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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

CALIFORNIA RIVER WATCH, an
IRC Section 501(c)(3), non-profit,
public benefit Corporation,

Plaintiff,

v.

CITY OF RANCHO PALOS VERDES,

Defendant.

Case No. 2:17-cv-05718-JAK (PLAx)
CONSENT DECREE
JS-6

WHEREAS, on August 1, 2017, California River Watch (“Plaintiff” or “CRW”) filed a Complaint in this Court asserting it is an Internal Revenue Code section 501(c)3 nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protecting, enhancing, and helping to restore the surface waters and ground waters of California, including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs;

WHEREAS, the Complaint alleges City of Rancho Palos Verdes (“Defendant” or “the City”), organized under the laws of the State of California, owns and operates a

1 collection system for the purpose of collecting and conveying for treatment wastewater
2 from residential, commercial, and industrial sources, subject to various federal and state
3 regulatory requirements under the federal Water Pollution Control Act, 33 U.S.C.
4 §§1251 *et seq.* (“Clean Water Act” or “CWA”);

5 WHEREAS, on October 7, 2016, CRW served the City, the United States
6 Environmental Protection Agency (“EPA”), EPA Region IX, the Executive Director of
7 the State Water Resources Control Board (“State Board”) and the Executive Director of
8 the Los Angeles Regional Water Quality Control Board (“Regional Board”) with a 60-
9 day Notice of Violations and Intent to File Suit (“Notice Letter” or “Notice”) alleging
10 various violations of the CWA relating to the collection system;

11 WHEREAS, the City denies all of CRW’s allegations that it is liable for any
12 claims that were, or could have been, asserted against the City based upon the Notice
13 Letter;

14 WHEREAS, the Parties have expended effort and resources in investigating and
15 evaluating allegations and claims set forth in the Notice Letter, including the exchange
16 of information regarding the collection system, as well as engaging in a negotiation and
17 technical dialogue regarding settlement;

18 WHEREAS, the Parties now wish to resolve and settle all disputes, obligations,
19 and purported or actual claims or causes of action, which may exist by and between
20 CRW and the City, including without limitation any disputes, obligations, claims and/or
21 causes of action that were or could have been asserted in or pursuant to the Notice
22 Letter and have tentatively reached a settlement;

23 WHEREAS, on August 1, 2017, CRW filed a Complaint against the City in the
24 United States District Court, Central District of California, Eastern Division (Civil Case
25 No. 5:17-cv-01534) entitled, *California River Watch v. City of Rancho Palos Verdes*.
26 (“Complaint”);

27 WHEREAS, the Defendant denies all allegations set forth in the Complaint, and
28 pursuant to Federal Rule of Civil Procedure Rule 4, has either filed an Answer or

1 motion under Rule 12 or will do so by November 5, 2107 or such other date as
2 permitted by Court Rules or the Court;

3 WHEREAS, CRW and the City (collectively referred to herein as the “Parties”)
4 have agreed that it is in the Parties’ mutual interest to enter into a Consent Decree
5 setting forth terms and conditions appropriate to resolving the allegations set forth in
6 the Complaint without further proceedings; and

7 WHEREAS, all actions taken by the City pursuant to this Consent Decree shall
8 be made in compliance with all applicable federal, state and local rules and regulations.

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

12 1. The Court has jurisdiction over the subject matter of this action pursuant to 28
13 U.S.C. §1331 (federal question), and 33 U.S.C. §1365(a) (CWA citizen suit
14 jurisdiction).

15 2. Venue is appropriate in the Central District Court pursuant to 33 U.S.C.
16 §1365(c)(1), because the alleged violations purportedly occurred within this District.
17 Venue is also proper because the City is located, and the alleged events or omissions
18 giving rise to CRW’s claims allegedly occurred in the this District. 28 U.S.C.
19 §1391(b)(1),(2).

20 3. The Complaint is styled as a Complaint for Injunctive Relief, Civil Penalties
21 and Declaratory Relief (Environmental-Clean Water Act 33 U.S.C. §1251, *et seq.*).

