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June 23, 2014

Vince Chhabria
United States District Judge

Re: California River Watch v. City of Willits
Case # 3:13-cv-03395 VC

Dear Judge Chhabria

We represent Brooktrails Township Community Services District which holds a property interest in the City of Willits Wastewater Plant. Immediately upon the filing of the current action Brooktrails sought to intervene in this action, (ECF 11). By minute order Judge Chen whom was previously assigned this case denied our motion to intervene, without prejudice. (ECF 13.) At the hearing, on our motion, Judge Chen said that he assumed that the matter would be resolved by a Consent Decree being proposed by the parties and that he ordered that the parties should provide Brooktrails notice of such consent decree. (See Transcript of the Hearing on the Motion to Intervene, ECF 40, pp 16-18.)

On Wednesday June 18 I learned from a press report that a settlement had been reached by the parties. Upon making inquiry late last week I learned that the parties had not provided notice of the settlement because they were proceeding by stipulation for dismissal, and a settlement agreement rather than consent decree and that they did not therefore feel compelled to provide notice of the settlement.

The Stipulation does not refer to the separately executed settlement agreement which contemplates continuing action on the part of the Defendant which will be monitored by Plaintiff and with Plaintiff having the right to enforce the Defendant's continuing action. This has the appearance of being the functional equivalent of a consent decree with the device of settlement agreement and stipulation for entry of dismissal being employed to avoid comment by my client as envisioned by Judge Chen. The settlement agreement is attached for reference.

In that the undersigned has just received a copy of the dispositive documents late last week, I have not had the opportunity to research the effect of the entry of a stipulation of dismissal and private settlement agreement, or to consult with my client, a public agency whose governing board meets twice monthly. It is requested that the Court delay approving the stipulation and entry of order of dismissal until the legal effect of the settlement can be evaluated and the undersigned may consult with the Board of Directors at its July 8th meeting of its governing board. Delay is requested to July 11 to provide time to file any motions that might be necessary to protect the District's interest, previously and including but not limited to a possible renewal of the motion to intervene, which motion was timely made, but denied without prejudice.

In that Judge Chen envisioned that Brooktrails would have an opportunity to review a settlement which might affect Brooktrails, and further that the parties appear to have pursued a path to avoid entry of a consent decree to avoid giving notice to Brooktrails, and the fact that a 21 day delay would have no apparent adverse impact upon the parties, your indulgence to permit our review and consultation would be appropriate.

Yours very truly,

CHRISTOPHER J. NEARY

CJN/cm

cc Steve Mitchell, Esq.
James Lance, Esq.
Jerry Bernhaut, Esq.
Jack Silver, Esq.
Judith Harvey – Judith.Harvey@usdoj.gov
Matthias St. John

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is made and entered on June 5, 2014 ("Effective Date"), by and between California River Watch, a non-profit corporation on behalf of itself and its members ("River Watch") and the City of Willits, a general law municipal corporation ("City"). The City and River Watch will hereinafter be referred to collectively as the "Parties."

RECITALS

1. WHEREAS, the City owns and operates a wastewater treatment plant ("Plant"), as well as its own wastewater collection system, consisting of approximately 24 miles of collection lines. The City's operation of the Plant is regulated pursuant to the Regional Water Quality Control Board ("RWQCB") Order Number R1-2010-017, NPDES Permit Number CA0023060, adopted by the RWQCB on July 15, 2010 ("NPDES Permit").

2. WHEREAS, on June 20, 2013, River Watch provided the City with a Notice of Violations and Intent to File Suit ("Notice") under Section 505 of the Clean Water Act (33 U.S.C. § 1365) with regard to alleged violations of the Clean Water Act associated with the City's operation of the Plant and associate sewer collection system.

3. WHEREAS, following unsuccessful attempts to resolve the matters set forth in the Notice, on or about September 16, 2013, River Watch filed its First Amended Complaint in the United States District Court for the Northern District of California, Case Number 2:13-cv-03395-EMC.

4. WHEREAS, the City, its elected and appointed officials, officers and agents deny each and all of the claims and allegations in the River Watch Notice and First Amended Complaint.

