

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), effective as of the last date of execution below (“Effective Date”), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members (“CRW”), and the City of Livingston (“City”). CRW and the City are sometimes hereinafter each referred to as a “Party” or collectively as the “Parties.”

RECITALS

- A. California River Watch (“CRW”) is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.
- B. The drinking water supplied by the City is subject to various federal and state regulatory requirements under the federal Safe Drinking Water Acts, 42 U.S.C. § 300f *et seq.* and its related regulations under 40 C.F.R. Part 141 (“SDWA”), and the California Safe Drinking Water Act, Health and Safety Code § 116270 *et seq.* and its related regulations under Titles 17 and 22 of the California Code of Regulations (“California SDWA”). The City is a “supplier of water” as defined by 42 U.S.C. § 300f(5) and 40 C.F.R. § 121.2, and owns and operates a “public water system” as defined by 42 U.S.C. § 300f(4) and 40 C.F.R. § 141.2.
- C. On or about December 13, 2013, CRW served the City with a 60-Day Notice of Violations and Intent to File Suit alleging various violations of the federal SDWA (“SDWA Notice Letter”). On or about March 26, 2014, CRW filed a Complaint against the City in the United States District Court, Eastern District of California, Case No. 1:14-CV-00437-AWI-MJS, alleging the violations of SDWA detailed in the Notice Letter (“SDWA Complaint”).
- D. On or about June 12, 2014, CRW served the City with a 90-Day Notice of Violations and Intent to File Suit alleging various violations of the federal Resource Conservation and Recovery Act (“RCRA Notice Letter”).
- D. The City denies all of CRW’s allegations that it is liable to CRW for any claims that were, or could have been asserted against the City based upon the SDWA and RCRA Notice Letters and in the SDWA Complaint.
- E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the SDWA and RCRA Notice Letters and SDWA Complaint, including the exchange of information as well as engaging in a negotiation and technical dialogue regarding settlement.
- G. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the City regarding compliance with the SDWA and RCRA, including without limitation any disputes, obligations,

claims and/or causes of action that were or could have been asserted in or pursuant to the SDWA and RCRA Notice Letters and SDWA Complaint.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

TERMS AND CONDITIONS

1. Parties Bound By This Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the City. The “Effective Date” is the last date on which the signature of a Party to this Agreement is executed, and the “Termination Date” is the date that all of the requirements under Section 2(c) are finished by the City.

2. Actions by the City of Livingston. The City shall:

(a) Install and operate wellhead treatment for Arsenic at Well No. 13 no later than June 1, 2016.

i. Continue monitoring for Arsenic at Well No. 13 consistent with federal SDWA and California SDWA requirements.

(b) Install and operate wellhead treatment for 1,2,3 Trichloropropane (“TCP”) at Well No. 8 no later than January 1, 2015.

i. Prior to installation and operation of wellhead treatment at Well No. 8, the City shall undertake sampling at Well No. 8 not less than quarterly until completion of the compliance efforts set forth in Section 2(b).

(c) To demonstrate compliance with 2(a) and 2(b) above, the City shall provide CRW with a written authorization from the California Department of Public Health (“CDPH”) to operate wellhead treatment at each Well.

(d) In the event of any new exceedances of the maximum contaminant level (“MCL”) for Arsenic at Wells other than Well No. 13, the City shall provide written notice to the public within ten (10) calendar days after learning of the exceedance, using the notice form required by the CDPH, attached hereto as Attachment A. The City shall deliver such notification consistent with the notification requirements set forth in California Code of Regulations Title 22, Chapter 15, Section 64463.4(c). The City shall repeat the notice every three months as long as the exceedance continues.

(e) Within six (6) months after the Effective Date, the City shall post on its website information regarding the City’s efforts to address TCP in drinking water. In addition, the City shall, on a semi-annual basis, provide inserts in its utility bills that provide information on that topic. The City shall update its website and the utility bill inserts, as needed, to reflect current information.

