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 12 (For Attorneys for Defendants, see *infra* p. 25.)

13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
 16 Plaintiff,
 17 v.
 18 MATTHEW R. ANCHORDOGUY,
 19 ANCHORDOGUY AND COMPANY
 20 LIMITED PARTNERSHIP, and JOHN
 21 R. BARLOW,
 22 Defendants.

No. 2:13-cv-848-MCE-CMK

CONSENT DECREE

23 WHEREAS, Plaintiff United States of America (“United States”), at the request of
 24 the Administrator of the United States Environmental Protection Agency, has filed a
 25 Complaint in this action, alleging that Defendants Matthew R. Anchordoguy,
 26 Anchordoguy and Company Limited Partnership, and John R. Barlow (“Defendants”)
 27 violated Clean Water Act (“CWA”) section 301(a), 33 U.S.C. § 1311(a);

28 WHEREAS, the Complaint alleges that Defendants violated CWA section 301 by
 discharging dredged or fill material, without a CWA section 404 permit from the United

1 States Army Corps of Engineers, into waters of the United States at the "Site," as that
2 term is defined in Paragraph 9, subparagraph m, generally in conjunction with preparing
3 the Site for the planting of olive and walnut orchards;

4 WHEREAS, the Complaint requests, *inter alia*, that the Court award injunctive
5 relief and civil penalties;

6 WHEREAS, Defendants do not admit any liability to the United States arising out
7 of the activities alleged in the Complaint and have asserted affirmative defenses;

8 WHEREAS, Defendants have submitted evidence to the United States regarding
9 the limits of their ability to pay;

10 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair
11 settlement of the United States' claims alleged in the Complaint, and that this Consent
12 Decree adequately protects the public interest in accordance with the CWA;

13 THEREFORE, before the taking of any testimony upon the pleadings, without the
14 adjudication or admission of any issue of fact or law except as provided in Section I of
15 this Consent Decree, and upon consent of the Parties hereto by their authorized
16 representatives, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

17 I. JURISDICTION, VENUE, AND SUFFICIENCY OF COMPLAINT

18 1. This Court has jurisdiction over the subject matter of this action and over
19 the Parties pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C.
20 §§ 1331, 1345, and 1355.

21 2. Venue is proper in the Eastern District of California pursuant to CWA
22 section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) because Defendants
23 conduct business in this District; the Site is located in this District; and the claims alleged
24 in the Complaint arose in this District.

25 3. For purposes of this Consent Decree and any action to enforce this
26 Consent Decree, Defendants consent to the Court's jurisdiction and venue.

27 4. For purposes of this Consent Decree and any action to enforce this
28 Consent Decree, the Parties agree, and the Court finds, that the Complaint states claims

1 upon which relief can be granted pursuant to CWA sections 301(a), 309(d), and 404, 33
2 U.S.C. §§ 1311(a), 1319(d), and 1344.

3 II. APPLICABILITY

4 5. This Consent Decree applies to and is binding upon the United States and
5 upon Defendants and any successors, assigns, or other entities or persons otherwise
6 bound by law whether or not such entity or person has notice of this Consent Decree.

7 6. Defendants shall provide notice of this Consent Decree to all partners,
8 employees, and agents to the extent that their duties might reasonably include
9 compliance with this Consent Decree, as well as to all contractors retained to perform
10 work at the Site to the extent their duties might reasonably include compliance with this
11 Consent Decree.

12 7. In any action to enforce this Consent Decree, Defendants shall not raise as
13 a defense the failure by any of their partners, employees, agents, or contractors to take
14 any actions necessary to comply with this Consent Decree.

15 III. DEFINITIONS

16 8. Terms used in this Consent Decree that are defined in the CWA or in
17 regulations promulgated pursuant to the CWA shall have the meanings assigned to them
18 in the statute or such regulations, unless otherwise provided in this Consent Decree.

19 9. Whenever the terms set forth below are used in this Consent Decree, the
20 definitions in the following subparagraphs shall apply.

21 a. "CWA" shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.

