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15 Attorneys for Defendant  
16 SIMS GROUP USA CORPORATION

17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA  
19 SACRAMENTO DIVISION

20 \_\_\_\_\_ )  
21 CALIFORNIA SPORTFISHING )  
PROTECTION ALLIANCE, a non-profit )  
22 corporation, )  
23 Plaintiff, )  
24 vs. )  
25 SIMS GROUP U.S.A., INC., a )  
corporation, )  
26 Defendant. )  
27 )

Case No. 2:08-cv-00879 WBS KJM

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

Judge: Hon. William B. Shubb  
Trial Date: To Be Determined

28 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter

1 “CSPA”) is a non-profit public benefit corporation dedicated to the preservation, protection,  
2 and defense of the environment, wildlife, and natural resources of California’s waters;

3 **WHEREAS**, Defendant Sims Group USA Corporation (hereinafter “Sims”) operates  
4 an approximately 5.5 acre facility located at 11320 Dismantle Court, Rancho Cordova,  
5 California, which is engaged in the recycling of scrap metal and other materials (hereinafter,  
6 “the Facility”). A map of the Facility is attached hereto and incorporated herein by reference  
7 as Exhibit “A”;

8 **WHEREAS**, CSPA and Sims collectively shall be referred to as the “Parties”;

9 **WHEREAS**, Sims’ operations at the Facility primarily involve scrap metal recycling  
10 (including ferrous and non-ferrous metal receiving and shipping, ferrous metal compacting,  
11 flattening of auto hulks, non-ferrous metal baling, torch-cutting, handling, sorting and  
12 storage), along with other ancillary activities, such as handling and storage of hazardous and  
13 non-hazardous wastes, vehicle fueling and plant maintenance;

14 **WHEREAS**, for purposes of this Consent Agreement, the term “storm water  
15 discharges” refers to storm water containing pollutants associated with industrial activities at  
16 the Facility and which is discharged to waters of the United States;

17 **WHEREAS**, approximately 90% of the Facility is paved or covered by structures;

18 **WHEREAS**, storm water at the Facility is currently discharged to the municipal  
19 storm sewer system via three outfalls (OF-1, OF-2 and OF-3) following oil and sediment  
20 separation by structural Best Management Practices (“BMPs”);

21 **WHEREAS**, the municipal storm sewer system into which the Facility discharges in  
22 turn drains into a tributary to the Sacramento River and the Sacramento-San Joaquin Delta;

23 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
24 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General  
25 Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order  
26 No. 91-13-DWQ (as amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued  
27 pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “General  
28 Permit”);

1           **WHEREAS**, prior to the 2007-2008 Wet Season, the Facility was a member of the  
2 Metals Recycling Monitoring Group (“MRMG”). Membership in the MRMG has been  
3 discontinued, and the Facility now conducts storm water monitoring in accordance with the  
4 requirements of the General Permits on an individual basis;

5           **WHEREAS**, on February 13, 2008, CSPA provided notice of alleged violations of  
6 the General Permit by Sims and CSPA’s intention to file suit against Sims (the “CWA  
7 Notice”) to the Administrator of the United States Environmental Protection Agency  
8 (“EPA”); the Regional Administrator for EPA Region IX; the Executive Director of the State  
9 Water Resources Control Board (“State Board”); the Executive Officer of the Regional  
10 Water Quality Control Board, Central Valley Region (“Regional Board”); and to Sims,  
11 pursuant to Section 505 of the Federal Water Pollution Control Act (“Act”), 33 U.S.C.  
12 § 1365. A true and correct copy of the CWA Notice is attached hereto as Exhibit B;

13           **WHEREAS**, on March 24, 2009, CSPA provided notice of alleged violations by  
14 Sims of California Health & Safety Code § 25249.5, et seq.(“Prop. 65”) and CSPA’s  
15 intention to file suit against Sims (the “Prop. 65 Notice”) to the California Attorney  
16 General’s Office and to the District Attorneys of Yolo, Sacramento and Solano Counties. A  
17 true and correct copy of the Prop. 65 Notice is attached hereto as Exhibit C (the CWA Notice  
18 and the Prop. 65 Notice shall hereafter be referred to, collectively, as the “Notices”);

19           **WHEREAS**, Sims denies the occurrence of any of the violations alleged in the  
20 Notices and maintains that it has implemented an extensive set of structural and non-  
21 structural Best Management Practices (“BMPs”) at the Facility since first obtaining coverage  
22 under the General Permit in 1993 and has complied at all times with the provisions of the  
23 General Permit and Prop. 65, either as a member of the MRMG or individually;

24           **WHEREAS**, on April 25, 2008, CSPA filed a complaint (“Complaint”) against Sims  
25 in the United States District Court, Eastern District of California;

26           **WHEREAS**, this Consent Agreement shall be submitted to the United States  
27 Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C.  
28 § 1365(c); and shall thereafter be submitted for approval by the Court, the date of which

1 approval shall be referred to herein as the “Court Approval Date;”

2           **WHEREAS**, at the time the Consent Agreement is submitted for approval to the  
3 United States District Court, CSPA shall request a dismissal of the Complaint with prejudice,  
4 and the Parties shall stipulate and request that the Court retain jurisdiction for the  
5 enforcement of this Consent Agreement as provided herein; and

6           **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
7 without further litigation.

8           **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**  
9 **SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS**  
10 **FOLLOWS:**

11 **I.       OBLIGATIONS OF SIMS**

12           1.       **Implementation of Compliance Measures.** Sims shall continue to  
13 implement all measures, or shall identify and implement such additional measures, as may be  
14 needed to operate the Facility in compliance with the requirements of the General Permit and  
15 Clean Water Act as applied to storm water discharges during the term of this Consent  
16 Agreement.

17           2.       **BMP Implementation, Maintenance and Reassessment.** In order to  
18 further reduce or prevent pollutants associated with industrial activity in storm water  
19 discharges from the Facility, to the extent not already implemented, Sims shall implement  
20 appropriate structural and non-structural BMPs that, collectively, are the Best Available  
21 Technology Economically Achievable (“BAT”) and the Best Conventional Treatment  
22 Technology (“BCT”), as those terms are defined in the General Permit. During the term of  
23 this Consent Agreement, Sims shall maintain all structural BMPs at the Facility in good  
24 operating condition during the period between October 1 and May 30 of each year (the “Wet  
25 Season”) and as otherwise required to conform to the General Permit and the Facility’s Storm  
26 Water Pollution Prevention Plan (“SWPPP”).