5. WHEREAS, without either adjudication of River Watch's claims as set forth in the Notice and First Amended Complaint, or admission by the City of any alleged violation or other wrongdoing, the Parties agree it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving the claims that have been asserted by River Watch in the Notice and First Amended Complaint.

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

1. The City agrees to assess all of the sewer collection lines which it owns and operates within the next five years from the Effective Date for sources of infiltration or exfiltration, utilizing either or both of its current closed circuit television scan, or any other new scanning technology which it may acquire.

A. The City agrees to assign to each sewer line segment a rating consistent with the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies, which assigns grades as follows:

5 – Failed or will fail within 5 years
4 – Failure likely in 5-10 years
3 – May fail in 10-20 years
2 – Unlikely to fail for at least 20 years
1 – Unlikely to fail in foreseeable future

2. The City agrees to comply with all obligations imposed upon it under its current Sanitary Sewer Management Plan ("SSMP"), which applied to Sewage System Overflows ("SSO"), and that the required reporting of SSOs in the future shall be substantially similar in format and level of detail as set forth in its most recent SSO report dated March 27, 2014, unless the RWQCB alters the reporting format in connection with the same, in which case the City shall comply in all respects with the RWQCB SSO reporting requirements.

A. The City agrees, pursuant to section 8b of the City's SSMP, to prioritize problem areas in need of repair such that sewer line segments with a rating of 5, located within 150 feet of a named creek or river, will be repaired or replaced within two (2) years of the rating determination.

3. Within 120 days of the Effective Date, the City shall set up a revolving loan program ("Loan Program") to provide partial loans for the replacement or repair of private sewer laterals, including installation of property line clean outs as follows:

a. The City shall invest $35,000 (Thirty Five Thousand Dollars) into the Loan Program.

b. The Loan Program shall provide a low interest loan to eligible property owners in an amount not to exceed $2,500 (Twenty-Five Hundred Dollars) for each eligible private sewer lateral requiring repair or replacement and/or property line clean out installation.

c. A property owner shall be considered eligible for the Loan Program if the City determines that the private sewer lateral is failing and/or that the property does not have a property line clean out, and the repair or replacement and/or installation can be completed within 120 (one hundred twenty) days to the application for the Loan Program.

d. The City shall set the interest rate, financing term, financing amount, and terms of repayment for the Loan Program.

e. The City shall publicize, advertise and otherwise promote the Loan Program to property owners within its service area and shall set forth procedures for eligible property owners to apply for the Loan Program.

4. The City shall provide its anticipated Reclamation/Irrigation Management Plan to River Watch upon its approval by City Council and upon providing the same to the RWQCB, in order to enable River Watch to comment upon the same.

5. Within one year from the Effective Date, the City will obtain, and follow, recommendations from GHD, to conduct additional, appropriate sampling of surface water from Outlet Creek, in addition to that already required by the RWQCB, in order to assess any effect on water quality in Outlet Creek as a result of any seepage of wastewater from the adjacent enhancement ponds, and will provide the results of the sampling to River Watch. Willits shall provide the recommendations from GHD to River Watch for review, comment and approval prior to adoption by the Willits City Council in order to ensure that the surface water testing is efficacious and not illusory; provided, however, that River Watch may not unreasonably withhold approval of the testing recommended by GHD.

6. Within 30 (thirty) days of the Effective Date, the City shall pay River Watch the sum of $60,000 (Sixty Thousand Dollars) as full reimbursement for River Watch's investigative and attorney's fees and costs. Payment shall be made by way of a single check payable to "California River Watch" and shall constitute full and complete satisfaction of any and all claims by River Watch for attorney's fees and costs in connection with this matter up to and including the Effective Date, as well as attorney's fees and costs incurred by River Watch to monitor and enforce City's compliance with this Agreement, with the exception of fees and costs incurred by enforcing this Agreement in court, in which the Court would have discretion to award any prevailing party attorneys fees.

