Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net

Via Electronic Mail
Richard.Norwood@usdoj.gov

March 3, 2015

Richard Norwood - Citizen Suit Coordinator
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Re: *California River Watch and Salton Community Services District*
Settlement Agreement - March 3, 2015

Dear Mr. Norwood:

In compliance with 33 U.S.C. § 1365(c)(3), 40 C.F.R. § 135.5, we enclose for review by the Department of Justice a copy of the Settlement Agreement and Mutual Release of Claims entered into by the parties in resolution of the above-captioned matter.

No Complaint or other legal action has been filed.

Kindly confirm receipt of this correspondence and notify the parties as to the 45-day time frame.

Sincerely,

Jerry Bernhaut

JB:lhm
Enclosure
cc: Marc E. Empey, Esq. (*Via Electronic Mail - empey@sbemp.com)*
SLOVAK BARON EMPEY MURPHY & PINKNEY LLP
1800 E. Tahquitz Canyon Way
Palm Springs, CA 92262

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between California River Watch, a 501(c)(3) non-profit, public benefit Corporation, on behalf of itself and its members ("CRW") and Salton Community Services District, a special district organized under the laws of the State of California ("SCSD"), (collectively the "Parties") as of the last date executed below, with respect to the following facts and objectives.

RECITALS

WHEREAS, CRW is a 501(c) (3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna. And to educate the public concerning environmental issues associated with these environs.

WHEREAS, SCSD provides wastewater collection for Salton City, which has a total area of 21.1 square miles and a population of approximately 3,763; and, for Desert Shores, an unincorporated community which has a total area of 0.7 square miles and a population of approximately 1,104. Wastewater from Salton City is conveyed through 300 miles of gravity sewer and 6 miles of pressure sewer to either the Lansing Avenue Wastewater Treatment Facility or the Thomas R. Cannell Wastewater Treatment Facility. Wastewater from Desert Shores is conveyed through 60 miles of gravity sewer and 4 miles of pressure sewer to the Desert Shores Wastewater Treatment Plant.

WHEREAS, on or about November 4, 2014 CRW served SCSD with a Notice of Violations and Intent to File Suit under the Clean Water Act, CWA § 505, 33 U.S.C. § 1365, ("CWA Notice") alleging various violations of the CWA by SCSD relating to activities and operations of the wastewater collection system, a copy of which CWA Notice is attached hereto as **Exhibit A**.

WHEREAS, CRW and SCSD, through their authorized representatives, and without either adjudication of CRW's claims or admission by SCSD of any alleged violation or other wrongdoing, wish to resolve in full CRW's allegations as set forth in the CWA Notice, through settlement to avoid the cost and uncertainties of litigation.

WHEREAS, CRW and SCSD have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving

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CRW's allegations set forth in the CWA Notice, including without limitation, any disputes, obligations, claims and/or causes of action that were asserted in or pursuant to the CWA Notice.

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

AGREEMENT

I. DEFINITIONS

A. Collection System: Any public system of pipes, pump stations, sewer lines, or other conveyances located within the boundary of SCSD's sewage collection service area, for which SCSD has ownership and/or maintenance responsibility, used to collect and convey wastewater to the Lansing Avenue Wastewater Treatment Facility, the Thomas R. Cannell Wastewater Treatment Facility or to the Desert Shores Wastewater Treatment Plant.

B. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of the Collection System. Inspection for gravity mains is based on closed circuit television ("CCTV") inspections. Inspections of manholes and pipe connections are based on visual inspection at the manhole for structural defects. After inspection occurs, gravity main pipe segments are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies, 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

C. Effective Date: Shall have the meaning set forth in Section VIII L, below.

D. Selective Condition Assessment: A limited Condition Assessment prioritizing SCSD's sewer lines most likely to discharge untreated sewage to surface waters and taking into consideration SCSD's limited resources.

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E. Significantly Defective: A sewer pipe segment is considered to be Significantly Defective if the condition of the pipe receives a grade of 5 based on the PACP rating system described above.