22 b. "Complaint" shall mean the Complaint filed by the United States in
23 this action on May 1, 2013 (ECF No. 2).

24 c. "Coyote Creek" shall mean the feature that has segments generally
25 located in the southern portion of the Site and is inclusive of its north fork, south fork,
26 and mainstem. Coyote Creek is shown on the Tehama County Assessor's Parcel Map,
27
28

1 which is Appendix A to this Consent Decree,¹ and illustrated on an annotated aerial
2 photograph of the Site, which is Appendix B to this Consent Decree.

3 d. "Consent Decree" shall mean this Consent Decree; all Appendices
4 attached hereto and listed in Section XVII; and all modifications made effective in
5 accordance with Section XII.

6 e. "Corps" shall mean the United States Army Corps of Engineers and
7 any of its successor departments or agencies.

8 f. "Day" shall mean a calendar day unless expressly stated to be a
9 business day. In computing any period of time under this Consent Decree, where the
10 last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the
11 close of business of the next day that is not a Saturday, Sunday, or legal holiday.

12 g. "Defendants" shall mean Matthew R. Anchordoguy, Anchordoguy
13 and Company Limited Partnership, and John R. Barlow.

14 h. "EPA" shall mean the United States Environmental Protection
15 Agency and any of its successor departments or agencies.

16 i. "Effective Date" shall mean the date on which this Consent Decree
17 is entered by the Court.

18 j. "Paragraph" with a capital "P" shall mean a portion of this Consent
19 Decree identified by an Arabic numeral.

20 k. "Parties" shall mean the United States and Defendants.

21 l. "Section" with a capital "S" shall mean a portion of this Consent
22 Decree identified by a Roman numeral.

23 m. "Site" shall mean certain real property in Tehama County, California
24 that is located at 10555 State Highway 99W, Red Bluff, California, 96080. The Site has
25 an approximate size of 1,036.39 acres and is comprised of the following Tehama County
26 Assessor's Parcel Numbers: 037-050-20-1, 037-050-18-1, 037-050-16-1, 037-050-15-1,

27 _____
28 ¹ Appendix A is a true and correct copy of the Tehama County Assessor's Parcel Map,
available at <http://www.co.tehama.ca.us/assessor-info-maps> (last visited June 30, 2014).

1 and 037-050-04-1. These parcels are shown on Appendix A to this Consent Decree,
2 and the Site boundary is illustrated on Appendix B to this Consent Decree.²

3 n. "Stream 1" shall mean the feature that has segments generally
4 located in the northern, eastern, and southern portions of the Site. Stream 1 is
5 illustrated on Appendix B to this Consent Decree.

6 o. "Stream 2" shall mean the feature that has segments generally
7 located in the northern, central, and eastern portions of the Site. Stream 2 is illustrated
8 on Appendix B to this Consent Decree.

9 p. "Stream 3" shall mean the feature that is generally located in the
10 southwest portion of the Site and is illustrated on Appendix B to this Consent Decree.

11 q. "Stream 4" shall mean the feature that has a segment generally
12 located in the northeastern portion of the Site and is illustrated on Appendix B to this
13 Consent Decree.

14 r. "Stream 5" shall mean the feature that is generally located in the
15 southern portion of the Site and is illustrated on Appendix B to this Consent Decree.

16 s. "Stream 6" shall mean the feature that is generally located between
17 the north and south forks of Coyote Creek in the southwestern portion of the Site and is
18 illustrated on Appendix B to this Consent Decree.

19 t. "United States" shall mean the United States of America, acting on
20 behalf of EPA.

21 u. "Unfilled Wetlands" shall mean features that are illustrated in yellow
22 on Appendix B to this Consent Decree.

23 IV. SCOPE OF CONSENT DECREE

24 10. This Consent Decree shall constitute a complete and final settlement of all
25 civil claims alleged and relief sought in the Complaint, subject to compliance by

26 _____
27 ² The Site does not include the limited portion of Assessor's Parcel Number 037-100-
28 17-1 located north of Coyote Creek, which Defendants also prepared for the planting of
olive or walnut orchards. No CWA violations are alleged or believed to have occurred in
this portion of Assessor's Parcel Number 037-100-17-1.

