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SANTA BARBARA CHANNELKEEPER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA BARBARA
CHANNELKEEPER, a California
non-profit corporation;

Plaintiff.

VS.

COUNTY OF SANTA BARBARA,
a municipal corporation

Defendant.

Civil Case No. 2:15-cv-09758-BRO-
(Ex)

CONSENT DECREE

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

CONSENT DECREE

The following Consent Decree is entered into by and between Plaintiff Santa Barbara Channelkeeper (“Plaintiff” or “Channelkeeper”) and Defendant County of Santa Barbara (“Defendant” or “County”). The entities entering into this Consent Decree are each an individual “Party” and collectively “Settling Parties.”

WHEREAS, Channelkeeper is a non-profit public benefit corporation dedicated to, among other things, the protection and enhancement of the water quality of the Santa Barbara Channel;

WHEREAS, the County is a political subdivision of the state of California;

WHEREAS, the County owns and operates the South Coast Recycling and Transfer Station located at 4430 Calle Real in Santa Barbara, California (hereinafter “SCRTS” or “Facility”);

WHEREAS, discharges from the Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 (“Storm Water Permit”) and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”), Sections 301(a) and 402, 33 U.S. C. §§ 1311(a), 1342;

WHEREAS, on October 8, 2015, Channelkeeper issued a sixty (60) day notice letter (“Notice Letter”) to the County. The Notice Letter alleged violations of the Clean Water Act and informed the County of Channelkeeper’s intention to file suit against the County. The Notice Letter was sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, and the Executive Director of the State Water Resources Control Board (“State Board”), as required by section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A). The Notice Letter was also sent to the Executive Officer of the Regional Board;

1 **WHEREAS**, on December 18, 2015, Channelkeeper filed its complaint against
2 the County in the United States District Court for the Central District of California,
3 Case No. 2:15-cv-09758-BRO (Ex) (hereinafter “Complaint”);

4 **WHEREAS**, the County denies Channelkeeper’s allegations that it has violated
5 the Clean Water Act or the Storm Water Permit and denies it has liability to
6 Channelkeeper;

7 **WHEREAS**, the Settling Parties, through their authorized representatives and
8 without either adjudication of the Complaint’s claims or admission by the County of
9 any alleged violation or other wrongdoing, have chosen to resolve this action through
10 settlement to avoid the costs and uncertainties of further litigation;

11 **WHEREAS**, all actions taken by the County pursuant to this Consent Decree
12 will be made in compliance with all applicable federal, state and local rules and
13 regulations; and

14 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE
15 SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS
16 FOLLOWS:**

17 1. The Court has jurisdiction over this citizen suit pursuant to Section
18 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A).

19 2. Venue is appropriate in the Central District pursuant to Section 505(c)(1)
20 of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Facility is located within
21 this District.

22 3. The Complaint alleges claims for relief pursuant to Section 505 of the
23 Clean Water Act, 33 U.S.C. § 1365.

24 4. Plaintiffs have standing to bring this action.

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

1 **I. AGENCY REVIEW AND TERM OF CONSENT DECREE**

2 6. Plaintiff shall submit this Consent Decree to the United States
3 Department of Justice and the Environmental Protection Agency (collectively
4 “Federal Agencies”) within three (3) business days of the final signature of the
5 Settling Parties for agency review consistent with 40 C.F.R. § 135.5. In the event that
6 the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree
7 to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies
8 within a reasonable amount of time. Following the Federal Agencies’ review or the
9 expiration of the 45 day comment period provided to them, the Settling Parties shall
10 submit the Consent Decree to the Court for entry.

11 7. The term “Effective Date” as used in this Consent Decree shall mean
12 expiration of the 45 day comment period provided for the United States
13 Environmental Protection Agency and Department of Justice in the Clean Water Act,
14 or the date the Department of Justice submits a “no comment” letter to the Court,
15 whichever is earlier.

16 8. This Consent Decree shall terminate within the earlier of the following:
17 1) four (4) years from the Effective Date; or 2) 365 days from implementation of a
18 storm water diversion system at the Facility if the County implements such a system
19 and makes an early termination demonstration as described in paragraphs 18 through
20 20 and 64 below. These termination provisions apply unless at the time for
21 termination, there is an ongoing, unresolved dispute regarding the County’s
22 compliance with this Consent Decree, in which case Plaintiff will seek termination of
23 the Consent Decree within fifteen (15) days of notice by the Settling Parties that the
24 dispute has been fully resolved.

25 **II. COMMITMENTS OF THE SETTLING PARTIES**

26 **A. Storm water Pollution Control Best Management Practices.**

27 9. In addition to maintaining the current Best Management Practices
28 (“BMPs”) at the Facility, the County shall develop and implement the BMPs

1 identified herein.

2 10. Within ninety (90) days of the Effective Date, to the extent they have not
3 already done so, the County shall develop and/or implement the following additional
4 BMPs.

5 10.1 Vehicle and Equipment Maintenance and Repair. All vehicle and
6 equipment maintenance or repair shall be conducted indoors in the fully enclosed
7 Maintenance Shop shed.

8 10.2 Waste Oil Storage and Disposal. All waste oil collection shall be
9 conducted indoors in the Maintenance Shop shed. Waste oil storage with secondary
10 containment will be in the existing Oil Shed, which is a separate indoor structure
11 attached to the Maintenance Shop. The existing 1,000 gallon oil storage tank will be
12 removed from the site.