27           3.       **Burden of Proof.** In the event of any disagreement or dispute between  
28 Sims and CSPA over the necessity or appropriateness of implementing any particular BMP

1 or set of BMPs, including in any formal or informal proceeding brought to enforce the terms  
2 of this Consent Agreement, Sims shall bear the burden of demonstrating that its BMPs,  
3 collectively, constitute BAT/BCT for the Facility. CSPA shall not be required to prove that  
4 Sims' BMPs do not constitute BAT/BCT.

5 **Improvements to the Facility's Storm Water Management System**

6 4. Understanding that time is of the essence, Sims shall complete construction  
7 of certain improvements to the storm water management system at the Facility (as described  
8 in Paragraph 5 below), which improved system shall be designed to retain and/or treat and/or  
9 infiltrate approximately 90% of the volume of storm water produced by a 25-year/24-hour  
10 design storm event (the "Design Storm")<sup>1</sup> prior to discharge to the municipal storm drain  
11 system. Installation of the Improvements shall be conducted in two phases, with the first  
12 phase (consisting of the installation of the new stormwater interceptor box, pump station  
13 vault, and appurtenant piping) to be completed by September 1, 2009, and the second phase  
14 (comprising the balance of the Improvements) to be completed by September 1, 2010. The  
15 period between the Execution Date and the completion of all Improvements described in  
16 Paragraph 5 below (or September 1, 2010, whichever should occur first) shall be referred to  
17 as the "Construction Period."

18 5. The improved storm water management system shall include each of the  
19 following components with the design capacities set forth in subparagraphs a. through f.  
20 below (hereafter, the "Improvements"). Sims shall be allowed to modify the engineering  
21 specifications of any of the components only so long as the capacity of the Improvements,  
22 overall, remains sufficient to retain and/or treat and/or infiltrate approximately 90% of the  
23 volume of storm water produced by a Design Storm prior to discharge to the municipal storm  
24 drain system, and achieve the design flow rate capacities specified in this section:

25  
26 \_\_\_\_\_

27 <sup>1</sup> For purposes of this Agreement, the "Design Storm" shall be defined to mean a storm  
28 event resulting in a triangular Facility discharge hydrograph, producing approximately  
411,000 gallons of runoff water at the Facility, with a peak flow rate of 571 gpm.

- 1           a.       Stormwater interceptor box (such as that manufactured by Jensen  
2           Precast), similar or functionally equivalent to the type depicted on Exhibit D, attached  
3           and incorporated herein by reference, to be located in the area shown on Exhibit A  
4           (“Interceptor 1”). Interceptor 1 shall replace the existing interceptors referred to in  
5           Exhibit A as JB-1 and JB-2, and shall receive the combined drainage from areas of  
6           the Facility that currently discharge through OF-1 and OF-2. The combined design  
7           flow rate capacity of Interceptor 1 and the remaining existing interceptor referred to  
8           in Exhibit A as JB-3 (collectively the “Interceptors”) shall be 1,000 gallons per  
9           minute (gpm), significantly above the peak flow rate of the Design Storm;
- 10          b.       Flow restrictor devices to be located at or before the inlet to each of  
11          Interceptor 1 and JB-3, similar or functionally equivalent to the type depicted on  
12          Exhibit E, attached and incorporated herein by reference;
- 13          c.       Pump station, similar or functionally equivalent to the type depicted on  
14          Exhibit F, attached and incorporated herein by reference, to be located in the area  
15          shown on Exhibit A, capable of pumping storm water to the Detention Basin  
16          (described below in item d.) at a design rate of 1,000 gpm (“Pump Station”);
- 17          d.       Detention area/sedimentation basin, to be located in the area shown on  
18          Exhibit A, and as schematically shown in Exhibit G, which shall have a design  
19          storage capacity of 150,000 gallons of water and shall be capable of settling  
20          sediments out of the water (the “Detention Basin”);
- 21          e.       Infiltration area located around the perimeter of the Detention Basin,  
22          either beneath or adjacent to the side walls, and extending to a depth of approximately  
23          eleven (11) feet from the grade of the ground surface (“Infiltration Area”). The  
24          Infiltration Area shall be keyed to a high permeability soil zone identified at  
25          approximately that depth, and shall be capable of achieving an infiltration rate of 30  
26          gpm, taking into consideration the entire Infiltration Area, provided, however, that  
27          Sims shall not be in violation of this Consent Agreement if the actual rate of  
28          infiltration is less than 30 gpm; and

1 f. Sand filter, similar or functionally equivalent to the type depicted on  
2 Exhibit H, attached and incorporated herein by reference, to be located in the area  
3 shown on Exhibit A (“Sand Filter”), and which shall have a design flow rate capacity  
4 of 170 gpm.

5 **Discharge to Municipal Storm Sewer System**

6 6. Upon completion of all Improvements, all storm water from the Facility  
7 shall be discharged through a single outfall, OF-1 shown in Exhibit A (the “Outfall”), which  
8 shall discharge to the municipal storm drain system through the existing connection.

9 Notwithstanding the foregoing, if it is determined either during or after the Construction  
10 Period that it would be more efficient to discharge storm water passing through Interceptor 1  
11 from more than one discharge point, or from a different discharge point, Sims shall notify  
12 CSPA of such determination in writing and the Parties shall confer regarding the need and  
13 rationale for the alternative discharge point(s). In the event the Parties agree that alternative  
14 or additional discharge point(s) are appropriate, Sims shall revise Exhibit A to depict the  
15 location of the additional or alternative outfall(s) and make such other revisions to its Storm  
16 Water Pollution Prevention Plan as are necessary. In the event the Parties are unable to reach  
17 agreement, CSPA may invoke the Dispute Resolution provisions set forth herein below.

18 **Exceedance of Design Storm; Bypass**

19 7. Sims shall be allowed to discharge storm water from a bypass upstream of  
20 the Interceptors, directly to the Outfall, for any storm water discharges to the Interceptors in  
21 excess of 1,000 gpm (“Initial Bypass Water”).

