Consolidated Civil Action No. 1:00CV00183TFH

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANACOSTIA WATERSHED SOCIETY, et al., **Plaintiffs,** **v.** **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, and THE DISTRICT OF COLUMBIA,** **Defendants,** **and** **THE UNITED STATES OF AMERICA,** **Plaintiff,** **v.** **DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, et al., and THE DISTRICT OF COLUMBIA,** **Defendants.**	**Consolidated** **Civil Action No. 1:00CV00183TFH**

FIRST AMENDMENT TO CONSENT DECREE

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WHEREAS, on February 2, 2000, the Plaintiffs, Anacostia Watershed Society, Kingman Park Civic Association, American Canoe Association, Friends of the Earth, Sierra Club, and Mary Stuart Bick Ferguson ("Citizen Plaintiffs") filed an action, Civil Action No. 1:00CV00183TFH, against the District of Columbia Water and Sewer Authority (hereinafter "DC Water") and its then General Manager, Jerry Johnson, pursuant to Sections 309(b) and (d) and 505 of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or "the Act"), 33 U.S.C. §§1319(b) and (d), and 1365;

WHEREAS, on December 20, 2002, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint against DC Water and the District of Columbia ("District"), which case was consolidated with the pending matter against DC Water for the alleged violations of the Clean Water Act;

WHEREAS, the Complaints alleged that DC Water violated the Clean Water Act, 33 U.S.C. §§1251 et seq., by failing to comply with the District of Columbia Water Quality Standards, effluent limitations and other conditions established in the National Pollutant Discharge Elimination System ("NPDES") Permit No. DC0021199 issued to DC Water by EPA under Section 402 of the Act, 33 U.S.C. §1342, and by failing to properly manage, operate and maintain all collection, pumping facilities, treatment and/or combined sewer overflow ("CSO") control facilities or combined sewer systems ("CSS") owned and/or operated by DC Water;

WHEREAS, the United States further asserted, inter alia, a claim against the District of Columbia pursuant to Section 309(e) of the Act, 33 U.S.C. §1319(e), and Fed. R. Civ. P. 19(a);

WHEREAS, the United States, the Citizen Plaintiffs, and DC Water have resolved the claims for alleged violations of the Nine Minimum Controls and for the performance of certain

projects in a partial consent decree, entered by the Court on October 10, 2003 ("Partial Consent Decree");

WHEREAS, in that Partial Consent Decree, DC Water agreed to pay a civil penalty and to perform Supplemental Environmental Projects and a Citizen Community Project;

WHEREAS, on April 26, 2004, Plaintiffs and Defendants entered into a stipulation which provided in essence that Defendants would not contest their liability for certain claims; that Plaintiff United States waived its claims for any additional civil penalties and dismissed with prejudice its claims under Count Three of its Complaint; and that Citizen Plaintiffs also waived their claims for civil penalties;

WHEREAS, DC Water submitted a draft Long Term Control Plan to EPA in June, 2001. Thereafter, DC Water finalized the Long Term Control Plan in July 2002 ("LTCP") and submitted it to EPA in August, 2002;

WHEREAS, DC Water provided for public participation in development of the Long Term Control Plan through public hearings at various locations throughout the District of Columbia, stakeholder meetings, and other means;

WHEREAS, the recommended control plan in Section 13 of the LTCP provides for, inter alia, three or more underground storage tunnels to hold up to 193 million gallons of the combined wastewater and stormwater during wet weather and to thereby reduce CSOs significantly;

WHEREAS, the Parties and the Citizen Plaintiffs stipulated and agreed and on September 22, 2004, the Court ordered, that issues pertaining to the scope of Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q), including whether the measures proposed in DC Water's August, 2002 LTCP conform to the water quality standards of the District of Columbia, would

not be addressed in this consolidated action, but rather EPA agreed to address such issues outside the context of this lawsuit in, inter alia, the modification of DC Water's NPDES permit that was pending at that time;

WHEREAS, EPA is the permitting agency and noticed an NPDES Permit containing Phase II conditions for public comment on March 18, 2004. EPA issued the final version of the Permit on December 14, 2004. The Fact Sheet to the final permit states that EPA has determined that, "based upon current information, including but not limited to documentation in the LTCP and the District of Columbia Department of Health's analysis and interpretation of its water quality standards, DC Water has demonstrated, pursuant to Section II.C.4.b of the 1994 CSO Policy, that the CSO control program will not preclude the attainment of water quality standards or the receiving waters' designated uses or contribute to their impairment." The Fact Sheet further provides that this determination is subject to post-construction monitoring adequate to verify compliance with water quality standards, in accordance with Section II.C.4.b and II.C.9 of the 1994 CSO Policy;

WHEREAS, because DC Water is unable to comply with the water quality based CSO effluent limits in the Phase II conditions of its NPDES Permit until such time as it has completed implementation of the CSO controls in its LTCP, the Parties entered into a consent decree, entered by the Court on March 23, 2005 ("2005 Consent Decree"), to establish a judicially enforceable schedule for implementation of the CSO controls in the LTCP;

WHEREAS, in a March 19, 2008 ruling on a permit appeal, the EPA Environmental Appeals Board ruled that District of Columbia water quality standards required that any compliance schedules for attainment of effluent limits for total nitrogen ("Total Nitrogen Limit") and phosphorus must be included in DC Water's NPDES Permit;

WHEREAS, on August 31, 2010, EPA re-issued DC Water's NPDES permit. The re-issued permit requires DC Water to design, construct and Place in Operation (as defined below) the facilities needed for DC Water to attain the Total Nitrogen Limit in the re-issued NPDES permit, and sets forth a schedule for DC Water to place such facilities into operation and to attain compliance with the Total Nitrogen Limit;

WHEREAS, in 2008, DC Water prepared a first revision to its LTCP which is called "DC Water's Total Nitrogen Removal/Wet Weather Plan" ("TN/Wet Weather Plan"). The TN/Wet Weather Plan sets forth DC Water's proposal and schedule to attain the Nitrogen Limit and related limits for phosphorus in its NPDES Permit, to satisfy its wet weather treatment obligations, and to optimize operations at Blue Plains (as defined below). On September 23, 2008, DC Water submitted to EPA the Anacostia River Facility Plan summary report and detailed implementation schedule ("Summary Report"). The Summary Report, which was approved by EPA on July 27, 2010, provides plans for implementing the wet weather aspects of the TN/Wet Weather Plan. The Summary Report is attached as **Appendix D** to this First Amendment to Consent Decree ("Consent Decree");

WHEREAS, the plans for reconfiguring and enlarging the Anacostia River tunnels and related facilities have been expanded upon by DC Water in accordance with the Summary Report, and these facilities are now under design and construction;

WHEREAS, DC Water has also completed a number of additional CSO control projects since the Partial Consent Decree was entered, including, but not limited to, projects to separate combined sewers in the Anacostia and the Rock Creek sewersheds, rehabilitate the Main & O, East Side, and Poplar Point Pumping Stations, improve regulators, eliminate outfalls, and install Green Infrastructure at multiple sites throughout the District;

WHEREAS, the 2005 Consent Decree calls for DC Water to control CSOs in the Potomac River and Rock Creek sewersheds by implementing Gray CSO Controls, including storage tunnels in each sewershed with combined storage capacities of 67.5 million gallons in the aggregate, rehabilitation of the existing Potomac Pumping Station, constructing a new Potomac Tunnel dewatering pumping station, and CSO outfall diversion, consolidation, and separation;

WHEREAS, in 2013, DC Water prepared and submitted to EPA a second revision to its LTCP which proposed substituting Green/Gray CSO Controls in the Potomac sewershed and Green CSO Controls in the Rock Creek sewershed for the corresponding Gray CSO Controls proposed in the LTCP. The new controls proposed in the second revision to the LTCP are summarized and depicted in **Appendix E** to this Consent Decree. The analyses submitted by DC Water in support of the second revision to the LTCP demonstrated that these Green/Gray CSO Controls and Green CSO Controls are projected to provide a degree of control equivalent to the Gray Controls in the LTCP. Following EPA's response to the second revision to the LTCP, DC Water filed a request to modify the affected CSO controls and deadlines pursuant to Section VII of the 2005 Consent Decree (Modifications to Selected CSO Controls and Schedules).