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

26 **I. OBJECTIVES**

27 5. It is the express purpose of the Parties entering into this Consent Decree to
28 further the objectives set forth in the CWA and to resolve those issues alleged by CRW

1 in its Complaint. In light of these objectives and as set forth fully below, the City and
2 CWA agree to comply with the provisions of this Consent Decree.

3 **II. COMMITMENTS OF THE CITY**

4 **A. ACTIONS BY THE CITY**

5 6. The City shall perform the below-specified acts. The City reserves the right,
6 in its sole discretion, to determine: (i) which persons shall perform any acts described
7 herein, including contractors; and (ii) the scope and technical details of, and the manner
8 to implement, such acts; and to the extent the Regional Water Quality Control Board is
9 required to review and approve, work may be subject to review and approval by the
10 Regional Water Quality Control Board (or such other regulatory agency as may, from
11 time to time, exercise jurisdiction with respect to environmental matters under the
12 Permit).

13 **B. CONDITION ASSESSMENT**

14 7. Prior to the service of the Notice, the City and County had been conducting a
15 condition assessment. Thus, the City has conducted a Sewer Collection System
16 Investigation and Repair, a Condition Assessment and full Condition Assessment
17 within the last 10 years according to the Pipeline Assessment and Certification Program
18 (“PACP”) system. The final repairs are being completed and documented. The County
19 and City have been performing surface water condition assessments as part of their
20 Condition Assessments, but they are not labeled in record-keeping as “surface water
21 condition assessments.” Upon receipt from the County of Los Angeles, the City will
22 produce the remaining portion of its condition assessment reports, and records
23 sufficient to document the remaining repairs pursuant to the condition assessment and
24 full condition assessment have been performed according to the County’s schedule. To
25 the extent there are any sewer lines in the sewer collection system located sufficiently
26 proximate to a surface water that, if defective, could allow exfiltration to that surface
27 water, City will also produce records sufficient to show a surface water condition
28 assessment was done.

1 7.a. Definitions

2 i. Condition Assessment: A report that comprises inspection, rating, and
3 evaluation of the existing condition of a sewer collection system. Inspection is based
4 upon closed circuit television (“CCTV”) inspections for sewer lines; manhole
5 inspections for structural defects; and inspections of pipe connections at the manhole.
6 After CCTV inspection occurs, pipe conditions are assigned a grade such as the
7 Pipeline Assessment and Certification Program (“PACP”) rating system, developed by
8 the National Association of Sewer Service Companies.

9 ii. A Full Condition Assessment: A Condition Assessment of all sewer lines
10 in the sewer collection system.

11 iii. Surface Water Condition Assessment: A Condition Assessment of sewer
12 lines in the sewer collection system located sufficiently proximate to a surface water
13 that if defective, could allow exfiltration to that surface water. Whether a line is
14 “sufficiently proximate” will depend upon a number of factors including age,
15 composition and PACP rating of the sewer line in question, the nature of the defect, soil
16 types, and groundwater patterns.

17 iv. Surface Significantly Defective: A sewer pipe is considered to be
18 Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP
19 rating system. The PACP assigns grades based on the significance of the defect, extent
20 of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss
21 due to deterioration. Grades are assigned as follows:

22 5 – Most significant defect

23 4 – Significant defect

24 3 – Moderate defect

25 2 – Minor to moderate defect

26 1 – Minor defect.

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1 7.b. Documents to be Provided

2 i. If there are any sewer lines in the City’s sewer collection system in the vicinity
3 of Abalone Cove park and trail within the City of Rancho Palos Verdes maintained by
4 the City (“Abalone Cove”) sufficiently proximate to surface water and determined by
5 the City to pose a risk of exfiltration to that surface water which have not been repaired
6 or replaced, within two (2) years after this consent decree, the City shall repair or
7 replace all sewer lines in such City sewer collection system sufficiently proximate to a
8 surface water and determined to pose a risk of exfiltration to that surface water which
9 have been closed circuit television inspected (“CCTV”) within the past ten (10) years
10 and were rated as Significantly Defective or given a comparable assessment.

11 ii. Within six (6) months of the Effective Date of the Consent Decree, the City
12 shall provide CRW with documentary evidence that it or the County has appropriately
13 scheduled activities to monitor and manage such defective pipe(s), or has repaired or
14 has scheduled the repair of all sewer lines found to be Significantly Defective.

