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5 Attorneys for Defendants
 JOHN BALLETO AND TERESA BALLETO

6 UNITED STATES DISTRICT COURT
 7
 8 NORTHERN DISTRICT OF CALIFORNIA

9 CALIFORNIA RIVER WATCH,
 10
 11 Plaintiff,

12 v.

13 JOHN BALLETO; TERESA BALLETO;
 DOES 1-10, Inclusive,
 14 Defendants.

CIVIL CASE NO. 3:14-cv-04948-JCS

~~PROPOSED~~ CONSENT DECREE AND ORDER

15 **I. RECITALS**

16 a. Defendants John Balletto and Teresa Balletto (collectively, “Defendants”) have an
 17 ownership interest in the real property located at 5700 Occidental Road (“Occidental Road
 18 Property”), Santa Rosa, California (associated with Sonoma County Assessor’s Parcel Numbers
 19 060- 010-36, 060-010-037, and 060-010-040) and 3736, 3772 and 3800 Guerneville Road
 20 (“Guerneville Road Property”), Santa Rosa, California (associated with Sonoma County
 21 Assessor’s Parcel Numbers 130-030-030, 130-030-031, and 130-030-032) (collectively,
 22 “Property”), which is the subject of Plaintiff California River Watch’s (“CRW”) Complaint for
 23 Declaratory Relief, Injunctive Relief and Remediation filed on November 7, 2014
 24 (“Complaint”).

25 b. CRW filed this action against Defendants pursuant to the citizen suit provision of the
 26 federal Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., codified at 16 U.S.C. §
 27 1540(g)(1)(A), to enjoin Defendants from alleged ongoing violations of the ESA and alleged
 28

1 violations of regulations pertaining to the Sonoma California Tiger Salamander (“CTS”), a
2 species listed as endangered pursuant to ESA § 4.

3 c. Defendants dispute CRW’s allegations and contend that they have not violated the ESA
4 in any manner. Defendants do not admit any of the substantive allegations contained in the
5 Complaint, and neither Defendants’ consent to entry of this Consent Decree nor any provision
6 herein shall be construed as an admission of fact or liability for any purpose.

7 d. CRW and Defendants (collectively, “Parties”) consent to the entry of this Consent Decree
8 without trial of any issues, and without admission by Defendants of any alleged liability,
9 violation or wrongdoing. The Parties have chosen to resolve in full CRW’s lawsuit and
10 allegations as set forth in the Complaint, and hereby stipulate that, in order to settle the claims
11 alleged against Defendants in the Complaint and to avoid the delay and expense of litigation, the
12 Court should enter this Consent Decree. In mutual consideration for the resolution of CRW’s
13 lawsuit, the Parties agree to the terms set forth herein. This Consent Decree constitutes a final
14 judgment with respect to and a settlement of CRW’s lawsuit and the disputed claims
15 encompassed therein.

16 NOW, THEREFORE, in consideration of this Consent Decree and for good and valuable
17 consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intend to
18 be legally bound and agree as set forth below.

19 **II. CONSENT DECREE**

20 a. Jurisdiction: The Court has jurisdiction over the subject matter of this action and the
21 Parties pursuant to ESA § 11(g)(1)(A), 16 U.S.C. § 1540(g)(1)(A). The basis for assignment of
22 this case to the Northern District of California (“District”), pursuant to 16 U.S.C. §
23 1540(g)(3)(A), is that the alleged violations of the ESA asserted in the Complaint are purported
24 to have taken place on property and land located within the District, and Defendants conduct
25 business within this District.

26 b. Effective Date: The Effective Date of this Consent Decree shall be the last date on which
27 the signature of a party to this Consent Decree is executed.

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1 c. Required Tasks: Without admitting any fact, wrongdoing, or liability, Defendants shall
2 undertake the tasks set forth below. Defendants' obligation to undertake the tasks shall only be
3 in effect so long as CTS is listed as Threatened or Endangered under the ESA and so long as
4 Defendants' compliance does not conflict with any legal or regulatory mandate. Additionally,
5 Defendants' obligation to undertake the tasks is limited to matters and actions within
6 Defendants' power or control. Unless otherwise specified, the tasks set forth below are focused
7 on and limited to the vineyard areas of the Property.

