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7 Attorneys for Plaintiffs  
8 FRIENDS OF MARIPOSA CREEK and  
SARAH WINDSOR

9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11 FRIENDS OF MARIPOSA CREEK, an  
12 unincorporated association; and, SARAH  
WINDSOR, an individual,

13 Plaintiffs,

14 vs.

15 MARIPOSA PUBLIC UTILITY DISTRICT,  
16 a public utility district,

17 Defendant.  
18

Case No. 1:15-cv-00583-EPG

**CONSENT DECREE**

19 **WHEREAS**, Plaintiff Friends of Mariposa Creek (“FMC”) is an unincorporated  
20 organization of citizens living in Mariposa, CA, that live adjacent to or in the vicinity of Mariposa  
21 Creek;  
22

23 **WHEREAS**, Plaintiff Sarah Windsor is an individual who lives adjacent to Mariposa Creek  
24 downstream from the Mariposa Wastewater Treatment Facility and a member of FMC;

25 **WHEREAS**, Defendant Mariposa Public Utility District (the “District”) is a public utility  
26 district that provides water, wastewater, and fire protection services to the town of Mariposa,  
27 California. The District operates the Mariposa Wastewater Treatment Facility located at 4956 Miller  
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1 Road in Mariposa, California (“Facility”).

2       **WHEREAS**, from January 25, 2008, through March 27, 2014, discharges from the Facility  
3 were regulated by National Pollutant Discharge Elimination System (“NPDES”) Permit No.  
4 CA0079430, State Board Order No. R5-2007-0171 (“2007 NPDES Permit”);

5       **WHEREAS**, since March 28, 2014, discharges from the Facility have been regulated by  
6 NPDES Permit No. CA0079430, State Board Order No. R5-2014-0042 (“2014 NPDES Permit”);

7       **WHEREAS**, the Central Valley Regional Board Water Quality Control Board (“Regional  
8 Board”) has issued Regional Board Order No. R5-2015-0041 (“2015 Time Schedule Order”) which  
9 sets forth interim average monthly and maximum daily effluent limitations for  
10 dichlorobromomethane;

11       **WHEREAS**, on February 13, 2015, Plaintiffs provided the District with a Notice of  
12 Violation and Intent to File Suit (“60-Day Notice Letter” or “Notice Letter”) under Section 505 of  
13 the Federal Water Pollution Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365;

14       **WHEREAS**, on April 15, 2015, Plaintiffs filed their Complaint in the United States District  
15 Court for the Eastern District of California (*Friends of Mariposa Creek et al. v. Mariposa Public*  
16 *Utility District*, Case No. 1:15-cv-00583-EPG). A true and correct copy of the Complaint, including  
17 the 60-Day Notice Letter, is attached hereto as Exhibit A and incorporated by reference;

18       **WHEREAS**, on February 26, 2016, Plaintiffs filed a Motion for Partial Summary Judgment  
19 as to Liability for violations of final effluent limitations contained in the 2007 NPDES Permit and  
20 the 2014 NPDES Permit;

21       **WHEREAS**, on April 19, 2016, the Court issued an order granting Plaintiffs’ Motion for  
22 Partial Summary Judgment. The Court found that the District was liable for 2,218 separate  
23 violations of effluent limitations for dichlorobromomethane and copper included in the 2007 and  
24 2014 NPDES Permits. A true and correct copy of the Court’s April 19, 2016 Order is attached  
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1 hereto as Exhibit B;

2 **WHEREAS**, Plaintiffs and the District (hereinafter, collectively referred to as the  
3 “SETTLING PARTIES”), through their authorized representatives, have agreed that it is in the  
4 parties’ mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate  
5 to resolving the allegations set forth in the Complaint without further proceedings;

6 **WHEREAS**, this proposed Consent Decree will be submitted to the United States  
7 Department of Justice and the national and Region IX offices of the United States Environmental  
8 Protection Agency for the statutory review period pursuant to 33 U.S.C. § 1365(c) at least 45 days  
9 prior to the submittal of this Consent Decree to the Court for entry;

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

13 **COMMITMENTS OF MARIPOSA PUBLIC UTILITY DISTRICT**

14  
15 **1. Compliance with Effluent Limitations in 2014 NPDES Permit.** No later than May  
16 18, 2020, the District shall come into full compliance with the final average monthly and maximum  
17 daily effluent limitations for dichlorobromomethane and copper contained in the 2014 NPDES  
18 Permit in Table 4. The final average monthly and maximum daily effluent limitations include the  
19 following:  
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Parameter	Average Monthly	Maximum Daily
Dichlorobromomethane	0.56 µg/L	1.3 µg/L
Copper, Total Recoverable	6.8 µg/L	13 µg/L

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25 Should any of the final maximum daily or average monthly effluent limitations for  
26 dichlorobromomethane or copper be amended by any future NPDES permit issued to the District  
27 prior to the termination date of this Consent Decree, the Settling Parties agree to request the Court to  
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1 amend the limitations set forth in this paragraph to be consistent with such new effluent limitations  
2 included in a final NPDES permit and no longer subject to any administrative challenge.

