovers the change in the Facility's storm water discharge point(s),
23 Coastkeeper must promptly notify Defendant. Coastkeeper shall provide comments,
24 if any, to Defendant within thirty (30) days of receipt of the M&RP and SWPPP site
25 map. Defendant shall incorporate Plaintiff's comments into the M&RP, or shall
26 justify in writing why any comment is not incorporated within thirty (30) days of
27 receiving comments.

28 **17. Sample Analysis and Sample Frequency.** Defendant shall collect storm

1 water samples from each discharge location from five (5) storm events per Wet
2 Season (to the extent there are at least five (5) storm events during a particular Wet
3 Season). For purposes of this Consent Decree, this includes any storm water
4 discharge occurring during the Facility operating hours defined as: between 5:00
5 a.m. and 5:00 p.m. Monday through Friday (excluding company holidays), between
6 5:00 a.m. and 2:00 p.m. Saturday (excluding company holidays), or whenever storm
7 water is intentionally released outside these hours (“operating hours”). Defendant
8 must sample their storm water discharge(s) from each of the first five (5) storm
9 events that produce a storm water discharge in each Wet Season, during the first
10 hour of the storm event if the discharge occurs during the operating hours in this
11 paragraph, or within the first hour during the operating hours in this paragraph if the
12 storm event commences before the operating hours in this paragraph. Any failure to
13 sample in one of the first five (5) storm events that produce a storm water discharge
14 shall be documented. Defendant must continue to sample its storm water discharges
15 from each storm event that produces a discharge until a total of five (5) storm events
16 that produce a discharge have been sampled.

17 **18.** Defendant shall analyze the samples for the constituents identified in
18 Table 1. A California State certified laboratory shall perform all sample chemical
19 analyses. Defendant shall select laboratories and analytical limits such that, at a
20 minimum, achieve method detection limits below the Numeric Limits in Table 1.

21 **D. Storm Water Pollution Prevention Plan**

22 **19.** SWPPP. Within thirty (30) days of the Effective Date, Defendant
23 agrees to implement the SWPPP currently in effect at the Facility to incorporate all
24 storm water pollution prevention measures and other requirements set forth in this
25 Consent Decree and/or the Storm Water Permit.

26 **20.** SWPPP Revisions. Defendant shall revise the SWPPP as necessary to
27 incorporate additional BMPs developed pursuant to this Consent Decree.
28 Specifically, the SWPPP shall include a description of all industrial activities and

1 corresponding potential pollutant sources and, for each potential pollutant source, a
2 description of the potential pollutants from the sources. The constituents identified
3 in Table 1 shall be identified in the SWPPP, along with any other potential
4 pollutants and corresponding potential pollutant source(s) at the Facility.

5 **21. Coastkeeper’s Review of Revised SWPPP.** If Defendant revises the
6 SWPPP, it shall submit the revised SWPPP to Coastkeeper for review and comment
7 as soon as it is completed but in any event no later than thirty (30) days from the
8 date of revision. Within thirty (30) days of Coastkeeper’s receipt of the revised
9 SWPPP, Coastkeeper shall provide Defendant with comments and suggestions, if
10 any, concerning the revisions to the SWPPP. Within thirty (30) days of Defendant’s
11 receipt of Coastkeeper’s comments on the revised SWPPP and if Defendant agrees
12 with Coastkeeper’s comments, Defendant shall incorporate Coastkeeper’s comments
13 into the SWPPP and the SWPPP will be re-issued. Any disputes as to the adequacy
14 of the SWPPP shall be resolved pursuant to the dispute resolution provisions of this
15 Consent Decree, set out in Section IV below.

16
17 **D. Employee Training**

18 **22.** Within thirty (30) days of the Effective Date, Defendant shall develop
19 a training program, including any training materials needed for effective
20 implementation of the training program, to ensure that employees are properly
21 trained to perform the activities described in subsections (a)-(d) below. Such
22 training program shall be specified in the SWPPP. Training shall be provided by a
23 private consultant or a representative of Defendant familiar with the requirements of
24 this Consent Decree and the Storm Water Permit, and shall be repeated as necessary
25 to ensure that all such employees are familiar with the requirements of this Consent
26 Decree, the Storm Water Permit, and the Facility’s SWPPP. All new staff will
27 receive this training before assuming responsibilities for implementing the SWPPP.
28 Defendant shall maintain training records to document compliance with this