22 8. Sims shall be allowed to discharge storm water from a second bypass  
23 downstream or in the vicinity of the Detention Basin, directly to the Outfall, if both of the  
24 following conditions are satisfied: (i) the storm water was processed through one of the  
25 Interceptors and then pumped by the Pump Station to the Detention Basin, and (ii) such  
26 discharges from the Detention Basin exceed the combined capacity of the Sand Filter and the  
27 Infiltration Area (“Secondary Bypass Water”).

28

1           9.       Sims shall evaluate the feasibility of pumping some or all Secondary Bypass  
2 Water into other areas within the Facility to provide an opportunity for such water to be  
3 recirculated through some portion or all of the Improvements as capacity becomes available  
4 (“Recirculation System”), and shall implement this measure as an additional Improvement if  
5 determined to be feasible. Sims shall report its findings on the feasibility of a Recirculation  
6 System to CSPA no later than May 1, 2011, and if determined to be feasible, shall construct  
7 such Recirculation System by September 1, 2011.

8 **Improvements to the Facility’s Sweeping Practices**

9           10.       During the Construction Period Sims shall continue to implement the  
10 Sweeping Program described in its SWPPP, using the Tymco 435 Regenerative Sweeper  
11 currently operated by the Facility (or equivalent), the vacuum-assisted industrial sweeper  
12 currently operated by the Facility (“Secondary Sweeper”), and such other automated or  
13 manual sweeping as described therein. Such sweeping shall be undertaken with the  
14 Regenerative Sweeper on a twice-weekly basis for all areas of the Facility that may  
15 reasonably and safely be accessed by such equipment.

16           11.       Within 60 days after the Court Approval Date, Sims shall review the  
17 Sweeping Program for the Facility and shall revise it, as necessary, to include the following  
18 provisions, at a minimum: (i) ensure that sweeping and cleaning practices are designed to  
19 minimize tracking and other dispersal of pollutants on paved areas of the Facility and to  
20 minimize the tracking and other dispersal of pollutants from the Facility to areas outside the  
21 Facility; (ii) identify areas of the Facility that are to be swept with the Regenerative Sweeper,  
22 areas that are to be swept with the Secondary Sweeper, areas that must be swept manually,  
23 and areas where sweeping is not feasible (such as under stockpiles of metal or other  
24 recyclable materials); (iii) specify the frequency with which each area of the Facility is to be  
25 swept, consistent with the terms of this Agreement, both during the Dry Season and the Wet  
26 Season; (iv) identify triggers for more frequent ad hoc sweeping or cleaning (e.g., visual  
27 accumulation of dust or debris); (v) specify that, at least annually, Sims shall conduct a  
28 thorough inspection of the Facility, and to the extent warranted by this inspection, perform



1 additional Facility sweeping or cleaning to remove significant accumulations of finely  
2 divided metals, dust, shavings, or other pollutants that could become entrained in storm water  
3 discharged from the Facility, and that would not otherwise be removed by the Treatment  
4 System; (vi) prohibit the discharge of any waste fluids or solid wastes generated in site  
5 cleaning and sweeping to storm drain inlets or waterways; and (vii) require that Sims shall  
6 collect and dispose of all wastes generated during Facility cleaning and sweeping in a manner  
7 that complies with all applicable local, state, and federal laws. This Sweeping Program shall  
8 be incorporated into Sims' SWPPP and followed throughout the term of this Consent  
9 Agreement.

10 **Inspection, Maintenance and Monitoring**

11           12.       Within 30 days of the Court Approval Date, Sims shall further amend its  
12 SWPPP to include a requirement that all waste storage containers at the Facility shall either  
13 be stored indoors or, if stored outdoors, shall be covered at all times during the Wet Season,  
14 except when in the process of being loaded or unloaded, to prevent dust, shavings, and other  
15 materials from being blown or washed outside the waste storage containers.

16           13.       Within 30 days of the Court Approval Date, Sims shall implement a revised  
17 Facility maintenance schedule consistent with this Consent Agreement, including employee  
18 training materials and inspection schedules and logs, which schedules and logs shall be  
19 incorporated into the Facility SWPPP.

20           14.       Within 30 days of the Court Approval Date, Sims agrees to amend its  
21 SWPPP to require it to maintain appropriate logs of all cleaning, sweeping, maintenance and  
22 inspection activities at the Facility pertaining to storm water BMPs, which shall include the  
23 name of the person or persons conducting the activity, the date such activities took place, and  
24 whether such activities took place in the morning or afternoon.

25           15.       Within 30 days of the Court Approval Date, Sims agrees to amend its  
26 SWPPP to require the inspection and, if necessary, maintenance, of all storm water collection  
27 and discharge points at the Facility on a weekly basis during the Wet Season to ensure that  
28 they are functioning properly. Such inspections and maintenance shall occur weekly and just

1 prior to forecasted storm events that may reasonably result in storm water discharges from  
2 the Facility. Sims shall record the results of all such inspections in the applicable Facility  
3 inspection logs.

4 **Sampling Program**

5           16.       After the Parties' execution of this Agreement and through the Construction  
6 Period, Sims shall collect four (4) storm water samples from each storm water outfall at the  
7 Facility (referred to in Exhibit A as OF-1, OF-2, and OF-3, each a current "Facility  
8 Discharge Point"), during working hours, in accordance with the sampling requirements set  
9 forth in Section B.5 of the General Permit ("Qualifying Storm Events"). In the event that no  
10 Qualifying Storm Events have occurred by March 1 of any particular Wet Season, Sims shall  
11 continue to make best efforts to collect the requisite four samples from storm events that are  
12 non-qualifying due solely to the fact that they are not preceded by three (3) working days  
13 during which no storm water discharges have occurred (hereafter, "Non-qualifying Storm  
14 Events"). Samples from Non-qualifying Storm Events may be used to satisfy the sampling  
15 requirements of this paragraph if fewer than four Qualifying Storm Events occur prior to  
16 completion of the Construction Period.

