

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“Agreement”) is entered into between Northern California River Watch (“NCRW”) and Bodega Bay Public Utility District (“BBPUD”) (individually, a “Party,” or collectively, the “Parties”) as of the last date executed below (the “Effective Date”) with respect to the following facts and objectives:

### RECITALS

A. **WHEREAS**, NCRW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California;

B. **WHEREAS**, BBPUD is a public utility district organized under the laws of the State of California located in the western coastal portion of Sonoma County, serving the unincorporated community of Bodega Bay. BBPUD produces and furnishes potable water within its boundaries and also treats and disposes of municipal wastewater collected therein, providing reclaimed water for irrigation to the Bodega Harbour golf course and disposing the remaining reclaimed water at the North Disposal Site owned by BBPUD;

C. **WHEREAS**, on February 11, 2011 NCRW provided BBPUD and Brelje & Race Consulting Civil Engineers with Notices of Violations and Intent to File Suit under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.* and the Endangered Species Act (“ESA”), 16 U.S.C. 1531 *et seq.* On February 23, 2011 NCRW provided BBPUD and Brelje & Race Consulting Civil Engineers with Notices of Violations and Intent to File Suit under the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*; and the California Coastal Act (“CCA”). Copies of these Notices of Violations are attached to this Agreement as Exhibit A and are hereafter referred to in this Agreement collectively as the “Notice Letters.” This Agreement resolves all allegations and claims as to BBPUD and Brelje & Race Consulting Civil Engineers;

D. **WHEREAS**, BBPUD denies any and all of NCRW’s allegations and claims in the Notice Letters;

E. **WHEREAS**, NCRW and BBPUD, through their authorized representatives and without either adjudication of NCRW's claims or admission by BBPUD of any alleged violation or other wrongdoing, and to avoid the cost and uncertainties of litigation, have chosen to resolve in full NCRW's allegations as set forth in the Notice Letters through settlement; and,

F. **WHEREAS**, NCRW and BBPUD have agreed that it is in their mutual interest to enter into this Agreement, which constitutes a full and final resolution of all allegations and claims that were, or could have been asserted against BBPUD by NCRW based upon the Notice Letters.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. COMMITMENTS OF BBPUD**

1.1 Compliance With Policy and Procedure Protocol. BBPUD agrees to comply with its *Policy and Procedure (Protocol) For Pumping At Salmon Creek* ("Protocol,") a copy of which is attached to this Agreement as Exhibit B, and shall provide a copy of the Annual Report described therein to NCRW for the duration of this Agreement, which confirms compliance.

Within six (6) months of the Effective Date of this Agreement, BBPUD will prepare project plans and specifications and file permit applications for modification to BBPUD's Salmon Creek Water Level Monitoring and Well Pump Control System as follows:

- a. Provide redundant creek level based controls for the existing well pump;
- b. Provide real time data collection of Salmon Creek water levels during operation of the well pump, and well pump status indicating whether the well pump is running or off. "Real time data collection" shall be defined as one data polling event for level determination every 15 minutes consistent with protocols established by United States Geological Survey;

c. Provide that collected data for Salmon Creek water levels and well pump running status is displayed on the BBPUD website and updated at intervals consistent with the real time monitoring as defined above; and

d. During the seasonal shut down of the Salmon Creek Well, which typically occurs during the summer and extends through the fall of each year, indicate on BBPUD's website that a seasonal shutdown of the well is in effect and, during this period, display only the well pump status.

e. BBPUD agrees to diligently pursue completion of the Salmon Creek Water Level Monitoring and Well Pump Control System modifications discussed herein, provided reasonable and cost-effective permitting conditions apply to the project. BBPUD will report on the status of the project in written correspondence to NCRW every six (6) months until the project is complete. NCRW, its officers, executive staff, members of its governing board or any organization under the control of NCRW, its officers, executive staff, or members of its governing board, agree not to oppose or otherwise interfere with the permitting of the Salmon Creek Water Level Monitoring and Well Pump Control System modifications discussed herein, nor will NCRW, its officers, executive staff, members of its governing board or any organization under the control of NCRW, its officers, executive staff, or members of its governing board, provide financial assistance, personnel time, or other support to third parties who may oppose or otherwise interfere with the permitting of the Salmon Creek Water Level Monitoring and Well Pump Control System.

1.2 Protocols for Recording Collection System Overflows. BBPUD will establish a uniform system of questions to ask callers upon the initial report of a sanitary sewer overflow ("SSO"). BBPUD will revise its website to clearly identify the telephone number(s) (during and after business hours) to call to report an SSO and will post the uniform system of questions that callers will be asked. The BBPUD staff person receiving a call reporting an alleged SSO incident shall record the name, address, and phone number of the person reporting the incident, if the caller is willing to provide that information upon request. The BBPUD staff person shall ask the caller about the location and estimated duration of the observed problem. The caller response would be recorded and preserved in the record of the incident, if provided. Service crews responding to a reported SSO incident would record (1) the information relied upon to estimate the start-time of the spill, (2) the method used to estimate the volume of the spill; (3) a general description of the terrain surrounding the point of discharge/overflow, including the

direction of flow; and (4) measures taken to eliminate the overflow. BBPUD will maintain a log of all calls made reporting an SSO.