WHEREAS, as required by Section XXII of the 2005 Consent Decree (Modification), DC Water conducted a public participation process prior to submitting its modification request. The public participation process also included the proposed amendments to incorporate the reconfigured and enlarged Anacostia tunnels and related facilities according to the Summary Report and the more efficient designs for the Anacostia River Selected CSO Controls;

WHEREAS, the Parties have agreed to enter into this Consent Decree to reflect the above-described changes to the Selected CSO Controls and Schedules;

WHEREAS, DC Water contends that, pursuant to Section 202 of its enabling legislation,

which provides, with certain exceptions not applicable here, that DC Water is subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government, DC Water is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§1341 et seq., to the same extent as other agencies of the District of Columbia;

WHEREAS, the Parties agree, without adjudication of facts or law, that settlement of this matter in accordance with the terms of this Consent Decree is in the public interest, and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve the claims for alleged violations of water quality standards stated in the Complaint of the United States, and to provide for compliance with the water quality-based effluent CSO limits in DC Water's modified NPDES permit, this Consent Decree should be entered;

WHEREAS, the Court, upon consideration of the judicial record before it and review of this Consent Decree, also finds that settlement of this matter and entry of this Consent Decree is fair and in the public interest and will address the underlying causes of the violations. The Court also finds that it should exercise continuing jurisdiction over this matter to resolve disputes and, should the need arise, to modify the obligations in this Consent Decree;

AND WHEREAS, settlement and entry of this Consent Decree does not constitute an admission of liability by DC Water or the District of Columbia;

NOW THEREFORE, before taking any testimony, and without any adjudication of any fact or law, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and over the Parties hereto, pursuant to Sections 309 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319, 1365, and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in the District of Columbia

pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a).

II. APPLICATION AND SCOPE

2. The provisions of this Consent Decree shall apply to and be binding upon the Parties to this action, and their agents, employees, successors and assigns, as well as to all persons acting under the direction and/or control of DC Water, including but not limited to third party firms, corporations, consultants, and contractors.

3. DC Water shall provide a copy of this Consent Decree to any consultant and contractor selected or retained to perform any activity required by this Consent Decree upon selecting or retaining such consultant or contractor.

4. No later than thirty (30) days prior to transfer of any ownership interest, operation, management, or other control of the CSS (as defined below), DC Water shall give written notice and provide a copy of this Consent Decree to any such transferee or successor in interest. DC Water shall require, as a condition of any such sale or transfer, that the purchaser or transferee agree in writing to be bound by this Consent Decree and submit to the jurisdiction of this Court for its enforcement. DC Water shall also notify, in writing, EPA Region III, the United States Attorney for the District of Columbia, and the United States Department of Justice, in accordance with Section XXI (Form of Notice), of any such planned transfer at least thirty (30) days prior to the transfer.

III. OBJECTIVES

5. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251. All plans, reports, construction, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of achieving full compliance with the

Clean Water Act, all applicable Federal and local regulations, and the terms and conditions of DC Water's NPDES Permit, and to meet the objectives of the 1994 CSO Policy (as defined below).

IV. DEFINITIONS

6. Unless otherwise defined herein, the terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the regulations promulgated thereunder, and EPA's 1994 CSO Policy.

7. The following terms used in this Consent Decree shall be defined as follows:

"Blue Plains" means the District of Columbia advanced wastewater treatment plant at Blue Plains.

"Collection System" means both the separate sanitary sewer and combined sewer systems within the District of Columbia.

"Combined Sewer Collection System" or "CSS" means the pipelines, pumping stations, treatment facilities and appurtenances in the District of Columbia which are designed to convey wastewaters and stormwater through a single pipe system to combined sewer overflow outfalls and/or treatment works. It includes the CSS and CSO facilities described in the NMC Report (as defined below), as well as any future additions or modifications required by this Consent Decree and the Partial Consent Decree.

"Combined Sewer Overflow" or "CSO" means a discharge from the CSS at a CSO outfall designated in the Permit.

"2005 Consent Decree" means the consent decree entered by the Court in this action on March 23, 2005.

"Consent Decree" or "Decree" means this First Amendment to Consent Decree, which amends and supersedes the 2005 Consent Decree.

"Consolidation" or "Outfall Consolidation" means elimination of a permitted CSO outfall by routing the discharge so that it is joined with one or more other permitted CSO outfall(s), or by connecting it with a storage/conveyance tunnel. Consolidation of outfalls does not reduce the volume of the overflow but does allow its location to be changed.

"Contract Award" or "Award Contract" means the date on which a contract is signed by both DC Water and the other party to the contract.

"Construction" means the act of building a facility.

"1994 CSO Policy" means EPA's April 19, 1994 CSO Control Policy, published at 59 Fed. Reg. 18,688, and incorporated into the Clean Water Act pursuant to the Wet Weather Water Quality Act, Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).

"DC Water" means the District of Columbia Water and Sewer Authority and any successors thereto.

"Detailed Design" means the final stage of preparing contract documents to be used to receive bids for construction of a facility.

"District" means the Government of the District of Columbia.

"Effective Date of the First Amendment to the Consent Decree" means the date on which this First Amendment to Consent Decree is approved and entered by the Court.

"Enhanced Clarification Facility" or "ECF" means those facilities at Blue Plains which are to replace the excess flow treatment facilities at Blue Plains. The ECF includes a combination of process units located on the end of the Blue Plains Tunnel ("BPT"), designed to empty the BPT and distribute flow from the BPT. Flows treated in and distributed from the ECF will be discharged as a CSO Bypass from Outfall 001 and/or Outfall 002 as provided in the NPDES Permit. Disinfection by chlorination will be followed by de-chlorination.

"Facility Plan" or "Facility Planning" means preparing an engineering study to develop additional definition of the Selected CSO Controls as may be necessary for preliminary design. Examples of Facility Planning activities include, but are not limited to, planning level geotechnical investigations, developing proposed alignments for the tunnels, identifying land acquisition and required approvals, establishing bases for design, establishing system hydraulics, siting shafts, regulators and pumping stations, and other elements needed to define the function and interaction of the Selected CSO Controls in the LTCP.

"Final Nitrogen Limit" means a limit on the discharge of total nitrogen from Blue Plains as specified in the NPDES Permit.

"Gray CSO Controls" means structural facilities, including but not limited to combined sewer separation, pumping stations, pipelines and conveyance and treatment facilities to control CSO discharges.

"Green CSO Controls" means the use of Green Infrastructure to control CSO discharges.

"Green/Gray CSO Controls" means the use of combinations of Green Infrastructure and Gray CSO Controls.

"Green Infrastructure" or "GI" means both LID and LIDR.

"Long Term Control Plan" or "LTCP" means the plan for controlling CSOs from DC Water's CSS that was prepared by DC Water pursuant to the 1994 CSO Policy and submitted to EPA as a final report in August, 2002, and all supplements thereto.

"Low Impact Development" or "LID" means design and techniques that store, infiltrate, evaporate and detain runoff, including, but not limited to, practices that mimic predevelopment site hydrology as identified in the District's stormwater management regulations and guidebook and in "Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer

Overflow (CSO) Control", U.S. Environmental Protection Agency, March 2014, Publication # 832-R-14-001.

"Low Impact Development Retrofit" or "LIDR" means the modification of an existing site to accomplish LID goals. In this Decree, LIDR refers to both LID and LIDR.

"MGD" means million gallons per day.

"NMC Report" means the report entitled District of Columbia Water and Sewer Authority, EPMC III-Sewer System, "Combined Sewer System Nine Minimum Controls Summary Report", Draft, July 1999 (Engineering Program Management Consultant III, Greeley and Hansen, Program Manager).

"NPDES Permit" means National Pollutant Discharge Elimination System ("NPDES") permit number DC0021199 issued to DC Water pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and any future, extended, modified or reissued permit.

"Partial Consent Decree" means the Consent Decree in this consolidated action entered by this Court on October 10, 2003, resolving, inter alia, Plaintiffs' claim for failure to implement Nine Minimum Controls.

"Parties" means the United States of America, DC Water and the District of Columbia.

"Person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

"Place in Operation" means to achieve steady state operation and to operate consistently in such a way as to accomplish the intended function, even though all construction close-out activities (such as completion of a punchlist and resolution of contract disputes or close-outs) may not yet be completed.