17           17.       Subsequent to the Construction Period, and during each of the 2010-2011  
18 and 2011-2012 Wet Seasons Sims shall collect four (4) storm water samples from Qualifying  
19 Storm Events from the remaining single storm water outfall at the Facility (referred to in  
20 Exhibit A as OF-1, the "Facility Discharge Point"). In the event that Sims determines to  
21 discharge storm water from the Facility at more than one discharge point pursuant to  
22 Paragraph 6 above, Sims shall additionally be required to collect four (4) storm water  
23 samples from any such additional discharge points during the 2010-2011 Wet Season and  
24 three (3) storm water samples from any such additional discharge points in the 2011-2012  
25 Wet Season. All sampling shall be conducted in accordance with the sampling requirements  
26 set forth in Section B.5 of the General Permit. In the event that no Qualifying Storm Events  
27 have occurred by March 1 of the applicable Wet Season, Sims shall continue to make best  
28 efforts to collect the requisite number of samples from Non-qualifying Storm Events.

1 Samples from Non-qualifying Storm Events may be used to satisfy the sampling  
2 requirements of this paragraph if fewer than the requisite number of Qualifying Storm Events  
3 occur during a particular Wet Season.

4           18.       Sims shall analyze each storm water discharge sample collected from each  
5 Facility Discharge Point, as prescribed by Paragraphs 16 and 17 herein, for each of the  
6 constituents listed in Exhibit I, consistent with the requirements of Paragraph 19 below, and  
7 shall comply with the Interim Action Memorandum requirements described below, as  
8 applicable.

9           19.       Beginning immediately after the Parties' execution of this Consent  
10 Agreement and throughout the duration of the Consent Agreement, Sims shall maintain a  
11 storm event log at the Facility for those dates on which storm events have occurred, including  
12 the date, weather conditions, and estimated duration of any discharges from the Facility.  
13 Storm event logs shall be made available to CSPA within five (5) working days of a written  
14 request by CSPA.

15           20.       All storm water samples collected pursuant to this Consent Agreement shall  
16 be analyzed by a laboratory accredited by the State of California. All samples collected from  
17 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample  
18 "hold time" is not exceeded. Sims shall request that sample results shall be reported to it  
19 within ten (10) days of laboratory receipt of the sample. Analytical methods used by the  
20 laboratory shall be adequate to detect the individual constituents at or below the values  
21 specified on Exhibit I. All sampling results shall be provided to CSPA within seven (7) days  
22 of Sims' receipt of such sampling results from the laboratory.

23           21.       Within thirty (30) days after receipt of storm water sampling results, Sims  
24 shall provide CSPA with a chart in digital or hard copy form that summarizes the results of  
25 all samples collected to that date in the current Wet Season (defined as the period between  
26 October 1 of a given year and May 31 of the subsequent year) along with a column or row  
27 showing those constituent levels specified in Exhibit I for comparison purposes ("Summary  
28 Table").

1 **Interim Action Memoranda**

2           22.       After the Parties' execution of this Agreement and throughout the  
3 Construction Period, Sims shall compare the concentration of each reported constituent for  
4 the sampled storm water, as set forth in the most recent Summary Table, with the  
5 corresponding concentration level on Exhibit I. If the concentration of any constituent in the  
6 applicable Summary Table exceeds the concentration level specified on Exhibit I for any  
7 sampling event, then, within 30 days of Sims' receipt of the lab result in question, Sims shall  
8 prepare and transmit to CSPA an interim action memorandum; provided, however, that Sims  
9 shall not be required to prepare more than one interim action memorandum prior to  
10 completion of the Construction Period. The interim action memorandum shall discuss the  
11 circumstances surrounding the discharge and the measures, if any, that Sims proposes to take  
12 to improve storm water controls at the Facility (pending completion of the Improvements)  
13 and a reasonable schedule to implement those proposed measures which are feasible for  
14 implementation at the Facility ("Interim Action Memorandum"). Revisions to existing  
15 structural or non-structural BMPs, or additional structural or non-structural BMPs, may  
16 include, but are not limited to, interim improvements to the Facility's storm water collection,  
17 management, and discharge system, increasing the frequency of Facility sweeping, removal  
18 of sediment from the interceptors, or modifying other industrial activities or management  
19 practices at the Facility. Notwithstanding the foregoing, nothing in this Agreement, nor any  
20 of the actions undertaken by Sims pursuant to this Agreement, shall be construed as an  
21 admission by Sims that it has any obligation to achieve any constituent levels set forth in  
22 Exhibit I.

23           23.       CSPA may review and comment on an Interim Action Memorandum and  
24 suggest any additional pollution prevention or other measures it believes are appropriate.  
25 However, CSPA's failure to provide comments on, or agreement with, any aspect of an  
26 Interim Action Memorandum or the reasonableness of any additional measures proposed or  
27 implemented by Sims shall not be deemed to be an admission by CSPA of the adequacy of  
28 such measures. Upon written request by CSPA, the Parties shall meet and confer in good

1 faith within 30 days of CSPA's request, or such other time as may be agreed to by the  
2 Parties, regarding the contents of an Interim Action Memorandum or the adequacy of the  
3 measures, if any, Sims proposes to implement to further reduce pollutant levels in storm  
4 water discharges from the Facility. If the Parties are able to resolve CSPA's concerns  
5 through the meet-and-confer process concerning the Interim Action Memorandum, Sims  
6 shall implement the measures identified in the Interim Action Memorandum according to the  
7 schedule set forth therein or as the Parties may otherwise agree. If the Parties fail to meet  
8 and confer, or the meet-and-confer does not resolve CSPA's concerns, CSPA may invoke the  
9 Dispute Resolution provisions set forth herein below. As set forth in Paragraph 3 herein, in  
10 any judicial proceeding, Sims shall bear the burden of demonstrating that its BMPs,  
11 collectively, constitute BAT/BCT for the Facility.

12           24.       Within fourteen (14) days of implementation, Sims shall amend its SWPPP  
13 to include all additional BMPs or BMP revisions designated in an Interim Action  
14 Memorandum.

