

1 THOMAS R. PARKER, County Counsel SBN 114835
 DOUGLAS L. LOSAK, Deputy SBN 220443
 2 Office of the County Counsel
 County of Mendocino - Administration Center
 3 501 Low Gap Road, Room 1030
 Ukiah, CA 95482
 4 Telephone: (707) 234-6885
 Facsimile: (707) 463-4592
 5 losakd@co.mendocino.ca.us

6 Attorneys for Defendant
 COUNTY OF MENDOCINO

8 Jack Silver, Esq. SB# 160575
 Law Office of Jack Silver
 9 Jerry Bernhaut, Esq. SB# 206264
 Post Office Box 5469
 10 Santa Rosa, CA 95402-5469
 Tel. (707) 528-8175
 11 Fax: (707) 542-7139
 lhm28843@sbcglobal.net

12 Attorneys for Plaintiff
 13 CALIFORNIA RIVER WATCH

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 CALIFORNIA RIVER WATCH, a
 18 501(c)(3), non-profit, public benefit
 Corporation,

19 Plaintiff,

20 v.

21 COUNTY OF MENDOCINO,

22 Defendants.
 23 _____ /

Case No.: 3:13-cv-01087 CRB

~~PROPOSED~~ CONSENT DECREE AND
 ORDER

COMPLAINT FILED: March 8, 2013

Honorable Charles R. Breyer
 U.S. District Court Judge

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26
 27 CV 13-1087 CRB
 [Proposed] Consent Decree and Order

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RECITALS

2 A. Defendant County of Mendocino ("County") is a municipal discharger under CWA §
3 402(p) and as such must operate under a municipal stormwater permit - CWA §
4 402(p)(3)(B), 33 U.S.C. §1342(p)(3)(B). The County's operations are located within the
5 watershed basin of the Russian and Noyo Rivers, waters of the United States.

6 B. Plaintiff California River Watch ("River Watch") has filed this action pursuant to Clean
7 Water Act 33, U.S.C. §1251 et. seq., specifically 33 U.S.C. §1311, 33 U.S.C. §1342, AND
8 33 U.S.C. 1365, alleging that the County has violated and is continuing to violate the
9 NPDES Permit in various respects.

10 C. River Watch and the County ("the "Parties") have consented to the entry of this Consent
11 Decree and Order without trial of any issues, and hereby stipulate that, in order to settle
12 the claims alleged against the County in River Watch's complaint, and to avoid the delays
13 and expenses of litigation, this Consent Decree should be entered. This Consent Decree
14 constitutes a settlement of disputed claims. It is not an admission of jurisdiction or the
15 validity of River Watch's allegations. Should this proposed Consent Decree fail to be
16 entered for any reason, this proposed Consent Decree, and any statement or other
17 provision contained in this proposed Consent Decree shall have no legal effect and shall
18 not be used for any purpose in any subsequent proceeding in this or any other litigation.

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CONSENT DECREE

21 The Court having considered the representations of the Parties, and after opportunity for
22 comment by the United States pursuant to 33 U.S.C. § 1365(c)(3) and 40 C.F.R. §135.5(a) having
23 determined that entry of this Decree is in the public interest, NOW THEREFORE, before taking
24 any testimony, and without any adjudication of any fact or law, it is hereby ORDERED,
25 ADJUDGED and DECREED as follows:

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27 CV 13-1087 CRB
28 [Proposed] Consent Decree and Order

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I. JURISDICTION

1. The Parties agree that this Court has jurisdiction over the subject matter and the Parties in this action pursuant to Section 505 of the Act, 33 U.S.C. § 1365.
2. Venue is proper in this Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because this is the judicial district in which the County is located.

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II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree shall apply to and be binding upon River Watch and its members, and the County, and its elected officials, and both of their officers, employees, contractors, subcontractors, consultants, agents, assigns and volunteers and each and every one of them acting under their direction and/or control. To the extent that federal law (including federal principles of *res judicata*) allows, this Consent Decree shall also be found binding upon other private parties who may hereafter file a citizen suit against the County for alleged violations of the Clean Water Act that have been alleged in this action. However, This Consent Decree shall not be construed to limit the authority of the United States under Section 309 of the Act, 33 U.S.C. § 1319, or of the RWQCB under California law.

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**III. AGREED TERMS OF COUNTY'S COMPLIANCE WITH ITS
STORM WATER PERMIT**

4. The County agrees to complete 70 percent of data collection necessary to complete a map as required under the second NPDES Phase II permit (issued 2013) showing the outfall locations for all storm water and U.S. waters that receive discharge from these outfalls by July 31, 2014 and to complete the mapping no later than December 2015.
5. The County will begin dry weather sampling of the five points where the County road crosses the water of the Russian River, (which would be ten tests, one on each side of the river at each location), no later than June 30, 2014. The County will complete this initial dry weather sampling regime no later than July 31, 2014. After that, the County will

1 conduct dry weather sampling as required by the second NPDES Phase II storm water
2 permit.