1 paragraph, and shall provide Coastkeeper with a copy of these records within
2 fourteen (14) days of receipt of a written request. Specific training shall include, but
3 is not limited to:

4 a) Non-Storm Water Discharge Training. Defendant shall train all
5 employees on the Storm Water Permit's prohibition of non-storm water discharges
6 so that employees know what non-storm water discharges are and how to avoid
7 them;

8 b) BMP Training. Defendant shall train all employees responsible
9 for BMP implementation and maintenance on the proper implementation and
10 maintenance of the BMPs developed and implemented at the Facility;

11 c) Sampling Training. Defendant shall train all individuals
12 performing sampling at the Facility pursuant to this Consent Decree or the Storm
13 Water Permit on the proper sampling protocols;

14 d) Visual Observation Training. Defendant shall provide training to
15 all individuals performing visual observations at the Facility pursuant to this
16 Consent Decree or the Storm Water Permit.

17 **E. Compliance Monitoring**

18 **23. Site Inspections**. Up to two representatives of Coastkeeper, and if
19 Coastkeeper desires an attorney or other representative, may conduct one yearly site
20 inspection ("Site Inspection") at the Facility for each year that this Consent Decree
21 is in effect. The annual Site Inspection shall occur during normal business hours
22 and Coastkeeper shall provide Defendant with as much notice as possible, but at
23 least twenty-four (24) hours notice prior to a Site Inspection during wet weather, and
24 seventy-two (72) hours notice prior to a Site Inspection during dry weather. Notice
25 will be provided by phone, followed up by electronic mail documenting the phone
26 call or voicemail. During the annual Site Inspection, Defendant shall allow
27 Coastkeeper and/or its representatives access to the Facility's SWPPP and
28 monitoring records, and to all monitoring reports and data for the Facility. During

1 the annual Site Inspection, Defendant shall allow Coastkeeper and/or its
2 representatives to collect samples of storm water discharges at the Facility.

3 **24. Sampling Inspections.** Upon twenty-four (24) hours notice,
4 Defendant shall grant Coastkeeper personnel access to the Facility up to two (2)
5 times per wet season that this Consent Decree is in effect for the purpose of
6 collecting samples of stormwater discharges at the Facility.

7 **25. Reporting.** After the Effective Date, Defendant shall provide
8 Coastkeeper with a copy of all compliance and monitoring data, including
9 inspection reports, related to the Facility’s dry weather and storm water discharges
10 on a monthly basis. After the Effective Date, Defendant shall provide Coastkeeper
11 with all laboratory analyses related to the Facility within seven (7) days of
12 Defendant’s receipt of such information.

13 **26. Document Provision.** After the Effective Date, Defendant shall copy
14 Coastkeeper on all documents and communications related to water quality at the
15 Facility that are submitted to the Regional Board, the State Board, and/or any State
16 or local agency or municipality. Such reports and documents shall be provided to
17 Coastkeeper concurrently as they are sent to the agencies and/or municipalities. Any
18 correspondence related to water quality received by Defendant from any regulatory
19 agency shall be provided within three (3) business days of receipt by Defendant.

20 **F. Environmental Projects, Compliance Monitoring Funding**
21 **and Fees and Costs**

22 **27. Environmental Project A.** Defendant agrees to make a payment of Fifty
23 Thousand Dollars \$50,000 to California Trout, Inc. for projects designed to analyze,
24 reduce, prevent, or otherwise mitigate the ecological effects of storm water and
25 wastewater discharges into the Santa Clara River on adult and juvenile steelhead
26 migration in the Santa Clara River watershed as outlined in Exhibit A. Defendant
27 shall make the mitigation payment in three installments as follows: a payment of
28 Fifteen Thousand Dollars (\$15,000) within thirty (30) days of the Effective Date, a

1 second payment of Fifteen Thousand Dollars (\$15,000) within sixty days of the
2 Effective Date, and a third payment of Twenty Thousand Dollars (\$20,000) within
3 ninety (90) days of the Effective Date. All payments required under this paragraph
4 shall be made to “California Trout, Inc.”, and mailed via certified mail or overnight
5 delivery to “California Trout, Inc.”, attention: Alan Roesberry, Finance
6 Director, 870 Market Street, Suite 528, San Francisco, 94102. Defendant shall
7 provide Coastkeeper with a copy of such payment. Plaintiff agrees to provide
8 Defendant with a final written report or a report describing the product of
9 Environmental Project A within thirty (30) days of its completion.