1 Defendants with this Consent Decree.

2 11. It is the express purpose of the Parties in entering this Consent Decree to
3 further the objectives set forth in CWA section 101, 33 U.S.C. § 1251.

4 12. Defendants' obligations under this Consent Decree are joint and several.

5 13. The Parties acknowledge that, upon entry of this Consent Decree,
6 Nationwide Permit 32, found at 77 Fed. Reg. 10,184 (Feb. 21, 2012), will authorize,
7 subject to the conditions provided in the Nationwide Permit and this Consent Decree, the
8 dredged or fill materials that were allegedly placed at the Site as part of the alleged
9 discharges alleged to be violations of the CWA in the Complaint.

10 14. This Consent Decree is not and shall not be interpreted to be a permit or
11 modification of any existing permit issued pursuant to any federal, state, or local laws or
12 regulations; except as provided in Paragraph 13, nothing in this Consent Decree shall
13 limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual
14 permit or any nationwide or regional general permit, nor shall this Consent Decree limit
15 EPA's ability to exercise its authority pursuant to CWA section 404(c), 33 U.S.C.
16 § 1344(c).

17 15. Except as provided in this Consent Decree, this Consent Decree in no way
18 affects or relieves Defendants of their responsibility to comply with any applicable
19 federal, state, or local law, regulation or permit.

20 16. This Consent Decree in no way affects the rights of the United States as
21 against any person not a party to this Consent Decree.

22 17. The United States reserves any and all legal and equitable remedies
23 available to enforce this Consent Decree and applicable law. The United States further
24 reserves all legal and equitable remedies available to address any subsequently
25 discovered imminent and substantial endangerment to public health or welfare or the
26 environment at the Site, whether related to the alleged violations addressed in this
27 Consent Decree or otherwise. This Consent Decree shall not be construed to limit the
28 rights of the United States to obtain penalties or injunctive relief under the CWA or its

1 implementing regulations, or under other federal laws, regulations, or permit conditions,
2 except as expressly specified in Paragraph 10 of this Consent Decree.

3 18. Except as provided in Section I, nothing in this Consent Decree shall
4 constitute an admission of fact or law by either the United States or Defendants.

5 V. SPECIFIC PROVISIONS

6 CIVIL PENALTIES

7 19. By the later of December 31, 2014 or the thirtieth (30th) Day after the
8 Effective Date, Defendants shall pay civil penalties to the United States in the amount of
9 three hundred thousand dollars (\$ 300,000).

10 20. Payment of the civil penalties to the United States shall be made in
11 accordance with the written instructions to be provided to Defendants by the United
12 States Department of Justice. Upon payment, Defendants shall promptly provide written
13 notice to the United States at the addresses specified in Section IX.

14 21. Defendants shall not deduct any penalties paid under this Consent Decree
15 pursuant to this Section or Section VII in calculating any federal income tax owed.

16 22. No transfer of ownership or control of the Site shall relieve Defendants of
17 their obligation to timely pay civil penalties under Paragraph 19.

18 INJUNCTIVE RELIEF

19 23. Injunctions:

20 a. Defendants and Defendants' agents, successors, and assigns are
21 enjoined from discharging any pollutant into Coyote Creek, Stream 1, Stream 2, Stream
22 3, Stream 4, Stream 5, Stream 6, or Unfilled Wetlands, unless such discharge complies
23 with the provisions of the CWA and its implementing regulations.

24 b. Defendants and Defendants' agents, successors, and assigns are
25 enjoined from dredging or excavating any portion of Coyote Creek unless, before
26 initiating any such activity, Defendants provide written notification to the Corps fully
27 describing the proposed activity and obtain from the Corps a CWA section 404 permit, a
28 verification of the applicability of a nationwide permit, or a determination that no CWA

1 section 404 permit is required for the proposed activity.

