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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16

17
18 UNITED STATES OF AMERICA,
19 Plaintiff,

20 v.

21 EL DORADO COUNTY, CALIFORNIA,
22 et al.,
23 Defendants.

24 AND RELATED ACTIONS.

No. 2:01-cv-1520-MCE-DAD

**SETTLEMENT AGREEMENT AND
MODIFICATION OF PARTIAL
CONSENT DECREE (ECF No. 389);
ORDER THEREON**

1 WHEREAS in August 2010 the Court entered a Partial Consent Decree (ECF No.
2 389) between Plaintiff United States of America (“Plaintiff” or “United States”), on behalf
3 of the United States Department of Agriculture, Forest Service (“Forest Service”), and
4 Defendant El Dorado County, California (“County” or “Settling Defendant”);

5 WHEREAS in April 2011 the County filed a Motion for Construction,
6 Enforcement, and Modification of Partial Consent Decree (“County’s Motion”);

7 WHEREAS the United States opposed that motion;

8 WHEREAS in July 2011 the Court issued a Memorandum and Order granting the
9 County’s Motion (ECF No. 416);

10 WHEREAS in January 2013 the United States Court of Appeals for the Ninth
11 Circuit dismissed as premature the United States’ appeal of the Court’s July 2011
12 Memorandum and Order (704 F.3d 1261);

13 WHEREAS in October 2014 the Court order the Parties to file briefs regarding
14 the extent of the United States’ liability under the County’s Motion (ECF No. 445);

15 WHEREAS the Parties desire to resolve the County’s Motion, as well as certain
16 other contested matters set forth herein regarding the Partial Consent Decree, without
17 further litigation or appeal;

18 WHEREAS the Parties desire to enter into this Settlement Agreement and
19 Modification of Partial Consent Decree (“SA/MPCD”); and

20 THEREFORE, the Parties agree, and the Court orders, as follows:

21 1. As soon as reasonably practicable after the Effective Date¹ of this
22 SA/MPCD, the United States, on behalf of the Forest Service, shall pay to the County
23 \$4,100,000 to resolve any and all claims alleged by the County in conjunction with the
24 County’s Motion as well as any and all claims that the County had, has, or may have
25 arising out of the transaction or occurrence that is the subject matter of the County’s

26 _____
27 ¹ “Effective Date” shall be the date upon which this SA/MPCD is entered by the Court as
28 recorded on the Court docket, or, if the Court instead issues an order approving this
SA/MPCD, the date such order is recorded on the Court docket.

1 Motion.

2 2. The United States shall make the payment required by Paragraph 1 of this
3 SA/MPCD in accordance with instructions, to be provided by the County promptly after
4 the Effective Date of this SA/MPCD.

5 3. In the event that payment required by Paragraph 1 of this SA/MPCD is not
6 made within 45 days of the Effective Date of this SA/MPCD, Interest² on the unpaid
7 balance shall be paid commencing on the 46th day after the Effective Date of this
8 SA/MPCD and accruing through the date of the payment.

9 4. Paragraph 1 of this SA/MPCD also resolves any and all claims the County
10 has, had, or may have to recover any or all of Settling Defendant Excess Future OU-1
11 Construction Costs under the Partial Consent Decree.

12 5. Within 30 days of receiving the payment required by Paragraph 1 of this
13 SA/MPCD, the County shall pay to the Forest Service \$500,000 to resolve any and all
14 claims the United States, on behalf of the Forest Service, has, had, or may have to
15 recover any or all Interim Response Costs and Future Response Costs associated with
16 OU-1. Such payment by the County shall also resolve any and all claims the County
17 has, had, or may have against the United States based on any contention that the
18 Forest Service is liable for all or part of such Interim Response Costs or Future
19 Response Costs.

20 6. The County shall make the payment required by Paragraph 5 of this
21 SA/MPCD in accordance with instructions, to be provided by the United States promptly
22 after the Effective Date of this SA/MPCD.

23 7. Upon receipt of the County's payment required by Paragraph 5 of this
24 SA/MPCD, the Forest Service shall deposit such amount into the Meyers Landfill

25 _____
26 ² "Interest," "Settling Defendant Excess Future OU-1 Construction Costs," "Interim
27 Response Costs," "Future Response Costs," "Meyers Landfill Special Account,"
28 "Operation and Maintenance," "Work," and other intra-sentence capitalized words or
phrases shall have the same meaning as provided by the Partial Consent Decree
except to the extent applied to and modified by this SA/MPCD.

1 Special Account to be retained and used by the Forest Service solely to conduct or
2 finance response actions at or in connection with the Site.

3 8. Within 30 days of receiving the payment required by Paragraph 1 of this
4 SA/MPCD, the County shall establish and fund an interest-bearing trust in the amount of
5 \$2,700,000 to be used for OU-1 Operation and Maintenance ("O&M"). The County shall
6 establish and fund such trust in accordance with instructions, to be provided by the
7 United States promptly after the Effective Date of this SA/MPCD. Any fees required to
8 establish or maintain the trust shall be subtracted from the \$2,700,000 funding.

9 9. The County shall not seek to recover from the United States any of the
10 funds required to establish the trust required by Paragraph 8 of this SA/MPCD.
11 Likewise, after the completion of such funding by the County, the United States shall not
12 seek to recover from the County any additional funds for OU-1 O&M, including any fees
13 of any sort for the establishment and maintenance of the trust.