"Required Approvals" means approvals and/or permits required from agencies of the

District of Columbia government (other than DC Water itself), the federal government or any other governmental or private entity or person.

"Selected CSO Controls" or "Selected Controls" means the controls and projects that are comprised by the recommended control plan in Section 13 of the LTCP as subsequently modified and enumerated in Section VI (Selected CSO Controls and Schedules).

"Separation" or "Sewer Separation" means separation of sewers carrying stormwater and sanitary wastes, so that stormwater and sanitary wastewater each are conveyed through a separate system of pipes. For those portions of the CSS that are separated pursuant to this Decree or that were separated pursuant to the 2005 Consent Decree, the permitted CSO outfall may remain as a discharge point but shall discharge only stormwater after its separation. For Sewer Separation, in areas targeted for Green Infrastructure, the area managed by sewer separation may be accounted for as achieving the 1.2" retention standard for that area.

"Settling Defendants" means DC Water and the District of Columbia.

"Summary Report" means the Anacostia River Facility Plan summary report and detailed implementation schedule submitted by DC Water to EPA on September 23, 2008, and approved by EPA on July 27, 2010.

"The 1.2" Retention Standard" means the volume of water runoff produced by 1.2 inches of rain falling on an impervious surface.

V. OVERVIEW

A. Selected CSO Controls from the LTCP

8. The LTCP provides for control of CSO discharges to the Anacostia River, the Potomac River, and to Rock Creek and its Piney Branch tributary ("receiving waters"). The Selected CSO Controls comprise a system of underground storage tunnels and pumping stations designed to reduce CSO discharges to the receiving waters and to convey stored combined flow

to Blue Plains for treatment. Other elements of the LTCP include LIDR, Sewer Separation, Outfall Consolidation, CSO monitoring, public notification, intercepting sewers, regulator improvements and improvements to excess flow treatment facilities at Blue Plains.

B. Total Nitrogen/Wet Weather Plan-Related Changes to the Selected CSO Controls for the Anacostia Sewershed

9. The Summary Report **(Appendix D)** embodies certain changes to the Selected CSO Controls that implement the wet weather aspects of DC Water's TN/ Wet Weather Plan. Those changes, which are herein memorialized, include the use of enhanced clarification for treatment of certain wet weather flows consistent with the terms and conditions of DC Water's NPDES Permit, design and construction of a tunnel from the Main and O Street Pumping Station site to Blue Plains (the "Blue Plains Tunnel"), a 225 mgd Blue Plains Tunnel Dewatering Pumping Station, a 225 mgd Enhanced Clarification Facility ("ECF") to provide high-rate treatment of certain wet weather flows at Blue Plains, and other modifications to the Selected CSO Controls derived from the facility planning work summarized in the Summary Report.

C. Green/Gray CSO Control-Related Changes to the Selected CSO Controls and Schedules for the Potomac and Rock Creek Sewershed.

10. This Consent Decree also incorporates changes to the Selected CSO Controls and related schedules to incorporate substitution of Green/Gray CSO Controls in the Potomac sewershed and Green CSO Controls in the Rock Creek sewersheds as set forth in the second revision to the LTCP and summarized at Appendix E.

11. **Green/Gray CSO Controls for the Potomac Sewershed.** The Green/Gray CSO Controls in the Potomac sewershed are designed to take advantage of and build upon the additional conveyance and treatment capacity provided by the Blue Plains Tunnel, the Blue Plains Tunnel Dewatering Pumping Station, and the ECF. For Outfalls 025, 026, 027, 028 and 029, DC Water will implement a combination of targeted Sewer Separation and Green

Infrastructure for these outfalls. For Outfalls 020, 021, 022 and 024, DC Water will reduce the capacity of the Potomac Tunnel from 58 million gallons to 30 million gallons. Accordingly, the Green/Gray CSO Controls for the Potomac sewershed incorporated in this Consent Decree include substituting a smaller Potomac tunnel for the larger tunnel in the Selected CSO Controls from the LTCP, connecting the Potomac Tunnel to the Blue Plains Tunnel, the Green Infrastructure Program in **Appendix F** to this Decree, and targeted Sewer Separation. Because the Potomac and Anacostia Tunnel Systems will be interconnected, the total system storage available will not be less than 187 million gallons. The analyses submitted by DC Water in support of the second revision to the LTCP demonstrate that these Green/Gray CSO Controls and Green CSO Controls are projected to provide a degree of control equivalent to the Gray Controls in the LTCP.

12. **Green/Gray CSO Controls for the Rock Creek Sewershed.** DC Water will substitute Green Infrastructure for the Piney Branch Storage Tunnel. Accordingly, the Green CSO Controls for the Rock Creek sewershed incorporated in this Consent Decree include substituting the Green Infrastructure Program in **Appendix F** to this Decree for the Piney Branch Storage Tunnel.

VI. SELECTED CSO CONTROLS AND SCHEDULES

DC Water agrees to and is ordered to implement the following Selected CSO Controls, which shall be operated in accordance with the NPDES Permit and shall have the minimum elements and capacities set forth below. Nothing herein shall be deemed to supersede the NPDES Permit and, in the event of a conflict, the NPDES Permit shall control.

A. Anacostia River Projects

DC Water shall plan, design, and Place in Operation the following projects to control CSO discharges to the Anacostia River, at any time up to, but no later than, the schedules set

forth below, and thereafter operate them.

13. DC Water commenced work required under the Facility Plan for the Anacostia River Projects on April 4, 2005. On September 18, 2008 DC Water submitted the Summary Report to EPA pursuant to Section X of the 2005 Consent Decree (EPA Approval of Plans and Submissions). EPA approved the Summary Report and detailed implementation schedule on July 10, 2010. Except for the milestones in this subsection VI.A (Anacostia River Projects), the deadlines in the detailed implementation schedule approved on July 10, 2010, shall serve to track and report progress, but shall not be enforceable obligations of this Consent Decree.

14. **Rehabilitation of Main, "O" Street, and Eastside Pumping Stations.** DC Water has certified that these projects have been completed pursuant to the requirements of the Partial Consent Decree.

15. **Separate Fort Stanton Drainage Area (Outfall 006).** On April 1, 2010, DC Water certified that it had separated the combined sewer area tributary to CSO Outfall 006 on the east side of the Anacostia River, eliminating it as a CSO outfall.

16. **Storage/Conveyance Tunnel from Blue Plains to CSO 019.** DC Water shall construct a Storage/Conveyance Tunnel from Blue Plains to CSO 019 which shall store and convey combined sewer flow from the Main and O Street Pumping Station site and other CSOs along the Anacostia River in accordance with DC Water's NPDES Permit. This tunnel will be designed and operated to provide CSO storage and conveyance for CSO Outfalls 005, 007, 009, 010, 011, 011a, 012, 013, 014, 015, 016, 017, 018, and 019 on the Anacostia River. The storage capacity of the tunnel shall be at least 105 million gallons. The location of the tunnel shall be finalized during final design but its approximate location is depicted in the Summary Report. After the tunnel and its appurtenances are Placed in Operation, discharges to the Northeast

Boundary Facility may be discontinued and the Facility may be abandoned or demolished in accordance with applicable law. After the tunnel is Placed in Operation, in the event of weather causing the tunnel to be used for storage, DC Water shall dewater the tunnel to the CSS as soon as practicable, but in no event longer than 59 hours from the end of the last rainfall event, and shall convey the contents of the tunnel to Blue Plains for treatment in accordance with its NPDES permit. DC Water shall plan, design, construct, and Place in Operation the tunnel at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: Completed

b. Award Contract for Construction: Completed

c. Place in Operation: March 23, 2018

17. **Poplar Point Pumping Station.** Under the Partial Consent Decree, DC Water is required to make certain interim improvements to the existing Poplar Point Pumping Station. In addition, DC Water shall replace the existing Poplar Point Pumping Station with a new pumping station, which shall have a firm pumping capacity of not less than 45 MGD. DC Water shall design, construct and Place in Operation the new pumping station at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: Completed

b. Award Contract for Construction: Completed

c. Place in Operation: March 23, 2018

18. **Northeast Boundary Storage/Conveyance Tunnels.** DC Water shall construct: (1) a Storage/Conveyance Tunnel generally in the Northeast Boundary area, and (2) a Branch Tunnel from the Storage/Conveyance Tunnel in the area of First Street NW and Rhode Island Avenue. The purpose of these tunnels is to provide additional storage and conveyance for