15 iii. Within six (6) months of the Effective Date of the Consent Decree, the City
16 shall provide CRW with documentary evidence that it has been making efforts to
17 identify deficiencies associated with moderate defects in the City’s sewer collection
18 system in the vicinity of Abalone Cove and is monitoring its system, repaired or
19 scheduled the repair or replacement of sewer pipe segments containing defects with a
20 rating of 3 based on the PACP rating system, if such defect resulted in a sanitary sewer
21 overflow (“SSO”), or, if in the City’s discretion, such defects are in close proximity to
22 Significantly Defective segments that are in the process of being repaired or replaced;
23 sewer pipe segments which contain defects with a rating of 3 that are not repaired or
24 replaced within five (5) years after completion of the Surface Water Condition
25 Assessment are to be re-CCTV’d every ten (10) years to ascertain the condition of the
26 sewer line segment. If the City determines that the grade-3 sewer pipe segment has
27 deteriorated and needs to be repaired or replaced, the City shall perform regular
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1 maintenance, or schedule repairs or replacement within two (2) years after the last
2 CCTV cycle.

3 iv. The City shall continue to cooperate in the County’s performance of a
4 Condition Assessment of all sewer at least every ten (10) years, as is already required.

5 **C. SSO REPORTING AND RESPONSE**

6 8. The City contracts with the County for its SSO Reporting and Response. The
7 City shall ask the County to modify its Backup and SSO Response Plan to include in its
8 reports submitted to the California Integrated Water Quality System (“CIWQS”) the
9 following items:

- 10 a. The method or calculations used for estimating total spill volume, spill
11 volume that reached surface waters, and spill volume recovered;
- 12 b. For Category I and II Spills, a listing of nearby residences or business
13 owners who have been contacted to attempt to establish the SSO start
14 time, duration, and flow rate, if such start time, duration, and flow rate
15 have not been otherwise reasonably ascertained, such as from a caller who
16 provides information that brackets a given time that the SSO began; and,
- 17 c. Taking of photographs of the manhole flow at the SSO site using either
18 the San Diego or Central Coast Method array (if applicable to the SSO),
19 or other photographic evidence that may aid in establishing the spill
20 volume.

21 9. The City shall implement and place in its Sewage System Overflow Response
22 Plan (“SSORP”) the following:

- 23 a. A plan to reduce the potential for human health risks and adverse
24 environmental impacts that are associated with an SSO event that include
25 the following:
 - 26 i. In any area within the City in which the County or City cannot
27 confirm that all of the infectious materials, if any, from a SSO have
28 been removed or mitigated, the City (for City maintained areas

1 [Abalone Cove system]) shall post appropriate public notification
2 signs and place barricades to keep vehicle and pedestrians away from
3 contact with spilled sewage until it has been deemed cleaned as
4 described below. For example, signs will be posted at creeks and
5 streams, if any, that have been contaminated as a result of an SSO
6 and at visible access locations until the risk of exposure has subsided
7 to acceptable background levels. Warning signs should be checked
8 every day to ensure that they are still in place. Major spills warrant
9 broader public notice. For major spills within the City, the City, if it
10 is a City maintained area, shall contact local media when significant
11 areas may have been contaminated by sewage and may pose a danger
12 to public health.

- 13 ii. The signs and other public notices will not be removed until City, the
14 Health Department or Sanitation District has determined there is no
15 further risk to public health and the environment.

16 10. The water quality sampling procedures shall include:

- 17 a. Samples should be collected as soon as safely possible after the discovery
18 of the SSO event as follows:
 - 19 i. Pursuant to the Statewide WDR, Section D subsection 7, the City or
20 its designee shall sample to determine the nature and extent of any
21 SSO whenever there is an SSO discharged to a surface where it poses
22 a risk to public health and where it is required by the WDR, Section
23 D, subsection 7.
 - 24 ii. If the SSO poses an imminent and substantial endangerment to public
25 health or the environment that cannot be fully mitigated by the City's
26 current SOPs, the City shall consult a qualified biologist, health care
27 specialist or equivalent professional to mitigate the effects of the
28 SSO on the environment.