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7. Upon the Effective Date, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter (including but not limited to Northern California River Watch), agrees that it releases, quits and forever discharges the City, its elected and appointed officials, its City Council, officers, employees, agents, attorneys, legal successors and assigns, and any other person acting on the City's behalf, from all claims, actions, causes of action, obligations, except for obligations under this Agreement, liabilities, indebtedness, breach of duty, claims for injunctive relief and/or equitable relief, suits, liens, damages, losses, costs or expenses, including attorney's fees, known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen, based upon the violations alleged, or which could have been alleged in the Notice, including without limitation any and all claims for violations of the Clean Water Act which occurred at any time up to the Effective Date.

8. River Watch agrees that the releases set forth in this Settlement Agreement extend to unknown as well known claims. River Watch herby waives the benefits of section 1542 of the California Civil Code, which provides as follows:

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

9. In further consideration of the City's agreement to enter into this Settlement Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter (including but not limited to Northern California River Watch), covenants and agrees not to sue or take any other step to enforce any claims, rights, liabilities or causes of action released by the Settlement Agreement. Furthermore, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter (including but not limited to Northern California River Watch) agrees and covenants that for a period of 7 (seven) years from the Effective Date, it will not file any lawsuits against the City seeking relief for alleged violations of the Clean Water Act nor will River Watch initiate or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative action. River Watch understands and agrees that its sole remedy against the City during this seven year period shall be to enforce the Settlement Agreement. River Watch further covenants and agrees that, at least 60 (sixty) days before filing any action seeking to enforce the Settlement Agreement, it shall notify the City in writing of what actions or inactions by the City it deems to be in violation of the Settlement Agreement. Thereafter, the Parties shall meet and confer in a good faith attempt to resolve their disputes. If the Parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute prior to the filing of any action to enforce the Settlement Agreement.

10. This Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for any injunction against, any action, suit or other proceedings which may be instituted, prosecuted or attempted in breach of the Settlement Agreement, whether by the Parties hereto or any of River Watch's members, successors or assigns.

11. Force Majeure

A. Separate from, and in addition to any other limitations on the City's obligations under this Agreement, the City's obligation to comply with one or more of the provisions of this Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstance beyond the reasonable control of the City or any entity controlled by the city, including its contractors, and that could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Delays beyond the control of the City may include, but are not limited to, delays caused by the action or inaction of state, regional, federal or other permitting authorities and regulatory agencies. Delays solely caused by unanticipated or increased costs or expenses associated with the completion of any work or activity under this Agreement, changed financial circumstances, or the City's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits or normal inclement weather shall not, in any event, be considered to be circumstances beyond the City's control.

B. If any event or circumstance occurs that causes or may cause a delay in the City's compliance with any provision of this Agreement, and the City seeks relief under this section of the Agreement, the City shall:

1. Provide written notice to River Watch within thirty (30) days for the date that the City first knows of the event or circumstance, or should have known of the event or circumstance by the exercise of due diligence. The City's notice to River Watch shall specifically refer to this part of this Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance.

2. The City shall adopt all reasonable measures to avoid and minimize such delays.

3. If River Watch disagrees with the City's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that the delay was or is impossible to avoid, despite the good faith efforts of the City.

12. This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Settlement Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. This Agreement shall supersede all prior previous agreements whether written or oral that may have been reached between the Parties in connection with this matter, and provides the sole remedy for any party to any other party regarding this matter.

13. This Agreement is entered into by each party freely and voluntarily. Each of the Parties has had the benefit of advice of counsel of their choice in the negotiating, drafting and execution of this Agreement, and the language and all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any party.

14. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

15. Each party respectively represents and warrants to each other party that the undersigned representative for each party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

16. This Agreement may be signed in counterparts for the Parties hereto and shall be valid and binding on each party as if fully executed all in one copy.

Dated: 5/29/2014

CALIFORNIA RIVER WATCH
By
Its Board President

Dated:

CITY OF WILLITS
By
Its HOLLY [illegible], MAYOR

APPROVED AS TO FORM:

JERRY BERNHAUT
Attorney for California River Watch

H. JAMES LANCE
City Attorney for City of Willits