combined sewer flow and to relieve street and basement flooding in the Northeast Boundary area. The tunnels shall capture and store the combined sewer flow, in accordance with DC Water's NPDES permit. After the tunnels are Placed in Operation, in the event of wet weather causing the tunnels to be used for storage, DC Water shall dewater the tunnels to the CSS as soon as practicable, but in no event longer than 59 hours from the end of the last rainfall event, and shall convey the contents of the tunnels to Blue Plains for treatment in accordance with DC Water's NPDES permit. The sum of the storage capacities of the Storage/Conveyance Tunnel from Blue Plains to CSO 019 and the Northeast Boundary Storage/Conveyance Tunnels shall be at least 157 million gallons. The locations of the tunnels will be finalized during final design but their approximate locations are depicted in the Summary Report. DC Water shall design, construct and Place in Operation the tunnels at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: January 2, 2016

b. Award Contract for Construction: March 23, 2020

c. Place in Operation: March 23, 2025

19. **M Street (CSO 016 and CSO 017) and 018 Diversion Sewers.** DC Water shall consolidate and direct all combined sewer flow from Outfalls 016, 017 and 018 in the vicinity of the Anacostia Marina to the Storage/Conveyance Tunnel from Blue Plains to CSO 019 by way of diversion sewers, thus eliminating Outfalls 016, 017 and 018 except in those rare cases where use of those outfalls is required to isolate the tunnels or their appurtenances for service or repair. DC Water shall consolidate these outfalls at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: Completed

b. Award Contract for Construction: Completed

c. Place in Operation: March 23, 2018

B. Potomac River Projects

DC Water shall plan, design, construct, and Place in Operation the following projects on the Potomac River to control CSO discharges to that river, at any time up to, but no later than, the schedules set forth below, and thereafter to operate them.

20. DC Water shall start the Facility Plan for the Potomac Storage Tunnel and the Potomac Tunnel Dewatering Pumping Station no later than January 1, 2017. No later than December 31, 2018, DC Water shall submit to EPA pursuant to Section X (EPA Approval of Plans and Submissions) a summary report and detailed implementation schedule for the Potomac Storage Tunnel. That detailed implementation schedule shall set forth anticipated completion dates for stages of work and shall include appropriate deadlines for filing all applications for all permits that DC Water knows will be necessary, and dates for notices to proceed with work and construction starts. Except for the milestones in this subsection VI.B (Potomac River Projects), the deadlines in the detailed implementation schedule that is submitted no later than December 31, 2018, shall serve to track and report progress and shall not be enforceable obligations of this Consent Decree.

21. **Rehabilitation of the Existing Potomac Pumping Station**. The existing Potomac Pumping Station is being rehabilitated pursuant to the Partial Consent Decree in this consolidated action.

22. **Potomac Storage Tunnel.** DC Water shall construct a Potomac Storage/Conveyance Tunnel which shall store combined sewer flow from CSO Outfalls 020, 021, 022, and 024 in accordance with DC Water's NPDES Permit. The storage capacity of the tunnel will be at least thirty (30) million gallons. The location of the tunnel will be finalized

during facility planning and design but its approximate location is depicted in **Appendix E** to this Decree. The tunnel will be dewatered by gravity to the Blue Plains Tunnel. After the tunnel is Placed in Operation, in the event of wet weather causing the tunnel to be used for storage, DC Water shall dewater the tunnel as soon as practicable, but in no event longer than 59 hours, and will convey the contents of the tunnel to Blue Plains for treatment in accordance with DC Water's NPDES permit. DC Water will design, construct and Place into Operation the tunnel at any time up to, but no later than, the following schedule:

a. Award Contract for Design: July 1, 2021

b. Award Contract for Construction: September 30, 2023

c. Place in Operation: March 23, 2030

23. **CSO Outfall Separation.** DC Water shall separate the CSS tributary to CSO Outfalls 025 and 026 and eliminate them as CSO outfalls at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: March 23, 2019

b. Award Contract for Construction: March 23, 2021

c. Place in Operation: March 23, 2023

24. **Environmental Impact Statement for the Potomac Storage Tunnel.** DC Water has certified that it has awarded a contract for preparation of the Environmental Impact Statement ("EIS") required by the National Park Service for the Potomac Storage Tunnel. DC Water shall proceed to complete preparation of the EIS in accordance with the requirements of the National Environmental Policy Act and applicable National Park Service regulations.

25. **Green Infrastructure Program.** DC Water shall implement the Green Infrastructure Program for the Potomac sewershed in accordance with the requirements and

schedules in **Appendix F** to this Decree.

C. Rock Creek Projects

26. **Green Infrastructure Program.** DC Water shall implement the Green Infrastructure Program for the Rock Creek sewershed in accordance with the requirements and schedules in **Appendix F** to this Decree.

27. **CSO Outfall Separation.** DC Water has certified pursuant to the Partial Consent Decree that it has separated the Luzon Valley CSS tributary to CSO Outfall 059. DC Water has also certified that it has separated the combined sewer areas tributary to CSO outfalls 031, 037, 053 and 058, and that the separation has eliminated them as CSO outfalls.

28. **Monitoring at CSO Outfalls 033, 036, 047 and 057.** DC Water represents that it has conducted hydraulic monitoring at CSO Outfalls 033, 036, 047 and 057 to obtain data to further characterize the overflows on Rock Creek, including their frequency and volume. DC Water submitted its monitoring data to EPA on April 15, 2005, and EPA approved the data on November 23, 2005. Subsequently, DC Water submitted its plan for controlling CSOs 033, 036, 047 and 057 on May 19, 2006 in a report titled *Control Plan: Rock Creek CSO Outfall Nos. 033. 036, 047 and 057*, Final, May 2006 ("Control Plan"). EPA approved the Control Plan on October 4, 2007. The Control Plan calls for diversion structure improvements and sewer construction to control CSOs 033, 036, and 057. Based on the monitoring, the Control Plan determined that CSO 047 was not predicted to overflow in the average year and that no additional controls were required. The location, sizing, and extent of improvements were finalized during final design. DC Water shall plan, design, construct, and Place in Operation the measures in the Control Plan at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: Completed

b. Award Contract for Construction: Completed

c. Place in Operation: Completed

29. **Piney Branch Diversion Structure Improvements.** DC Water shall modify diversion Structure No. 70 at Piney Branch to improve diversions to the interceptor system at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: March 23, 2016

b. Award Contract for Construction: March 23, 2018

c. Place in Operation: March 23, 2020

D. Blue Plains Wastewater Treatment Plant Projects

DC Water shall plan, design, construct, Place in Operation and operate the following projects at Blue Plains, at any time up to, but no later than, the schedules set forth below.

30. **Blue Plains Tunnel Dewatering Pumping Station ("TDPS") and Enhanced Clarification Facility ("ECF").** The locations of the ECF and TDPS will be finalized during the final design. Their approximate location is depicted in the Summary Report. DC Water shall design, construct, and Place in Operation the TDPS and ECF at Blue Plains at any time up to, but no later than, the following schedule:

a. Award Contract for Detailed Design: Completed

b. Award Contract for Construction: Completed

c. Place in Operation: March 23, 2018

E. Public Notification

31. A visual notification system shall be installed as part of the construction of the tunnel storage projects for the Anacostia River, the Potomac River and for Rock Creek. The system shall be installed at a minimum of three locations on each receiving water at public access locations. The system shall be designed to notify the public of the occurrence of overflows based on flow monitoring at representative CSO outfalls on each receiving water. The

system shall comprise a series of colored lights, flags or pendants that shall operate as follows:

a. Color A shall be displayed as long as flow is detected from the representative outfall;

b. Color B shall be displayed for 24 hours after flow is no longer detected from the representative outfall;

c. When operational, the visual notification system shall be described and explained on DC Water's web site.

32. DC Water shall finalize the details of the public notification system (e.g., selection of representative outfalls, locations, warning devices, and colors) during Facility Planning for each receiving water. DC Water shall submit its plan with the final details to EPA for approval pursuant to Section X (EPA Approval of Plans and Submissions).