(f) Within six (6) months after the Effective Date and continuing until completion of the compliance efforts set forth in Section 2(c) above, the City shall provide CRW, on a semi-annual basis, with copies of all correspondence and documentation sent to or received from the CDPH and State Water Resources Control Board related to compliance with federal SDWA and California SDWA requirements for Arsenic at Well No. 13 and the City's efforts to address TCP at Well No. 8. Copies of correspondence and documentation may be submitted to CRW either electronically or by First Class Mail.

(g) Within six (6) months after the Effective Date and continuing until completion of the compliance efforts set forth in Section 2(c) above, the City shall conduct annual workshops at City Hall to address efforts by the City to ensure compliance with federal SDWA and California SDWA requirements at Well No. 13 and the City's efforts to address TCP at Well No. 8. Copies of this Agreement shall be made available for review at these workshops.

3. Fees and Costs. Within thirty (30) calendar days after the Effective Date of this Agreement, City shall pay CRW the sum of Thirty-Eight Thousand Five Hundred Dollars (\$38,500) as reimbursement for CRW's investigative, expert, and attorneys' fees and costs. Payment shall be made by the City to CRW in the form of a single check payable to "California River Watch," and shall constitute full and complete satisfaction of all costs of litigation and attorneys' fees incurred by CRW that have or could have been claimed in connection with this matter up to and including the Effective Date of the Agreement, and for CRW's expert and attorneys' fees and costs incurred for monitoring and enforcing the City's compliance with ongoing obligations under this Agreement up to and including the Termination Date.

4. Mutual Release.

(a) It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the City, and the City against CRW, with respect to any and all allegations and claims made in the SDWA Notice Letter, SDWA Complaint, and RCRA Notice Letter. CRW and the City, on behalf of themselves and any and all of their agents, representatives, successors, members, and assigns, do hereby absolutely, fully, and forever release, relieve, remise, and discharge the City and CRW, respectively, and their past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims that were or could have been asserted under SDWA in the SDWA Notice Letter and SDWA Complaint, and under RCRA in the RCRA Notice Letter. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) are known or unknown, suspected or unsuspected, (ii) are based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

(b) Further, the Parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, known or unknown, suspected

or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, 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.

(c) The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. Covenant Not to Sue. As of the Effective Date of this Agreement, CRW agrees that neither CRW, its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notice of Violations and Intent to Sue or file any lawsuit against the City seeking relief for alleged violations of the SDWA or RCRA, or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act (Cal. Water Code, § 13000 et seq.), related to the City's supply of drinking water, nor will CRW initiate or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions. The Parties acknowledge and agree that this provision shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

6. Dismissal With Prejudice. Within ten (10) calendar days from the Effective Date of this Agreement, CRW shall file with the United States District Court, Eastern District of California, a Notice of Dismissal With Prejudice, providing that CRW'S SDWA Complaint and all claims and causes of action alleged therein against the City shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

7. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by the City, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by the City, which expressly denies any such liability or wrongdoing.

8. Delays in Schedule Implementation. In the event implementation by the City of the remedial measures set forth in Section 2 of this Agreement does not occur by the agreed to dates, despite the timely good faith efforts of the City to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, the City agrees to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days

prior to any deadline set forth in Section 2, and shall describe the reasons for the anticipated delay.

9. Force Majeure. The City shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of the City or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the City's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

10. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the City concerning any alleged breach of this Agreement, except for the City's obligation to make timely payment under Section 3 of this Agreement, shall be subject to the following dispute resolution procedures. Failure to satisfy the payment condition in Section 3 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

(a) Good Faith Negotiations. CRW and the City shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 10. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

(b) Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

(c) Arbitration. If, and only if, the dispute cannot be resolved by the Parties pursuant to the above mechanisms, such dispute shall be submitted for binding arbitration before a mutually agreeable neutral arbitrator. In the event that binding arbitration occurs, the Parties agree that no discovery shall be permitted. Briefing will be limited to one brief of no longer than ten (10) pages for each Party, submitted no later than fourteen (14) days before the scheduled arbitration hearing. The arbitration hearing is limited to a maximum of one (1) day. The determination of the arbitrator shall be binding upon the Parties. Within thirty (30) days after the conclusion of the arbitration hearing, the arbitrator shall issue a written award and a written statement of decision describing the reasons for the award, including the calculation of any damages awarded. The non-prevailing Party shall bear the cost of the arbitrator's fees. Otherwise, the Parties shall each bear their own costs and attorney's fees incurred in connection with such binding arbitration. Judgment upon any determination rendered by the arbitrator may be entered by any court having competent jurisdiction.