1.3 Video Inspection of Select Sections of the Collection System. Within five (5) years of the Effective Date of this Agreement, BBPUD will CCTV all gravity sewer lines within 150 feet of surface waters. Any lines within 150 feet of surface waters found to be damaged, such that exfiltration is likely, will be prioritized for repair and included in BBPUD's capital improvement program. BBPUD's annual budget and a list of year-end capital improvements and associated actual expenditures will be provided to NCRW in July of each year this Agreement is in effect for the prior fiscal year, commencing on July 15, 2013.

1.4 Water Balance. Within sixty (60) days of the Effective Date, BBPUD shall provide NCRW with a water balance analysis that illustrates that for the average influent sewage flow of the past five (5) years, the existing storage capacity is adequate to avoid land disposal after soils are saturated or during storm events under normal operational conditions. BBPUD shall post to its website quarterly its operating logs depicting recycled water use, the storage capacity of its ponds, and the level of freeboard in those ponds.

1.5 Website upgrade. BBPUD will upgrade its website such that if a person poses a computer with the words 'Bodega Bay Public Utility District', 'BBPUD' or 'Bodega Bay PUD', the BBPUD website will be easy to find coming up on the first page preferable and the first item on that page. The website will be user-friendly such that persons will be able to easily find the data posts identified in this Agreement. BBPUD will post to its website the results from its Annual Consumer Confidence Report. All data generated by BBPUD for purposes of compliance with the Safe Drinking Water Act will be made available to the public for review upon request.

1.6 Compliance with Coastal Act. BBPUD agrees to pursue a coastal development permit in accordance with Section 26C-340 of the Sonoma County Code of Ordinances and Public Resources Code section 30600 for all development not subject to exemptions and categorical exclusions as set forth in the Coastal Act, including Public Resources Code sections 30600(e), 30610 and 30610.5, and the Sonoma County Code of Ordinances, including Section 26C-340.1. For purposes of this Agreement, the term "development" has the same meaning as set forth in Public Resources Code section 30106. BBPUD will notify NCRW within ten (10) days of filing an application for a coastal development permit.

1.7 Attorneys' Fees Costs and Expenses. BBPUD shall pay NCRW the sum of \$45,000.00 within fifteen (15) days of the Effective Date of this Agreement as reimbursement for NCRW's investigative, expert, and attorneys' fees and costs. BBPUD shall issue a single check in that amount payable to "Northern California River Watch," and this payment shall constitute full payment for all fees and costs, including attorney's fees, that have or could have been claimed by NCRW in connection with the Notice Letters, up to and including the Effective Date of this Agreement, and for NCRW's expert and attorneys' fees and costs spent monitoring and enforcing BBPUD's compliance with ongoing obligations under this Agreement.

## **2. TERMINATION DATE**

2.1 This Agreement shall terminate five (5) years from the Effective Date.

## **3. NO ADMISSION OR FINDING**

3.1 Neither this Agreement nor any payment pursuant to this Agreement shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this Agreement and/or any payment pursuant to the Agreement may constitute evidence in actions seeking compliance with this Agreement.

## **4. MUTUAL RELEASE OF LIABILITY.**

4.1 In consideration of the matters set forth in this Agreement, and except as otherwise provided herein, the Parties hereby forever and fully release each other and their respective successors, assigns, directors, board members, officers, agents, representatives, employees, contractors, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kinds, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, whether known or unknown, which the Parties have or may have against each other arising from or related to NCRW's allegations and claims as set forth in the Notice Letters up to and including the Effective Date of this Agreement.

4.2 The Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

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

The Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code Section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the Notice Letters up to and including the Effective Date of this Agreement.

## **5. COVENANT NOT TO SUE.**

5.1 For the period beginning on the Effective Date and ending on the Termination Date of this Agreement, NCRW agrees that neither NCRW, its officers, executive staff, members of its governing board nor any organization under the control of NCRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notice Letter or file any lawsuit against BBPUD seeking relief -under the Clean Water Act, Porter-Cologne Water Quality Control Act, Endangered Species Act, Safe Drinking Water Acts, California Coastal Act, and/or the Resource Conservation Recovery Act and its California counterpart, nor will NCRW support such notices or lawsuits against BBPUD brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

## **6. FORCE MAJEURE**

6.1 Separate from, and in addition to any other limitations on BBPUD's obligations under this Agreement, BBPUD's obligations to comply with any provisions of this Agreement shall be excused or deferred if compliance, or a delay to compliance, is caused by an event or circumstance beyond the reasonable control of BBPUD or any entity controlled by BBPUD, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by BBPUD. Where implementation of the actions set forth in this Agreement becomes unachievable, despite the good faith efforts of BBPUD, BBPUD shall notify NCRW in writing within sixty (60) days of the date that BBPUD knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that the non-performance was or is impossible, despite the

timely good faith efforts of one of the Parties, compliance shall be excused or new performance deadlines shall be established by agreement of the Parties.