VII. MODIFICATIONS TO SELECTED CSO CONTROLS AND SCHEDULES

33. DC Water agrees that the original 20 year implementation schedule and the work set forth in Section VI of the 2005 Consent Decree (Selected CSO Controls and Schedules) remain feasible and equitable, based on current information, assumptions and financial and other projections. Some of the information originally available to DC Water and its original assumptions and projections are set forth in, inter alia, the LTCP appended at **Appendix A**. DC Water's original financial assumptions and projections for the 20 year implementation schedule are set forth in, inter alia, **Appendix B**.

34. The Parties recognize that the information currently available to DC Water as well as DC Water's current assumptions and projections may change during implementation of the Selected CSO Controls. The schedule and/or the Selected CSO Controls in Section VI (Selected CSO Controls and Schedules) may be modified based on a significant change in the information currently available to DC Water, or in DC Water's current assumptions or

projections, whether or not such change is anticipated, that renders the Consent Decree no longer feasible and equitable. Unless the Parties otherwise agree, a request for modification shall not relieve DC Water of its obligations pursuant to Section VI (Selected CSO Controls and Schedules) and DC Water shall continue with implementation of the Selected CSO Controls until the request for modification is either agreed to by the Parties, approved by the Court, or ruled on by the Court under Section XXII (Modification). Any dispute as to whether or not implementation of the Selected CSO Controls should continue during the pendency of the modification request shall not be subject to judicial review or to dispute resolution.

35. The United States on behalf of EPA has accepted the Selected CSO Controls and the 20 year schedule. **Appendices A, B, D and E** are not stipulations, however, and the United States reserves its right to disagree with or to contest particular statements or facts contained therein. In the event that DC Water seeks a modification to extend the schedule based upon a significant increase in costs or other changes in financial circumstances, DC Water shall provide to EPA an update of the information contained in **Appendix B** and, at EPA's request, an update of the key financial variables listed at **Appendix C**.

36. The failure of DC Water and/or the District to seek, approve, or enact timely and adequate rate changes or to obtain bond or other financing to implement the work according to the schedule contained herein based on current information, assumptions and projections shall not constitute a significant change in circumstances under this Section nor shall such failure by itself justify any change in or reassessment of the interim milestones or the 20 year schedule in this Decree.

37. **Grant Funding.** The schedules contained herein assume no federal appropriations, grants, or funding from sources other than DC Water for performance of the

work described in Section VI (Selected CSO Controls and Schedules). In the event that DC Water receives grant funding from federal or other sources for such work, it shall report to EPA in writing the source, amount, and timing of any such grant funding when it learns that it will be appropriated or otherwise received. DC Water has the option but is not required to accelerate the schedule contained in Section VI (Selected CSO Controls and Schedules) based on grant funding.

38. Modifications made pursuant to this Section shall follow the procedures set forth in Section XXII (Modification).

39. In the event that DC Water, after consultation with the District, requests a modification to the schedule or to the Selected CSO Controls, and the United States does not agree to the proposed modification, DC Water and/or the District may invoke the dispute resolution procedures of Section XIV (Dispute Resolution).

40. If DC Water, after consultation with the District, requests a modification because it has decided that it needs to rebid a contract to construct a project, and if DC Water has made best efforts to communicate with the appropriate personnel at EPA Region 3 to obtain a response to a request for modification and has promptly responded to any requests for information from EPA Region 3 related to the requested modification, but EPA does not act on the request for modification within sixty (60) days after receiving the modification request, DC Water may initiate informal dispute resolution and issue a notice of the dispute under the dispute resolution procedures. For all other requests for modification, if DC Water has made best efforts to communicate with the appropriate personnel at EPA Region 3 to obtain a response to a request for modification, and has promptly responded to any requests for information from EPA Region 3 related to the requested modification, but EPA does not act on the request for modification

within one hundred twenty (120) days after receiving the modification request, DC Water may initiate informal dispute resolution and issue a notice of the dispute under the dispute resolution procedures.

41. Compliance with the terms of this Decree is not conditioned upon the receipt of federal or state grant funds and DC Water's failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, subject solely to a force majeure event due to the Anti-Deficiency Act provisions in Section XIII (Force Majeure).

VIII. CONTROL SYSTEM COMPLIANCE AND POST-CONSTRUCTION MONITORING

A. Individual Construction Project Certification.

42. Within sixty (60) days of Placing in Operation each project required under Section VI (Selected CSO Controls and Schedules), DC Water shall certify under Section XX (Certification of Submissions) that such project has been designed, constructed and will be operated in accordance with the terms of this Consent Decree and its NPDES permit.

B. Post-construction monitoring.

43. When the Selected Controls set forth in Section VI (Selected CSO Controls and Schedules) have been Placed in Operation, DC Water shall comply with the post-construction monitoring program set forth in its NPDES permit.

44. Following the Effective Date of the First Amendment to the Consent Decree, DC Water shall include with its next application for NPDES permit renewal proposed revisions to the post-construction monitoring program to reflect the modifications to the Selected CSO Controls for the Potomac River and Rock Creek.

IX. LOW IMPACT DEVELOPMENT RETROFIT

45. DC Water shall promote LIDR in the District of Columbia by performing projects as set forth in this Section. Such projects shall constitute additional work that DC Water agrees to perform in addition to the injunctive relief set forth in Section VI (Selected CSO Controls and Schedules).

46. As set forth in the LTCP, DC Water shall incorporate LIDR techniques into new construction or reconstruction on DC Water facilities for demonstration projects up to a total expenditure of $3 million and shall maintain the LIDR projects for at least five (5) years after each project is Placed into Operation. DC Water shall monitor such projects to obtain data regarding the effectiveness of LIDR in reducing run-off reaching combined sewers and surface waters. These LIDR projects shall be in addition to those constructed as a Supplemental Environmental Project or financed as a Citizen Environmental Project pursuant to the Partial Consent Decree.

47. DC Water submitted a plan to EPA for approval and a schedule for implementing and monitoring LIDR on its own property, which plan and schedule have been approved by EPA. DC Water Placed in Operation all LIDR projects by March 18, 2014. DC Water shall monitor the LIDR projects for twelve (12) months after Placing in Operation all LIDR facilities.

X. EPA APPROVAL OF PLANS AND SUBMISSIONS

48. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree (with the exception of requests for modification pursuant to Section VII (Modifications to Selected CSO Controls and Schedules)), EPA shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

49. If the submission is approved, DC Water shall take all actions required by the plan, report, or other item, as approved. If the submission is conditionally approved or approved

only in part, DC Water shall, upon written direction of EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to DC Water's right to dispute only the specified conditions or the disapproved portions, under Section XIV (Dispute Resolution).

50. If the submission is disapproved in whole or in part, DC Water shall, within 45 days or such other time as the Parties agree in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval. Any Stipulated Penalties applicable to the original submission, as provided in Section XII (Stipulated Penalties), shall accrue during the 45-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of DC Water's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

51. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require DC Water to correct any deficiencies, in accordance with the preceding Paragraphs of this Section, subject to DC Water's right to invoke Dispute Resolution and the right of EPA to seek Stipulated Penalties, as provided in the preceding Paragraphs of this Section.

XI. REPORTING

52. Progress reports are to be provided at quarterly intervals for all milestone events one year or longer in duration. Each progress report shall summarize the status and progress of work required for completion of the next milestone and the impact of any delays on completion of said milestone, and shall be submitted on the 28th day of the month following each calendar quarter.

53. Beginning with the first CSO Quarterly Report due after the Effective Date of the First Amendment to the Consent Decree, and for every calendar quarter thereafter until this Consent Decree terminates in accordance with Section XXVI (Termination), DC Water shall submit written status reports to U.S. EPA, certified pursuant to Section XX (Certification of Submissions), and post them on the DC Water website. In each report, DC Water shall provide the following:

a. a statement setting forth the deadlines and other terms that DC Water is required by this Consent Decree to meet since the date of the last quarterly statement, whether and to what extent DC Water has met these requirements, and the reasons for any noncompliance;

b. a statement tracking DC Water's progress against the detailed implementation schedules required to be submitted under Section VI (Selected CSO Controls and Schedules) upon the completion of Facility Planning for each receiving water, whether there have been any delays, the reasons for the delays, and the actions DC Water is taking or intends to take to overcome the delays.

c. a general description of the work completed within the three-month period, and a projection of work to be performed pursuant to this Consent Decree during the next three-month period. Notification to U.S. EPA of any anticipated delay shall not, by itself, excuse the delay.