13 10.3 Cleaning and Maintaining the Storm Drainage System. The County
14 shall install BMPs such as straw wattles, filters, and/or oil absorbents at each drain
15 inlet at the Facility. Defendant shall implement procedures for the inspection and
16 maintenance of all drain inlet BMPs to ensure the drain inlet BMPs are in place,
17 working as intended, and are being replaced as needed, and according to
18 manufacturer's schedule. The BMP drain inlet inspections shall occur during routine
19 weekly inspections during the Wet Season¹, and routine monthly inspections during
20 the Dry Season. The County shall inspect the Facility's storm water system and
21 related treatment BMPs on a weekly basis during the Wet Season and on a monthly
22 basis during the Dry Season and remove from them any object affecting the
23 performance of the storm water system (e.g., wood, metal, concrete and other debris).

24 10.4 Containing Refuse and Litter. The County shall install BMPs such
25 as fence barriers, filter fabric and/or other wind control BMPs to prevent refuse and
26 other materials from discharging with storm water.

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28

¹ The Wet Season is October 1 through May 1.

1 10.5 Sweeping. Defendant shall develop and implement a plan to sweep
2 all impervious ground surfaces at the Facility using a mechanical sweeper according
3 to the following schedule: (1) at least once a week during the Wet Season; and (2) at
4 least once per month during the dry season. Defendant shall keep a log of all sweeping
5 done at the Facility.

6 10.6 Divert flows. The County shall install BMPs such as berms, straw
7 wattles or other measures to divert storm water away from stockpile and waste storage
8 areas at the Facility.

9 10.7 Use of Temporary Coverings. Defendant shall place secured lids,
10 covers, or tarps on storage bins, including but not limited to waste disposal and
11 industrial material storage containers at the Facility: (1) if it rains for 15 minutes or
12 more while the Facility is operating; and (2) at the end of an operational day if a
13 precipitation event of 0.1 inch, or more, of rain is predicted to occur after the Facility
14 ceases operating for the day with a minimum likelihood of occurrence of fifty-percent
15 (50%) by the National Weather Service (Oxnard/Los Angeles). Defendant shall
16 inspect tarps and other temporary coverings that are used at the Facility to cover
17 storage bins and other containers used for storage to ensure that the tarps and
18 coverings are in place, intact, in good condition and preventing the exposure of
19 pollutant sources to precipitation. The inspections shall take place as part of weekly
20 housekeeping activities during the Wet Season and monthly housekeeping activities
21 during the Dry Season. All tarps or other covers shall be repaired or replaced as
22 necessary to prevent exposure of pollutant sources to precipitation.

23 10.8 Raptor Program. The County shall continue to use a falcon at the
24 Facility for bird management.

25 **B. Advanced BMP Implementation.**

26 11. On or before November 1, 2017, the County shall implement an Advanced
27 BMP(s), as that term is used in Section X.H.2. of Order No. 2014-0057-DWQ
28 (“Advanced BMP(s)”), sufficient to eliminate storm water discharges generated by a

1 storm up to the design storm as calculated pursuant to Section X.H.6. of Order No. 2014-
2 0057-DWQ, the “Design Storm Standards for Treatment Control BMPs” (hereafter the
3 “Design Storm”) for the capture area identified on Exhibit A or, if the County continues
4 to discharge storm water in storms smaller than the Design Storm event, an Advanced
5 BMP(s) sufficient to meet the requirements of paragraphs 28 through 30 below and sized
6 to treat storm water discharges generated by storms up to the Design Storm. Approval of
7 any Advanced BMP(s) will be subject to all applicable California Environmental Quality
8 Act (“CEQA”) review processes, permitting requirements, public comment and hearing
9 requirements, and other public approval processes.

10 12. The County shall make best efforts to give notice to Channelkeeper by
11 January 1, 2017, if the County deems that it cannot complete implementation of an
12 Advanced BMP(s) by November 1, 2017 due to information produced from any required
13 CEQA review process or other public review and hearing processes. In any event, the
14 County will within ten (10) days of making such determination provide written notice of
15 the anticipated non-implementation to Channelkeeper. The notice will include the new
16 information leading to the failure to implement, a proposed schedule for implementation
17 of an Advanced BMP(s), and if the proposed schedule delays implementation of an
18 Advanced BMP(s) for more than 180 days, a proposal to modify and/or to extend the
19 term of the Consent Decree sufficient to allow monitoring of any elimination of storm
20 water discharges up to the Design Storm for one (1) wet season or if storm water
21 discharges during less than Design Storm events continue, to allow monitoring for three
22 (3) wet seasons.

23 **C. Advanced BMP Analysis.**

24 13. Within sixty (60) days of the Effective Date, the County will evaluate
25 Advanced BMPs for the Facility, including but not limited to: 1) a Storm Water
26 Diversion option; 2) an Advanced On-Site Treatment BMP; and 3) any other option
27 identified in Section X.H.2. of Order No. 2014-0057-DWQ that the County selects
28 (collectively referred to as the “Advanced BMP Analysis”). The Advanced BMP

1 Analysis shall evaluate the details of each option and evaluate a timeline for potential
2 implementation of each option consistent with paragraph 11 of this Consent Decree.
3 Channelkeeper shall have thirty (30) days upon receipt of Defendant's Advanced BMP
4 Analysis to provide Defendant with comments related to the adequacy of the analysis on
5 an Advanced On-Site Treatment BMP or any other option selected by the County under
6 No. 3 above, as to compliance with the Consent Decree, if any. Within thirty (30) days of
7 Defendant's receipt of Channelkeeper's comments, Defendant shall accept and
8 incorporate Channelkeeper's comments or, if Defendant declines to accept one or more
9 of Channelkeeper's recommendations shall provide Channelkeeper with a written
10 explanation of the grounds for rejection. The Storm Water Diversion option evaluation
11 will be subject to comments by and design requirements of the Goleta Sanitary District
12 on any permit or similar submittal.