(d) Waiver. By agreeing to these dispute resolution provisions, including the binding arbitration provision, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

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

If to CRW:

Jack Silver, Esq.
Law Office of Jack Silver
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
lhm28843@sbcglobal.net

If to City:

Jose A. Ramirez, City Manager
City of Livingston
1416 C Street
Livingston, CA 95334
209-394-8041

And:

Sarah N. Quiter
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94611
510-808-2000
squiter@meyersnave.com

The foregoing addresses may be changed by Notice given in accordance with this Section 11. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-

delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

12. Attorneys' Fees. Other than the payment to CRW under Section 3 and subject to the prevailing party provisions under Section 10(c) of this Agreement, each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

13. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW and the City and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

14. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

15. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

17. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

18. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

19. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

20. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other

tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

21. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

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

23. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

[signatures appear on following page]

THE CITY OF LIVINGSTON

By: _____
Jose Antonio Ramirez
City Manager of the City of Livingston

Dated: _____

CALIFORNIA RIVER WATCH

By: _____
Larry Hanson
Board President

Dated: 9/9/2014

APPROVED AS TO FORM:

LAW OFFICE OF DAVID J. WEINSOFF

By: _____
David Weinsoff, Attorney for California River Watch


Dated: 9.9.14

MEYERS NAVE

By: _____
Sarah Quiter, Attorney for City of Livingston

Dated: _____

THE CITY OF LIVINGSTON

By: 
Jose Antonio Ramirez
City Manager of the City of Livingston

Dated: 9-10-14

CALIFORNIA RIVER WATCH

By: _____
Larry Hanson
Board President

Dated:

APPROVED AS TO FORM:

LAW OFFICE OF DAVID J. WEINSOFF

By: _____
David Weinsoff, Attorney for California River Watch

Dated: _____

MEYERS NAVE

By: 
Sarah Quiter, Attorney for City of Livingston

Dated: 9/8/14

Instructions for Tier 2 Arsenic MCL Notice Template

Template Attached

Since exceeding the arsenic maximum contaminant level (MCL) is a Tier 2 violation, you must provide public notice to persons served as soon as practical but within 30 days after you learn of the violation [California Code of Regulations Title 22, Chapter 15, Section 64463.4(b)]. Each water system required to give public notice must submit the notice to the Department for approval prior to distribution or posting, unless otherwise directed by the Department [64463(b)].

Notification Methods

You must use the methods summarized in the table below to deliver the notice to consumers. If you mail, post, or hand deliver, print your notice on letterhead, if available.

<i>If You Are a...</i>	<i>You Must Notify Consumers by...</i>	<i>...and By One or More of the Following Methods to Reach Persons Not Likely to be Reached by the Previous Method...</i>
Community Water System [64463.4(c)(1)]	Mail or direct delivery ^(a)	Publication in a local newspaper
		Posting in public places served by the water system or on the Internet ^(b)
		Delivery to community organizations
Non-Community Water System [64463.4(c)(2)]	Posting in conspicuous locations throughout the area served by the water system ^(b)	Publication in a local newspaper or newsletter distributed to customers
		Email message to employees or students
		Posting on the Internet or intranet ^(b)
		Direct delivery to each customer

(a) Notice must be distributed to each customer receiving a bill including those that provide their drinking water to others (e.g., schools or school systems, apartment building owners, or large private employers), and other service connections to which water is delivered by the water system.

(b) Notice must be posted in place for as long as the violation or occurrence continues, but in no case less than seven days.