XII. STIPULATED PENALTIES

54. DC Water shall be liable for stipulated penalties for the failure to satisfactorily achieve any deadline for the start of Facility Planning, submission of a detailed implementation schedule and summary report on Facility Planning, Award of Contract for Detailed Design and the Award of Contract for Construction in Section VI (Selected CSO Controls and Schedules), as

follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 59th Day	$ 1,000
60th day until submitted	$ 1,500

55. DC Water shall be liable for stipulated penalties for the failure to satisfactorily Place in Operation any of the required projects by the final deadline set forth for that project in the schedules in Section VI (Selected CSO Controls and Schedules), as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,000
31st to 59th Day	$ 2,000
After 60 Days	$ 5,000

56. DC Water shall be liable for stipulated penalties for each failure to properly perform the CSO monitoring required in its NPDES Permit after the Selected Controls are Placed in Operation, as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 1,000
31st to 59th Day	$ 2,000
60th day until submitted	$ 2,500

57. DC Water shall be liable for stipulated penalties for failure to timely submit any progress or completion report required in Section XI (Reporting) , as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 59th Day	$ 1,000
60th day until submitted	$ 2,000

58. Other Violations: If DC Water fails to comply with a requirement or provision of this Decree not expressly listed above, it shall be liable for stipulated penalties as follows:

Period of Noncompliance	Penalty Per Day Per Violation
1st to 30th Day	$ 500
31st to 59th Day	$ 1,000
60th day until submitted	$ 2,000

59. General Provisions. Stipulated civil penalties shall automatically begin to accrue on the first day DC Water fails to meet any of the schedules required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue each day until DC Water achieves compliance with such schedule, obligation or requirement; provided, however, that if DC Water submits an appropriately documented request for modification under Section XXII (Modification) 180 days prior to an affected deadline or compliance date, and EPA does not act on such request for modification prior to the deadline or compliance date, stipulated penalties shall not accrue for DC Water's failure to satisfy the deadline or compliance date until EPA's approval or disapproval. This provision shall not apply if DC Water does not have a reasonable basis to make the request for modification or if the request is made for purposes of delay. In the event EPA approves or disapproves DC Water's request for modification after passage of the affected deadline or compliance date, stipulated penalties shall begin to accrue from the time EPA acts on the request for modification.

60. Failure to Meet Award of Construction Contract Deadlines Due to Rebidding. If DC Water elects to rebid a construction contract for a project described in Section VI (Selected CSO Controls and Schedules), it may request a modification under Section VII (Modifications to Selected CSO Controls and Schedules). In the alternative, DC Water may rebid and elect to have any stipulated penalties for failure to meet the Award of Construction Contract deadline due and owing but to defer their payment. If DC Water meets its deadline for Placing in Operation the specific project for which penalties were deferred, stipulated penalties for failure to meet the deadline for Award of Construction Contract will be excused. If DC Water fails to meet the deadline for Placing in Operation the specific project for which penalties were deferred, stipulated penalties for the failure to meet both the Award of Construction Contract and the

Placing in Operation deadlines will be due and payable on demand by the United States. When DC Water elects a deferral of stipulated penalties for failure to meet an Award of Construction deadline due to rebidding a project, it shall give written notice to EPA that it intends to rebid the project and to defer stipulated penalties. When it awards the contract for construction of that project, DC Water shall so notify EPA and advise it in writing of the amount of stipulated penalties accrued pursuant to Section XII (Stipulated Penalties) that are due and owing but deferred.

61. Stipulated civil penalties shall be paid within thirty (30) days of the date of a demand for payment of stipulated civil penalties for any non-compliance with any of the schedules of performance or requirements set forth in this Consent Decree.

62. In the event that a stipulated penalty is not paid according to the instructions in a written demand from the United States, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

63. Stipulated civil penalties shall be paid electronically or by submitting a certified or cashier's check payable to "Treasurer, the United States of America", and tendered to the United States Attorney for the District of Columbia. Simultaneously, DC Water shall send copies of the certified or cashier's check, together with a letter describing the basis for the penalties, to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044, and to Section Chief, Compliance and Enforcement Branch, Water Protection Division, US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. The transmittal letter shall reference the caption, the civil action number, and DOJ Number 90-5-1-1-07137.

64. Payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or its agencies by reason of DC Water's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits. Where a violation of this Consent Decree is also a violation of such laws, regulations, or permits, DC Water shall be allowed a credit, in the amount of any Stipulated Penalties paid, as a set-off against any statutory penalties imposed for such violation.

65. If DC Water invokes dispute resolution and the Court resolves the dispute against DC Water, stipulated penalties which have accrued during the pendency of the dispute shall be payable, as set forth herein, upon resolution of the dispute; provided, however, that in the event that the Director of the Water Protection Division requires more than sixty (60) days to issue a final agency decision concerning the dispute, DC Water shall be liable only for sixty (60) days of stipulated penalties for the period from submission of the final Statements of Position or written Reply until issuance of the final agency decision, as set forth in Section XIV (Dispute Resolution). Stipulated penalties shall begin to accrue again upon issuance of the final agency decision.

XIII. FORCE MAJEURE

66. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of DC Water or the control of any entity controlled by DC Water, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Nothing in this Section is intended to relieve DC Water of its duty to use due diligence to complete the requirements of this Consent Decree in a timely manner or of DC Water's obligation to meet all discharge limitations and other obligations contained in DC Water's NPDES Permit. Unanticipated or increased costs or

changed financial circumstances are not Force Majeure events, except as provided in Paragraph 68 (Anti-Deficiency Act Events) below, although in certain instances they may constitute the basis for a request for modification pursuant to Section VII (Modifications to Selected CSO Controls and Schedules).

67. **Permitting:** Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Decree, are not Force Majeure events. However, failure of a permitting authority to issue a necessary permit in a timely fashion is an event of Force Majeure where the failure of the permitting authority to act is beyond the control of DC Water and DC Water demonstrates that it has taken all steps available to it to obtain the necessary permit, including but not limited to:

a. Promptly providing reasonably known permitting authorities with copies of this Consent Decree, when lodged, as well as briefing each such authority, both orally and with written materials if necessary, on the projects and schedules contained therein in order to coordinate permitting submittals and approvals;

b. submitting a complete permit application within two (2) months of the date identified in the detailed implementation schedule to apply for permits that are known to be required, and in a prompt fashion for those permits not known to be required or previously identified in the schedule;

c. responding to requests for additional information by the permitting authority in a timely fashion;

d. making regular inquiry, approximately every 45 days, both verbally and in writing, with the permitting authority after initial or supplemental permit filings, to determine the

status of the permit application;

e. seeking relief from higher management officials within the permitting authority where permit processing delays threaten to cause noncompliance with any deadline in this decree;

f. accepting lawful permit terms and conditions; and

g. prosecuting appeals of any unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

68. **Anti-Deficiency Act Events:** Nothing in this Decree shall be construed to require an expenditure, obligation or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. Where an expenditure, obligation or contract is subject to the Anti-Deficiency Act, DC Water's obligations shall be subject to the availability of appropriated funds. In such case, DC Water must identify the portion of its budget related to implementation of this Consent Decree that is comprised of appropriated or other funds, and demonstrate why the unavailability of those appropriated or other funds will delay specific obligations.

69. To the extent made necessary by lack of appropriated funds, DC Water may obtain deferral of compliance with an obligation of this Consent Decree until its next annual budget cycle if, within sixty (60) days after DC Water knew or should have known of the event described in Paragraph 70 below, it provides in writing to EPA Region III a statement which shows the following:

a. That it included in its annual budget, which accompanies the District of Columbia budget submitted to the President for transmission to the Congress pursuant to Section 446 of the District of Columbia Home Rule Act, D.C. Code Sec. 1-204.46 (2001), sufficient money to carry out such objective;

b. That it made diligent efforts to obtain Congressional enactment of that part of the budget act;

c. That it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Decree as such) together with the amount of money tied to performing such obligation; and

d. That Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in DC Water's appropriation as shown in DC Water's adopted budget without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation, left an insufficient amount to carry out that obligation.

