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16 Attorneys for Plaintiff
17 CALIFORNIA SPORTFISHING
18 PROTECTION ALLIANCE

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 CALIFORNIA SPORTFISHING
22 PROTECTION ALLIANCE, a non-profit
23 corporation,

24 Plaintiff,

25 vs.

26 LAKE COUNTY, LAKE COUNTY
27 DEPARTMENT OF PUBLIC
28 SERVICES, KIM KEVIN CLYMIRE, in
his official capacity, and CHUCK
MAVES,

Defendants.

Case No. 2:09-cv-01756-SI

[Proposed] CONSENT AGREEMENT

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

WHEREAS, Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
(hereinafter “CSPA”) is a non-profit public benefit corporation dedicated to the preservation,
protection, and defense of the environment, wildlife, and natural resources of California’s
waters;

1 **WHEREAS**, LAKE COUNTY, LAKE COUNTY DEPARTMENT OF PUBLIC
2 SERVICES, KIM KEVIN CLYMIRE and CHUCK MAVES (collectively hereinafter
3 “COUNTY”) operate an approximately 80-acre facility comprised of a landfill and recycling
4 center located at 16015 Davis Street in Clearlake, California (hereinafter, “the Facility”);

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

6 **WHEREAS**, COUNTY’s operations at the Facility primarily involve the collection and
7 storage of waste materials primarily consisting of household garbage and recycling materials
8 collected by COUNTY, and storage and maintenance of equipment appurtenant thereto;

9 **WHEREAS**, storm water from the West side of the Facility primarily drains to
10 Molesworth Creek which flows to Clear Lake, which flows into Cache Creek, a tributary to the
11 Sacramento River, which drains into the Sacramento-San Joaquin Delta and ultimately the San
12 Francisco Bay;

13 **WHEREAS**, storm water from the East side of the Facility primarily drains to an
14 unnamed tributary of Cache Creek itself;

15 **WHEREAS**, a map of the Facility is attached hereto as Exhibit “A” and incorporated
16 herein by reference;

17 **WHEREAS**, storm water discharges associated with industrial activity are regulated
18 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit
19 No. CAS000001 [State Water Resources Control Board], Water Quality Order No.
20 91-13-DWQ (as amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued
21 pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “General
22 Permit”);

23 **WHEREAS**, on February 7, 2009, CSPA provided notice of alleged violations of the
24 General Permit by COUNTY and CSPA’s intention to file suit against COUNTY (the
25 “Notice”) to the Administrator of the United States Environmental Protection Agency
26 (“EPA”); the Administrator of EPA Region IX; the Executive Director of the State Water
27 Resources Control Board (“State Board”); the Executive Officer of the Regional Water Quality
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1 Control Board, Central Valley Region (“Regional Board”); and to COUNTY, pursuant to
2 Section 505 of the Federal Water Pollution Control Act (“Act”), 33 U.S.C. § 1365. A true and
3 correct copy of the Notice is attached hereto as Exhibit B;

4 **WHEREAS**, CSPA filed a complaint (“Complaint”) against COUNTY in the United
5 States District Court, Northern District of California on April 22, 2009;

6 **WHEREAS**, COUNTY denies the occurrence of the violations alleged in the Notice
7 and Complaint;

8 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is
9 proper in this Court, and that COUNTY does not contest the exercise of jurisdiction by this
10 Court to enter this Consent Agreement;

11 **WHEREAS**, this Consent Agreement shall be submitted to the United States
12 Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c);
13 and shall thereafter be submitted for approval by the Court, the date of which approval shall be
14 referred to herein as the “Court Approval Date;”

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

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

21 **I. COMMITMENTS OF COUNTY**

22 1. **Implementation of Compliance Measures.** COUNTY shall continue to
23 implement all measures, or shall identify and implement such additional measures, as may be
24 needed to operate the Facility in full compliance with the requirements of the General Permit
25 and Clean Water Act, and shall operate the Facility in full compliance with the requirements
26 of the General Permit and Clean Water Act during the term of this Consent Agreement.

1 2. **BMP Implementation, Maintenance and Reassessment.** In order to further
2 reduce or prevent storm water discharges from the Facility, to the extent not already
3 implemented, COUNTY shall implement appropriate structural and non-structural BMPs as
4 more fully described below. During the two-year term of this Consent Agreement,
5 COUNTY shall maintain all structural BMPs at the site in good operating condition during
6 the period October 1 and May 30 of each year (the “Wet Season”) and as otherwise required
7 to conform to the General Permit and the Facility’s Storm Water Pollution Prevention Plan
8 (“SWPPP”).

9 3. **BMP Evaluation: Constituents of Concern Compared Against EPA**
10 **Benchmark Values as Set Forth in Exhibit C.** The effectiveness of the BMPs shall be
11 measured by comparing the results of storm water discharge samples collected and analyzed
12 in accordance with this Agreement (“Samples”) with the values as set forth in Exhibit C,
13 attached hereto and incorporated herein by reference. If the constituent concentration values
14 of any such Samples exceed the values set forth in Exhibit C, COUNTY agrees to comply
15 with the Action Memorandum requirements set forth below.

16 4. **Collection and Discharge Points Identified On SWWPP Map Attached**
17 **Hereto as Exhibit A.** Within sixty (60) days of the Court Approval, COUNTY shall
18 eliminate all storm water collection and discharge points except those presently shown on
19 Exhibit A hereto. (the revised SWPPP facility map, which shall be submitted at the time of
20 the mutual execution of this Consent Agreement, is attached hereto as Exhibit A).