3 6. The sampling shall consist of testing for PH and turbidity until July 31, 2015 when
4 sampling will be done in accordance with the second NPDES Phase II permit (issued
5 2013).

6 7. The County will develop and implement procedures for construction site plan review by
7 no later than three (3) months from the Effective Date of this Agreement, using the
8 currently adopted SUSMP. The County will submit the procedures to River Watch
9 concurrently with submitting the procedures to the RWQCB as part of a progress report
10 or in any other format. The County is not required to modify or change its proposed
11 procedures based on River Watch's comments/suggestions.

12 8. The County will develop and implement procedures for construction site inspections and
13 enforcement of control measures no later than June 30, 2014. The County will also ensure
14 that relevant staff has received appropriate training. The County will submit the
15 procedures to River Watch concurrently with submitting the procedures to the RWQCB
16 as part of a progress report or in any other format. The County is not required to modify
17 or change its proposed procedures based on River Watch's comments/suggestions.

18 9. The County will implement policies and procedures for maintenance of the County
19 General Services Corporation Yard and the County Transportation Yards by no later than
20 June 30, 2014 . The County will submit the procedures to River Watch concurrently with
21 submitting the procedures to the RWQCB as part of a progress report or in any other
22 format. The County is not required to modify or change its proposed procedures based on
23 River Watch's comments/suggestions. The County will also develop a Facility Pollution
24 Prevention Program for the General Services Corporation Yard and Department of
25 Transportation Yard no later than June 30, 2017.

26 10. The County will develop, implement and enforce a program to control storm water runoff

1 from new development and redevelopment by a date agreed upon between the County
2 and the Regional Water Quality Control Board, using the SUSMP standards currently
3 adopted by the County and/or language from the County's Stormwater Ordinance where
4 applicable. The County will submit the procedures to River Watch concurrently with
5 submitting the procedures to the RWQCB as part of a progress report or in any other
6 format. The County is not required to modify or change its proposed procedures based on
7 River Watch's comments/suggestions.

8 11. The County agrees that beginning in July 2015, it will analyze the 2011 SUSMP adopted
9 by Santa Rosa and other municipalities with a view toward revising the County's current
10 SUSMP standards. By no later than October 1, 2015 the County will submit a proposed
11 revised SUSMP to River Watch. The County is not required to modify or change its
12 proposed procedures based on River Watch's comments/suggestions.

13 12. The County will then draft and submit the revised SUSMP to the North Coast Regional
14 Water Quality Control Board for review and comment. The County will then submit the
15 proposed changes to the County's Board of Supervisors through its legislative process for
16 the Board's and the public's review, and possible adoption of the proposed changes by the
17 Board. County staff shall recommend in good faith that the Board of Supervisors adopt
18 the proposed revisions based on the review and comments of the North Coast Regional
19 Water Quality Control Board. The above process for reviewing and submitting proposed
20 changes to the SUSMP shall be completed no later than January 31, 2016.

21 13. Separate from, and in addition to any other limitations on the County's obligations under
22 this Consent Decree, the County's obligation to comply with one or more of the
23 provisions of this Consent Decree shall be deferred to the extent and for the duration that
24 the delay in compliance is caused by an event or circumstances beyond the reasonable
25 control of the County and that could not have been reasonably foreseen and prevented by
26 the exercise of due diligence by the County. Delays solely caused by unanticipated or

1 increased costs or expenses associated with the completion of any work or activity under
2 this Consent Decree, changed financial circumstances, or the County's failure to make
3 timely and bona fide applications and to exercise diligent efforts to obtain permits, shall
4 not be considered to be circumstances beyond the County's control.

5 IV. SETTLEMENT AND RELEASE OF CLAIMS

6 14. Upon the entry of this Consent Decree, River Watch, on behalf of itself and its members,
7 successors, and assigns, agrees that it releases, acquits, and forever discharges the
8 County, and its employees, officials, officers, volunteers, successors and assigns, from all
9 Clean Water Act claims, rights, liabilities, and causes of action, known or unknown, based
10 upon the claims alleged under the Clean Water Act in River Watch's Notice of Intent or
11 the Complaint in this lawsuit that occurred at any time up to and including the effective
12 date of this Consent Decree and for four (4) years thereafter.