70. **General Requirements:** When circumstances are occurring or have occurred which may delay the completion of any requirement of this Consent Decree, whether or not due to a Force Majeure event, DC Water shall so notify EPA, in writing, within fifteen (15) days after DC Water knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the basis for DC Water's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

71. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for

such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIV (Dispute Resolution) shall apply and DC Water shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

72. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. DC Water shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. DC Water may petition for the extension of more than one compliance date in a single request.

XIV. DISPUTE RESOLUTION

73. This Court shall retain jurisdiction for the purpose of adjudicating, in the manner provided by this Section, all disputes between DC Water and the United States that may arise under the provisions of this Consent Decree. Unless otherwise expressly provided in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of DC Water that have not been disputed in accordance with this Section.

74. Permit actions pursuant to 40 C.F.R. Part 124, including issuance, denials, and modifications, shall not be subject to this Consent Decree, but rather shall continue to be handled through the administrative and judicial procedures set forth in those regulations.

75. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between DC Water and the United States. Notice of the dispute shall be transmitted no later than fourteen (14) days from the date of

the circumstances giving rise to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the date of receipt of the original notice of the dispute, unless DC Water and the United States otherwise agree in writing to extend that period.

76. If the informal negotiations are unsuccessful, the position of the United States shall control unless, within twenty (20) days after the conclusion of the informal negotiation period, DC Water invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, which shall set forth the nature of the dispute with a proposal for its resolution as well as any factual data, analysis or opinion supporting that position and any supporting documentation (including the Long Term Control Plan or portions thereof) relied upon.

77. Within thirty (30) days of the receipt of a Statement of Position, pursuant to this Section, the United States may serve on DC Water its own Statement of Position, which may include an alternate proposal for resolution of the dispute as well as any factual data, analysis, or opinion supporting that position and all supporting documentation (including the Long Term Control Plan or portions thereof) relied upon by the United States. Within 15 days after receipt of such Statement, DC Water may serve on the United States a written Reply.

78. Matters Accorded Record Review: With the exception of modification requests pursuant to Section VII (Modifications to Selected CSO Controls and Schedules), this Paragraph shall pertain to disputes subject to the procedures of this Section that concern the adequacy or nature of the work to be performed under Section VI (Selected CSO Controls and Schedules), or other matters that are accorded review on the administrative record under applicable principles of administrative law. For matters subject to this Paragraph, DC Water shall have the burden of showing that the position of the United States is arbitrary and capricious or otherwise not in

accordance with applicable law or this Consent Decree. Plaintiff shall compile an administrative record, which shall consist of the Statements of Position and supporting documentation relied upon (including the LTCP or portions thereof that the parties incorporated into their Statements) and other documents considered and relied upon by EPA in arriving at its final administrative decision. Where appropriate, EPA may allow DC Water, the District of Columbia, Citizen Plaintiffs, and/or other members of the public to make supplemental submissions. The Director of the Water Protection Division shall issue a written final administrative decision resolving the dispute based on the administrative record. Stipulated penalties for the period from submission of the final Statement of Position or written Reply until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than 60 days. The final administrative decision shall be effective in ten (10) days, unless DC Water moves for judicial review within ten (10) days of its receipt of the final agency decision.

79. Modification Requests: In the case of requests for modification of the Selected CSO Controls and/or schedules pursuant to Section VII (Modifications to Selected CSO Controls and Schedules), DC Water shall bear the burden of demonstrating that the requested modification should be approved in accordance with Section VII (Modifications to Selected CSO Controls and Schedules). EPA's final decision shall be binding on DC Water, unless within twenty (20) days of its receipt DC Water submits a modification request to the Court. If the Director of the Water Protection Division does not issue a final decision on a request for modification within one hundred twenty (120) days from the date that DC Water submits its Reply to the United States' Statement of Position, DC Water may elect to move in Court to modify the Consent Decree.

80. Other Matters: In the case of other matters not subject to Paragraphs 78 and 79

above, DC Water shall have the burden to demonstrate that its actions or positions were taken in accordance with the terms, conditions, requirements and objectives of this Consent Decree and the Clean Water Act. The Director of the Water Protection Division will issue a final decision resolving the dispute which will be binding on DC Water, unless within twenty (20) days of its receipt DC Water serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Stipulated penalties for the period from submission of the final Statement of Position or written Reply until issuance of the final administrative decision shall accrue for no more than sixty (60) days, even if EPA issues the final administrative decision after more than 60 days.

81. Where the dispute arises from DC Water's request for modification of the Selected CSO Controls and/or schedules pursuant to Section VII (Modifications to Selected CSO Controls and Schedules), the matter shall not be subject to the principles of record review in Paragraph 78. For other matters, if DC Water and the United States disagree as to whether the dispute should proceed under the principles of record review or not, DC Water shall follow the procedures determined by EPA to be applicable. Upon appeal, the Court shall determine which procedures are applicable in accordance with the standards set forth in this Section.

82. Submission of any matter to the Court for resolution shall not extend or stay any of the deadlines set forth in this Consent Decree unless the Parties agree to such extension in writing or the Court grants an order extending such deadline(s). Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in this Section. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent

Decree. In the event that DC Water does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XV. RIGHT OF ENTRY

83. Commencing upon the date of lodging of this Consent Decree, U.S. EPA and its representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the premises of DC Water at all reasonable times, upon proper presentation of credentials, for the purposes of:

a. Monitoring the progress of activities required by this Consent Decree;

b. Verifying any data or information required to be submitted pursuant to this Consent Decree;

c. Obtaining samples and, upon request, splits of any samples taken by DC Water or its consultants. Upon request, DC Water will be provided with splits of all samples taken by the United States;

d. Inspecting and evaluating the CSO System;

e. Inspecting and reviewing any record required to be kept under the provisions of this Consent Decree or any NPDES Permit and the Clean Water Act; and

f. Otherwise assessing DC Water's compliance with this Consent Decree.

84. This Section XV (Right of Entry) in no way limits or affects any right of entry and inspection, or any other right otherwise held by the United States, U.S. EPA and any other governmental entity, pursuant to applicable federal or state laws, regulations.

85. DC Water reserves the right to request the laboratory analytical results of samples taken from the CSS by the United States during the term of this Consent Decree, and any non-privileged reports prepared using such results.

XVI. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

86. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. This Consent Decree does not relieve DC Water of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or to comply with any federal, state or local laws or regulations, including, but not limited to its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with federal and state laws and regulations.

XVII. FAILURE OF COMPLIANCE

87. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that DC Water's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or with DC Water's NPDES permit. Notwithstanding EPA's review or approval of any Scope of Work, report, or plans and specifications, pursuant to this Consent Decree, DC Water shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the Clean Water Act, and regulations promulgated thereunder. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone DC Water's duties and obligations as set forth in this Consent Decree.

XVIII. EFFECT OF DECREE AND NON-WAIVER PROVISIONS

88. The Parties agree that this Consent Decree resolves the civil claims for violation of water quality standards and for long-term injunctive relief (Claim One) alleged in the Complaint filed by the United States through the date of lodging of this Decree.

89. The Consent Decree in no way affects or relieves Settling Defendants of any responsibility to comply with any federal, state, or local law or regulation.

90. The Parties agree that DC Water is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

91. The United States reserves the right to file a civil action for statutory penalties or injunctive relief against DC Water for any violations of the Clean Water Act by DC Water which occur after the date of lodging of this Consent Decree and any such violations occurring prior to that date that are not specifically alleged as Claims for Relief in the Complaints.

92. This Consent Decree does not limit or affect the rights of DC Water, the District of Columbia, or the United States as against any third parties which are not parties to this Consent Decree.

93. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from DC Water or to seek access to the property of DC Water, nor shall anything in this Consent Decree be construed to limit the authority of the United States to undertake any action against any person, including DC Water, in response to conditions that may present an imminent and substantial endangerment to the environment or the public health or welfare.

94. Obligations of DC Water under the provisions of this Consent Decree to perform duties scheduled to occur after the date of lodging, but prior to the Effective Date of the First Amendment to the Consent Decree, shall be legally enforceable from the date of lodging of this

Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations as of the date of violation and payment of such stipulated penalties may be demanded by the United States upon or after the Effective Date of the First Amendment to the Consent Decree.

95. The United States reserves the right to file a criminal action for statutory penalties or other criminal relief against DC Water for any violations by DC Water of the Clean Water Act or other applicable federal statutes.