3 **2. Compliance with Interim Effluent Limitations.** Until May 17, 2020, the District  
4 shall comply with the following interim average monthly and maximum daily effluent limitations for  
5 dichlorobromomethane, consistent with 2015 Time Schedule Order:

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7 <b>Parameter</b>	<b>Average Monthly</b>	<b>Maximum Daily</b>
8 Dichlorobromomethane	22 µg/L	49 µg/L

9

10 With respect to discharges from the Facility, compliance with the above interim effluent  
11 limitations for dichlorobromomethane through May 17, 2020, shall be deemed compliance with this  
12 Consent Decree, as approved and ordered by the Court.

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14 **3. Adherence to Deadlines for Compliance Project.** By May 18, 2020, the District  
15 shall complete a Compliance Project for the Facility, which includes upgrades to tertiary treatment  
16 for the Facility. A description of the Compliance Project is attached hereto as Exhibit C. In  
17 addition, until the Compliance Project is completed, the District is required to submit to the Regional  
18 Board semi-annual Progress Reports that detail what steps have been implemented towards  
19 achieving compliance with the final effluent limitations for dichlorobromomethane and copper for  
20 the Facility. The content of these semi-annual Progress Reports includes financing, construction  
21 progress, evaluation of measures implemented, and recommendations for additional measures as  
22 necessary to achieve full compliance with the 2014 NPDES Permit by May 18, 2020. Each calendar  
23 year, within 10 days of submission of the second semi-annual Progress Report of the year, copies of  
24 both semi-annual Progress Reports shall be served on Plaintiffs. Submission of said reports shall  
25 continue annually through the completion of the Compliance Project. Within 30 days of the  
26 completion of installation and operation of the Compliance Project, the District shall serve Plaintiffs  
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1 a Final Compliance Report certifying to the Plaintiffs and the Court that the Compliance Project is  
2 complete and operational. No later than May 18, 2020 the District shall serve the Plaintiffs and the  
3 Court with a report certifying that the Facility is in full compliance with the effluent limitations set  
4 forth in Paragraph 1 above.

5 **4. Mitigation Payment.** In recognition of the good faith efforts by the District to  
6 comply with final effluent limits of the 2014 NPDES Permit and the Clean Water Act, and in lieu of  
7 payment by the District of any penalties, which may have been assessed in this action if it had been  
8 adjudicated through the penalty phase, the SETTLING PARTIES agree that the District will pay the  
9 sum of eighty-thousand dollars (\$80,000) to the Rose Foundation for Communities and the  
10 Environment (“Rose Foundation”) for the sole purpose of providing grants to environmentally  
11 beneficial projects in the Mariposa Creek watershed, downstream from the Facility and until  
12 Mariposa Creek’s confluence with Duck Slough. Payment shall be provided to the Rose Foundation  
13 as follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94607, Attn: Tim  
14 Little. Payment shall be made by the District to the Rose Foundation within thirty (30) calendar  
15 days of the District Court’s entry of this Consent Decree. It shall be the District’s obligation to  
16 request necessary W-9 tax information from the Rose Foundation. The District shall copy Plaintiffs  
17 with any correspondence and a copy of the check sent to the Rose Foundation. The SETTLING  
18 PARTIES hereby recommend to the Rose Foundation that all of the mitigation funds, less any  
19 administrative costs for the Rose Foundation not to exceed 10% of the project(s) cost, be directed to  
20 one or more environmentally beneficial projects in the Mariposa Creek watershed downstream from  
21 the Facility and until Mariposa Creek’s confluence with Duck Slough, proposed by the Sierra  
22 Foothill Conservancy if a suitable grant application is submitted to the Rose Foundation for those  
23 projects. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30)  
24 days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose  
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1 terms of this Consent Decree, nothing in this Consent Decree shall preclude Plaintiffs from filing a  
2 motion with the District Court seeking to assess additional liability and civil penalties as authorized  
3 by the Clean Water Act, for any violations by the District of the dichlorobromomethane or copper  
4 effluent limitations occurring after May 18, 2020.

5 **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

6  
7 8. In consideration of the above, and except as otherwise provided by this Consent  
8 Decree, the SETTLING PARTIES hereby forever and fully mutually release each other and their  
9 respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and  
10 former employees, volunteers, attorneys, officers, directors and agents from any and all claims and  
11 demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages,  
12 injuries, actions or causes of action, either at law or in equity, which arise or could have arisen from  
13 the Complaint, including all claims for injunctive relief, damages, penalties, fines, sanctions,  
14 mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum  
15 incurred or claimed or which could have been claimed in the Complaint, addressing the District's  
16 violations of the dichlorobromomethane and copper effluent limitations that have occurred or will  
17 occur through May 18, 2020.