13 14. Disputes regarding the Advanced BMP Analysis, or implementation of
14 an Advanced BMP(s), shall not impact the schedule for implementing any other
15 BMPs required in Paragraphs A.10, I, J, or K of this Consent Decree. Any disputes
16 over the adequacy of the Advanced BMP Analysis shall be resolved pursuant to the
17 dispute resolution provisions of this Consent Decree, set out in Section M below.

18 **D. Storm Water Diversion Option Evaluation.**

19 15. As part of the Advanced BMP Analysis required in paragraph 13 above,
20 the County shall evaluate capture and discharge to the Goleta Sanitary District system
21 of all non-storm water and all storm water runoff generated by the Design Storm
22 within the boundaries defined in Exhibit A attached hereto ("Capture Area").

23 16. The analysis of the Storm Water Diversion option shall include a permit
24 application or similar submittal to the Goleta Sanitary District for connection to its
25 collection system pursuant to its permit requirements, which may include an analysis
26 by the County or Goleta Sanitary District as to pipe installation, capacity limitations,
27 on-site detention, and pre-treatment requirements.

28

1 17. If the County's permit or similar submittal to Goleta Sanitary District is
2 not complete by December 1, 2016, the County shall submit a report to Channelkeeper
3 describing the status of that option's evaluation by December 15, 2016.

4 18. Should the County implement the Storm Water Diversion option, the
5 Consent Decree will terminate pursuant to paragraph 64 below after the installation of
6 the Storm Water Diversion option if the County demonstrates, to Channelkeeper's
7 satisfaction, zero non-storm water and storm water discharge for the Design Storm
8 from the Capture Area for three hundred sixty five (365) days following
9 implementation of the Storm Water Diversion option (referred to as the "Diversion
10 Report"). In the Diversion Report the County shall include a written demonstration
11 that the Storm Water Diversion option has eliminated storm water discharge from the
12 Capture Area for the Design Storm at the Facility and shall also include:

13 18.1 Documentation that all storm water run-on to the Capture Area has
14 been redirected around the Capture area, or that run-on has been included in the
15 capacity calculations;

16 18.2 Calculation of the storm water generated at the Capture Area
17 during the Design Storm, and a demonstration of adequate detention and conveyance
18 capacity to convey the flows from that storm to the sanitary sewer;

19 18.3 Flow metering at the discharge point to the sanitary sewer, and rain
20 gauge data, sufficient to compare the volume discharged to the sanitary sewer to rain
21 event return periods, for each rain event; and

22 18.4 Visual observations at the point of diversion to the sanitary sewer
23 during each qualifying rain event.

24 19. The County will send the Diversion Report to Channelkeeper when
25 complete.

26 20. Channelkeeper will comment on the Diversion Report within 30 days of
27 receipt, or send written notification of its approval of the Diversion Report. If
28 Channelkeeper does not approve the Diversion Report, the County shall provide

written responses to Channelkeeper's comments on the Diversion Report within thirty (30) days of the County's receipt of Channelkeeper's comments. Disputes as to the adequacy of the Diversion Report will be resolved via the dispute resolution provisions of this Consent Decree.

E. Advanced On-Site Treatment BMP Option Evaluation.

21. As part of the Advanced BMP Analysis required in paragraph 13 above, the County shall also evaluate an Advanced On-Site Treatment BMP option ("Advanced On-Site Treatment Plan").

22. The Advanced On-Site Treatment Plan shall consider measures at the site to reduce the volume of storm water to be treated by the Advanced On-Site Treatment BMP, including but not limited to:

22.1 Channeling run-on from adjacent up-gradient areas around the site;

22.2 Limiting industrial activities and materials;

22.3 Removing pavement from areas no longer hosting industrial activities; and

22.4 Assessing consolidation of industrial activities.

22.5 The Advanced On-Site Treatment Plan shall at a minimum require installation of advanced treatment control measures with sufficient capacity to treat storm water generated in the Facility's industrial operations area, as designated in the map attached hereto as Exhibit A, and based on the Design Storm. The Advanced On-Site Treatment Plan shall provide for treatment sufficient to treat to the effluent quality required in Table 1 and, if applicable, Table 2 ("Numeric Levels"), below.

23. The Advanced On-Site Treatment Plan shall include a plan for a study to evaluate sources of fecal contamination in storm water discharges from the Facility (hereinafter referred to as the "Microbial Source Tracking Study"). The Microbial Source Tracking Study ("MST Study") shall evaluate storm water samples collected pursuant to paragraph 27.1 of this Consent Decree over a 365-day period, or until July 1, 2017 if that date is earlier. The MST Study shall be conducted using PCR DNA

1 analysis for Human and Dog. The MST Study shall seek to determine whether waste
2 from any of the sources listed above contribute to Fecal Indicator Bacteria (“FIB”)
3 discharges from the Facility.