1 11. The City shall, on its website, create a link from the website to the CIWQS
2 home page including a county or city phone number at which members of the public
3 can report to the City or County a sanitary sewer overflow observed in the City. On an
4 annual basis for a period of three (3) years from the Effective Date of this Consent
5 Decree the City shall provide CRW with the results of its weekly fecal testing and
6 ocean testing already being performed.

7 **D. LATERAL INSPECTION/REPAIR PROGRAM**

8 12. The City shall develop for public notice, and place on its website within six
9 (6) months “recommended best practices for maintaining your laterals” for the benefit
10 of property owners who are responsible for their own laterals. It will remind private
11 property owners of their responsibility for their laterals. Such recommended best
12 practices shall include reasonable measures for property owners to maintain, repair and
13 inspect their own laterals. The recommendations will include recommended inspections
14 upon any of the following occurring:

- 15 a. Transfer of ownership of the property if no inspection/replacement of the
16 sewer lateral occurred within ten (10) years prior to the transfer;
- 17 b. The occurrence of two (2) or more SSOs caused by the private sewer
18 lateral within two (2) years;
- 19 c. A change of the use of the structure served (a) from residential to non-
20 residential use, (b) to a non-residential use that will result in a higher flow
21 than the current non-residential use, or (c) to non-residential uses where
22 the structure served has been vacant or unoccupied for more than three (3)
23 years;
- 24 d. Upon replacement or repair of any part of the sewer lateral;
- 25 e. Upon issuance of a building permit with a valuation of \$50,000.00 or
26 more.

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1 **E. CHEMICAL ROOT CONTROL**

2 13. The City does not presently use chemical root control. The City shall post on
3 its website “best practices when using chemical root control” for the benefit of private
4 property owners responsible for their own laterals. The City shall ask County agents
5 using chemical root control within the City’s MS4 system to use chemicals approved by
6 the Los Angeles County Sanitation District for any chemical root control as
7 recommended by the Regional Water Quality Control Board, and ask that all
8 application comply with the recommendations of the manufacturer of the chemical and
9 as required by Cal-OSHA. Within one (1) year after this Consent Decree, the City shall
10 develop its posting on its website “recommended best practices when using chemical
11 root control” for the benefit of private property owners responsible for the maintenance
12 and repair of their own laterals. It will include recommended methods for the
13 application of root control agents that lessen the incident of these agents escaping the
14 collection system and keeping the public informed. If the City implements its own
15 chemical root control within the next five (5) years, it will also use these protocols, to
16 the extent they do not conflict with any Sanitation District Ordinance, Cal-OSHA rule,
17 product manufacturer instruction or Los Angeles County, California or federal law by
18 which City is bound. These protocols will also be included in these recommended best
19 practices when using chemical root control for the benefit of property owners who are
20 responsible for their laterals:

- 21 a. Blocking the line upstream and down-stream of the area of application;
- 22 b. Flushing out the line after application and removing the residue before
23 reopening the line;
- 24 c. Random sampling of the line after flushing to insure the protocols
25 eliminate >90% of root control agents; and/or using root control agents
26 that have a half-life of fifteen (15) days or less and the breakdown
27 products are non-toxic to aquatic plants or animals;

- 1 d. Developing and implementing best management practices to preclude the
2 escape of the root control agent from the sewer line;
- 3 e. City will recommend property owners maintain records that include
4 identifying the PACP rating in the section being treated; a map identifying
5 locations where treatment occurs; the chemical(s) used including the
6 MSDS sheets; and the amounts applied. If the City begins chemical root
7 control, it will also perform such record keeping;
- 8 f. Not applying any root control agent to any sewer line that has a known
9 PACP rating of 4 or 5 unless the property owner applying chemical root
10 control can ensure that none of the root control agent will escape the
11 sewer line through any line defect; and
- 12 g. Not knowingly applying any root control agent in any location where
13 groundwater can be contaminated via infiltration or exfiltration.

14 14. If the City begins using chemical root control, the City shall post on its
15 website a map showing where a root control agent may be used throughout the sewer
16 system and provide a contact number for the City to respond to questions.

17 15. If the City begins using chemical root control, it will similarly update its City
18 sewer system management plan (“SSMP”) to include these protocols.