8 i. **Chemical Use**: Defendants shall refrain from applying any pesticide, herbicide,
9 rodenticide or other chemical agents in the vineyards on the Property in a manner that would be
10 harmful to CTS. To comply with and satisfy this restriction, Defendants shall follow the
11 limitations, if any, in California Department of Pesticide Regulation's Endangered Species
12 Custom Realtime Internet Bulletin Engine ("PRESCRIBE") as applied to the Property, except
13 that between April 1 and October 31 Defendants may apply fungicides and organic-approved
14 materials (e.g., Organic Materials Review Institute [OMRI] listed substances allowed for use in
15 certified organic operations under the USDA National Organic Program) to the grapevines
16 without regard to restrictions in PRESCRIBE, if any. Notwithstanding any other provision
17 herein, restrictions on Defendants' chemical use shall not apply to any chemical application
18 required by a regulatory agency or a legal or regulatory mandate. Defendants shall provide
19 CRW with an annual, or more frequent if Defendants so choose, report of chemical use in the
20 vineyards on the Property ("Chemical Report"). The Chemical Report shall include the following
21 information: (a) chemical agent applied; (b) amount applied; (c) application location (i.e., which
22 property); and (c) date of application.

23 ii. **Rodent Management**: Defendants shall not undertake any rodent management
24 actions in the vineyards on the Property except in circumstances where Defendants deem it
25 reasonably necessary to prevent harm to crops, vineyards or structures. If rodent management
26 actions are deemed reasonably necessary, Defendants shall first attempt non-chemical means of
27 control. If non-chemical means of control are unsuccessful, Defendants may use the
28 pesticides/rodenticides (or generic equivalent) listed in **Exhibit A** attached hereto. If Defendants

1 desire to use a pesticide/rodenticide not identified in **Exhibit A**, Defendants shall notify CRW of
2 the intended use at least fourteen (14) days prior to application, and CRW may provide
3 Defendants with a recommended alternate pesticide/rodenticide. Defendants shall consider
4 CRW's recommendation and negotiate this issue in good faith.

5 iii. **Crop Cover Management:** Defendants shall plant native cover crops between
6 vineyard rows and other tilled areas bordering the vineyards on the Property. The native cover
7 crops shall include seed mixes of some or all of the plant species listed in **Exhibit B** attached
8 hereto ("Native Cover Crop"). Defendants shall undertake planting the Native Cover Crop by
9 disking and seeding with the Native Cover Crop approximately one-third (1/3) of the vineyard
10 rows on the Property per year for three successive calendar years starting in 2016 ("Initial
11 Seeding"). Defendants may, but are not required to, disk and/or seed more than one-third of the
12 vineyard rows annually as part of its crop cover management. If Defendants elect to re-seed the
13 cover crop in vineyard rows after the Initial Seeding of all vineyard rows has been completed,
14 Defendants shall use the Native Cover Crop seed except as provided below. If Defendants desire
15 to apply a plant species not identified in **Exhibit B**, or a non-native plant species that would
16 compete with the Native Cover Crop, Defendants shall notify CRW of the intended use at least
17 fourteen (14) days prior to application, and CRW may provide Defendants with a recommended
18 alternate plant species. Defendants shall consider CRW's recommendation and negotiate this
19 issue in good faith. Notwithstanding any prohibitions herein, Defendants may use a non-native
20 plant species as part of its crop cover if it does not compete with the Native Cover Crop.
21 Defendants shall demonstrate compliance with the cover crop management requirements of this
22 Consent Decree annually by providing CRW with date-stamped photographs of the Native Cover
23 Crop around the Property when it submits the Chemical Report to CRW.

24 iv. **Disking and Tilling:** Defendants shall limit disking, tilling and other cultivation
25 in the vineyards on the Property to a depth of twelve (12) inches unless done in accordance with
26 the Impact Avoidance measures set forth in Section II(c)(vi). Deeper tilling will be required on a
27 periodic basis when grapevine replants on the Property are necessary. Deeper tilling will be
28 restricted to the same locations where the previous grapevines were removed.

1 v. **Vernal Pool Creation:** Defendants shall construct two vernal pools on the
2 Property or other property suitable for CTS breeding habitat. Specifically, the vernal pools may
3 be placed on the Occidental Road Property and/or the Guerneville Road Property, or on other
4 property suitable for CTS breeding habitat. Defendants shall design and construct the vernal
5 pools in good faith to provide for adequate CTS breeding habitat. Defendants shall design the
6 pool size, depth and vegetation based on their expert's determinations made with input provided
7 from CRW's expert. Completion of the vernal pools shall occur as follows:

- 8 1. Defendants shall identify a site or sites for the vernal pools by November 1,
9 2015;
- 10 2. CRW shall approve the site or sites by December 1, 2015, which approval shall
11 not unreasonably be denied;
- 12 3. Defendants shall provide CRW with a conceptual restoration plan by April 1,
13 2016; and
- 14 4. Defendants shall complete construction of the vernal pools by August 1, 2016.