4 24. If the County proceeds with the Advanced On-Site Treatment Plan
5 option, it shall submit the MST Study with a report summarizing the results of the
6 MST Study, with laboratory reports attached, to Channelkeeper on or before July 15,
7 2017. Channelkeeper shall have thirty (30) days to comment on the MST Study and
8 summary report. Disputes as to the adequacy of the MST Study will be resolved via
9 the dispute resolution provisions of this Consent Decree. If the County begins
10 implementation of the Storm Water Diversion option, it may terminate the MST
11 Study.

12 **F. Advanced BMPs From Order No. 2014-0057-DWQ Evaluation.**

13 25. As part of the Advanced BMP Analysis required in paragraph 13 above, the
14 County also may evaluate other Advanced BMPs including those specifically identified
15 in Section X.H.2. of Order No. 2014-0057-DWQ. The County shall evaluate any such
16 Advanced BMP pursuant to the standards and procedures set forth in Sections C through
17 E above.

18 **G. Storm Water Discharge Locations, Storm Water Sampling.**

19 26. If the County implements an Advanced BMP(s) that continues to discharge
20 from the site in less than Design Storm events, the County shall berm, channel and
21 otherwise direct all storm water discharges at the Facility to a collected drain system to
22 only one (1) storm water discharge location, which the County will identify as part of its
23 Advanced BMP Analysis

24 27. Sampling. The following storm water monitoring procedures shall be
25 implemented at the Facility:

26 27.1 Frequency. During the life of this Consent Decree, the County
27 shall collect samples of storm water discharges from the Facility during operational
28 hours from at least four (4) “Qualifying Storm Events (“QSE”),” as that phrase is

1 defined in paragraph XI.B.1. of Order No. 2014-0057-DWQ, that occur in a Reporting
2 Year,² such that Defendant collects two (2) samples during the first half of the
3 Reporting Year and two (2) samples during the second half of the Reporting Year. If,
4 prior to February 1, Defendant has collected samples from two (2) or fewer QSEs,
5 Defendant shall continue to sample QSEs until Defendant has collected four (4)
6 samples for the Reporting Year.

7 27.2 Parameters. All samples collected pursuant to this section shall be
8 analyzed for the parameters listed in Table 1.

9 27.3 Lab. A laboratory accredited by the State of California shall
10 analyze all samples collected pursuant to this Consent Decree, excepting pH which
11 will be analyzed onsite using a calibrated portable instrument for pH in accordance
12 with accompanying manufacturer's instructions.

13 27.4 Detection Limit. The laboratory shall use analytical methods
14 adequate to detect the individual contaminants at or below the values specified in
15 Table 1.

16 27.5 Holding Time. All samples collected from the Facility shall be
17 delivered to the laboratory and analyzed within the holding times required in 40 CFR
18 Part 136, excepting pH which will be analyzed onsite using a calibrated portable
19 instrument for pH in accordance with accompanying manufacturer's instructions.

20 27.6 Lab Results. The County shall request that sample-analysis results
21 and associated chain of custody forms be reported to them within fourteen (14) days
22 of laboratory receipt of the sample.

23 27.7 Reports to Channelkeeper. The County shall provide the complete
24 lab results and pH results of all samples collected at the Facility to Channelkeeper at
25 the time that it uploads the lab results to the SMARTS database.

28

² A "Reporting Year" is July 1 to June 30.

1 **H. Discharge Standards.**

2 28. Storm Water Contaminant Reduction. If the County implements an
3 Advanced BMP(s) that continues to discharge storm water in less than the Design
4 Storm and following the implementation of such BMP(s), the presence of any
5 contaminant in storm water discharge from the Facility in excess of, or outside the
6 range of, any Numeric Level in Table 1 during a single Reporting Year and pursuant
7 to the limits of paragraph 30 below shall trigger the action plan requirements.

8 **Table 1. Numeric Levels for Storm Water Discharges**

Contaminant	Level	Source of Level
Total Suspended Solids	100 mg/L	2015 EPA Benchmark
Total Copper	0.0332 mg/L	2015 EPA Benchmark
Total Lead	0.262 mg/L	2015 EPA Benchmark
Total Zinc	0.26 mg/L	2015 EPA Benchmark
Oil and Grease	15 mg/L	2015 EPA Benchmark
Total Recoverable Aluminum	0.750 mg/L	2015 EPA Benchmark
Total Recoverable Iron	1.00 mg/L	2008 EPA Benchmark
Chemical Oxygen Demand	120 mg/L	2015 EPA Benchmark
pH	7.0-8.5 units	Basin Plan

22 29. Where the MST Study detects human or dog markers in discharges from
23 the Facility, the County shall begin sampling discharges up to the Design Storm for
24 the constituents in Table 2 below following implementation of any Advanced BMP(s).
25 If any samples for fecal coliform or E.Coli exceed any Table 2 Numeric Levels during
26 a single Reporting Year, the County shall submit an Action Plan pursuant to
27 paragraphs 30 and 31 below to add disinfection sufficient to achieve the Table 2
28 Numeric Levels:

Table 2. Numeric Bacteria Levels for Storm Water Discharges

Fecal Coliform	400 MPN/100 ml	Basin Plan Objective
Escherichia coli (E. coli)	576 MPN/100 ml	Water Quality Criteria