2 c. The prohibitions of subparagraphs a and b of Paragraph 23 run with
3 ownership or control of the Site. Within thirty (30) Days of the Effective Date,
4 Defendants shall record with the Recorder of Deeds office in Tehama County, California
5 a true and correct copy of this Consent Decree. Upon recording, Defendants shall
6 promptly provide written notice of such recording to the United States, along with a true
7 and correct copy of items recorded, at the addresses specified in Section IX.

8 d. In no event may Defendants cause ownership or control of the Site
9 to be transferred until they have paid the civil penalty (i.e., Paragraph 19); completed the
10 mitigation requirements (i.e., Paragraph 24); and recorded the Consent Decree in
11 accordance with the immediately preceding subparagraph (i.e., subparagraph c of
12 Paragraph 23). After such time, Defendants may cause ownership or control of the Site
13 to be transferred if, at least thirty (30) Days prior to such transfer, Defendants provide a
14 true and correct copy of this Consent Decree to the proposed transferee and
15 simultaneously provide written notice of the proposed transfer to the United States at the
16 addresses specified in Section IX. Further, until such time as this Consent Decree is
17 terminated, if Defendants seek to cause ownership or control of the Site to be transferred
18 they must first obtain a written agreement from the proposed transferee acknowledging
19 that: (1) transferee and its agents, successors, or assigns are prohibited from
20 discharging any pollutant into Coyote Creek, Stream 1, Stream 2, Stream 3, Stream 4,
21 Stream 5, Stream 6, or Unfilled Wetlands, unless such discharge complies with the
22 provisions of the CWA and its implementing regulations; (2) transferee and its agents,
23 successors, or assigns are prohibited from dredging or excavating any portion of Coyote
24 Creek unless, before initiating any such activity, they provide written notification to the
25 Corps fully describing the proposed activity and obtain from the Corps a CWA section
26 404 permit, a verification of the applicability of a nationwide permit, or a determination
27 that no CWA section 404 permit is required for the proposed activity; and (3) such
28 prohibitions run with ownership or control of the Site. Transferring ownership or control

1 of the Site does not include changing the ownership or control of Anchordoguy and
2 Company Limited Partnership so long as that change does not affect title to the Site.

3 24. Mitigation:

4 a. To mitigate the alleged losses of ecological functions resulting from the
5 CWA violations alleged in the Complaint, by the fifteenth (15th) Day after the Effective
6 Date, Defendants shall pay seven hundred ninety five thousand dollars (\$795,000) to
7 The Nature Conservancy in accordance with the Agreement Concerning Mitigation
8 Funds that is appended to this Consent Decree as Appendix C. As set forth in Appendix
9 C, these funds are for the purpose of protecting, preserving, enhancing, restoring,
10 maintaining, managing, and monitoring vernal pool habitat and salmon and riparian
11 habitats as natural open space in perpetuity in the Sacramento River watershed,
12 including completing the priority project of acquiring and maintaining a conservation
13 easement on a 515-acre parcel in Tehama County, California, known as "Foor Ranch."
14 As further detailed in Appendix C, the easement will protect the vernal pools and vernal
15 swales on Foor Ranch, which is of heightened conservation value due to its connectivity
16 to surrounding conserved lands, including The Nature Conservancy's 4,600-acre Vina
17 Plains Preserve of vernal pool and grassland habitats.

18 b. Upon completion of the requirements of Paragraph 24, Defendants shall
19 promptly provide written notice to the United States at the addresses specified in Section
20 IX, at which time Defendants shall have completed the mitigation requirements of
21 Paragraph 24.

22 c. No transfer of ownership or control of the Site shall relieve Defendants of
23 their obligation to complete timely mitigation under Paragraph 24.

24 VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

25 25. Until termination of this Consent Decree, Defendants shall retain all
26 documents and electronically stored information that relate in any manner to Defendants'
27 performance of their obligations under this Consent Decree. Upon request by the United
28 States, Defendants shall make any documents or information required to be maintained

1 under this Paragraph available for inspection and copying by the United States.