13 15. All Parties acknowledge and agree that this release applies to all claims in existence at the
14 time of execution of this Consent Decree that any party may have against any other party
15 arising out of the operation of the County's Storm Water System and its compliance with
16 its NPDES permit, except any obligations arising under the terms of this Consent Decree.

17 16. The Parties acknowledge that they are familiar with Section 1542 of the California Civil
18 Code. Each party expressly waives and relinquishes any rights and benefits which they
19 have or may have under Section 1542 of the Civil Code of the State of California, which
20 provides:

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

24 17. The releases set forth in this Consent Decree are not conditioned upon timely compliance
25 by the County with obligations under Paragraphs 4 through 14 of this Consent Decree, and
26 River Watch agrees that its exclusive remedies for a breach of this Consent Decree by the

1 County shall be to move the Court for specific performance, contempt and any other
2 remedies available under law.

3 18. In further consideration of the County's agreement to enter into this Consent Decree, River
4 Watch, for itself, and its members, officers, employees, contractors, subcontractors,
5 consultants, agents, assigns and volunteers and each and every one of them acting under
6 River Watch's direction and/or control, covenants and agrees not to sue or take any other
7 steps to enforce any claims, rights, liabilities, or causes of action released hereby.
8 Furthermore, River Watch, for itself and its members, successors, assigns, officers,
9 employees, contractors, subcontractors, consultants, agents and volunteers and each and
10 all persons acting in concert or participating with them, are restrained and enjoined from
11 prosecuting any citizen's suit arising out of any violations of the Clean Water Act
12 committed by the County during the four (4) year period from the effective date of this
13 Consent Decree. River Watch's sole remedy against the County during this period shall be
14 limited to enforcement of this Consent Decree by motion for court order. River Watch
15 further covenants and agrees that, at least sixty (60) days before filing any such motion
16 with the Court, it shall notify the County in writing of what actions or inactions by the
17 County it deems to be in violation of this Consent Decree. Thereafter, the Parties will meet
18 and confer in a good faith attempt to resolve their disputes hereunder. If the Parties cannot
19 informally resolve the dispute, they will make a good faith effort to mediate the case under
20 the ADR Rules of the Northern District of California prior to the filing of any motion to
21 enforce this Consent Decree. The auspices of the ADR office of this Court may be used
22 to effectuate such mediation. In the event that the County thereafter corrects the action or
23 inaction that River Watch contends constitutes a violation of this Consent Decree within
24 sixty (60) days, no motion shall be made to the court by either party.

25 19. River Watch covenants and agrees not to cause any third party to commence a citizen's
26 suit against the County under the Clean Water Act for any permit violations that occurred

1 prior to the effective of this Consent Decree or for a period of four (4) years from the
2 effective date of this Consent Decree.

3 20. This Consent Decree does not limit or affect the rights of the County as to any persons
4 not parties to this Consent Decree.

5 21. Execution of this Consent Decree does not preclude the County from asserting any legal
6 or factual position in any action brought by any person or entity not a party to this Consent
7 Decree.

8 22. Neither this Consent Decree nor the action taken hereunder shall constitute an admission
9 by the County of liability for any violation of the Clean Water Act or applicable California
10 law regarding any of the matters referenced in this Consent Decree.

11 **V. ATTORNEY'S FEES AND COSTS**

12 23. Within fifteen (15) days of entry of the Consent Decree by the Court, the County shall pay
13 River Watch the sum of \$40,000.00 in full satisfaction of all claims by River Watch for
14 attorneys' fees and costs incurred in this action. The County's check or warrant shall be
15 made payable to California River Watch and mailed to the Law Office of Jack Silver, P.O.
16 Box 5469, Santa Rosa, CA 95402-5469.

17 24. Except as stated in paragraph 23 above, each Party shall bear its own attorneys' fees, costs
18 and expenses.

19 **VI. NOTICE TO THE FEDERAL GOVERNMENT**

20 25. The Parties acknowledge and agree that entry of this Consent Decree is subject to the
21 requirements of Section 505(c)(3) of the Act, 33 U.S.C. § 1365(c)(3), which provides that
22 "[n]o consent judgment shall be entered in an action in which the United States is not a
23 party prior to 45 days following receipt of a copy of the proposed consent judgment by the
24 Attorney General and the [EPA] Administrator." Within five (5) business days following
25 the Parties' execution of this document, the County shall serve copies upon the EPA
26 Administrator, the Attorney General and the Regional Administrator of EPA Region IX

1 in San Francisco, in accordance with 40 C.F.R. § 135.5(a).