5 30. Action Plan for Table 1 Numeric Level Exceedances. If after
6 implementation of an Advanced BMP(s) that continues to discharge in less than the
7 Design Storm results for: (1) any two (2) storm water sample(s) collected at the
8 Facility for zinc, copper, lead, chemical oxygen demand, iron, aluminum, oil and
9 grease, or total suspended solids exceed any Table 1 Numeric Level during a single
10 Reporting Year; or (2) any two (2) storm water samples collected at the Facility for
11 pH are outside the range of the Table 1 Numeric Level during a single Reporting
12 Year, the County shall submit a plan to implement pollution control measures
13 designed to achieve the Table 1 Numeric Levels (“Action Plan”) during the following
14 Wet Season. Results from discharge samples that are greater in size than the Design
15 Storm shall be excluded from the count of Numeric Level exceedances and the Action
16 Plan analysis. An Action Plan shall be submitted by August 1 in the Reporting Year
17 during which the Table 1 exceedance(s) occurs. For example, if there are any
18 exceedances between the Effective Date of this Consent and the end of the 2016/2017
19 Reporting Year (i.e. June 30, 2017) the Action plan will be due August 1, 2017.

20 31. Action Plan Requirements. Any Action Plan submitted based on storm
21 water samples containing pollutants above Table 1 Numeric Levels and the limits of
22 paragraph 30 shall include at a minimum: (1) the identification of the contaminant(s)
23 discharged in excess of the Table 1 Numeric Level(s), (2) an assessment of the source
24 for each contaminant exceedance, including but not limited to any outdoor material
25 storage or processing areas and any outdoor vehicle and equipment maintenance areas,
26 (3) the identification of additional BMPs, including an evaluation of the treating of
27 storm water, that are designed to achieve compliance with the Numeric Level(s), and
28 (4) time schedules for implementation of the proposed BMPs. The time schedule(s)

1 for implementation shall ensure that all Action Plan measures are implemented as
2 soon as possible, but in no case later than January 1.

3 32. Review. Channelkeeper shall have thirty (30) days upon receipt of an
4 Action Plan to provide the County with comments related to the adequacy of the
5 Action Plan as to compliance with the Consent Decree. Within thirty (30) days of the
6 County's receipt of Channelkeeper's comments on the Action Plan, the County shall
7 provide written responses to Channelkeeper's comments of recommended BMPs into
8 the Action Plan that either accept and incorporate Channelkeeper's comments or
9 explain the basis for the County's rejection of Channelkeeper's comments.

10 33. Disputes. Disputes regarding the adequacy of a particular BMP shall not
11 impact the schedule for implementing any other BMP set forth in the Action Plan.
12 Any disputes as to the adequacy of an Action Plan shall be resolved pursuant to the
13 dispute resolution provisions of this Consent Decree, set out in Section M below.

14 34. Completion of an Action Plan. When an Action Plan is completed, the
15 County shall revise its Storm Water Pollution Prevention Plan ("SWPPP") and/or
16 Monitoring and Reporting Plan ("M&RP"), as applicable, prior to the next Wet
17 Season, or within thirty (30) days of completion of the Action Plan, whichever is
18 sooner, to reflect the changes required by the Action Plan. The County shall notify
19 Channelkeeper when an Action Plan has been completely implemented, and shall
20 submit the revised SWPPP and/or M&RP to Channelkeeper for review and comment
21 related to the adequacy of the SWPPP and/or M&RP as to compliance with the
22 Consent Decree upon revision.

23 **I. Visual Observations.**

24 35. Storm Water Discharge Observations. During the life of this Consent
25 Decree, the County shall conduct visual observations of any rain event that produces
26 discharge and occurs during business hours.

27 36. Non-Storm Water Discharge Observations. During the life of this
28 Consent Decree, the County shall conduct monthly non-storm water visual

1 observations at each discharge location.

2 37. Visual Observations Records. The County shall maintain observation
3 records to document compliance with this section, and shall provide Channelkeeper
4 with a copy of these records within fourteen (14) days of receipt of a written request
5 from Channelkeeper for the records.

J. Employee Training.

7 38. Training Program. Within forty-five (45) days of the Effective Date, the
8 County shall develop and have begun to implement a training program to ensure (1)
9 that there are a sufficient number of employees delegated to achieve compliance with
10 the Storm Water Permit and this Consent Decree at the Facility, and (2) that these
11 employees are properly trained to perform the required activities to achieve
12 compliance with the Storm Water Permit and this Consent Decree (“Training
13 Program”). At a minimum the Training Program shall include:

38.1. Non-Storm Water Discharges. Employees will be trained on the Storm Water Permit's prohibition of non-storm water discharges, so that employees know what non-storm water discharges are, that non-storm water discharges can result from improper washing or dust control methods, and how to detect and prevent non-storm water discharges.

38.2. The SWPPP and BMPs. The County shall train all employees on the SWPPP and specifically BMP implementation and/or maintenance, as applicable, to ensure that BMPs are implemented effectively to prevent the exposure of pollutants to storm water, to prevent the discharge of contaminated storm water, and to ensure the proper handling of storm water at the Facility.

38.3. Storm Water Sampling. The County shall designate an adequate number of employees necessary to collect storm water samples from each discharge location at the Facility as required by this

1 Consent Decree. The training for these individuals shall include the
2 proper sampling protocols, including chain of custody
3 requirements, to ensure storm water samples are properly
4 collected, stored, and submitted to a certified laboratory or
5 analyzed onsite, as applicable.

