January 30, 2003

Richard W. Wieking, Clerk
U.S. District Court for the
Northern District of California
16-1111 U.S. Courthouse
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, CA 94102

Re: Northern California River Watch v. City of Willits, et al., United States District Court for the Northern District of California, Case No. 02-00609 JCS

Dear Mr. Wieking:

On December 17, 2002, the Attorney General of the United States received a copy of the proposed consent decree in the above-referenced case for review pursuant to section 505(c)(3) of the Clean Water Act, 33 U.S.C.§1365(c)(3). This provision provides, in relevant part:

> No consent judgment shall be entered in any action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

Pursuant to Section 505 (c)(3) of the Clean Water Act, the United States, for the record, submits these comments to the court. *See* 33 U.S.C. § 1365 (c)(3); Sierra Club, Inc. v. Electronic Controls Design, 909 F.2d 1350, 1352 n.2 (9th Cir. 1990) (holding that the United States shall have 45 days to comment on any Clean Water Act consent judgment to which it is not a party).

Plaintiff's Complaint in this case claims the Defendant violated the Clean Water Act by failing to comply with NPDES Permit No. CA0023060. The consent decree prohibits, with certain exceptions, Defendant from spray irrigating with treated effluent after the actual onset of significant rainfall between October 1st and May 14th. If Defendant determines that it is necessary to spray, the consent decree requires Defendant to notify Plaintiff and monitor pH, DO, turbidity, fecal coliform, BOD, and TSS. In addition to paying for and performing an audit of its own procedures for compliance and reporting under its NPDES permit, Defendant is

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required to undertake a creek/sewer line study and remedy problems that are identified. Although the attorney's fees of $40,000 provided for in this decree appear to be quite substantial in light of the limited relief obtained, the United States will not oppose entry of this decree. We will, however, monitor other litigation by Northern California River Watch to determine whether there is a pattern of substantial attorney's fees and limited relief.

The United States notes for the record that, under prevailing law, it is not bound by this settlement. *See, e.g.*, Hawthorn v. Lovorn, 457 U.S. 255, 268, n.23 (1982) (Attorney General is not bound by cases to which he was not a party). As explicitly set forth in paragraph two of this decree, no provision of this proposed decree is binding on the United States.

Based on these observations, the United States has no objection to entry of the proposed consent decree. We appreciate the attention of the Court.

Please contact the undersigned at (202) 514-0750 if you have any questions.

Sincerely,

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R. Justin Smith, Attorney
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cc: Jack Silver, Plaintiff's Counsel
Ross Walker, Defendant's Counsel

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bcc: Karen Dworkin, DOJ/EES
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