15 **Action Memoranda**

16           25.       Subsequent to the Construction Period, Sims shall compare the  
17 concentration of each reported constituent for the sampled storm water, as set forth in the  
18 most recent Summary Table, with the corresponding concentration level on Exhibit I. If the  
19 concentration of any constituent in the applicable Summary Table exceeds the concentration  
20 level specified on Exhibit I for two consecutive sampling events conducted after the date of  
21 implementation of any BMPs identified in the last Interim Action Memorandum or Action  
22 Memorandum and which sampling events are separated by more than 30 days, then, within  
23 30 days thereafter, Sims shall prepare an action memorandum. The action memorandum  
24 shall discuss the circumstances surrounding the discharge and the measures, if any, that Sims  
25 proposes to take to further improve storm water controls at the Facility and a reasonable  
26 schedule to implement those proposed measures which are feasible for implementation at the  
27 Facility ("Action Memorandum"). Revisions to existing structural or non-structural BMPs,  
28 or additional structural or non-structural BMPs, may include, but are not limited to, further

1 improvements to the Facility's storm water collection, management, and discharge system,  
2 increasing the frequency of Facility sweeping, removal of sediment from the interceptors, or  
3 modifying other industrial activities or management practices at the Facility.  
4 Notwithstanding the foregoing, nothing in this Agreement, nor any of the actions undertaken  
5 by Sims pursuant to this Agreement, shall be construed as an admission by Sims that it has  
6 any obligation to achieve any constituent levels set forth in Exhibit I. Further, no actions  
7 taken by Sims pursuant to this paragraph shall be construed as an admission or evidence that  
8 the storm water system or any other BMP implemented by Sims fails to achieve BAT/BCT.

9           26.       The parties acknowledge that it is possible, under certain meteorological  
10 conditions, that, given the vagaries of predicting the nature and character of future storm  
11 events, the Improvements required herein may not perform hydraulically as well as designed,  
12 intended and/or predicted. While Sims agrees to undertake the engineering work required  
13 herein prudently and in good faith, both Parties agree that the vagaries of rainfall events  
14 make it impossible to predict the actual hydraulic performance of the Improvements before  
15 installation.

16           Accordingly, to provide both Parties with a reasonable opportunity to evaluate the  
17 actual hydraulic performance of the Improvements, Sims agrees to evaluate the hydraulic  
18 performance of the Improvements during the first two significant storm events of the 2010-  
19 2011 Wet Season and thereafter to make such modifications to the Improvements as may be  
20 warranted (e.g., increasing the infiltration capacity and/or installing additional advanced  
21 treatment). Sims shall provide CSPA with notice of the date(s) upon which the evaluation of  
22 the Improvements will be conducted and allow CSPA to observe the performance of the  
23 Improvements and to make recommendations concerning modifications thereto. Nothing in  
24 this paragraph shall negate any obligation that Sims may have to prepare an Action  
25 Memorandum as specified in Paragraph 25. However, nothing in this paragraph shall  
26 obligate Sims to modify the Improvements if the storm water sampling results collected  
27 pursuant to Paragraph 17 do not exceed any of the levels listed on Appendix I. No actions  
28

1 taken by Sims pursuant to this paragraph shall be construed as an admission or evidence that  
2 the storm water system or any other BMP implemented by Sims fails to achieve BAT/BCT.

3           27.       CSPA may review and comment on an Action Memorandum and suggest  
4 any additional pollution prevention or other measures it believes are appropriate. However,  
5 CSPA's failure to provide comments on, or agreement with, any aspect of an Action  
6 Memorandum or the reasonableness of any additional measures proposed or implemented by  
7 Sims shall not be deemed to be an admission by CSPA of the adequacy of such measures.  
8 Upon written request by CSPA, the Parties shall meet and confer in good faith within 30 days  
9 of CSPA's request, or such other time as may be agreed to by the Parties, regarding the  
10 contents of an Action Memorandum or the adequacy of the measures, if any, Sims proposes  
11 to implement to reduce pollutant levels in storm water discharges from the Facility. If the  
12 Parties are able to resolve CSPA's concerns through the meet-and-confer process concerning  
13 the Action Memorandum, Sims shall implement the BMPs identified in the Action  
14 Memorandum according to the schedule set forth therein or as the Parties may otherwise  
15 agree. If the Parties fail to meet and confer, or the meet-and-confer does not resolve CSPA's  
16 concerns, CSPA may invoke the Dispute Resolution provisions set forth herein below. As  
17 set forth in paragraph 3 herein, in any judicial proceeding, Sims shall bear the burden of  
18 demonstrating that its BMPs, collectively, constitute BAT/BCT for the Facility.

19           28.       Within fourteen (14) days of implementation, Sims shall amend its SWPPP  
20 to include all additional BMPs or BMP revisions designated in an Action Memorandum.

21 **Inspections and Reporting**

22           29.       In addition to any site inspections conducted as part of the meet-and-confer  
23 process on an Action Memorandum as set forth above, Sims shall permit representatives of  
24 CSPA to perform up to three (3) physical inspections of the Facility (which may include  
25 sampling, photographing, and/or videotaping as described below) during the term of this  
26 Consent Agreement. CSPA shall provide at least three (3) business days advance written  
27 notice of each such physical inspection. Notwithstanding the foregoing, Sims shall have the  
28 right to deny access to the Facility if circumstances would make the inspection unduly

1 burdensome and pose significant interference with business operations on the day requested.  
2 In such case, Sims shall specify at least three (3) dates within the next fourteen (14) calendar  
3 days upon which a physical inspection by CSPA may proceed. Sims shall not make any  
4 alterations to Facility conditions during the period between receiving CSPA’s notice and the  
5 start of CSPA’s inspection that Sims would not otherwise have made but for receiving notice  
6 of CSPA’s request to conduct a physical inspection of the Facility. Nothing herein shall be  
7 construed to prevent Sims from continuing to implement any BMPs identified in its SWPPP  
8 during the period prior to an inspection by CSPA.