6 38.4. Training Language. The Training Program shall be conducted in
7 the language of the employee(s) participating in the Training
8 Program.

9 38.5. Frequency. The Training Program shall be repeated annually, or as
10 necessary to ensure that all responsible employees are familiar
11 with the requirements of this Consent Decree and the Storm Water
12 Permit.

13 38.6. New Staff. All new staff will participate in the Training Program
14 before assuming responsibilities for compliance with this Consent
15 Decree or the Storm Water Permit.

16 39. Training Implementation. A private consultant, a County employee, who
17 is familiar with this Consent Decree and completes a State Water Board sponsored or
18 approved Qualified Industrial Storm Water Practitioner (“QISP”) training course
19 ninety (90) days after that training becomes available, or a person with the equivalent
20 credentials, as specified at paragraph IX.A.1. of Order No. 2014-0057-DWQ shall
21 implement the Training Program at the Facility.

22 40. Training Records. The County shall maintain training records to
23 document compliance with this section and shall provide Channelkeeper with a copy
24 of these records on July 15 annually for the life of the Consent Decree.

25 **K. Compliance Monitoring and Reporting.**

26 41. Site Inspections. Each Reporting Year during the life of this Consent
27 Decree, Channelkeeper and its representatives accompanied by a County
28 Representative(s) may conduct up to two (2) site inspections during the Wet Season

1 and one (1) dry season site inspection (for a total of three (3) inspections per Reporting
2 Year), plus an additional inspection if there is a dispute regarding compliance with the
3 terms of this Consent Decree.

4 41.1. Notice. The site inspections shall occur during normal business
5 hours. Channelkeeper shall provide the County with twenty-four
6 (24) hours' notice prior to each Wet Season site inspection, and at
7 least seventy-two (72) hours' notice prior to a dry weather
8 inspection.

9 41.2. Documents. During the site inspections, Channelkeeper and its
10 representatives shall be allowed access to the Facility' SWPPP,
11 M&RP, and other monitoring records, reports, and sampling data
12 for the Facility.

13 41.3. Samples. During the site inspections, Channelkeeper and/or its
14 representatives may collect samples of discharges from the
15 Facility. A certified California laboratory shall analyze samples
16 collected by Channelkeeper and copies of the lab reports shall be
17 provided to the County within ten (10) business days of receipt. At
18 the request of the County, the samples shall be split and one half
19 provided to the County so as to allow the County to have its own
20 certified California laboratory analyze the samples, in which case
21 the County shall provide the laboratory results to Channelkeeper
22 within ten (10) business days of receipt.

23 41.4. Scope. During the site inspections, Channelkeeper and/or its
24 representatives will be permitted to take written notes, photographs
25 or videos to record information, data, or observations.

26 42. Compliance Monitoring and Oversight. The County agrees to partially
27 defray Channelkeeper's monitoring of the County's compliance with this Consent
28 Decree in the amount of Five Thousand Dollars (\$5,000.00) per year for the life of

1 this Consent Decree. The first annual payment shall be made within ten (10) days of
2 the end of the 45-day Federal Agencies review period described in paragraph 6 above,
3 and by July 15th each year thereafter. All payments shall be made payable to:
4 “Lawyers for Clean Water Attorney Client Trust Account” and delivered by overnight
5 delivery to: Lawyers for Clean Water, Inc., 1004-A O'Reilly Avenue, San Francisco,
6 California 94129.

7 43. Action Plan Payments. If the County is required to submit an Action Plan
8 to Channelkeeper, the County shall make a payment of Six Thousand Dollars
9 (\$6,000.00) per Action Plan payable to: “Lawyers for Clean Water Attorney Client
10 Trust Account” and delivered by overnight delivery to: Lawyers for Clean Water, Inc.,
11 1004-A O'Reilly Avenue, San Francisco, California 94129. The Action plan payment
12 shall be made at the time an Action Plan is submitted to Channelkeeper.

13 44. Reporting and Document Provision. During the life of this Consent
14 Decree, the County shall provide Channelkeeper with a copy of all documents related
15 to water quality at the Facility that are submitted to the Regional Board, the State
16 Board, and/or any State or local agency, county, or municipality. Such reports and
17 documents shall be provided to Channelkeeper concurrently as they are sent to the
18 agencies, counties, and/or municipalities. Any correspondence related to the County's
19 compliance with the Storm Water Permit or water quality received by the County
20 from any regulatory agency, State or local agency, county, and/or municipality shall
21 be forwarded to Channelkeeper within fourteen (14) days of receipt by the County.

22 45. The County shall provide Channelkeeper with documents in the County's
23 possession or control reasonably required to evaluate compliance with this Consent
24 Decree within 30 days of written request by Channelkeeper.

25 **L. Environmental Mitigation Project, Litigation Fees and Costs,
26 Stipulated Penalties and Interest.**

27 46. Environmental Mitigation Project. To remediate environmental harms
28 related to the allegations in the Complaint, the County agrees to make a payment of

1 Forty-Three Thousand Dollars (\$43,000.00) to South Coast Habitat Restoration to
2 fund environmental project activities that will benefit the Goleta Beach and Estuary,
3 and the surrounding watershed. The payment shall be made within sixty (60) days of
4 the Effective Date of this Consent Decree and made payable to the “South Coast
5 Habitat Restoration” and delivered to P.O. Box 335, Carpinteria, California 93014.
6 The County shall provide Channelkeeper with a copy of such payment.