10 **28. Environmental Project B.** Defendant agrees to make a payment of Five
11 Thousand Dollars (\$5,000) to Central Coast Alliance United for a Sustainable
12 Economy for street, storm channel, wetlands, riparian, stream, and river trash clean
13 up projects designed to analyze, reduce, prevent, or otherwise mitigate the
14 ecological effects of storm water and wastewater discharges into the Santa Clara
15 River and its watershed as outlined in Exhibit B. Defendant shall make the
16 mitigation payment in one installment as follows: a payment of Five Thousand
17 Dollars (\$5,000) within thirty (30) days of the Effective Date. All payments required
18 under this paragraph shall be made to Central Coast Alliance United for a
19 Sustainable Economy (“CAUSE”) and mailed via certified mail or overnight
20 delivery to “CAUSE”, attention: Cameron Yee, 2021 Sperry Avenue, Suite 18,
21 Ventura, CA 93003. Defendant shall provide Coastkeeper with a copy of such
22 payment. Plaintiff agrees to provide Defendant with a final written report or a
23 report describing the product of Environmental Project B within thirty (30) days of
24 its completion.

25 **29. Coastkeeper’s Fees and Costs.** Defendant agrees to partially reimburse
26 Coastkeeper for its investigation fees and costs, consultant fees and costs,
27 reasonable attorneys’ fees, and other costs incurred as a result of investigating and
28 filing the lawsuit, and negotiating a resolution of this matter totaling Forty Thousand

1 Dollars (\$40,000). Defendant shall pay this amount in eight (8) monthly
2 installments of Five Thousand Dollars (\$5,000.00). The first payment shall be due
3 on the fourteenth (14th) day following the Effective Date. Subsequent payments
4 shall be due every thirty (30) days until the remaining seven (7) payments have been
5 made. The payments required under this paragraph shall be made payable to
6 “Ventura Coastkeeper,” addressed to Ventura Coastkeeper, 3875-A Telegraph Road
7 #423, Ventura, CA 93003, and sent via certified mail or overnight delivery.

8 **30. Coastkeeper Compliance Monitoring.** Defendant agrees to compensate
9 Coastkeeper for time to be spent by legal staff or technical consultants monitoring
10 Defendant’s compliance with the Consent Decree. To this end, the Defendant shall
11 pay Coastkeeper the sum of Nine Thousand Dollars (\$9,000) within thirty (30) days
12 of the Effective Date of this Consent Decree. If the Defendant is required to submit
13 an Action Plan to Coastkeeper by June 30, 2012 Defendant shall make an additional
14 compliance monitoring payment in the amount of Twelve Thousand Dollars
15 (\$12,000) upon submission of the Action Plan. If the Defendant is required to
16 submit an Action Plan to Coastkeeper by June 30, 2013 Defendant shall make an
17 additional compliance monitoring payment in the amount of Nine Thousand Dollars
18 (\$9,000) upon submission of the Action Plan. If the Defendant is required to submit
19 an Action Plan to Coastkeeper by June 30, 2014 Defendant shall make an additional
20 compliance monitoring payment in the amount of Twelve Thousand Dollars
21 (\$12,000) upon submission of the Action Plan. All payments required under this
22 paragraph shall be made payable to “Ventura Coastkeeper,” addressed to Ventura
23 Coastkeeper, 3875-A Telegraph Road #423, Ventura ,CA 93003, and sent via
24 certified mail or overnight delivery.

25 **31. Stipulated Payment.** Defendant shall make a remediation payment of
26 One Thousand Dollars (\$1,000) for each missed deadline included in this Consent
27 Decree. Payments for a missed deadline shall be made for the restoration and/or
28 improvement of the watershed in the area affected by Defendant’s discharges and

1 shall be awarded to Friends of the Santa Clara River and mailed via certified mail or
2 overnight delivery to Friends of the Santa Clara River, attn: Ron Bottorff, 660
3 Randy Drive, Newbury Park, California 91320-3036. Defendant agrees to make the
4 stipulated payment within thirty (30) days of a missed deadline and make the
5 payment via overnight delivery or by certified mail. Defendant shall provide
6 Coastkeeper with a copy of each such payment at the time it is made.