F. Rehabilitation: The replacement or slip lining of a defective pipeline segment.

II. REMEDIAL MEASURES

A. SEWER SYSTEM INVESTIGATION AND REPAIR

1. Selective Condition Assessment

a. Within five (5) years from the Effective Date of this Agreement, SCSD shall complete a Selective Condition Assessment of all sewer gravity main segments in the Collection System located within one hundred (100) feet of surface waters, including the Salton Sea and any Wash or Arroyo leading to the Salton Sea, or located within one hundred (100) feet downstream of a lift station, that have not been investigated and rated, or repaired within five (5) years prior to the Effective Date of this Agreement, or newly installed or rehabilitated within ten (10) years prior to the Effective Date of this Agreement.

b. Within three (3) years of determination under the Selective Condition Assessment that a sewer gravity main segment has a PACP rating of 5, SCSD shall repair the defect, or rehabilitate or replace the sewer gravity main.

c. Within three (3) years of determination under the Selective Condition Assessment that a sewer gravity main segment has a PACP rating of 4, SCSD will place the segment on a watch list to be further investigated in one (1) year, and moved up to a 5 rating, as needed, to be repaired within three (3) years.

d. Upon completion of the Selective Condition Assessment, SCSD shall provide CRW with a Report identifying the segments rated 5 and 4. For the segments rated 5, the Report shall include documentation of repair, rehabilitation or replacement, or an explanation of further planned remediation

e. Inspection of traditional metal force mains has historically been accomplished by (1) excavating the pipelines at strategic points, (2) extracting a section of pipe or "coupon," (3) assessing the coupon using a corrosion expert; and (4) televising the force main to the extent possible by accessing the pipe through the excavation area.

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SCSD shall budget for Operations, Inspection and Capital Improvements to its force mains on a fifteen (15) year cycle.

B. SMART COVER INSTALLATION

Within one (1) year from the Effective Date of this Agreement, SCSD shall install ten "SMART COVER" manhole covers, i.e. manhole covers which monitor flow levels and pressure in sewer lines, with an alarm system which warns of imminent surface overflows. SCSD shall install the SMART COVERS at locations where they are likely to have the greatest benefit in avoiding surface overflows.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. Within one (1) year from the Effective Date of this Agreement, SCSD shall submit at least one application for State and/or Federal funds to perform the remedial measures described in sections II.A.1 a-e.

2. During the first year following the Effective Date of this Agreement, CRW shall donate thirty (30) hours of assistance from Robert Rawson, CRW's wastewater expert, in preparing and submitting grant applications pursuant to section C.1 above. As general manager of the Graton Community Services District, Mr. Rawson has been successful in obtaining public funds for substantial improvement projects.

D. SEWER SYSTEM OVERFLOW RESPONSE

1. Within one (1) year from the Effective Date of this Agreement, SCSD shall modify its Sanitary Sewer Overflow ("SSO") report form to require (not merely have a space for) the following additional information:

a. The method or calculations used for estimating total spill volume, spill volume reaching surface waters, and spill volume recovered;

b. For Category 1 spills, (as defined by State Water Resources Control Board Order No. 2006-0008, as amended by Order No. WQ 2013-0058-EXEC) a listing of nearby residents or business operators contacted to attempt to establish the SSO's start time, duration, and flow rate;

c. Provision for attachment of photographs taken of the manhole flow at the SSO site and of the spill volume if applicable, if photos can be taken without substantially impeding response measures; and,

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d. When appropriate, a brief description of any clearly visible ecological impacts (e.g. fish kills) and any remedial measures undertaken in an appropriate category on the CIWQS reporting form.

2. Within one (1) year from the Effective Date of this Agreement, SCSD shall require water quality sampling and testing whenever it is estimated that an SSO of fifty (50) gallons or more enters surface waters.

a. SCSD shall collect and test samples from three (3) locations, if feasible and the conditions are not unsafe[1] - the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include Ammonia, Fecal Coliform, E.Coli, Dissolved Oxygen, and a metals analysis.[2] Water quality sample results shall be reported in an appropriate category on the CIWQS reporting form.

b. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, SCSD shall, within one (1) week of receiving the test results, spot repair or replace the pipe segment determined to be the source of the SSO, if structural defects in that pipe segment rather than an internal blockage caused the overflow. If internal blockage caused the overflow, within one (1) week of receiving the test results, SCSD shall perform any necessary maintenance not undertaken at the time of the spill.

c. If the results of two (2) successive samples for metals analysis are negative, metals analysis may be discontinued for future samples.