7 47. Channelkeeper’s Litigation Costs. To partially reimburse Channelkeeper
8 for its investigation fees and costs, expert/consultant fees and costs, reasonable
9 attorneys’ fees, and other costs incurred as a result of investigating and filing the
10 lawsuit, and negotiating this Consent Decree, the County shall pay a total of One
11 Hundred Thousand Dollars (\$100,000.00). The payment shall be made within ten (10)
12 days of the Effective Date of the Consent Decree, and made payable to: “Lawyers for
13 Clean Water Attorney Client Trust Account” and delivered by overnight delivery to:
14 Lawyers for Clean Water, Inc., 1004-A O’Reilly Avenue, San Francisco, California
15 94129.

16 **M. Dispute Resolution.**

17 48. This Court shall retain jurisdiction over this matter for the life of this
18 Consent Decree for the purposes of enforcing the terms and conditions of this Consent
19 Decree, and adjudicating all disputes among the Settling Parties that may arise under
20 the provisions of this Consent Decree. The Court shall have the power to enforce this
21 Consent Decree with all available legal and equitable remedies, including contempt.

22 49. Meet and Confer. A party to this Consent Decree shall invoke the dispute
23 resolution procedures of this Section by notifying all other Settling Parties in writing
24 of the matter(s) in dispute. The Settling Parties shall then meet and confer in good
25 faith (either telephonically or in person) in an attempt to resolve the dispute over a
26 period of thirty (30) calendar days from the date of the notice. The Settling Parties
27 may elect to extend this time in an effort to resolve the dispute without court
28 intervention.

1 50. If the Settling Parties cannot resolve a dispute by the end of informal
2 meet and confer negotiations, the party initiating the dispute resolution provision may
3 invoke formal dispute resolution by filing a motion before the United States District
4 Court for the Central District of California.

5 51. Litigation costs and fees incurred in conducting meet and confer or
6 otherwise addressing and/or resolving any dispute, including an alleged breach of this
7 Consent Decree, shall be awarded in accord with the standard established by Section
8 505 of the Clean Water Act, 33 U.S.C. §§ 1365 and 1319, and case law interpreting
9 that standard.

10 **N. Mutual Release of Liability and Covenant Not to Sue.**

11 52. Channelkeeper's Release. Upon the Effective Date of this Consent
12 Decree, Channelkeeper, on its own behalf and on behalf of its current and former
13 officers, directors, employees, members, parents, subsidiaries, and affiliates and each
14 of their successors and assigns, and its agents, attorneys, and other representatives
15 releases all persons including, without limitation, the County (and each of its current
16 and former supervisors, officers, directors, employees and each of their predecessors,
17 successors and assigns, and each of their agents, attorneys, consultants, and other
18 representatives) from, and waives all claims which arise from or pertain to the
19 Complaint, including all claims for injunctive relief, penalties, fees (including fees of
20 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed
21 up to the date of termination of the Consent Decree.

22 53. The County's Release. Upon the Effective Date of this Consent Decree,
23 the County, on its own behalf and on behalf of its current and former supervisors,
24 officers, directors, employees, and each of their successors and assigns, and their
25 agents, attorneys, and other representatives releases Channelkeeper (and its current
26 and former officers, directors, employees, members, parents, subsidiaries, and
27 affiliates, and each of their successors and assigns, and its agents, attorneys, and other
28 representatives) from, and waives all claims which arise from or pertain to the

1 Complaint, including all claims for fees (including fees of attorneys, experts, and
2 others), costs, expenses or any other sum incurred up to the date of termination of the
3 Consent Decree.

4 54. Nothing in this Consent Decree limits or otherwise affects
5 Channelkeeper's right to address or take any position that it deems necessary or
6 appropriate in any formal or informal proceeding before a regulatory agency, or any
7 other judicial or administrative body on any other matter relating to the County's
8 compliance with the Storm Water Permit or the Clean Water Act.

9 **O. Miscellaneous Provisions.**

10 55. No Admission of Liability. Neither this Consent Decree, the
11 implementation of additional BMPs nor any payment pursuant to the Consent Decree
12 shall constitute or be construed as a finding, adjudication, admission or
13 acknowledgment of any fact, law, or liability, nor shall it be construed as an admission
14 of violation of any law, rule, or regulation. The County maintains and reserves all
15 defenses it may have to any alleged violations that may be raised in the future.

16 56. Force Majeure. A Force Majeure event is a circumstance beyond a
17 Party's control and includes any act of God, war, fire, earthquake, windstorm, flood or
18 natural catastrophe; civil disturbance, vandalism, sabotage or terrorism; restraint by
19 court order or public authority or agency; or action or non-action by, or inability to
20 obtain the necessary authorizations or approvals from any governmental agency.
21 Force Majeure shall not include normal inclement weather, economic hardship,
22 employee negligence or misconduct, or inability to pay. Any party seeking to rely
23 upon this paragraph to excuse or postpone performance, shall have the burden of
24 establishing that it could not reasonably have been expected to avoid the Force
25 Majeure event and which by exercise of due diligence has been unable to overcome
26 the failure of performance. The Settling Parties shall exercise due diligence to resolve
27 and remove any Force Majeure event. Delay in compliance with a specific obligation
28 under this Consent Decree due to Force Majeure as defined in this paragraph shall not

1 excuse or delay compliance with any or all other obligations required under this
2 Consent Decree.