19 **F. FEES AND COSTS**

20 16. Within ten (10) calendar days after the Effective Date of this Consent Decree
21 and approval by the Court, the City shall mail CRW the sum of fifty-thousand dollars
22 (\$50,000). Payment shall be made to CRW in the form of a single check (or two checks
23 which combined total \$50,000) payable to “California River Watch” and mailed to the
24 Law Office of Jack Silver, 708 Gravenstein Highway North, # 407, Sebastopol, CA
25 95472. Said payment shall constitute full and complete satisfaction of all costs of
26 litigation and attorneys’ fees incurred by CRW that have or could have been claimed in
27 connection with this matter up to and including the Effective Date of the Consent
28 Decree, and for CRW’s expert and attorneys’ fees and costs for monitoring and

1 enforcing the City's compliance with the ongoing obligations under this Consent
2 Decree up to and including the Termination Date.

3 **III. COMMITMENTS OF PLAINTIFF**

4 17. Within three days of the final signature of this Consent Decree by the Parties,
5 CRW shall file a Notice of Tentative Settlement and Notice of 45-Day Review Period
6 in the United States District Court for the Central District of California ("District
7 Court").

8 18. Plaintiff shall submit this [Proposed] Consent Decree to EPA and the U.S.
9 Department of Justice ("DOJ") within three days of obtaining Parties' attorneys
10 signatures approving as to form (with client signatures to follow), or at the latest three
11 (3) days after the final signatures of the Parties, consistent with 40 C.F.R. § 135.5. The
12 agency review period expires forty-five (45) days after receipt by both agencies, as
13 evidenced by the certified return receipts, copies of which shall be provided to
14 Defendant if requested. In the event that EPA or DOJ object to entry of this [Proposed]
15 Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s)
16 raised by EPA or DOJ.

17 19. Plaintiff shall file this Consent Decree with the District Court within three (3)
18 days of the Effective Date. CRW is responsible for notifying Defendant of the District
19 Court's entry of the Order dismissing these claims with prejudice. Such notification can
20 be satisfied by the Central District of California's Case Management/Electronic Case
21 Filing ("CM/ECF") notification to the Parties that the Order was executed and entered
22 by the District Court.

23 **IV. EFFECTIVE DATE AND TERMINATION DATE**

24 20. The term "Effective Date," as used in this Consent Decree, shall mean the
25 date on which the Parties receive notice that the Court approved the fully executed
26 Consent Decree.

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1 21. The “Termination Date” of this Consent Decree is the date that all of the
2 requirements under Section II are completed by the City or five (5) years from the date
3 of full execution and court approval of this Consent Decree, whichever is earlier.

4 **V. DISPUTE RESOLUTION**

5 22. This Court shall retain jurisdiction over this matter for five (5) years for the
6 purposes of implementing and enforcing the terms and conditions of this Consent
7 Decree, and adjudicating all disputes among the parties that may arise under the
8 provisions of this Consent Decree. The Court shall have the power to enforce this
9 Consent Decree with all available legal and equitable remedies.

10 23. Any disputes between CRW and the City concerning any alleged breach of
11 this Consent Decree shall be subject to the following dispute resolution procedures.
12 Failure to satisfy the payment condition in Section II is a substantial breach of this
13 Consent Decree and relieves CRW of its obligations under this Consent Decree:

14 a. Good Faith Negotiations. CRW and the City shall make good faith efforts
15 to resolve informally any alleged breach of the Consent Decree. If
16 informal efforts to resolve the alleged breach are unsuccessful, that Party
17 shall provide written notice of the alleged breach and that Party’s intent to
18 initiate the dispute resolution procedure of this Section. The notice shall
19 include a recitation of all facts and circumstances giving rise to the
20 dispute, including the particular provisions of the Consent Decree alleged
21 to have been breached.

22 b. Mediation. If the dispute is not resolved by the Parties within thirty (30)
23 days after such notice is given, such dispute shall be submitted to
24 mediation before a mutually agreeable neutral mediator. The Parties shall
25 each bear their own costs and attorney’s fees incurred in connection with
26 such mediation.