3. During the first year following the Effective Date of this Agreement, SCSD will contract with a registered Environmental Health Specialist or biologist to develop a protocol to evaluate the biological impacts and appropriate remediation for any SSO releases to surface waters that are one thousand (1,000) gallons or more, to be implemented as part of the defined SSO remediation procedures in the SSMP. SCSD

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[1] For purposes of this agreement, "unsafe" conditions may include, but are not limited to, non-daylight hours, electrical storms, tornados, hurricanes or wind events exceeding 60 miles per hour, severe flood events, or other conditions that would not comply with CAL-OSHA requirements.

[2] The following 17 metals will be sampled using EPA Part 136 approved methods: Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cobalt, Copper, Lead, Mercury, Molybdenum, Nickel, Selenium, Silver, Thallium, Vanadium, and Zinc.

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will submit the protocol to CRW for review and comment prior to implementation as part of the SSMP.

E. PRIVATE LATERAL ORDINANCE

1. Within one (1) year from the Effective Date of this Agreement, SCSD shall amend its Sewer Ordinance to require mandatory, private sewer lateral inspection and repair triggered by any one of the following events:

a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

b. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

c. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

d. Upon replacement or repair of any part of the sewer lateral;

e. Upon issuance of a building permit (by Imperial County) with a valuation of $25,000.00 or more;

f. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

F. TASK CONFIRMATION

SCSD shall provide written confirmation to CRW detailing SCSD's yearly progress toward completion of the tasks in Section II A-E. Completion of all tasks described in sections II. A-E above and herein shall constitute completion of all obligations set forth in this Agreement, and SCSD shall cease providing the above mentioned Reports to CRW at that time.

III. ATTORNEY'S COSTS AND FEES

The City agrees to pay River Watch, within thirty (30) days of the effective date of this Agreement, the sum of Twenty-Five Thousand Dollars ($25,000.00) represent full

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satisfaction of all claims by River Watch for River Watch's investigative, expert, and attorneys' fees and costs. Payment shall be made by the City to River Watch in the form of a single check payable to "California River Watch". The above payment amount shall constitute full payment for all costs of anticipated litigation and attorneys' fees incurred by River Watch that have or could have been claimed in connection with River Watch's allegation in its CWA Notice up to and including the Termination Date of the Agreement, and for River Watch's expert and attorneys' fees and costs spent monitoring and enforcing the City's compliance with ongoing obligations under this Agreement, with exception of any action taken to enforce the Agreement in accordance with the dispute resolution procedures set forth in paragraph VI.

IV. TERMINATION DATE

This Agreement shall terminate five (5) years from the Effective Date, or when SCSD has completed the Remedial Measures set forth in Sections II.A-E above, whichever is earlier.

V. RELEASE OF LIABILITY AND COVENANT NOT TO SUE

A. Upon the Effective Date of this Agreement, CRW, 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 (collectively "Releasors"), agrees that it releases, acquits and forever discharges SCSD, its elected and appointed officials, officers, employees, agents, attorneys, legal successors and assigns, and any other persons acting on SCSD's behalf (collectively "Releasees") from all claims and demands, actions, causes of action, obligations, (except for obligations under this Agreement,) liabilities, indebtedness, breach of duty, claims for injunctive relief and other equitable relief, suits, liens, damages, losses, costs or expenses, including attorneys' fees, (except for costs and fees pursuant to Section III above) based upon the claims alleged in the CWA Notice.

B. The Parties acknowledge that they are familiar with section 1542 of the Civil Code of the State of California. Each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

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

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

VI. DISPUTE RESOLUTION PROCEDURES

A. Any disputes with respect to any of the provisions of this Agreement shall be resolved through the following procedure: The Parties covenant and agree that, if either party believes the other is in violation of one or more terms of the Agreement, the party shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional thirty (30) days, the Parties will meet and confer in a good faith attempt to resolve their dispute.