7 **32. Interest Payments.** In the event of late payment of any of the sums due
8 referred to in this Section F of the Consent Decree, the Defendant shall pay 3%
9 interest to Coastkeeper, which shall accrue daily from the fifth day past the date the
10 sum was due until the date the Defendant tenders payment.

11 **G. Commitments of Plaintiff**

12 **33.** Plaintiff shall submit this Consent Decree to the United States
13 Environmental Protection Agency and the United States Department of Justice
14 (“DOJ”) within three (3) days of the final signature of the Parties for agency review
15 consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45)
16 days after receipt by both agencies, as evidenced by written acknowledgement of
17 receipt by the agencies or the certified return receipts, copies of which shall be
18 provided to Defendant. In the event that EPA or DOJ object to entry of this Consent
19 Decree the Parties agree to meet and confer to attempt to resolve the issue(s) raised
20 by EPA or DOJ.

21 **III. EFFECTIVE DATE AND TERMINATION DATE**

22 **34.** The term “Effective Date,” as used in this Consent Decree, shall mean
23 the last date for the United States Department of Justice and the United States
24 Environmental Protection Agency (“Federal Agencies”) to comment on the Consent
25 Decree, i.e., the 45th day following the United States Department of Justice and
26 United States Environmental Protection Agency’s receipt of the Consent Decree, or
27 the date on which the Federal Agencies provide notice that they require no further
28 review and the Court enters the final Consent Decree, whichever occurs earlier.

1 **35.** This Consent Decree will terminate on its own terms five (5) years
2 from the Effective Date. However, if no numeric limit, as outlined in Table 1, is
3 exceeded for two consecutive Wet Seasons (beginning with the 2013-2014 Wet
4 Season), Defendant shall move the Court to terminate the Consent Decree and
5 Coastkeeper shall not oppose this request.

6 **IV. DISPUTE RESOLUTION**

7 **36.** This Court shall retain jurisdiction over this matter for the purposes of
8 adjudicating all disputes among the Parties that may arise under the provisions of
9 this Consent Decree. The Court shall have the power to enforce this Consent
10 Decree with all available legal and equitable remedies, including contempt.

11 **37.** Meet and Confer. A party to this Consent Decree shall invoke the
12 dispute resolution procedures of this Section by notifying all other Parties in writing
13 of the matter(s) in dispute and of the party's proposal to resolve the dispute under
14 this Section. The Parties shall then meet and confer in an attempt to resolve the
15 dispute no later than fourteen (14) calendar days from the date of the notice.

16 **38.** If the Parties cannot resolve a dispute by the end of the meet and confer
17 process, the party initiating the dispute resolution provision may invoke formal
18 dispute resolution by filing a motion before the United States District Court for the
19 Central District of California. The Parties shall jointly apply to the Court for an
20 expedited hearing schedule on the motion.

21 **39.** If Coastkeeper initiates a motion or proceeding before the Court to
22 enforce the terms and conditions of this Consent Decree, Coastkeeper shall be
23 entitled to recover reasonable fees and costs incurred to enforce the terms of this
24 Consent Decree consistent with the provisions of Sections 505 and 309 of the CWA,
25 33 U.S.C. §§ 1365, 1319.

26 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

27 **40.** In consideration of the above, upon the Effective Date of this Consent
28 Decree, the Parties hereby fully release, except for claims for the Defendant's failure

1 to comply with this Consent Decree and as expressly provided below, each other
2 and their respective successors, assigns, officers, agents, employees, and all persons,
3 firms and corporations having an interest in them, from any and all alleged CWA
4 violations claimed in the Complaint and first amended Complaint, up to and
5 including the Effective Date of this Consent Decree.

6 **41.** Nothing in this Consent Decree limits or otherwise affects Plaintiff's
7 right to address or take any position that it deems necessary or appropriate in any
8 formal or informal proceeding before the Regional Board, EPA, or any other judicial
9 or administrative body on any other matter relating to Defendant.

10 **42.** Neither the Consent Decree nor any payment pursuant to the Consent
11 Decree shall constitute or be construed as a finding, adjudication, or
12 acknowledgement of any fact, law or liability, nor shall it be construed as an
13 admission of violation of any law, rule, or regulation. Defendant maintains and
14 reserves all defenses it may have to any alleged violations that may be raised in the
15 future.