**7. GENERAL PROVISIONS.**

7.1 Construction. The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined by law or specifically herein.

7.2 Choice of Law. This Agreement shall be governed by the laws of the State of California.

7.3 Severability. In the event that any provision, section, or sentence of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

7.4 Correspondence. All notices required herein or any other correspondence pertaining to this Agreement shall be provided by way of regular, certified, or overnight mail as follows:

**FOR NCRW:**

Northern California River Watch  
P.O. Box 817  
Sebastopol, CA 95472  
Attn: Larry J. Hanson

**WITH COPY TO:**

Jack Silver  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469

**FOR BBPUD:**

Bodega Bay Public Utility District  
Attn: Rod Huls  
P.O. Box 70  
Bodega Bay, CA 94923

**WITH COPY TO:**

Nicole E. Granquist  
Downey Brand Attorneys LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

James L. Copeland  
Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104

Notifications of communications shall be deemed submitted on the date that they are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices. In addition, the Parties may agree to transmit documents electronically or by facsimile.

7.5 Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, PDF, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Agreement.

7.6 Assignment. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

7.7 Modification of the Agreement. This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.



7.8 Full Settlement. This Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

7.9 Integration Clause. This is an integrated agreement. This Agreement is intended to be a full and complete statement of the terms of the agreement between the Parties and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Agreement.

7.10 Negotiated Agreement. The Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

7.11 Authority. The undersigned representatives for NCRW and BBPUD each certify that he or she is fully authorized by the party whom he represents to enter into the terms and conditions of this Agreement.

7.12 Dispute Resolution. Any disputes arising out of this Agreement shall be subject to the following dispute resolution procedure:

- a. The Parties shall make good faith efforts to resolve informally any disputes or disagreements arising out of their respective rights and obligations arising out of this Agreement via meet and confer.
- b. If informal efforts to resolve the dispute or disagreement are unsuccessful and a Party contends that the other Party is in breach of this Agreement, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of this Agreement alleged to have been breached.
- c. Thirty (30) days after such notice is given, if the dispute or disagreement is not resolved by the Parties, a Party may request that such dispute or disagreement shall be submitted to a mutually agreed upon mediator for resolution. Either party may request that the presiding judge of the Sonoma County Superior Court may select a mediator if the Parties cannot reach an

agreement. The non-prevailing party shall bear the cost of the mediator's fees. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation. If the Parties are unable to resolve their dispute or disagreement via mediation, the Parties retain any rights to file an action in the appropriate Superior Court of California.

- d. In any dispute or disagreement where BBPUD is invoking the force majeure clause regarding performance with Section 1.1. of this Agreement, BBPUD bears the burden to prove whether BBPUD "diligently pursued" the project and whether "reasonable and cost-effective conditions apply to the project."
- e. If NCRW asserts that BBPUD is in violation of this Agreement, and BBPUD corrects the alleged violation within sixty (60) days of notice from NCRW describing the asserted violations, no further enforcement action under this Agreement shall be taken by either Party. To the extent an alleged violation cannot be reasonably cured within the sixty (60) day period, and BBPUD undertakes all reasonable efforts to commence the cure of such asserted violation within that period, similarly, no further enforcement action under the terms of this Agreement shall be taken by either Party if BBPUD ultimately cures the alleged violation.

The Parties hereby enter into this Agreement.

Dated: 1-6-12

Northern California River Watch,

By: Margaret Bazgalys  
Board President

Dated: \_\_\_\_\_

Bodega Bay Public Utility District

By: \_\_\_\_\_

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The Parties hereby enter into this Agreement.

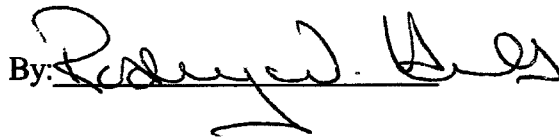
Dated: \_\_\_\_\_

Northern California River Watch,

By: \_\_\_\_\_


Dated: JAN 9, 2012

Bodega Bay Public Utility District


By: 

**APPROVED AS TO FORM:**

Dated: Jan. 6, 2012

  
\_\_\_\_\_  
Jack Silver  
Attorney for Northern California River Watch

Dated: Jan. 9, 2012

  
\_\_\_\_\_  
Nicole E. Granquist  
Attorney for Bodega Bay Public Utility District