2 Defendants reserve their rights and ability to assert that any documents or information
3 required to be maintained under this Paragraph is protected from disclosure under any
4 privilege or protection recognized by federal law.

5 26. Until termination of this Consent Decree, the United States and its
6 representatives, including attorneys, contractors, and consultants, shall have the right of
7 entry into the Site, at reasonable times and upon reasonable notice and presentation of
8 credentials, to assess Defendants' compliance with this Consent Decree and to inspect
9 and review any records required to be kept under this Consent Decree and/or the CWA.

10 27. This Consent Decree in no way limits or affects any other rights of entry
11 and inspection, or any rights to obtain information, held by the United States, including
12 EPA, pursuant to applicable federal laws, regulations, or permits, nor does it limit or
13 affect any duty or obligation of Defendants to maintain documents, records, or other
14 information imposed by applicable federal or state laws, regulations, or permits.
15 However, entry of this Consent Decree shall close the CWA section 308 Information
16 Request issued by EPA to at least one Defendant on or about January 10, 2011(EPA
17 Docket No. CWA 308-9-11-001), thereby terminating the effect of that Information
18 Request to Defendants.

19 VII. STIPULATED PENALTIES

20 28. Defendants shall be liable for stipulated penalties to the United States for
21 their violations of this Consent Decree in accordance with this Section. A violation
22 includes failing to fulfill any obligation of this Consent Decree, including, for example,
23 timely paying civil penalties (Paragraph 19); complying with injunctions (Paragraph 23,
24 subparagraphs a and b); timely recording the Consent Decree (Paragraph 23,
25 subparagraph c); complying with requirements pertaining to transferring ownership or
26 control of the Site (Paragraph 23, subparagraph d); and timely completing mitigation
27 (Paragraph 24).

28

1 29. Stipulated penalties shall accrue for violations of this Consent Decree in
2 the amount of two thousand dollars (\$2,000) per Day for each violation.

3 30. Stipulated penalties under this Section shall begin to accrue on the Day a
4 violation occurs and shall continue to accrue until the violation ceases. Stipulated
5 penalties shall accrue simultaneously for separate violations of this Consent Decree.

6 31. Except as provided in Paragraphs 32 and 33 below, Defendants shall pay
7 any stipulated penalty within thirty (30) Days of receiving the United States' written
8 demand. Defendants shall make any such payment in accordance with written
9 instructions to be provided by the United States. Upon any such payment, Defendants
10 shall provide written notice to the United States, at the addresses specified in Section IX.

11 32. The United States may, in the unreviewable exercise of its discretion,
12 reduce or waive stipulated penalties otherwise due under this Consent Decree.

13 33. Any disputes concerning the amount of stipulated penalties or the
14 underlying violation that gives rise to the assessment of stipulated penalties are subject
15 to the Dispute Resolution provisions of Section VIII. Stipulated penalties and any
16 applicable interest shall continue to accrue but need not be paid until the following:

17 a. If the dispute is resolved by agreement between the Parties,
18 Defendants shall pay the amount due under such agreement, together with any
19 applicable interest, to the United States within thirty (30) Days of the effective date of the
20 agreement.

21 b. If the dispute cannot be resolved between the Parties and is taken
22 to the Court, in the event that the Court determines that stipulated penalties are owed,
23 Defendants shall pay all accrued penalties determined by the Court to be owed, together
24 with any applicable interest, within thirty (30) Days of receiving the Court's decision,
25 except as provided in subparagraph c, below. In the event that the Court determines
26 that Defendants do not owe any stipulated penalties, such a determination shall be
27 controlling, except as provided in subparagraph c, below.

28

1 c. If any party appeals the Court's decision to the Court of Appeals (or
2 beyond), Defendants shall pay all accrued penalties determined to be owed, together
3 with any applicable interest, within fifteen (15) Days of receiving the final appellate
4 decision.

