

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 Michael R. Lozeau (SBN 142893)
Douglas J. Chermak (SBN 233382)
2 Lozeau Drury LLP
1516 Oak Street, Suite 216
3 Alameda, CA 94501
Telephone: 510 749 9102
4 Facsimile: 510 749 9103
Email: michael@lozeaudrury.com
5 doug@lozeaudrury.com

6 Andrew L. Packard (SBN 168690)
Michael P. Lynes (SBN 230462)
7 Law Offices of Andrew L. Packard
319 Pleasant Street
8 Petaluma, CA 94952
Telephone: 707 763 7227
9 Facsimile: 415 763 9227
Email: andrew@packardlawoffices.com

10 Attorneys for Plaintiff
11 California Sportfishing Protection Alliance

12 John Lynn Smith (SBN 154657)
13 Email: jsmith@reedsmith.com
Julia C. Butler (SBN 199133)
14 Email: jbutler@reedsmith.com
REED SMITH LLP
15 1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572
16 **Mailing Address:**
P.O. Box 2084
17 Oakland, CA 94604-2084

18 Telephone: +1 510 763 2000
19 Facsimile: +1 510 273 8832

20 Attorneys for Defendant
Waste Management Of Alameda County, Inc.

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE,
24
25 Plaintiff,
26 vs.
27 WASTE MANAGEMENT OF ALAMEDA
COUNTY, INC.,
28 Defendant.

No.: 008-03497
**FIRST AMENDMENT TO CONSENT
DECREE**
Honorable Samuel Conti

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. BACKGROUND

1. On April 21, 2009, the Court entered the Consent Decree in this action in which, among other things, Waste Management of Alameda County (“WMAC”) agreed to implement additional best management practices to improve the storm water pollution prevention measures at the drop inlets and outfalls at its Davis Street Station facility located at 2615 Davis Street in San Leandro, California (the “Facility”). The parties to the Consent Decree are Plaintiff California Sportfishing Protection Alliance (“CSPA”) and Defendant WMAC. CSPA and WMAC are collectively referred to herein as the Parties.

2. The Consent Decree set certain deadlines by which WMAC is to take certain actions to upgrade the storm water treatment system at the Facility’s outfalls. Recently, WMAC notified CSPA that it would be unable to meet those deadlines.

3. As a result, the Parties now desire to amend the Consent Decree to set new deadlines, extend the termination date of the Consent Decree, provide for an additional payment to CSPA for additional oversight costs and to provide for a payment to the Rose Foundation in the event that WMAC materially fails to meet the schedule to take certain actions to upgrade the storm water treatment system at the Facility’s outfalls, as amended herein.

4. Section J(9) of the Consent Decree provides that it may be changed by a written instrument signed by the Parties.

5. After all Parties have executed this First Amendment to the Consent Decree, the Parties will submit the First Amendment to the Consent Decree to the Department of Justice and the United States Environmental Protection Agency (the "Agencies") for a 45-day review period pursuant to 40 C.F.R. Section 135.5. At the end of this review period, the Parties will advise the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court whether the Agencies had any comments or objections thereto.

NOW THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED AND DECREED that the Consent Decree be amended as follows:

4. Additional Best Management Practices

Section 4.e. is hereby deleted and replaced in its entirety with the following:

e. WMAC shall take the following actions to upgrade the storm water treatment system at the Facility's outfalls and agrees that the treatment system shall be designed to handle up to a 15-year, 24-hour storm event.

(i) By October 31, 2009, WMAC shall complete an engineering feasibility study to evaluate a long-term treatment alternative(s) for reducing total suspended solids ("TSS") and other storm water pollutants below the bench mark values. This study will include an alternative to treat the storm water discharged at the Recycling Center outfall (Discharge Point #3). The study will evaluate treatment systems designed to treat a 15-year, 24-hour storm event.

(ii) By November 30, 2009, WMAC shall select the long-term treatment alternative(s).

(iii) By December 31, 2009, WMAC shall complete design plans and specifications for the selected long-term treatment alternative(s).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(iv) By March 31, 2010, WMAC shall implement the selected long-term treatment alternative(s).

D. MITIGATION PAYMENT

The following sentence shall be inserted following the original paragraph in this Section:

In addition, if WMAC materially fails to meet the schedule in Section 4.e. of the Consent Decree, as revised herein, then WMAC shall pay the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) to the Rose Foundation for Communities and the Environment for the sole purpose of providing grants to environmentally beneficial projects within the San Francisco Bay-Delta Estuary, relating to water quality improvements in the area. Payment shall be made by WMAC within THIRTY (30) calendar days of such failure, unless the Parties mutually agree on another payment schedule. Payment by WMAC shall be made in the form of a single check payable to the "Rose Foundation."

E. ATTORNEY'S FEES AND COSTS; COMPLIANCE OVERSIGHT COSTS

The following paragraph shall be inserted following the original paragraph in this Section:

In addition, as reimbursement for CSPA's future costs that will be incurred in order for CSPA to monitor WMAC's compliance with this First Amendment to the Consent Decree and to effectively meet and confer, WMAC shall pay CSPA the sum of FIVE THOUSAND DOLLARS (\$5,000) for costs to be incurred in overseeing the implementation of this First Amendment to the Consent Decree. Payment shall be made by WMAC within thirty (30) days of the last signature by a Party to this First Amendment to the Consent Decree. Payment by WMAC to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP Attorney-Client Trust Account."

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. TERMINATION DATE OF CONSENT DECREE

Section II is hereby deleted in its entirety and replaced with the following sentence:

This Consent Decree shall terminate on December 15, 2012.

This Amendment shall be effective upon the date of the last signature by a Party to this Amendment. Except as modified by this Amendment, the Consent Decree shall remain unchanged and in full force and effect.

SO AGREED AND STIPULATED:

Dated: 27 Oct 09

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

By: [Signature] Chairman
(Title)

Dated: 10/29/09

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

By: [Signature]
(Title)
Vice President & Assistant Secretary

APPROVED AS TO FORM:

LOZEAU DRURY LLP

[Signature]
Michael R. Lozeau
Attorneys for Plaintiff

REED SMITH LLP

[Signature]
John Lynn Smith
Attorneys for Defendant



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated and entered into on _____.

UNITED STATES DISTRICT JUDGE

US_ACTIVE-102364421.1