27 c. Waiver. By agreeing to these dispute resolution provisions, the Parties
28 understand that they are waiving certain important rights and protections

1 that otherwise may have been available to each of them if a dispute
2 between them were determined by judicial action including, without
3 limitation, the right to a jury trial, and certain rights of appeal. Other than
4 the remedies contained within this Consent Decree including dispute
5 resolution and specific performance of the terms of this Consent Decree,
6 there are no other remedies. The Parties specifically agree that there is no
7 basis within this Consent Decree or within the contemplation of the
8 Parties to support a claim for consequential damages due to any form of
9 breach.

10 **VI. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

11 24. Release. It is the intent of the Parties that the execution of this Consent
12 Decree constitutes a full and complete satisfaction of all rights, claims and demands by
13 CRW against the City with respect to any and all allegations and claims made in the
14 Notice Letter under the Clean Water Act. CRW on behalf of itself and any and all of its
15 agents, representatives, successors, members, and assigns, except as otherwise provided
16 for herein does hereby absolutely, fully and forever release, relieve, remise and
17 discharge the City and its past and present employees, officers, directors, attorneys, and
18 the predecessors, successors, and assigns of any of them, from all causes of actions,
19 claims, damages (including punitive damages), demands, debts, actions, attorneys' fees,
20 costs of suit, and liabilities of every kind or nature whatsoever, arising exclusively out
21 of the specific claims asserted in the Notice Letter under the Clean Water Act
22 concerning the operation of the sewage collection system. The release provided for
23 herein shall be valid and effective whether the claims, causes of action, or liability
24 hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based
25 in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. The release shall
26 survive the termination of this Consent Decree, whether by satisfaction of the terms and
27 conditions hereof or operation of law.

1 25. Covenant Not to Sue. For the period beginning on the Effective Date and
2 ending after five (5) years, CRW agrees that neither CRW, its officers, executive staff,
3 members of its governing board nor any organization under the control of CRW, its
4 officers, executive staff, or members of its governing board, will file any lawsuit
5 against the City seeking relief for alleged violations of the Clean Water Act. CRW
6 further agrees that, beginning on the Effective Date and ending after five (5) years,
7 CRW will not support other lawsuits by providing financial assistance, personnel time
8 or other affirmative actions against the City that may be proposed by other groups or
9 individuals who would rely upon the citizen suit provision of the Clean Water Act to
10 challenge the City's compliance with the Clean Water Act. This Not to Sue provision
11 shall survive the termination of this Consent Decree. This Not to Sue provision shall
12 not effect either Party's right to enforce this Consent Decree.

13 **VII. MISCELLANEOUS PROVISIONS**

14 26. No Admission. The Consent Decree is the direct result of a compromise of
15 disputed allegations and claims. As such, this Consent Decree shall not, for any
16 purpose, be considered as an admission of liability by the City, nor shall the payment of
17 any sum of money in consideration for the execution of this Consent Decree constitute
18 or be construed as an admission of any liability by the City, which expressly denies any
19 such liability or wrongdoing.

20 27. Delays in Schedule Implementation. In the event implementation by the City
21 of the remedial measures set forth Section II of this Consent Decree does not occur by
22 the agreed to dates, despite the timely good faith efforts of the City to acquire any
23 necessary approvals and/or permits, or due to factors unforeseen at the time this
24 Consent Decree was entered into, the City agrees to notify CRW in writing as soon as
25 practicable after the anticipated delay becomes apparent, and in any case except in a
26 case of force majeure described below, not less than twenty (20) days prior to any
27 deadline set forth in Section II, and shall describe the reasons for the anticipated delay.

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1 The foregoing addresses may be changed by Notice given in accordance with this
2 Section. Any Notice sent by mail shall be deemed received two (2) days after the date
3 of mailing. Any Notice sent by electronic mail shall be deemed received upon
4 electronic transmission thereof provided sender does not receive electronic notice of
5 non-delivery. Any Notice sent by overnight courier service shall be deemed received on
6 the day of actual delivery as shown by the confirmation of delivery by the messenger or
7 courier service. If the date of receipt of any Notice to be given hereunder falls on a
8 weekend or legal holiday, then such date of receipt shall automatically be deemed
9 extended to the next business day immediately following such weekend or holiday for
10 purposes of calculating time periods commencing upon the date of service.