5 34. If Defendants fail to pay stipulated penalties in accordance with this
6 Consent Decree, Defendants shall be liable for interest on such penalties, as provided
7 for in 28 U.S.C. § 1961, accruing as of the date payment became due. The interest shall
8 be computed daily from the time the payment is due until the date the payment is made.
9 The interest shall also be compounded annually. Nothing in this Paragraph shall be
10 construed to limit the United States from seeking any remedy otherwise provided by law
11 for Defendants' failure to pay any stipulated penalties.

12 35. The stipulated penalties provided for in this Consent Decree shall be in
13 addition to any other rights, remedies, or sanctions available to the United States for
14 Defendants' violation of this Consent Decree or applicable law.

15 VIII. DISPUTE RESOLUTION

16 36. Unless otherwise expressly provided for in this Consent Decree, the
17 dispute resolution procedures of this Section ("Dispute Resolution") shall be the
18 exclusive mechanism for Defendants to resolve all of their disputes arising under or with
19 respect to this Consent Decree. However, Section VIII shall not be construed to limit any
20 right of Defendants to seek immediate relief from the Court for any dispute arising under
21 or with respect to this Consent Decree in the unusually rare circumstance that requiring
22 Defendants to follow the dispute resolution procedures of Section VIII would likely result
23 in immediate and irreparable harm, loss, or damage to Defendants.

24 37. Any dispute Defendants have that is subject to Dispute Resolution shall
25 first be the subject of informal negotiations. The dispute shall be considered to have
26 arisen when Defendants send the United States, at the addresses listed in Section IX, a
27 written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in
28 dispute. The period of informal negotiations shall not exceed thirty (30) Days from the

1 date the dispute arises, unless that period is modified in writing by the Parties. If the
2 Parties cannot resolve a dispute by informal negotiations, then the position advanced by
3 the United States shall be considered binding unless, within forty five (45) Days after the
4 conclusion of the informal negotiation period, Defendants file with the Court a motion or
5 other appropriate paper or pleading seeking judicial resolution of the dispute.

6 38. In any dispute submitted by Defendants to the Court for resolution pursuant
7 to this Section, Defendants shall have the burden of proving by a preponderance of
8 evidence that the United States' position is not in accordance with this Consent Decree
9 and the CWA, and that Defendants' position will achieve compliance with this Consent
10 Decree and the CWA.

11 39. The invocation of Dispute Resolution procedures under this Section shall
12 not, by itself, extend, postpone, or affect in any way any obligation of Defendants under
13 this Consent Decree. Stipulated penalties and interest, if applicable to the disputed
14 matter, shall continue to accrue from the first Day of violation, but payment shall be
15 stayed pending resolution of the dispute as provided in Section VII. If Defendants do not
16 prevail on the disputed issue, stipulated penalties, and interest, if applicable, shall be
17 assessed and paid as provided in Section VII.

18 IX. ADDRESSES

19 40. All notices and communications required under this Consent Decree shall
20 be made to the Parties through each of the following persons and addresses:

21 a. TO THE UNITED STATES:

22 i. TO THE DEPARTMENT OF JUSTICE:

23 Andrew J. Doyle, Attorney
24 Environment and Natural Resources Division
25 U.S. Department of Justice
26 re: *USA v. Anchordoguy*, DJ# 90-5-1-1-19337
27 P.O. Box 7611
28 Washington, D.C. 20044
(202) 514-4427 (p)
(202) 514-8865 (f)
andrew.doyle@usdoj.gov

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ii. TO EPA:
Jessica Kao
Assistant Regional Counsel
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3922 (p)
kao.jessica@epa.gov

b. TO DEFENDANTS:

DOWNEY BRAND, LLP
Robert P. Soran, Esq.
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
(916) 444-1000 (p)
rsoran@downeybrand.com

B. Demar Hooper, Esq.
3910 Knollwood Court
Sacramento, CA 95821
(916) 849-3447 (p)
demar@bdhooperlaw.com

Matthew R. Anchordoguy
P.O. Box 136
Vina, CA 96092

Anchordoguy and Company Limited Partnership
77 Talon Drive
Chico, CA 95973

John R. Barlow
77 Talon Dr.
Chico, CA 95973

41. Any party may, by written notice to the other party, change its designated notice recipient or notice address provided above.

42. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

1 X. COSTS OF SUIT

2 43. Each party to this Consent Decree shall bear its own costs and attorneys'
3 fees in this action.

4 XI. PUBLIC COMMENT

5 44. The Parties acknowledge that after the lodging and before the entry of this
6 Consent Decree, final approval by the United States is subject to the requirements of 28
7 C.F.R. § 50.7, which provides for public notice and comment. The United States
8 reserves the right to withhold or withdraw its consent to the entry of this Consent Decree
9 if the comments received disclose facts or considerations which lead the United States
10 to conclude that the proposed judgment is inappropriate, improper, or inadequate.
11 Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of
12 this Consent Decree, unless the United States has notified Defendants in writing that it
13 no longer supports entry of the Consent Decree. Defendants consent to entry of this
14 Consent Decree in its present form without further notice.

15 XII. MODIFICATION

16 45. The terms of this Consent Decree may be modified only by a subsequent
17 written agreement signed by the Parties. Where the modification constitutes a material
18 change to any term of this Consent Decree, it shall be effective only upon approval by
19 the Court.

20 XIII. SIGNATORIES/SERVICE

21 46. Each undersigned representative of Defendants and the United States
22 Department of Justice certifies that he or she is fully authorized to enter into the terms
23 and conditions of this Consent Decree and to execute and legally bind the party he or
24 she represents to this document.

25 47. This Consent Decree may be signed in counterparts, such counterpart
26 signature pages shall be given full force and effect, and its validity shall not be
27 challenged on that basis. Defendants agree to accept service of process by mail with
28 respect to all matters arising under or relating to this Consent Decree and to waive any

1 formal service requirements set forth in the Federal Rules of Civil Procedure and any
2 applicable Local Rules of this Court including, but not limited to, service of a summons.

3 **XIV. INTEGRATION**

4 48. This Consent Decree constitutes the final, complete, and exclusive
5 agreement and understanding among the Parties with respect to the settlement
6 embodied in the Consent Decree and supersedes any prior agreements and
7 understandings, whether verbal or written, concerning the settlement embodied herein.
8 Other than Appendices (Section XVII) and modifications (Section XII), no other
9 document, nor any representation, inducement, agreement, understanding, or promise,
10 constitutes any part of this Consent Decree or the settlement it represents, nor shall it be
11 used in construing the terms of this Consent Decree.

12 **XV. CONFIDENTIALITY, FINAL JUDGMENT, AND RETENTION OF JURISDICTION**

13 49. Confidentiality Order: Pursuant to Rule 26(c) of the Federal Rules of Civil
14 Procedure, the documents and information Defendants produced to the United States in
15 conjunction with the response of one or more Defendants to the CWA section 308
16 Information Request issued by EPA on or about January 10, 2011(EPA Docket No. CWA
17 308-9-11-001), and Defendants' ability to pay submission in March 2014 and derivative
18 information (for example, notes taken by attorneys or consultants for the United States in
19 conjunction with their evaluation of the foregoing documents and information) shall be
20 kept confidential (or destroyed); shall not be used for any purpose whatsoever other than
21 in connection with this specific action or the enforcement of this Consent Decree
22 (including actions to resolve disputes arising under or with respect to this Consent
23 Decree); and shall not be publicly revealed by the United States. Paragraph 49 operates
24 as a Confidentiality Order and replaces Defendants' confidentiality assertions pursuant
25 to 40 C.F.R. Part 2. The discovery documents that Defendants produced to the United
26 States in March 2014, which are Bates-stamped ANCH000001 through ANCH005643,
27 are not subject to this Paragraph and Confidentiality Order even if some of these
28 documents were also produced to the United States in conjunction with Defendants'

1 ability-to-pay submission.