16 **43.** Force Majeure. Defendant shall notify Coastkeeper pursuant to the
17 terms of this paragraph, when timely implementation of the requirements set forth in
18 this Consent Decree becomes impossible, despite the timely good-faith efforts of
19 Defendant, due to circumstances beyond the reasonable control of Defendant or its
20 agents, and which could not have been reasonably foreseen and prevented by the
21 exercise of due diligence by Defendant. In no circumstances shall a claim of
22 inability to pay be considered Force Majeure.

- 23 a) If Defendant claims impossibility, they shall notify Coastkeeper in writing
24 within twenty-one (21) days of the date that Defendant first knew of the event
25 or circumstance that caused or would cause a violation of this Consent
26 Decree. The notice shall describe the reason for the nonperformance and
27 specifically refer to this Section. It shall describe the anticipated length of
28 time the delay may persist, the cause or causes of the delay, the measures

1 taken or to be taken by Defendant to prevent or minimize the delay, the
2 schedule by which the measures will be implemented, and the anticipated date
3 of compliance. Defendant shall adopt all reasonable measures to avoid and
4 minimize such delays.

5 b) The Parties shall meet and confer in good-faith concerning the non-
6 performance and, where the Parties concur that performance was or is
7 impossible, despite the timely good faith efforts of Defendant, due to
8 circumstances beyond the control of Defendant that could not have been
9 reasonably foreseen and prevented by the exercise of due diligence by
10 Defendant, new deadlines shall be established.

11 c) If Coastkeeper disagrees with Defendant's notice, or in the event that the
12 Parties cannot timely agree on the terms of new performance deadlines or
13 requirements, either party shall have the right to invoke the Dispute
14 Resolution Procedure pursuant to Section IV. In such proceeding, Defendant
15 shall bear the burden of proving that any delay in performance of any
16 requirement of this Consent Decree was caused or will be caused by force
17 majeure and the extent of any delay attributable to such circumstances.

18
19 **VI. MISCELLANEOUS PROVISIONS**

20 **44. Cooperation.** The Parties agree to cooperate with respect to aiding in
21 the preparation, review, determination of content and message, and dissemination of
22 mutually acceptable and consistent: press releases, public notices and postings, press
23 articles, written external communications, and public reports made in relation to, or
24 in regards to, this Consent Decree and/or lawsuit.

25 **45. Construction.** The language in all parts of this Consent Decree shall be
26 construed according to its plain and ordinary meaning, except as to those terms
27 defined in the Storm Water Permit, the Clean Water Act, or specifically herein.

28 **46. Choice of Law.** The laws of the United States shall govern this

1 Consent Decree.

2 **47. Severability.** In the event that any provision, paragraph, section, or
3 sentence of this Consent Decree is held by a court to be unenforceable, the validity
4 of the enforceable provisions shall not be adversely affected.

5 **48. Correspondence.** All notices required herein or any other
6 correspondence pertaining to this Consent Decree shall be sent by regular mail and
7 electronic mail as follows:

8 If to Plaintiff:
9 Jason Weiner
10 Staff Attorney
11 Wishtoyo Foundation / Ventura Coastkeeper
12 3875-A Telegraph Road #423
13 Ventura, CA 93003
14 jweiner.venturacoastkeeper@wishtoyo.org

15 If to Defendant:
16 William W. Funderburk, Jr.
17 Anna L. Cole
18 Castellon & Funderburk LLP
19 811 Wilshire Blvd. Suite 1025
20 Los Angeles, CA 90017
21 wfunderburk@candffirm.com
22 acole@candffirm.com

23 With copies to:
24 Lynn Harrison
25 E.J. Harrison & Sons, Inc.
26 P.O. Box 4144
27 Ventura, California 93007
28 lynnh@ejharrison.com

Notifications of communications shall be deemed submitted three (3) days
after the date that they are postmarked and sent by first-class mail. Any change of
address or addresses shall be communicated in the manner described above for

1 giving notices.

2 **49. Effect of Consent Decree.** Plaintiff does not, by its consent to this
3 Consent Decree, warrant or aver in any manner that the Defendant's compliance
4 with this Consent Decree will constitute or result in compliance with any federal or
5 state law or regulation. Nothing in this Consent Decree shall be construed to affect
6 or limit in any way the obligation of the Defendant to comply with all federal, state,
7 and local laws and regulations governing any activity required by this Consent
8 Decree.