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19  
20 9. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of  
21 the California Civil Code, which provides:

22 A general release does not extend to claims which the creditor does not know or suspect to  
23 exist in his or her favor at the time of executing the release, which if known by him or her  
24 must have materially affected his or her settlement with the debtor.

25 The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under  
26 California Civil Code section 1542 with respect to any other claims against each other arising from,  
27 or related to, the allegations and claims as set forth in the Notice Letter and Complaint at the Facility  
28 through the date of entry of the Consent Decree.





1 may seek recovery of reasonable attorney fees and costs incurred in bringing any such motion, and  
2 such fees and costs shall be awarded, pursuant to the provisions set forth in the Section 505(d) of the  
3 Clean Water Act, 33 U.S.C. § 1365(d).

4 **JURISDICTION OVER PARTIES AND**  
5 **SUBJECT MATTER OF THE CONSENT DECREE**

6 **13. Jurisdiction.** For the purposes of this Consent Decree, the SETTLING PARTIES  
7 stipulate that the United States District Court of California, Eastern District of California, has  
8 jurisdiction over the SETTLING PARTIES and subject matter of this Consent Decree.  
9

10 **14. Submission of Consent Decree to DOJ.** Within three (3) business days of  
11 receiving all of the Parties' signatures to this Consent Decree, Plaintiffs shall submit this Consent  
12 Decree to the U.S. Department of Justice ("DOJ") and EPA for agency review consistent with 40  
13 C.F.R. §135.5. The agency review period expires forty-five (45) calendar days after receipt by the  
14 DOJ, evidenced by correspondence from DOJ establishing the review period. In the event DOJ  
15 comments negatively on the provisions of this Consent Decree, the SETTLING PARTIES agree to  
16 meet and confer to attempt to resolve the issues raised by DOJ.  
17

18 **GENERAL PROVISIONS**

19 **15. Effective Date:** The Effective Date of this Consent Decree shall be upon the entry of  
20 the Consent Decree by the Court.  
21

22 **16. Impossibility of Performance.** Where implementation of the actions set forth in this  
23 Consent Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite the  
24 timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall  
25 notify the other in writing within seven (7) days of the date that the failure becomes apparent, and  
26 shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and  
27 confer in good faith concerning the non-performance. The SETTLING PARTIES agree to meet and  
28 confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur

1 that the non-performance was or is impossible, despite the timely good faith efforts of one of the  
2 SETTLING PARTIES, the Parties shall determine whether they can stipulate to requesting an order  
3 from the District Court amending the deadline. In the event that the SETTLING PARTIES cannot  
4 timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES may submit  
5 the dispute to the District Court.

6  
7 **17. Force Majeure.** No Party shall be considered to be in default in the performance of  
8 any of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event  
9 is any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A  
10 Force Majeure event does not include normal inclement weather or inability to pay. Any Party  
11 seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably  
12 have been expected to avoid, and which by exercise of due diligence has been unable to overcome,  
13 the Force Majeure.  
14

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

18 **19. Correspondence.** All notices required herein or any other correspondence pertaining  
19 to this Consent Decree shall be sent by regular, certified, overnight mail, or e-mail as follows:  
20

21	If to Plaintiffs:	<u>Sarah Windsor</u>	Copy to:	<u>Michael R. Lozeau</u>
22		<u>Friends of Mariposa Creek</u>		<u>Douglas J. Chermak</u>
23		<u>PO Box 723</u>		<u>Lozeau Drury LLP</u>
24		<u>Mariposa, CA 95338</u>		<u>410 12th Street, Suite 250</u>
25		<u>(209) 966-2408</u>		<u>Oakland, CA 94607</u>
26		<u>mariposacreek@sti.net</u>		<u>(510) 836-4200</u>
				<u>michael@lozeaudrury.com</u>
				<u>doug@lozeaudrury.com</u>

27	If to the			
28	District:	<u>Mark Rowney</u>	Copy to:	<u>Neal Costanzo</u>
		<u>General Manager</u>		<u>Costanzo &amp; Associates</u>





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**Order**

The Court finds that the provisions of the parties' Consent Decree, a fully executed copy of which is located on the docket as ECF No. 80, are fair and adequate. The provisions therein are hereby approved and the Court will retain jurisdiction of the case for the term of the Consent Decree. The Clerk of the Court is DIRECTED to close this action subject to reopening based on the terms of the Consent Decree.

IT IS SO ORDERED.

Dated: November 30, 2016

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