2 50. Final Judgment: Upon approval and entry of this Consent Decree by the
3 Court, this Consent Decree shall constitute a final judgment, and the Clerk of Court may
4 administratively close this case.

5 51. Retention of Jurisdiction: This Court retains jurisdiction over this action for
6 purposes of resolving disputes arising under this Consent Decree, or entering orders
7 modifying this Consent Decree, or effectuating or enforcing compliance with the terms of
8 this Consent Decree. (Paragraphs 52 through 56 are intentionally omitted.)

9 XVI. TERMINATION

10 57. After Defendants have paid civil penalties (Paragraph 19); recorded the
11 Consent Decree (Paragraph 23, subparagraph c); completed mitigation (Paragraph 24);
12 continuously complied with the injunctions (Paragraph 23, subparagraphs a and b) for
13 two years and 183 Days after the Effective Date; and paid any outstanding stipulated
14 penalties required by this Consent Decree, Defendants may submit to the United States,
15 at the addresses listed in Section IX, a written Request for Termination, stating that
16 Defendants have satisfied these requirements, together with supporting documentation.

17 58. If the United States agrees that the Consent Decree may be terminated,
18 the Parties shall submit, for the Court's approval, an appropriate paper or pleading to
19 terminate the Consent Decree.

20 59. If the United States does not agree that the Consent Decree may be
21 terminated or if the United States does not respond to Defendants' Request for
22 Termination within thirty (30) Days of service, Defendants may invoke the Dispute
23 Resolution provisions of Section VIII.

24 60. Termination of this Consent Decree does not extinguish the prohibitions of
25 subparagraphs a and b of Paragraph 23, which run with ownership or control of the Site.

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XVII. APPENDICES

61. The following Appendices are attached to and part of this Consent Decree:


a. Appendix A: Tehama County Assessor's Parcel Map for Parcel Numbers 037-050-20-1, 037-050-18-1, 037-050-16-1, 037-050-15-1, and 037-050-04-1, available at <http://www.co.tehama.ca.us/assessor-info-maps> (last visited June 30, 2014).

b. Appendix B: Annotated aerial photograph illustrating the boundary of the Site and Coyote Creek, Stream 1, Stream 2, Stream 3, Stream 4, Stream 5, Stream 6, and Unfilled Wetlands.

c. Appendix C: Agreement Concerning Mitigation Funds.

IT IS SO ORDERED

Date: November 06, 2014


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2 Sam Hirsch
3 Acting Assistant Attorney General

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9 Andrew J. Doyle
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Dated:

8/12/2014

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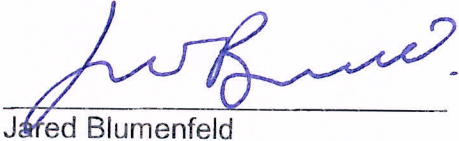
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1 FOR EPA (continued on next page):

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Dated: July 30, 2014

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Jared Blumenfeld
Regional Administrator
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1 FOR EPA (continued from previous page):

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Dated: 8/4/14

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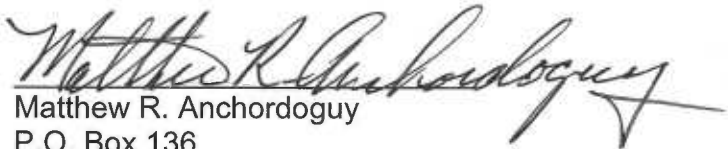
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FOR DEFENDANT MATTHEW R. ANCHORDOGUY:



Matthew R. Anchordoguy
P.O. Box 136
Vina, CA 96092

Dated: 7/22/14

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FOR DEFENDANT ANCHORDOGUY AND COMPANY LIMITED PARTNERSHIP:

Dated: 7-22-14

Anchordoguy and Company Limited Partnership
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Chico, CA 95973

By: John Barlow General Partner
(individual) (title)

1 FOR DEFENDANT JOHN R. BARLOW:

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Dated: 7-22-14

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1 COUNSEL FOR DEFENDANTS:

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Dated: 7/24/2014

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