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

6 58. Choice of Law. The laws of the United States shall govern this Consent
7 Decree.

8 59. Severability. In the event that any provision, paragraph, section, or
9 sentence of this Consent Decree is held by a court to be unenforceable, the validity of
10 the enforceable provisions shall not be adversely affected.

11 60. Correspondence. All notices required herein or any other correspondence
12 pertaining to this Consent Decree shall be sent as follows:

13 If to Plaintiff:

14 Kira Redmond, Executive Director
15 kira@channelkeeper.org
16 714 Bond Avenue
17 Santa Barbara, California 93103

18 With copies to:

19 Daniel Cooper
20 daniel@lawyersforcleanwater.com
21 Lawyers for Clean Water, Inc.
22 1004-A O'Reilly Avenue
23 San Francisco, California 94129

24 If to Defendant:

25 Mark Schleich
26 Resource Recovery & Waste Management Deputy Director
27 Schleich@cosbpw.net
28 County of Santa Barbara
29 Public Works Department
30 123 E. Anapamu St.
31 Santa Barbara, CA 93101

1 With copies to:

2 Amber Holderness

3 aholderness@co.santa-barbara.ca.us
4 Santa Barbara County Counsel
5 105 E. Anapamu St.
6 Santa Barbara, CA 93101

7 The Settling Parties agree to transmit documents electronically, unless
8 impracticable or impossible due to size limitations. Electronically transmitted
9 documents shall be deemed submitted on the date of the electronic transmission. If a
10 document cannot be sent electronically, it shall be sent by overnight mail or courier.
11 Any change of address or addresses shall be communicated in the manner described
12 above for giving notices.

13 61. Effect of Consent Decree. Except as provided herein, Channelkeeper
14 does not, by its consent to this Consent Decree, warrant or aver in any manner that the
15 County's compliance with this Consent Decree will constitute or result in compliance
16 with any Federal or State law or regulation. Nothing in this Consent Decree shall be
17 construed to affect or limit in any way the obligation of the County to comply with all
18 Federal, State, and local laws and regulations governing any activity required by this
19 Consent Decree.

20 62. Counterparts. This Consent Decree may be executed in any number of
21 counterparts, all of which together shall constitute one original document. Telecopy,
22 email of a .pdf signature, and/or facsimile copies of original signature shall be deemed
23 to be originally executed counterparts of this Consent Decree.

24 63. Modification of the Consent Decree. This Consent Decree, and any
25 provisions herein, may not be changed, waived, discharged, or terminated other than
26 by the operation of paragraphs eight (8) and/or sixty-four (64) unless by a written
27 instrument, signed by the Settling Parties and approved by the Court.

28 64. Early Termination. If the County selects and implements the Storm
Water Diversion option and demonstrates that the Storm Water Diversion option

1 captures and diverts storm water from the Capture Area for the Facility during Design
2 Storms as set forth above in paragraphs 18 through 20 above, the parties will provide
3 notice to the Court that the County has implemented the Storm Water Diversion
4 option and jointly request an order for termination of the Consent Decree within 30
5 days of Plaintiff's notice to Defendant that its demonstration satisfies the terms of the
6 Consent Decree.

7 65. Full Settlement. This Consent Decree constitutes a full and final
8 settlement of this matter.

9 66. Integration Clause. This is an integrated Consent Decree. This Consent
10 Decree is intended to be a full and complete statement of the terms of the agreement
11 between the Settling Parties and expressly supersedes any and all prior oral or written
12 agreements covenants, representations, and warranties (express or implied) concerning
13 the subject matter of this Consent Decree.

14 67. Authority. The undersigned representatives for Channelkeeper and the
15 County each certify that he/she is fully authorized by the party whom he/she
16 represents to enter into the terms and conditions of this Consent Decree.

17 68. The provisions of this Consent Decree apply to and bind the Settling
18 Parties, including any successors or assigns. The Settling Parties certify that their
19 undersigned representatives are fully authorized to enter into this Consent Decree, to
20 execute it on behalf of the Settling Parties, and to legally bind the Settling Parties to
21 its terms.

22 69. The Settling Parties agree to be bound by this Consent Decree and not to
23 contest its validity in any subsequent proceeding to implement or enforce its terms. By
24 entering into this Consent Decree, the County does not admit liability for any purpose
25 as to any allegation or matter arising out of the Notice Letter and Complaint.

1 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree
2 as of the date first set forth below.

3 APPROVED AS TO CONTENT

4

5 Dated: July ____, 2016

6 By: _____
7 Kira Redmond
8 Santa Barbara Channelkeeper

9 Dated: July ____, 2016

10 By: _____
11 Peter Adam
12 Chair, Santa Barbara County Board of
13 Supervisors on behalf of
14 County of Santa Barbara

15 APPROVED AS TO FORM

16 Dated: July ____, 2016

17 By: _____
18 Daniel Cooper
19 Lawyers For Clean Water, Inc.
20 Attorney for Plaintiff

21 MICHAEL C. GHIZZONI
22 COUNTY COUNSEL

23 Dated: July ____, 2016

24 By: _____
25 Amber R. Holderness
26 Deputy County Counsel
27 Attorney for Defendant

28 IT IS SO ORDERED.

DATED: September 21, 2016



HON. BEVERLY REID O'CONNELL
United States District Judge