9 **50. Counterparts.** This Consent Decree may be executed in any number of
10 counterparts, all of which together shall constitute one original document. Telecopy
11 and/or facsimile copies of original signature shall be deemed to be originally
12 executed counterparts of this Consent Decree.

13 **51. Modification of the Consent Decree.** This Consent Decree, and any
14 provisions herein, may not be changed, waived, discharged, or terminated unless by
15 a written instrument, signed by the Parties.

16 **52. Full Settlement.** This Consent Decree constitutes a full and final
17 settlement of this matter.

18 **53. Integration Clause.** This is an integrated Consent Decree. This
19 Consent Decree is intended to be a full and complete statement of the terms of the
20 agreement between the parties and expressly supersedes any and all prior oral or
21 written agreements, covenants, representations, and warranties (express or implied)
22 concerning the subject matter of this Consent Decree.

23 **54. Authority.** The undersigned representatives for Plaintiff and Defendant
24 each certify that he/she is fully authorized by the party whom he/she represents to
25 enter into the terms and conditions of this Consent Decree.

26 **55.** The provisions of this Consent Decree apply to and bind the Parties,
27 including any successors or assigns. The Parties certify that their undersigned
28 representatives are fully authorized to enter into this Consent Decree, to execute it

1 on behalf of the Parties, and to legally bind the Parties to its terms.

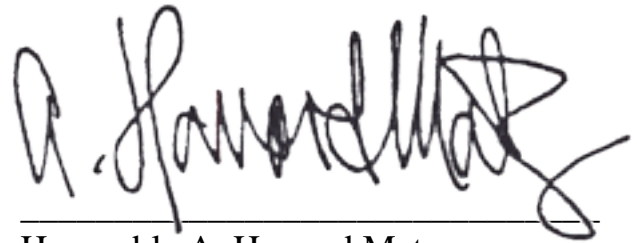
2 **56.** The Parties agree to be bound by this Consent Decree and not to contest
3 its validity in any subsequent proceeding to implement or enforce its terms. By
4 entering into this Consent Decree, the Defendant does not admit liability for any
5 purpose as to any allegation or matter arising out of this Action.

6 The undersigned representatives for Coastkeeper and Defendant each certify
7 that he/she is fully authorized by the party whom he/she represents to enter into the
8 terms and conditions of this Consent Decree and that this Consent Decree binds that
9 party.

10 IN WITNESS WHEREOF, the undersigned have executed this Consent
11 Decree as of the date first set forth above.

12 **IT IS SO ORDERED:**

13 Date: September 22, 2011



14
15
16
17 JS-6

Honorable A. Howard Matz
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

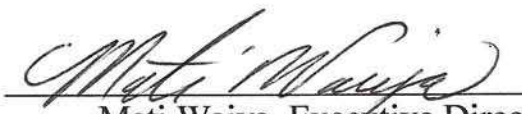
18
19
20
21
22
23
24
25
26
27
28

1 APPROVED AS TO CONTENT

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VENTURA COASTKEEPER AND
WISHTOYO FOUNDATION

Dated: July 23, 2011


Mati Waiya, Executive Director
Ventura Coastkeeper and
Wishtoyo Foundation

E.J. HARRISON & SONS, INC.

Dated: July _____, 2011

Ralph Harrison, President
E.J. Harrison & Sons, Inc.

APPROVED AS TO FORM

CASTELLON & FUNDERBURK LLP

Dated: July _____, 2011

William W. Funderburk, Jr.
Attorney for Defendants

WISHTOYO FOUNDATION AND
VENTURA COASTKEEPER

Dated: July _____, 2011

Jason Weiner
Staff Attorney for Plaintiffs

1 APPROVED AS TO CONTENT

2

VENTURA COASTKEEPER AND
WISHTOYO FOUNDATION

3

4

5

Dated: July _____, 2011

Mati Waiya, Executive Director
Ventura Coastkeeper and
Wishtoyo Foundation

6

7

8

9


E.J. HARRISON & SONS, INC.

10

11

12

Dated: July 21, 2011



Ralph Harrison, President
E.J. Harrison & Sons, Inc.