11 30. Attorneys' Fees. Other than the payment to CRW under Section II (E) each
12 Party shall bear its own past and future attorneys' fees and costs relating to the subject
13 matter of this Consent Decree.

14 31. Parties' Acknowledgment of Terms. This Consent Decree has been carefully
15 and fully read and reviewed by CRW, the City, and their respective counsel, if any,
16 who hereby represent that the contents of this Consent Decree are understood, and
17 agree that this Consent Decree is binding on each party or its respective predecessors,
18 successors, and assigns and as described above.

19 32. Interpretation and Applicable Law. This Consent Decree shall be construed
20 and interpreted in accordance with the laws of the United States and the State of
21 California without regard to principles of conflicts of law. This Consent Decree shall be
22 interpreted and construed as a whole, according to its fair meaning and not strictly for
23 or against any Party, and without regard to which Party drafted the Consent Decree. All
24 of the promises, representations, and warranties contained in this Consent Decree
25 survive the execution of this Consent Decree.

26 33. No Assignments. Each Party to this Consent Decree represents and warrants
27 that it has not assigned, transferred, hypothecated, or sold to any third person or entity,
28 any of the rights or obligations released by or entered into under this Consent Decree.

1 34. Counterparts. This Consent Decree may be executed in multiple counterparts
2 by the attorneys and Parties, each of which shall evidence one and the same agreement.

3 35. Headings. The headings used in this Consent Decree are for convenience of
4 reference and shall not be used to define any provision.

5 36. Entire Consent Decree in Writing. This Consent Decree constitutes the entire
6 agreement between the Parties hereto with respect to the subject matter set forth herein
7 and supersedes all previous or contemporaneous negotiations, commitments (oral or
8 written), and writings with respect to the subject matter set forth herein.

9 37. Modification or Amendment. This Consent Decree or any of its provisions
10 may be modified or amended only by written agreement executed by all Parties to this
11 Consent Decree.

12 38. Severability. The invalidity or unenforceability of any provision of this
13 Consent Decree shall in no way affect the validity or enforceability of any other
14 provision. If, in any action before any court or other tribunal or competent jurisdiction,
15 any term, restriction, covenant, or promise is held to be unenforceable for any reason,
16 then such term, restriction, covenant, or promise shall be deemed modified to the extent
17 necessary to make it enforceable by such court or other tribunal and, if it cannot be so
18 modified, that this Consent Decree shall be deemed amended to delete here from such
19 provision or portion adjudicated to be invalid or unenforceable, and the remainder of
20 this Consent Decree shall be deemed to be in full force and effect as so modified. Any
21 such modification or amendment in any event shall apply only with respect to the
22 operation of this Consent Decree in the particular jurisdiction in which such
23 adjudication is made.

24 39. Representations and Warranties. This Consent Decree is given voluntarily,
25 free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor
26 any officer, agent, employee, representative, or attorney of or for any Party, has made
27 any statement or representation to any other Party regarding any fact relied upon in
28 entering this Consent Decree, and no Party is relying upon any statement,

1 representation, or promise of any other Party, nor of any officer, agent, employee,
2 representative, or attorney of or for any Party, in executing this Consent Decree or in
3 making the settlement provided herein, except as expressly stated in this Consent
4 Decree.

5 40. No Third Party Beneficiaries. This Consent Decree is not intended to confer
6 any rights or obligations on any third party or parties, and no third party or parties shall
7 have any right of action under this Consent Decree for any cause whatsoever. Subject
8 only to the express restrictions contained in this Consent Decree, all of the rights, duties
9 and obligations contained in this Consent Decree shall inure to the benefit of and be
10 binding upon the Parties, and their successors and assigns.

11 41. Authority. Each of the persons signing this Consent Decree on behalf of an
12 entity represents and warrants that he or she has actual authority and capacity to execute
13 the Consent Decree on behalf of the entity and to bind it to all of the terms of this
14 Consent Decree.

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

17 APPROVED AS TO FORM:

18 Dated: October 3, 2017

**ATTORNEYS FOR CALIFORNIA
RIVER WATCH**

/s/ David Weinsoff

/s/ Jack Silver

DAVID WEINSOFF,

JACK SILVER

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