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3 **VII. GENERAL PROVISIONS**

4 26. All reports, notices or other written communications required to be submitted under this
5 Consent Decree shall be sent to the respective Parties at the following addresses:

6 a. To County of Mendocino: Douglas L. Losak,
7 Chief Deputy County Counsel, Mendocino County
8 501 Low Gap Road, Room 1030
9 Ukiah, CA 95482
Telephone (707) 234-6885
Facsimile (707) 463-4592

10 b. To California River Watch: Jerry Bernhaut, Esq.
11 Law Office of Jack Silver
12 P.O. Box 5469
13 Santa Rosa, CA 95402-5469
14 Telephone (707) 528-8175
Facsimile (707) 528-8675

15 27. This Consent Decree and its terms shall inure to the benefit of and be binding upon each
16 of the Parties and each and all of their respective predecessors, successors, and assignees,
17 as though they were parties to this action.

18 28. Each of the Parties have been fully advised by its attorney as to this Consent Decree and
19 all provisions contained within it and acknowledges that its signing of this Consent Decree
20 is based solely upon the written representations contained in this Consent Decree and not
21 based on any inducement, promise or representation not expressly stated in this Consent
22 Decree. Additionally, each of the Parties acknowledges, in signing this Consent Decree,
23 that it constitutes the full, complete, and entirety of the terms and conditions agreed to by
24 them in settling the dispute between them.

25 29. In the event that either party brings an action to enforce its rights under this Consent
26 Decree, the relief the court is empowered to award is limited to injunctive relief to take

- 1 action specified in this Consent Decree.
- 2 30. This Consent Decree is made and entered into under the laws of the State of California and
3 the United States and shall be interpreted, governed and enforced pursuant to these laws.
- 4 31. Should any provision of this Consent Decree be held invalid or illegal, such illegality shall
5 not invalidate the remainder of this Consent Decree. In that event, this Consent Decree
6 shall be construed as if it did not contain the invalid or illegal part, and the rights and
7 obligations of the Parties shall be construed and enforced accordingly.
- 8 32. The Parties have mutually negotiated this Consent Decree and the doctrine of *contra*
9 *proferentum* does not apply.
- 10 33. Each signatory of this Consent Decree signing on behalf of another, warrants that he or
11 she has the authority to sign on behalf of said person or entity and all persons covered by
12 this Consent Decree. This Consent Decree may be executed in counterparts with each
13 counterpart being interpreted as an original.
- 14 34. This Consent Decree contains the entire agreement of the Parties and shall not be modified
15 by any prior oral or written agreement, representations or understanding. Prior drafts of
16 this Consent Decree shall not be used in any action involving the interpretation or
17 enforcement of this Consent Decree. This Consent Decree shall not be amended or
18 modified except by the written order of this Court. Any modification of this Consent
19 Decree by the Parties shall be in writing and approved by the Court before it will be
20 deemed effective.
- 21 35. This Consent decree shall expire four (4) years after the date it is entered.
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23 **VIII. RETENTION OF JURISDICTION**

- 24 36. This Court shall retain jurisdiction to enforce the terms and conditions of this Consent
25 Decree and to resolve any disputes arising hereunder for a period of four (4) years from
26 its entry. After this four-year period has elapsed, the County's obligation to comply with

1 the injunctive relief provided for herein shall terminate.

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3 **IT IS SO AGREED AND STIPULATED:**

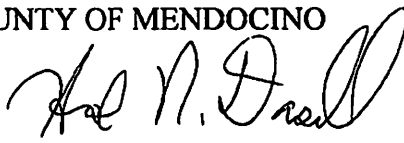
4 DATED: 1-6-14

COUNTY OF MENDOCINO

5
6 by 
7 STEVE DUNICLIFF, Director
8 Planning and Building Services

9 DATED: 1-3-14

COUNTY OF MENDOCINO

10 by 
11 HOWARD DASHIE, Director
12 Department of Transportation

13 DATED: 1-2-14


COUNTY OF MENDOCINO

14
15 by 
16 KRISTIN McMENOMEY, Director
17 General Services Agency/Risk Manager

18 Approved as to Form

19 DATED: 1-2-14

COUNTY OF MENDOCINO
THOMAS R. PARKER, County Counsel

20
21 by 
22 DOUGLAS L. LOSAK, Chief Deputy
23 Attorneys for Defendant
24 County of Mendocino

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27 CV 13-1087 CRB
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DATED: 1-14-14

CALIFORNIA RIVER WATCH

by Margaret Bacigalupi
Margaret Bacigalupi, President

APPROVED AS TO FORM:

DATED: 1-9-14

LAW OFFICE OF JACK SILVER

by Jerry Bernhaut
Jerry Bernhaut
Attorney for Plaintiff
California River Watch

IT IS SO ORDERED.

Dated and entered into this 11th day of March, 2014.

[Signature]
UNITED STATES DISTRICT JUDGE