13

14

15

APPROVED AS TO FORM

16

CASTELLON & FUNDERBURK LLP

17

18

19

Dated: July _____, 2011

William W. Funderburk, Jr.
Attorney for Defendants

20

21

22

23

WISHTOYO FOUNDATION AND
VENTURA COASTKEEPER

24

25

Dated: July _____, 2011

Jason Weiner
Staff Attorney for Plaintiffs

26

27

28

1 APPROVED AS TO CONTENT

2

VENTURA COASTKEEPER AND
WISHTOYO FOUNDATION

3

4

5

Dated: July _____, 2011

Mati Waiya, Executive Director
Ventura Coastkeeper and
Wishtoyo Foundation

6

7

8

9

E.J. HARRISON & SONS, INC.

10

11

12

Dated: July _____, 2011

Ralph Harrison, President
E.J. Harrison & Sons, Inc.

13

14

15

APPROVED AS TO FORM

CASTELLON & FUNDERBURK LLP

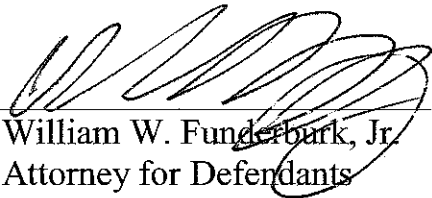
16

17

18

19

Dated: July 25, 2011



William W. Funderburk, Jr.
Attorney for Defendants

20

21

22

23

WISHTOYO FOUNDATION AND
VENTURA COASTKEEPER

24

25

Dated: July _____, 2011

Jason Weiner
Staff Attorney for Plaintiffs

26

27

28

1 APPROVED AS TO CONTENT

2

3

VENTURA COASTKEEPER AND
WISHTOYO FOUNDATION

4

5

Dated: July _____, 2011

Mati Waiya, Executive Director
Ventura Coastkeeper and
Wishtoyo Foundation

6

7

8

9

E.J. HARRISON & SONS, INC.

10

11

12

Dated: July _____, 2011

Ralph Harrison, President
E.J. Harrison & Sons, Inc.

13

14

15

APPROVED AS TO FORM

16

17

CASTELLON & FUNDERBURK LLP

18

19

Dated: July _____, 2011

William W. Funderburk, Jr.
Attorney for Defendants

20

21

22

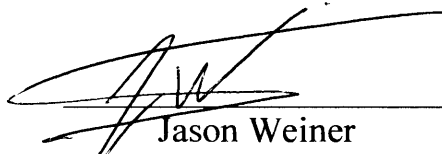
23

WISHTOYO FOUNDATION AND
VENTURA COASTKEEPER

24

25

Dated: July 25, 2011



Jason Weiner
Staff Attorney for Plaintiffs

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Exhibit A: Environmental Project
Santa Clara River Steelhead Migration Project**

This project will be conducted and administered by California Trout, Inc. (California Trout). The project will attempt to analyze, reduce, prevent, or otherwise mitigate the ecological effects of storm water and wastewater discharges into the Santa Clara River on adult and juvenile steelhead migration in the Santa Clara River watershed, and is limited to studies, implementation plans, and the implementation of projects that attempt to improve adult and juvenile steelhead migration in the Santa Clara River watershed.

The project will begin upon 30 days from the effective date of this consent decree, and will end when project funds are expended. The project deliverables are reports documenting the studies, implementation plans, and the implementation of projects upon their completion.