15 Within thirty (30) days of receiving notice of completion of the vernal pools, CRW shall
16 have the right to inspect the vernal pools upon reasonable notice to Defendants. Defendants shall
17 reasonably maintain the vernal pools in a condition to provide for adequate CTS breeding habitat
18 for so long as CTS are listed Threatened or Endangered under the ESA. Defendants shall
19 annually provide CRW with date-stamped photographs of the vernal pools when it submits the
20 Chemical Report to CRW.

21 vi. **Impact Avoidance:** Prior to any construction or future changes to the Property
22 that involve ground disturbance deeper than twelve (12) inches below ground surface, excepting
23 normal farming activities as allowed under this Consent Decree and minor repairs and
24 maintenance to existing infrastructure, exclusion fencing (silt fence) will be installed to exclude
25 CTS from entering the project area. Prior to the start of ground disturbance activities each
26 morning that construction occurs, a biological monitor will check for CTS in the construction
27 area, and under any equipment such as vehicles and stored pipes. Additionally, all open trenches,
28 holes, etc. will be covered at the end of the day or escape ramps will be provided at each location

1 to remove the potential for CTS becoming trapped in these features.

2 d. Fees and Costs: Defendants shall pay CRW the following amounts in full settlement of
3 CRW's attorney's fees and costs:

4 i. \$10,000 by December 1, 2015;

5 ii. \$10,000 by June 1, 2016; and

6 iii. \$10,000 by December 1, 2016.

7 Such payments will be made in the form of a check made payable to "California River
8 Watch" and will be mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA
9 95402-5469.

10 e. Dismissal of Lawsuit and Claims: Except to the extent the Court retains jurisdiction to
11 enforce compliance of this Consent Decree, entry of this Consent Decree shall act as a dismissal
12 with prejudice of CRW's lawsuit and all claims alleged against Defendants in the Complaint.

13 f. Release and Covenant Not to Sue or Participate: In consideration for Defendants'
14 agreement to perform the tasks described in Section II(c), CRW covenants not to sue for and
15 does for itself and its respective legal successors and assigns, release and absolutely and forever
16 discharge Defendants and their respective legal successors and assigns, of and from any and all
17 claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs, expenses,
18 liens, actions and causes of action of every kind and nature whatsoever, whether now known or
19 unknown, suspected or unsuspected, asserted in the Complaint or which have arisen or may arise
20 from the conduct underlying the allegations in the Complaint, including, without limitation: (a)
21 any common law claims; and (b) any claims arising under municipal, local, state, or federal
22 ordinances, statutes, or other laws including, but not limited to, Sections 7, 9, or 10 of the ESA,
23 16 U.S.C. § 1531 et seq., and any regulations promulgated pursuant to any municipal, local,
24 federal and state ordinance, statute, or other law that may arise from the conduct underlying the
25 allegations in the Complaint concerning the subject properties any time up to and including the
26 Effective Date ("Released Matters").

27 CRW, including anyone acting on its behalf in a representative capacity, shall not
28 participate, fund or otherwise assist any other person, entity or organization in taking action,

1 legal or otherwise, against Defendants relating to the Released Matters.

2 In furtherance of the intentions set forth herein, CRW acknowledges that it is familiar
3 with Section 1542 of the Civil Code of the State of California, which provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
6 TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
7 THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
8 MATERIALLY AFFECTED HIS SETTLEMENT WITH
9 THEDEBTOR.

8 CRW waives and relinquishes any right or benefit which it has or may have under Section 1542
9 of the Civil Code of the State of California or any similar provision of the statutory or
10 nonstatutory law of any other jurisdiction to the full extent that it may lawfully waive all such
11 rights and benefits pertaining to the subject matter of this Consent Decree. In connection with
12 such waiver and relinquishment, CRW acknowledges that it is aware that his or her attorneys or
13 accountants may hereafter discover claims or facts in addition to or different from those which
14 he or she now knows or believes to exist with respect to the subject matter of this Consent
15 Decree or the other party thereto, but that it is its intention hereby fully, finally and forever to
16 settle and release all of the Released Matters, disputes and differences known or unknown,
17 suspected or unsuspected, which now exist, may exist or heretofore have existed between and
18 among CRW and Defendants, except as otherwise expressly provided herein.

19 g. Dispute Resolution: Any disputes between the Parties concerning any alleged breach of
20 this Consent Decree, except for Defendants' failure to make timely payments under Section
21 II(d), shall be subject to the dispute resolution procedures set forth below. If Defendants fail to
22 make timely payments under Section II(d), CRW may seek immediate relief with the Court
23 pursuant to subsection II(g)(ii) below.