9           30.       In addition to the terms provided in Paragraph 29, all inspections shall be  
10 subject to the following conditions:

11                   a.       CSPA understands and acknowledges that the Facility is an active  
12 metal recycling facility involving use of heavy machinery, trucking operations, rail  
13 operations, scrap metal storage and handling, hazardous material storage, and other  
14 active heavy industrial operations. CSPA, on behalf of its employees, agents,  
15 contractors, and other authorized representatives (“CSPA Visitors”), is aware that  
16 engaging in the inspection activities provided for in this Consent Agreement (the  
17 “Activities”) involves potential risks to the safety of the CSPA Visitors. CSPA and  
18 the CSPA Visitors acknowledge that they are voluntarily participating in the  
19 Activities with full awareness of the risks involved. Accordingly, CSPA and the  
20 CSPA Visitors hereby agree to accept any and all risks of injury or death associated  
21 with conducting or participating in the Activities, and hereby release and forever  
22 discharge Sims, its parent, subsidiaries, and affiliates, invitees, contractors and  
23 subcontractors, and each of their officers, directors, employees, agents, and  
24 representatives, and each of their successors and assigns (each a “Sims Releasee”),  
25 from any and all liability for property damage, bodily injury or death that may be  
26 associated with entry onto the Facility and engagement in the Activities provided for  
27 in this Agreement, except to the extent that such property damage, injury or death was  
28 caused by the negligence or willful misconduct of Sims or any Sims Releasee.



1           b.       For safety reasons, CSPA agrees that CSPA Visitors shall have access  
2 to the Facility only during normal business hours, except as otherwise expressly  
3 allowed by Sims. Prior to commencing the Activities, CSPA Visitors shall check in  
4 at the reception area at the Facility and request to see Mr. Dave Rogers, Sims’  
5 Facility Manager, or such other person as designated by Sims prior to the Activities  
6 (hereafter, “Sims’ Representative”). The CSPA Visitors shall at all times be  
7 accompanied by Sims’ Representative, and no CSPA Visitor shall conduct any  
8 Activities on any portion of the Facility unless accompanied by Sims’ Representative.

9           c.       CSPA Visitors shall perform all Activities in accordance with all  
10 applicable federal, state, and local laws, rules, regulations, orders, ordinances,  
11 permits, and requirements (“Laws”) and Sims policies that govern the safe  
12 implementation of the Activities, including but not limited to those Laws pertaining  
13 to compliance with OSHA. Sims’ Representative shall inform the CSPA Visitors of  
14 Sims’ safety policies and requirements in advance of any Activities.

15           d.       Sims shall have the right to stop or otherwise restrict any Activities  
16 based on its assessment of safety conditions in the vicinity of such Activities,  
17 provided, however, that CSPA Visitors shall remain responsible for their health,  
18 safety, and security during performance of the Activities. CSPA Visitors shall take  
19 all measures necessary to properly protect (i) all persons at or in proximity to the  
20 Activities from risk of injury and danger to health, and (ii) real and tangible personal  
21 property and equipment from damage or loss resulting from the Activities. If CSPA  
22 Visitors encounter any condition at the Facility that is potentially or actually unsafe  
23 during the course of the Activities, they immediately shall cease such Activities and  
24 promptly notify Sims’s Representative.

25           e.       CSPA shall limit the use and disclosure of any information obtained  
26 during any Activities at the Facility to purposes solely related to CSPA’s enforcement  
27 of this Consent Agreement. At the end of each inspection visit, the CSPA Visitors  
28 shall provide Sims with the opportunity to review and obtain copies of all

1 photographs taken and videotapes made during the inspection. Sims shall have the  
2 right to designate certain photographs, videotapes or portions thereof as confidential,  
3 trade secret information (“Confidential Information”); CSPA shall have the right to  
4 challenge any such designation by bringing the matter to the Magistrate assigned to  
5 this matter for resolution. In the event that CSPA desires to use any Confidential  
6 Information in Dispute Resolution proceedings under this Consent Agreement, such  
7 Confidential Information may only be used if it is first placed under an enforceable  
8 protective seal to prevent public disclosure. CSPA’s obligation to limit the use and  
9 disclosure of any Confidential Information obtained during any Activities, as  
10 described herein, shall survive the expiration of this Agreement.

11 f. Prior to each inspection of the Facility, CSPA agrees to inform each  
12 CSPA Visitor that will participate in the Activities of the conditions in this  
13 paragraph 30 and to obtain the written consent of each CSPA Visitor to such  
14 conditions, replacing references to CSPA as appropriate with references to that CSPA  
15 Visitor.

16 31. During the term of this Consent Agreement, Sims shall provide CSPA with  
17 copies of all documents submitted to the Regional Board, the State Board, and the County of  
18 Sacramento, Environmental Management Department, Water Protection Division,  
19 concerning storm water discharges from the Facility including, but not limited to, all  
20 documents and reports submitted to the Regional Board and/or State Board as required by the  
21 General Permit. Such documents and reports shall be provided to CSPA pursuant to the  
22 Notice provisions herein and contemporaneously with Sims’ submission to such agency.

23 32. Within thirty (30) days after the Court Approval Date and again within  
24 thirty (30) days after the Parties reach agreement or Dispute Resolution proceedings have  
25 concluded on any meet-and-confer process conducted under this Agreement, and again  
26 within 30 days after any other additional BMPs are implemented by Sims independent of the  
27 Dispute Resolution process, Sims shall amend the Facility SWPPP as necessary to  
28 incorporate all Facility changes, improvements and BMPs set forth in this Consent

1 Agreement or otherwise agreed to by the Parties or ordered by the Court. Sims shall provide  
2 a copy of the amended SWPPP to CSPA within fourteen (14) days of any amendment.

3 **II. MITIGATION; REIMBURSEMENT OF FEES AND COSTS; COMPLIANCE**  
4 **MONITORING FUND**

5 33. **Mitigation Grant Funding** . In lieu of payment by Sims of any civil  
6 penalties which may have been assessed had this action proceeded to trial, Sims will pay the  
7 sum of \$100,000.00 to the Rose Foundation for Communities and the Environment (“Rose  
8 Foundation”) in two equal installments, in accordance with the schedule set forth below. Of  
9 that sum, \$70,000.00 is attributed to resolving the allegations set forth in CSPA’s CWA  
10 Notice Letter and \$30,000 is attributed to resolving the allegations set forth in CSPA’s  
11 Proposition 65 Notice Letter. The Rose Foundation shall direct these funds as specified  
12 below, and shall not retain any portion of the funds, except for the normal costs necessary to  
13 cover its overhead, not to exceed ten (10) percent of the total funds. Funds received in  
14 mitigation of the alleged Clean Water Act violations shall be used by the Rose Foundation to  
15 fund grant awards to projects that benefit water quality in the Sacramento River, the San  
16 Joaquin River and/or the Sacramento-San Joaquin Delta. Funds received in mitigation of the  
17 alleged Proposition 65 violations shall be used by the Rose Foundation for grant funding to  
18 California non-profit groups to reduce the discharge of known toxins to sources of drinking  
19 water, to reduce exposures to toxic chemicals, and to increase consumer, worker and  
20 community awareness of the health hazards posed by toxic chemicals, consistent with the  
21 purposes of Proposition 65. Sims shall pay the first installment of the mitigation grant  
22 monies (\$50,000.00) to the Rose Foundation within seven (7) days after the Court Approval  
23 Date; the second installment (\$50,000.00) shall be paid on or before October 1, 2010. .