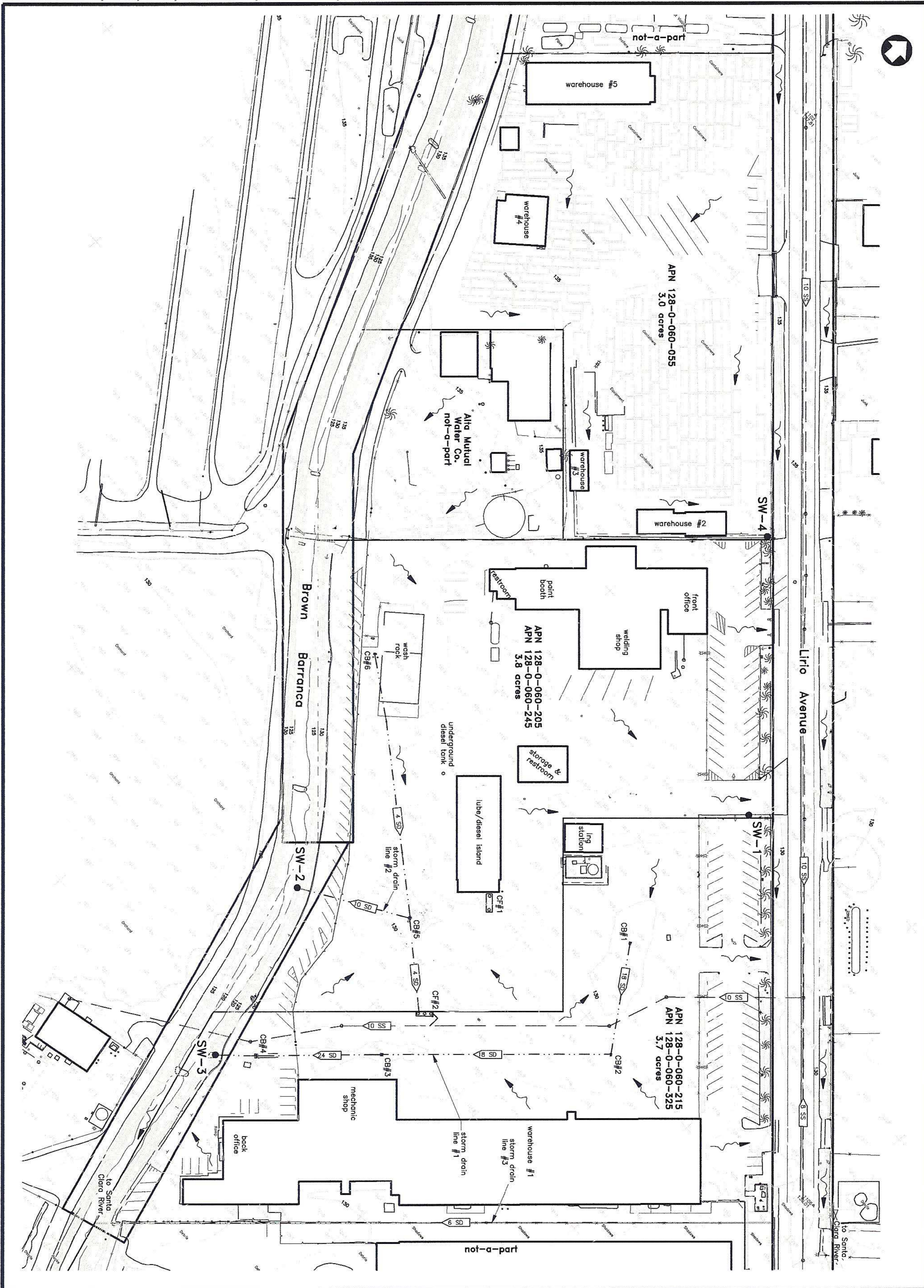
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Exhibit B: Environmental Project
Santa Clara River Watershed Community Trash Clean Up Project

This project will be conducted and administered by Central Coast Alliance United for a Sustainable Economy (“CAUSE”). The project will attempt to analyze, reduce, prevent, or otherwise mitigate the ecological effects of storm water and wastewater discharges into the Santa Clara River and its watershed by reducing pollutants associated with discharges of trash into waterways and waterbodies. The project will include a minimum of 12 street, storm channel, wetlands, stream, and river community trash clean up events within the Santa Clara River watershed.

The project will begin upon 30 days from the effective date of this consent decree, and will end within 450 days from the effective date of this consent decree. The project deliverables are reports documenting the number of participants at the trash clean up events and an estimate as to the amount of trash picked up.

Appendix A




 scale: 1" = 40'
 date: December 28, 2010
 sheet: 1 of 1

E.J. Harrison & Sons, Inc.
Storm Water Pollution Prevention Plan
Site Map
 1585, 1589, 1893, 1895 Lirio Avenue

Prepared By:

 civil engineering • land surveying • land planning
 24005 Ventura Boulevard, Suite 100
 Calabasas, California 91302
 Voice: (818) 444-1800
 Facsimile: (818) 223-9215
 www.diamondwest.net
 Prepared under the direction of:
 Mike Harrison RCE 57,320