24 i. The Parties covenant and agree that, if either party believes the other is in
25 violation of one or more terms of the Consent Decree, the party shall provide written notice to
26 the other specifying the actions or inactions it deems to be in violation of this Consent Decree.
27 Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to
28 the notice in writing. If the Parties still dispute compliance with this Consent Decree, within an

1 additional thirty (30) days, the Parties shall meet and confer in a good faith attempt to resolve
2 their dispute.

3 ii. If the Parties cannot informally resolve the dispute pursuant to the procedures set
4 forth immediately above, either party may seek relief through a claim or motion filed with the
5 appropriate judge in the U.S. District Court for the Northern District of California, which will
6 retain jurisdiction over this Consent Decree. In the event that either party files a claim or motion
7 to enforce its rights under this Consent Decree, the relief the reviewing court is empowered to
8 award is limited to injunctive relief to take the relevant action(s) specified in this Consent
9 Decree, and each party shall bear its own attorney's fees and costs incurred in such a proceeding.

10 h. Notice: All reports, pictures, notices, consents, approvals, requests, demands and other
11 communications (collectively, "Notice") which the Parties are required or desire to serve upon or
12 deliver to the other part shall be in writing and shall be given by nationally-recognized overnight
13 courier, by certified United States mail, return receipt requested, postage prepaid, addressed as
14 set forth below, or by electronic mail addressed as set forth below:

15 If to CRW: Edward E. Yates, Esquire
16 Law Office of Edward E. Yates
17 1000 Fourth Street, Suite 800
18 San Rafael, CA 94901
19 Tel: (415) 526-6143
20 Email: eyates@marinlandlaw.com

21 If to Defendants: John Balletto
22 Balletto Vineyards
23 5700 Occidental Road
24 Santa Rosa, CA 95401
25 Tel. (707) 568-2455
26 Email: john@ballettovineyards.com

27 Copy to: Craig A. Carnes, Jr.
28 Ellison, Schneider & Harris LLP
2600 Capitol Ave., Suite 400
Sacramento, CA 95816
Tel. (916) 447-2166
Email: cac@eslawfirm.com

The foregoing addresses may be changed by Notice given in accordance with this Section. Any
Notice sent by certified mail shall be deemed received on the date shown in the proof of delivery.

1 Any Notice sent by electronic mail shall be deemed received upon electronic transmission
2 thereof provided that the sender does not receive electronic notice of non-delivery. Any Notice
3 sent by overnight courier service shall be deemed received on the day of actual delivery as
4 shown by the confirmation of delivery by the messenger or courier service. If the date of receipt
5 of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt
6 shall automatically be deemed extended to the next business day immediately following such
7 weekend or holiday for purposes of calculating time periods commencing upon the date of
8 service.

9 i. Attorney's Fees and Costs: Except as set forth in Section II(d) above, each party shall
10 bear its own past and future costs and attorneys' fees relating to the subject matter of this
11 Consent Decree.

12 j. Parties' Acknowledgment of Terms. The Parties and their respective counsel have
13 carefully and fully read and reviewed this Consent Decree. The Parties hereby represent that the
14 contents of this Consent Decree are understood and agree that this Consent Decree is binding on
15 each party or its respective predecessors, successors, and assigns and as described herein. This
16 Consent Decree is entered into voluntarily, free of undue influence, coercion, duress, menace, or
17 fraud of any kind. Neither party, nor any officer, agent, employee, representative, or attorney of
18 or for either party, has made any statement or representation to the other party regarding any fact
19 relied upon in entering this Consent Decree, and no party to this Consent Decree is relying upon
20 any statement, representation, or promise of the other, nor of any officer, agent, employee,
21 representative, or attorney of or for either party, in executing this Consent Decree or in making
22 the settlement provided herein, except as expressly stated in this Consent Decree.

23 k. Interpretation and Applicable Law. This Consent Decree shall be construed and
24 interpreted in accordance with the laws of the United States and the State of California without
25 regard to principles of conflicts of law. This Consent Decree shall be interpreted and construed
26 as a whole, according to its fair meaning and not strictly for or against any party, and without
27 regard to which party drafted the Consent Decree. All of the promises, representations, and
28 warranties contained in this Consent Decree survive its execution.

1 1. Counterparts. This Consent Decree may be executed in multiple counterparts, each of
2 which shall evidence one and the same document.

3 m. Entire Consent Decree In Writing. This Consent Decree constitutes the entire agreement
4 between the Parties hereto with respect to the subject matter set forth herein and supersedes all
5 previous or contemporaneous negotiations, commitments (oral or written), and writings with
6 respect to the subject matter set forth herein.