24 34. Sims agrees to reimburse CSPA in the amount of \$54,750 to defray CSPA’s  
25 reasonable investigative, expert, consultant and attorneys’ fees and costs, and all other costs  
26 incurred as a result of investigating the activities at the Facility, preparing the Notices, and  
27 negotiating a resolution of this action in the public interest. Such payment shall be made to  
28

1 the Law Offices of Andrew L. Packard Attorney Client Trust Account within seven (7) days  
2 after the Court Approval Date.

3 35. Sims agrees to contribute \$5,000 per year for each of the four years covered  
4 by this Consent Agreement, to a compliance monitoring fund maintained by CSPA to defray  
5 CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs associated  
6 with monitoring Sims' compliance with this Consent Agreement. Compliance monitoring  
7 activities may include but shall not be limited to, site inspections, review of water quality  
8 sampling reports, review of annual reports, discussions with representatives of Sims  
9 concerning the actions taken or proposed to be taken pursuant to the Interim Action  
10 Memorandum or Action Memorandum discussed above, and potential changes to compliance  
11 requirements herein, preparation for and participation in meet-and-confer sessions and  
12 mediation, water quality sampling, and compliance-related activities. The first such payment  
13 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust  
14 Account within seven (7) days of the Court Approval Date; the second, third and fourth  
15 season payments shall be due on January 31, 2010, January 31, 2011, and January 31, 2012,  
16 respectively. In the event that CSPA has not expended all of the compliance monitoring  
17 funds for compliance activities at the Facility in a given year, any funds remaining shall be  
18 rolled over into the next year and Sims' payment obligation under this paragraph for the next  
19 year shall be reduced accordingly. If any unused compliance monitoring funds remain at the  
20 expiration of this Consent Agreement such funds shall be returned to Sims within fourteen  
21 (14) days of the expiration date.

22 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT**  
23 **AGREEMENT**

24 36. If a dispute under this Consent Agreement arises, or either Party believes  
25 that a breach of this Consent Agreement has occurred, the Parties shall meet and confer  
26 within seven (7) days of receiving written notification from the other Party of a request for a  
27 meeting to determine whether a breach has occurred and to develop a mutually agreed upon  
28 plan, including implementation dates, to resolve the dispute or cure the breach. If the Parties

1 fail to meet and confer or the meet-and-confer does not resolve the issue, after at least seven  
2 days have passed after the meet-and-confer occurred or should have occurred, the Parties  
3 may mutually agree to enter into a mediation process, the cost of which is to be borne by  
4 Sims. Mediation shall be completed within sixty-five (65) days from the date the Parties  
5 agree to enter into mediation or as soon thereafter as is possible in accordance with the  
6 mutually-selected mediator. The Parties stipulate to retaining the San Francisco Office of  
7 JAMS to conduct such mediation. If the Parties fail to resolve the issue through mediation,  
8 or if either Party chooses not to enter into mediation, either Party shall be entitled to all rights  
9 and remedies under the law, including filing a motion with the District Court of California,  
10 Eastern District, which shall retain jurisdiction over the Action for the limited purposes of  
11 enforcement of the terms of this Consent Agreement. The party who prevails on the motion  
12 or at the mediation shall be entitled to reasonable investigative, consulting and attorneys' fees  
13 and costs incurred in connection with the motion or the mediation process; all such fees and  
14 costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean  
15 Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting such provisions.

16       37.       **CSPA Waiver and Release of Sims.** Upon Court approval and entry of  
17 this Consent Agreement, CSPA, on its own behalf and on behalf of its officers, directors,  
18 employees, members, parent, subsidiaries, and affiliates, and each of their successors and  
19 assigns, and its agents, attorneys, and other representatives:

20               a.       releases all persons including, without limitation, Sims and its officers,  
21               directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of  
22               their predecessors, successors and assigns, and each of their agents, attorneys,  
23               consultants, and other representatives (each a "Released Sims Party") from, and  
24               waives all claims which arise from or pertain to this action, including, without  
25               limitation, all claims for injunctive relief, damages, penalties, fines, sanctions,  
26               mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
27               any other sum incurred or claimed or which could have been claimed for matters  
28               associated with or related to CSPA's February 13, 2008 and March 24, 2009 Notices,

1 or the Clean Water Act, the General Permit, or California’s Health & Safety Code  
2 Section 25249.5 *et seq.*, as those laws may relate to storm water discharges from the  
3 Facility, (each and all a “Storm Water Law”), whether known or unknown, including,  
4 without limitation, all such matters with respect to the alleged failure of Sims or any  
5 other person to comply with all or any portion of any Storm Water Law at the  
6 Facility, up to the Court Approval Date (hereinafter “Claims”), except as specifically  
7 provided for in this Consent Agreement.

8 b. releases all persons, including, but not limited to, Sims and every  
9 Released Sims Party from, and waives, all claims for injunctive relief, damages,  
10 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
11 others), costs, expenses or any other sum incurred or claimed, or which could be  
12 claimed with respect to any discharges of storm water from the Facility in alleged  
13 violation of any Storm Water Law that may arise during the term of this Consent  
14 Agreement.

15 c. covenants not to sue Sims or any Released Sims Party with respect to  
16 any alleged violations of any Storm Water Law at the Facility that may arise during  
17 the term of this Consent Agreement.