The notice attached is appropriate for the methods described above. However, you may wish to modify it before using it for posting. If you do, you must still include all the required elements and leave the health effects and notification language in italics unchanged. This language is mandatory [64465].

Multilingual Requirement

Spanish. Each public notice must contain information in Spanish regarding (1) the importance of the notice or (2) contain a telephone number or address where Spanish-

Attachment A

speaking residents may contact the water system to obtain a translated copy of the public notice or assistance in Spanish.

Non-English Speaking Groups Other than Spanish-Speaking. For each group that exceeds 1,000 residents or 10% of the residents in the community served, whichever is less, the public notice must (1) contain information in the appropriate language(s) regarding the importance of the notice or (2) contain a telephone number or address where such residents may contact the water system to obtain a translated copy of the notice or assistance in the appropriate language.

Population Served

Make sure it is clear who is served by your water system -- you may need to list the areas you serve.

Corrective Action

In your notice, describe corrective actions you are taking. Do not use overly technical terminology when describing treatment methods. Listed below are some steps commonly taken by water systems with chemical or radiological violations. Use one or more of the following actions, if appropriate, or develop your own:

- "We are working with [local/state agency] to evaluate the water supply and researching options to correct the problem. These options may include treating the water to remove arsenic or connecting to [system]'s water supply."
- "We have stopped using the contaminated well. We have increased pumping from other wells, and we are investigating drilling a new well."
- "We will increase the frequency at which we test the water for arsenic."
- "We have since taken samples at this location and had them tested. They show that we meet the standards."

After Issuing the Notice

Send a copy of each type of notice and a certification that you have met all the public notice requirements to the Department within ten days after you issue the notice [64469(d)]. You should also issue a follow-up notice in addition to meeting any repeat notice requirements the Department sets.

It is recommended that you notify health professionals in the area of the violation. People may call their doctors with questions about how the violation may affect their health, and the doctors should have the information they need to respond appropriately.

It is a good idea to issue a "problem corrected" notice when the violation is resolved.

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

Este informe contiene información muy importante sobre su agua potable.
Tradúzcalo o hable con alguien que lo entienda bien.

**The City of Livingston Has Levels of
Arsenic
Above the Drinking Water Standard**

Our water system recently violated a drinking water standard. Although this is not an emergency, as our customers, you have a right to know what you should do, what happened, and what we are doing to correct this situation.

We routinely monitor for the presence of drinking water contaminants. Water sample results received on [date] from Well No. 13 showed arsenic levels of [level and units]. This is above the U.S. EPA standard, or maximum contaminant level (MCL) of 0.010 milligrams per liter. The average arsenic concentrations from Well No. 13 ranged from _____ mg/L to _____ mg/L.

What should I do?

- You do not need to use an alternative water supply (e.g., bottled water).
- This is not an emergency. If it had been, you would have been notified immediately. However, *some people who drink water containing arsenic in excess of the MCL over many years may experience skin damage or circulatory system problems, and may have an increased risk to getting cancer.*
- If you have other health issues concerning the consumption of this water, you may wish to consult your doctor.

What happened? What is being done?

[Describe corrective action]. We anticipate resolving the problem within [estimated time frame].

For more information, please contact Humberto Molina at City of Livingston at 209-394-8044 or 1416 C Street, Livingston, CA 95334.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this public notice in a public place or distributing copies by hand or mail.

Secondary Notification Requirements

Upon receipt of notification from a person operating a public water system, the following notification must be given within 10 days [Health and Safety Code Section 116450(g)]:

- **SCHOOLS:** Must notify school employees, students, and parents (if the students are minors).
- **RESIDENTIAL RENTAL PROPERTY OWNERS OR MANAGERS** (including nursing homes and care facilities): Must notify tenants.
- **BUSINESS PROPERTY OWNERS, MANAGERS, OR OPERATORS:** Must notify employees of businesses located on the property.

This notice is being sent to you by the City of Livingston.

State Water System ID#: 2410004. Date distributed: _____.