96. It is the intent of the Parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

97. The United States reserves all remedies available to it for violations of Federal, State and local law.

XIX. COSTS OF SUIT

98. The Parties shall bear their own costs and attorney's fees with respect to this action and to matters related to this Consent Decree.

XX. CERTIFICATION OF SUBMISSIONS

99. DC Water shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, scope of work, reports, plans and specifications, or permits submitted to EPA pursuant to this Consent Decree for a period of five (5) years, except that DC Water shall not be required to maintain copies of drafts of documents, scope of work, reports, plans and specifications, reports or permits. DC Water shall require any independent contractor implementing this Consent Decree to also retain such materials for a period of five (5) years. DC Water shall submit such supporting documents to EPA upon request. DC Water shall also submit to EPA upon request any other documents that relate to or discuss

the operation, maintenance, repair, or construction of the CSO system (or any portion thereof), or that relate to or discuss the number, frequency, volume, quality or environmental impact of CSO discharges. In all notices, documents or reports submitted to EPA pursuant to this Consent Decree, a senior management official of DC Water shall sign and certify such notices, documents and reports as follows:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

XXI. FORM OF NOTICE

100. Unless otherwise specified within the terms of this Consent Decree, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:

Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, DC 20044
Reference DOJ Case No. 90-5-1-1-07137

United States Attorney
District of Columbia
Judiciary Center
555 Fifth Street NW
Washington, DC 20530

EPA

Director
Water Enforcement Division
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
OECA-ORE-WED
Ariel Rios Building
12th and Pennsylvania Ave, NW
Mail Code 2243A
Washington, DC 20004

Chief
NPDES Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Yvette Roundtree (3RC20)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to DC Water:

George S. Hawkins or his successor
General Manager
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

Deputy General Manager/Chief Enginner
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, SW
Washington, D.C. 20032

As to the District:

The Attorney General of District of Columbia
One Judiciary Square
441 Fourth Street NW
Suite 600 South
Washington, DC 20001

XXII. MODIFICATION

101. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

102. The non-material terms of this Consent Decree may be modified by a subsequent written agreement signed by all the Parties. If all the Parties agree to a material modification in writing, they may apply to the Court for approval thereof. If the Parties do not reach agreement on such material modification, the request for modification shall be subject to the dispute resolution procedures of this Decree. All material modifications shall be in writing and approved by the Court before they will be deemed effective.

103. In the event DC Water requests a material modification to the Selected CSO Controls and/or the schedule set forth in Section VI (Selected CSO Controls and Schedules), DC Water shall arrange for additional public participation prior to submitting the modification request to the United States. DC Water shall initially consult with EPA concerning the modification and the scope of public participation to be obtained by DC Water prior to submission of a formal request for modification from DC Water to EPA.

a. The proposed modification package shall be submitted to EPA and shall contain the following:

i. the basis for the modification and the supporting technical and regulatory justification (including if applicable the LTCP or pertinent portions thereof);

ii. any changes to the Selected CSO Controls and/or to the schedule in Section VI (Selected CSO Controls and Schedules), along with any supporting data;

iii. a demonstration of material compliance with any applicable requirements of the 1994 CSO Policy; and

iv. a demonstration that public participation has occurred.

b. If the United States, after consultation with the District of Columbia, agrees to the modification, the proposed changes to the Selected CSO Controls and/or the schedules shall be executed by appropriate officials on behalf of the United States, the District of Columbia, and DC Water and lodged with the Court for a period of public comment prior to entry. If the United States does not agree to the proposed modification, the matter shall be subject to the procedures of Section XIV (Dispute Resolution).

XXIII. PUBLIC COMMENT

104. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. This Paragraph does not create any rights exercisable by the Settling Defendants, and Settling Defendants shall not withdraw their consent to this Consent Decree between lodging and entry of this Consent Decree and hereby consents to entry of this Decree without further notice.

105. All information and documents submitted by Settling Defendants to U.S. EPA pursuant to this Consent shall be subject to public inspection, unless identified and supported as confidential by DC Water in accordance with 40 C.F.R. Part 2.

XXIV. CONTINUING JURISDICTION OF THE COURT

106. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification or execution of this Consent Decree.

XXV. APPENDICES

Appendix A is the Long Term Control Plan and its Appendices.

Appendix B contains DC Water's financial assumptions and projections that it sets forth as its basis for the 20 year implementation schedule in this Consent Decree.

Appendix C contains a list of key financial variables to be updated in the event of a request for modification due to changed financial circumstances pursuant to Section VII of the 2005 Consent Decree (Modifications to Selected CSO Controls and Schedules).

Appendix D contains the TN/Wet Weather Plan Summary Report.

Appendix E contains the Summary of Gray/Green and Green CSO Controls for the Potomac and Rock Creek Sewersheds.

Appendix F contains the Green Infrastructure Program for the Potomac and Rock Creek Sewersheds.

XXVI. TERMINATION

107. This Consent Decree shall terminate upon motion of the United States to the Court after each of the following has occurred:

a. DC Water has Placed in Operation all of the construction projects required under Section VI (Selected CSO Controls and Schedules);

b. DC Water has demonstrated that it has achieved and maintained compliance with the water quality based CSO numerical effluent limitations and the performance standards requiring that the Selected CSO Controls be implemented, operated and maintained as described in DC Water's NPDES Permit for two years after the Selected CSO Controls are Placed in Operation;

c. DC Water has satisfactorily implemented its LIDR projects and programs as required by Section IX (Low Impact Development Retrofit);

d. DC Water has paid all stipulated penalties and any other monetary obligations due hereunder, and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States; and

e. DC Water has certified completion to the United States, and the United States has not contested DC Water's completion or compliance.

108. The Consent Decree shall not terminate if, within 90 days of certification by DC Water to the United States of compliance pursuant to this Section, the United States asserts in writing that full compliance has not been achieved, or seeks further specific information in order to evaluate DC Water's certification. If the United States disputes DC Water's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

109. Notwithstanding Paragraph 108 above, if DC Water submits a certification to the United States that it has completed all the requirements in Paragraph 107 above, and the United States does not respond on or before 90 days, DC Water may file a motion to the Court seeking termination of this Consent Decree.

XXVII. SIGNATORIES

110. The Assistant Attorney General on behalf of the United States and the undersigned representatives of the Settling Defendants certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

Entered this 14th day of January, 2016

Thomas F. Hogan

Chief Judge, United States District Court

THE UNDERSIGNED PARTIES enter into this First Amendment to Consent Decree in the matter of *Anacostia Watershed Society, et al., v. District of Columbia Water and Sewer Authority and the District of Columbia; and United States of America v. District of Columbia Water and Sewer Authority and the District of Columbia*

FOR THE UNITED STATES OF AMERICA:

4/22/15
Dated

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

3/27/15
Dated

MARCELLO MOLLO
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
601 D Street NW
Washington, D.C. 20004

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[RESERVED]

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

5/8/15
Dated

SHAWN M. GARVIN
Regional Administrator
U.S. EPA Region III

4/20/15
Dated

MARY COE
Acting Regional Counsel
U.S. EPA Region III

4/21/15
Dated

YVETTE ROUNDTREE
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

4/7/15
Dated

SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

4-7-15
Dated

MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance

4-7-15
Dated

SUSHILA NANDA
Senior Attorney Advisor
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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FOR THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY:

12/18/14
Dated

GEORGE S. HAWKINS
General Manager
District of Columbia Water and Sewer Authority

12/18/14
Dated

RANDY E. HAYMAN
General Counsel
District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, D.C. 20032

Dec. 18, 2014
Dated

DAVID E. EVANS
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
Counsel to District of Columbia Water and Sewer Authority

THE UNDERSIGNED PARTIES enter into this First Amendment to Consent Decree in the matter of *Anacostia Watershed Society, et al., v. District of Columbia Water and Sewer Authority and the District of Columbia; and United States of America v. District of Columbia Water and Sewer Authority and the District of Columbia*

FOR THE DISTRICT OF COLUMBIA:

3/24/15
Dated

RASHAD M. YOUNG
City Administrator
District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

KARL A. RACINE
Attorney General for the District of Columbia

3/24/15
Dated

By: Ellen A. Efros /TMT
Ellen A. Efros
Deputy Attorney General
Public Interest Division
441 4th Street, NW, Suite 6 South
Washington, DC 20001