18 38. **Sims Waiver and Release of CSPA.** Sims, on its own behalf and on behalf  
19 of those Released Sims Parties under its control, releases CSPA (and its officers, directors,  
20 employees, members, parents, subsidiaries, and affiliates, and each of their successors and  
21 assigns, and its agents, attorneys, and other representatives) from, and waives all claims  
22 which arise from or pertain to this action, including all claims for fees (including fees of  
23 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which  
24 could have been claimed for matters associated with or related to this Action.

25 39. Upon the Court Approval Date, the Parties shall file with the Court a  
26 Stipulation and Order that shall provide that:

27 a. the Complaint and all claims therein shall be dismissed with prejudice  
28 pursuant to Federal Rule of Civil Procedure 41(a)(2); and

1                   b.       the Court shall retain and have jurisdiction over the Parties with  
2                   respect to disputes arising under this Consent Agreement.

3                   40.       The Parties enter into this Consent Agreement for the purpose of avoiding  
4                   prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as,  
5                   and Sims expressly does not intend to imply, an admission as to any fact, finding, issue of  
6                   law, or violation of law, nor shall compliance with this Consent Agreement constitute or be  
7                   construed as an admission by Sims of any fact, finding, conclusion, issue of law, or violation  
8                   of law. However, this paragraph shall not diminish or otherwise affect the obligation,  
9                   responsibilities, and duties of the Parties under this Consent Agreement.

10 **IV.   Miscellaneous Provisions**

11                  41.       The Consent Agreement shall terminate on January 31, 2013.

12                  42.       The Consent Agreement may be executed in one or more counterparts  
13                  which, taken together, shall be deemed to constitute one and the same document.

14                  43.       In the event that any of the provisions of this Consent Agreement is held by  
15                  a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
16                  affected.

17                  44.       The language in all parts of this Consent Agreement, unless otherwise  
18                  stated, shall be construed according to its plain and ordinary meaning.

19                  45.       The undersigned are authorized to execute this Consent Agreement on  
20                  behalf of their respective parties and have read, understood and agreed to all of the terms and  
21                  conditions of this Consent Agreement.

22                  46.       All agreements, covenants, representations and warranties, express or  
23                  implied, oral or written, of the Parties concerning the subject matter of this Consent  
24                  Agreement are contained herein.

25                  47.       **Notices.** Any notices or documents required or provided for by this Consent  
26                  Agreement or related thereto that are to be provided to CSPA pursuant to this Consent  
27                  Agreement shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as  
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1 follows or, in the alternative, shall be sent by electronic mail transmission to the email  
2 addresses listed below or by confirmed facsimile:

3 Bill Jennings, Executive Director  
4 California Sportfishing Protection Alliance  
5 3536 Rainier Avenue  
6 Stockton, CA 95204  
7 DeltaKeep@aol.com

8 With copies sent to:

9 Andrew L. Packard  
10 Law Offices of Andrew L. Packard  
11 319 Pleasant Street  
12 Petaluma, CA 94952  
13 andrew@packardlawoffices.com  
14 Fax: (707) 763-9227

15 And to:

16 Michael R. Lozeau  
17 Lozeau Drury LLP  
18 1516 Oak Street, Suite 216  
19 Alameda, CA 94501  
20 michael@lozeaudrury.com

21 Any notices or documents required or provided for by this Consent Agreement or related  
22 thereto that are to be provided to Sims pursuant to this Consent Agreement shall be sent by  
23 U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by  
24 electronic mail transmission to the email addresses listed below or by confirmed facsimile:

25 William E. Beebe  
26 Safety, Health, Environmental & Community Director  
27 Northwest Region  
28 Sims Metal Management  
29 600 S. 4<sup>th</sup> Street  
30 Richmond, CA 94804  
31 Fax: (510) 412-5421 \_\_\_\_\_

32 With copies sent to:

33 Scott Miller, Esq.  
34 Chief Corporate Counsel (SHEC)  
35 Sims Metal Management  
36 110 Fifth Avenue, Seventh Floor  
37 New York, New York 10011  
38 scott.miller@simsmm.com  
39 Fax: (212) 604-0722

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1 and to:

2 Margaret Rosegay, Esq.  
3 Pillsbury Winthrop Shaw Pittman LLP  
4 50 Fremont Street  
5 San Francisco, CA 94105  
6 margaret.rosegay@pillsburyllp.com  
7 Fax: (415) 983-1200

8 Each party shall promptly notify the other of any change in the above-listed contact  
9 information.

10 48. Signatures of the Parties transmitted by facsimile shall be deemed binding.

11 49. No Party shall be considered to be in default in the performance of any of its  
12 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is  
13 any circumstances beyond the Party's reasonable control, including, without limitation, any  
14 act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A  
15 Force Majeure event does not include normal inclement weather or inability to pay. Any  
16 Party seeking to rely upon this paragraph shall have the burden of establishing that it could  
17 not reasonably have been expected to avoid, and which by exercise of due diligence has been  
18 unable to overcome, the Force Majeure.

19 50. If for any reason the Court should decline to approve this Consent  
20 Agreement in the form presented, the Parties shall use their best efforts to work together to  
21 modify the Consent Agreement within thirty (30) days so that it is acceptable to the Court. If  
22 the Parties are unable to modify this Consent Agreement in a mutually acceptable manner,  
23 this Consent Agreement shall become null and void.

24 ///  
25 ///  
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1           51.       The settling Parties hereto enter into this Consent Agreement and submit it  
2 to the Court for its approval and entry as a final judgment pursuant to the stipulated dismissal  
3 referenced hereinabove.

4 Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

6 By: \_\_\_\_\_  
7 Bill Jennings, Executive Director

8 Dated: \_\_\_\_\_ Sims Group USA Corporation

10 By: \_\_\_\_\_  
11 Steve Shinn, President

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**EXHIBIT I**

<b>Constituent</b>	<b>Level</b>
Aluminum	0.75 mg/l
Cadmium	0.0159 mg/L
Chemical Oxygen Demand	120 mg/L
Copper	0.0636 mg/l
Iron	1.0 mg/l
Lead	0.0816 mg/L
Manganese	1.0 mg/L
Mercury	0.0024 mg/L
Oil & Grease	15 mg/L
pH	6.5 – 8.5
Specific Conductivity	200 µmho/cm
Total Suspended Solids	100 mg/L
Zinc	0.117 mg/L

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