14 10. Upon the earlier of the (1) County's (a) payment of the \$500,000 required
15 by Paragraph 5 of this SA/MPCD and (b) establishment and funding of the trust required
16 by Paragraph 8; or (2) 75 days after the Effective Date, the County shall be relieved of
17 any and all Work or payment obligations under the Partial Consent Decree associated
18 with OU-1, including but not limited to: conducting additional Work associated with OU-
19 1; obtaining an OU-1 Certificate of Completion from the Forest Service; paying Future
20 Response Costs associated with OU-1, conducting OU-1 O&M, and paying Past,
21 Interim, or Future Oversight Costs associated with OU-1 O&M (the "OU-1 Release"). If
22 the OU-1 Release takes effect because of clause (2) in the preceding sentence, and the
23 County fails to timely make the \$500,000 payment required by Paragraph 5 or fails to
24 timely establish and fund the trust required by Paragraph 8, the OU-1 Release shall be
25 suspended and rendered ineffective as of the first day of such noncompliance, and the
26 period of suspension and ineffectiveness shall continue until the County cures any such
27 noncompliance (at which time the suspension shall lift and the OU-1 Release shall
28 again be effective).

1 11. Paragraphs 18, 91, and 95 of the Partial Consent Decree in their entirety
2 are vacated. Subparagraphs (a) and (i) of Paragraph 94 are also vacated.

3 12. Paragraph 92 of the Partial Consent Decree is modified as follows:
4 Notwithstanding any other provision of the Partial Consent Decree or this SA/MPCD,
5 the United States reserves, and the Partial Consent Decree and SA/MPCD are without
6 prejudice to, the right to institute a new action or to issue an administrative order,
7 seeking to compel the County to perform further response actions at OU-1 and/or to pay
8 the United States for additional costs of response at OU-1 if, (a) subsequent to
9 December 31, 2013, (i) conditions at the Site, previously unknown to the Forest Service,
10 are discovered, or (ii) information, previously unknown to the Forest Service, is
11 received, in whole or in part, and (b) the Forest Service determines that these
12 previously unknown conditions or this information together with other relevant
13 information indicate that the Remedial Action is not protective of human health or the
14 environment. As of the date the United States executes this SA/MPCD, the Forest
15 Service represents that it has no such knowledge as to (a) and (b) in the preceding
16 sentence.

17 13. Paragraph 93 of the Partial Consent Decree is modified as follows: For
18 purposes of Paragraph 92, the information and conditions known to the Forest Service
19 shall include only that information and those conditions known to the Forest Service as
20 of December 31, 2013 and set forth in the OU-1 ROD Decision, the administrative
21 record supporting the OU-1 ROD, the post-OU-1 ROD administrative record, or in any
22 information received by the Forest Service pursuant to the requirements of the Partial
23 Consent Decree prior to December 31, 2013.

24 14. With respect to Paragraph 67 of the Partial Consent Decree, the phrase
25 “December 31, 2015” shall be substituted for the phrase “the first anniversary of the
26 Forest Service’s Certification of Completion of the Remedial Action for OU-1 pursuant to
27 Subparagraph 49.b. of Section XIV (Certification of Completion).” With respect to
28 Paragraph 112 of the Partial Consent Decree, the phrase “December 31, 2024” for the

1 phrase "ten years after Settling Defendant's receipt of the Service's notification pursuant
2 to Paragraph 49.b of Section XIV (Certification of Completion of the Remedial Action)."

3 15. The Partial Consent Decree (ECF No. 389) is incorporated by reference
4 herein (including, for example, Section IV's definitions -- as reflected in footnote 2 of this
5 SA/MPCD), except as modified by this SA/MPCD or rendered irrelevant by events
6 occurring subsequent to the Effective Date of the Partial Consent Decree.

7 16. Upon the United States' payment pursuant to Paragraph 1 of this
8 SA/MPCD, the Court's Memorandum and Order of July 2011 (ECF No. 416) and all
9 related Orders are vacated and superseded by this SA/MPCD.

10 FOR THE UNITED STATES OF AMERICA:

11
12 JOHN C. CRUDEN
13 Assistant Attorney General
14 Environment and Natural Resources
15 Division
16 United States Department of Justice

17 8/10/2016

18 _____/s/
19 KARL J. FINGERHOOD
20 Senior Counsel
21 Environmental Enforcement Section
22 Environment and Natural Resources
23 Division
24 United States Department of Justice

25 8/10/2016

26 _____/s/
27 ANDREW J. DOYLE
28 Trial Attorney
Environmental Defense Section
Environment and Natural Resources
Division
United States Department of Justice

1 FOR THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE:

2
3 6/07/2016

4 _____/s/_____
5 RANDY MOORE
6 Regional Forester
7 United States Department of Agriculture
8 Forest Service
9 1323 Club Drive
10 Vallejo, California 94592

11 FOR THE COUNTY OF EL DORADO, CALIFORNIA:

12 Date: 3/08/2016

13 Signature: _____/s/_____

14 Name (Print): Ron Mikulaco

15 Title: Chair, Board of Supervisors

16 Address: 330 Fair Lane

17 Placerville, CA 95667

18 IT IS SO ORDERED.

19 Dated: September 23, 2016

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE
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