7 n. Modification or Amendment. This Consent Decree, including any exhibits hereto, may be
8 modified or amended only by a written document executed by the Parties.

9 o. Severability. The invalidity or unenforceability of any provision of this Consent Decree
10 shall in no way affect the validity or enforceability of any other provision. If, in any action
11 before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or
12 promise is held to be unenforceable for any reason, then such term, restriction, covenant, or
13 promise shall be deemed modified to the extent necessary to make it enforceable by such court or
14 other tribunal and, if it cannot be so modified, that this Consent Decree shall be deemed amended
15 to delete such provision or portion adjudicated to be invalid or unenforceable, and the remainder
16 of this Consent Decree shall be deemed to be in full force and effect as so modified. Any such
17 modification or amendment in any event shall apply only with respect to the operation of this
18 Consent Decree in the particular jurisdiction in which such adjudication is made.

19 p. Parties Bound By This Consent Decree. This Consent Decree, and each of its provisions,
20 including all representations, warranties, and promises contained herein, binds, and inures to the
21 benefit of the Parties, and each of their respective officers, directors, members, employees,
22 contractors, heirs, assigns, present and future affiliates, parents, subsidiaries, predecessors and
23 successors in interest whether by merger, consolidation, or otherwise, as well as their respective
24 representatives, agents, and administrators, past, present, and future.

25 q. No Third Party Beneficiaries. This Consent Decree is not intended to confer any rights or
26 obligations on any third party or parties, and no third party or parties shall have any right of
27 action under this Consent Decree for any cause whatsoever.

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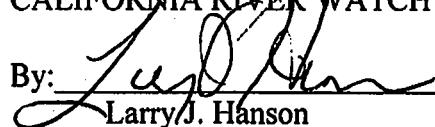
1 r. Authority. Each of the persons signing this Consent Decree on behalf of an entity
2 represents and warrants that he or she has actual authority and capacity to execute this Consent
3 Decree on behalf of the entity and to bind it to all of the terms of this Consent Decree.

4 s. Final Judgment. Upon entry of this Consent Decree by the Court, this Consent Decree
5 shall constitute a final judgment of the Court as to the matters addressed herein.

6 IN WITNESS WHEREOF, the undersigned have caused this Consent Decree to be
7 executed by their duly authorized representatives.

8
9 DATED: 09-02, 2015

CALIFORNIA RIVER WATCH

10 By: 
11 Larry J. Hanson
12 Board President

13 DATED: 09-02, 2015

JOHN BALLETTTO

14 By: 

15
16 DATED: 09-02, 2015

TERESA BALLETTTO

17 By: 

1 The Court having considered the representations of the Parties, NOW THEREFORE,
2 before taking any testimony, and without any adjudication of any fact or law, hereby enters the
3 Consent Decree. The Court retains jurisdiction to enforce the Consent Decree for a period of five (5)
4 IT IS SO ORDERED. years from the date hereof. This five (5) year period may be extended by the Court upon
a showing of good cause.

5 Dated and entered this 11th day of September, 2015.

6
7
8 JOSEPH C. SPERO
UNITED STATES JUDGE

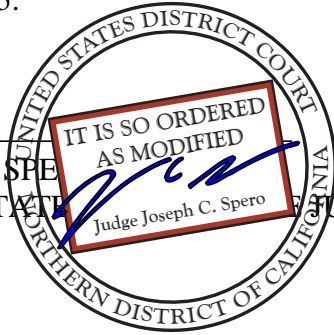


Exhibit A

List of pesticides/rodenticides that may be used where reasonably necessary to prevent harm to crops, vineyards or structures if non-chemical means of control are unsuccessful

1. Warfarin
2. Diphacinone
3. Chlorophacinone

Exhibit B

Native Cover Crop

1. Blue wildrye (*Elymus glaucus*)
2. Blue dicks (*Dichelostemma capitatum*)
3. Brodiaea spp. (terrestrial species)
4. Purple needlegrass (*Stipa pulchra*)
5. Lupines (*Lupinus nanus* or *L. bicolor*)
6. Native tarweeds (*Madia sativa*, *Hemizonia congesta*)
7. Claytonia perfoliata (Miner's lettuce)
8. Epilobium brachycarpum (Willow-herb; note – needs at least 1 early summer mowing; tall otherwise)
9. Deinandra corymbosa (another annual tarweed; needs 1 early summer mowing)
10. Madia elegans (another annual tarweed; needs 1 early summer mowing)
11. Clarkia purpurea (Purple clarkia)
12. Clarkia amoena (Clarkia)
13. California Brome (*Bromus carinatus*)