B. If, and only if, the dispute cannot be resolved by the Parties pursuant to the above mechanisms, such dispute shall be submitted for binding arbitration before a mutually agreed upon neutral arbitrator. In the event that binding arbitration occurs, the Parties agree that no discovery shall be permitted. Briefing will be limited to one brief of no longer than ten (10) pages for each party, submitted no later than fourteen (14) days before the scheduled arbitration hearing. The arbitration hearing shall be limited to a maximum of one (1) full day. The determination of the arbitration shall be binding upon the parties. Within thirty (30) days of the conclusion of the arbitration hearing, the arbitrator shall issue a written statement of decision describing the basis for the decision. The non-prevailing party shall bear the cost of the arbitrator's fees. Otherwise, the Parties shall each bear their own costs and attorneys' fees incurred in connection with such binding arbitration.

C. If CRW asserts that SCSD is in violation of this Agreement, and SCSD corrects the action or inaction within sixty (60) days of written notice from CRW describing the asserted violations, no further enforcement action under the terms of this Agreement, including the dispute resolution process described above, shall be taken by either party.

VII. FORCE MAJEURE

Separate from, and in addition to, any other limitations on SCSD's obligations under this Agreement, SCSD's obligations to comply with any provision of this Agreement shall be excused or deferred if compliance, or a delay in compliance, is

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caused by an event or circumstance beyond the reasonable control of SCSD or any entity controlled by SCSD, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by SCSD or any entity controlled by SCSD. Where implementation of the actions set forth in this Agreement within the deadlines prescribed becomes unachievable, despite timely good faith efforts, SCSD shall notify CRW in writing within thirty (30) days of the date that SCSD knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The Parties agree to meet and confer in good faith concerning the non-performance and, where the Parties concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the Parties, compliance shall be excused or new performance deadlines shall be established by agreement of the Parties. In the event that the Parties cannot timely agree, either party shall have the right to invoke the dispute resolution procedure described herein.

VIII. GENERAL PROVISIONS

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

B. Choice of Law. This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

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

D. Correspondence/Notices: All notices required herein or any other correspondence pertaining to this Agreement shall be sent by regular, certified, overnight, or electronic mail as follows:

If to CRW:

California River Watch
290 S. Main Street, #817
Sebastopol, CA 95472

And:

Jerry Bernhaut, Esq.

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P.O. Box 5469
Santa Rosa, CA 95402-5469
Telephone: (707) 595-1852
Email: j3bernhaut@gmail.com

If to SCSD:

Mitch Mansfield, General Manager
Board of Directors
Salton Community Services District
1209 Van Buren Avenue, Suite 1
P.O. Box 526
Salton City, CA 92275

And:

Marc E. Empey, Esq.
Slovak, Baron, Empey, Murphy & Pinkney, LLP
1800 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Tel. 760-322-2275
empey@sbemp.com

Notifications of communications shall be deemed submitted on the date that they are sent by electronic mail, postmarked and sent by first-class mail, or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

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

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

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

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

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

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

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

L. Agency Review. CRW shall submit this Agreement to the United States Department of Justice and the EPA (collectively "Federal Agencies") within three (3) days of the final signature of the parties for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) days after receipt by the Federal Agencies, as evidenced by written acknowledgement of receipt by the Federal Agencies or the certified return receipts, copies of which shall be provided to SCSD if requested. In the event that the Federal Agencies object to entry of this Settlement Agreement, the parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount of time. If the Federal Agencies do not provide comments on the Agreement that require changes to the Settlement Agreement, the term "Effective Date" as used in this Agreement shall mean the last day for the Federal Agencies to comment on the Settlement Agreement, i.e., the 45th day following the Federal Agencies' receipt of the Settlement Agreement, or the date on which the Federal Agencies provide notice that they require no further review, whichever occurs earlier. If the Federal Agencies do provide comments on the Agreement that require changes to the Settlement Agreement, the term "Effective Date" as used in this Agreement shall mean the thirtieth (30th) day after which the Settling Parties receive the Federal Agencies' comments.

THE PARTIES HEREBY ENTER INTO THIS AGREEMENT.

DATED: 3-3-15

CALIFORNIA RIVER WATCH

By: _____
Larry J. Hanson
Board President

DATED: _____

SALTON COMMUNITY SERVICES DISTRICT

By: Fran Aldridge
Fran Aldridge, President

APPROVED AS TO FORM:

DATED: 2-20-15

Jerry Bernhaut 3-2-15
Jerry Bernhaut, Esq.
Attorney for California River Watch

DATED: 2-26-15

Marc E. Empey, Esq.
Attorney for Salton Community Services District