21 5. **SWPPP Amendments.** Within 30 days of the Court Approval Date,
22 COUNTY shall formally amend its SWPPP to include all compliance measures set forth
23 herein as well as all requirements of the General Permit. COUNTY shall submit its revised
24 SWPPP for comment to CSPA within 15 days of the execution of this Agreement.

25 6. **Initial Revised Best Management Practices.** Within 30 days of the Court
26 Approval Date, COUNTY shall implement the following Best Management Practices at the
27 Facility:
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1 a. *Enlarge/Upgrade Detention Pond.* Enlarge the existing sediment
2 detention pond in the borrow area along the unnamed tributary of Cache Creek to a
3 capacity sufficient to handle a 25-year/24-hour storm event; develop maintenance
4 program to ensure this pond capacity. The parties understand and agree that, as to this
5 BMP, such an enlargement cannot take place until the conclusion of the 2010 Wet
6 Season; therefore this BMP shall be implemented on or before September 15, 2010.

7 b. *Improve Sweeping & Elimination of Visible Tracking.* A regenerative
8 sweeper shall be employed weekly on all paved surfaces of the facility and adjacent
9 roads throughout the year. In addition, a mechanical sweeper shall be employed on all
10 paved surfaces of the facility and adjacent roads daily during the wet season.

11 c. *Install Erosion Controls.* All barren and disturbed areas will be seeded.
12 Straw wattles, silt fences, and hay bales shall be installed annually in the areas
13 specified on the updated facility SWPPP map as necessary to prevent off-site transport
14 of eroded soils. All unpaved roads and earthen berms shall be subject to observation
15 monitoring as described in the revised SWPPP.

16 d. *Winterization Plan.* A winterization plan shall be prepared annually to
17 identify specific erosion and storm water controls to be implemented, together with
18 the specific location of, and the time frame for implementation of, each such storm
19 water control measure.

20 e. *Improve Grading.* The perimeter of the landfill's operation area shall
21 be graded in a way that will best prevent storm water from creating rills, channels and
22 gullies;

23 f. *Upgrade Sediment Controls for Access Road Surfaces.* Repair and
24 prevent ongoing roadbed erosion, especially on Facility's steeper roads, such as the
25 road on the West side of the Facility leading down to the leachate collection pond;

26 g. *Facility Maintenance Schedule.* COUNTY shall develop a
27 comprehensive facility cleaning, sweeping, maintenance, inspection and employee
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1 training schedule and logs for each aspect of same, including the date, time and the
2 person conducting such activities.

3 h. *Installation of Filtration Media – Type and Discharge Points to be*
4 *Determined.* At the conclusion of the 2012 Wet Season, COUNTY shall conduct an
5 evaluation of all of its Samples to determine whether the BAT and BCT standards
6 under the General Permit require additional filtration media to be installed at any
7 Facility discharge point or points to reduce contaminant loading in the Facility’s storm
8 water discharges. This evaluation shall be provided to CSPA in writing no later than
9 July 1, 2012; in the event that the parties disagree as to whether or how much
10 additional filtration is required under the General Permit, the dispute shall be resolved
11 pursuant to the dispute resolution provisions herein below.

12 **Sampling and Monitoring**

13 7. **Collection and Discharge Point Inspection.** Within 30 days of the Court
14 Approval Date, COUNTY agrees to amend their SWPPP as attached here to require the
15 inspection of all storm water collection and discharge points at the Facility weekly during the
16 Wet Season and just prior to forecasted storm events that may reasonably be expected to
17 result in a discharge from the Facility.

18 8. **Sampling Frequency.** During each of the 2010-2011 and 2011-2012 Wet
19 Seasons (October 1 – May 31), COUNTY shall collect three (3) storm water samples per Wet
20 Season from each Facility Discharge Point according to the following sampling schedule and
21 conditions:

22 a. Except as otherwise provided in subparagraph b. below, COUNTY shall
23 collect samples during storm events that meet each of the following criteria (hereafter,
24 “Qualifying Storm Events”): (i) the samples are preceded by at least three (3)
25 working days during which no storm water discharges have occurred from the
26 Facility; (ii) the samples are collected within the first hour that flow is observed at the
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1 Facility Discharge Points; and (iii) the samples can be collected during daylight
2 operating hours.

3 b. If fewer than three Qualifying Storm Events occur during any Wet
4 Season, COUNTY shall be obligated to take samples only during the Qualifying
5 Storm Events that do occur.

6 c. In the event no Qualifying Storm Event has occurred by January 31 of a
7 particular Wet Season, COUNTY shall continue to make best efforts to comply with
8 the sampling frequency obligations set forth herein and shall collect samples from
9 storm events that are non-qualifying to the extent they are not preceded by three (3)
10 working days during which no storm water discharges have occurred (hereafter,
11 “Non-qualifying Storm Events”). Samples from Non-qualifying Storm Events may be
12 used to satisfy the requirements of subparagraph (a) if an insufficient number of
13 Qualifying Storm Events has occurred in any given Wet Season.

14 9. **Storm Event Log.** After the Court Approval Date, COUNTY shall maintain a
15 storm event log at the Facility for those dates on which storm events have occurred, including
16 the date, weather conditions, and estimated duration of discharge (if any). Storm event logs
17 shall be made available to CSPA within ten (10) working days of a written request by CSPA.

18 10. **Sample Analysis.** After the Court Approval Date, COUNTY shall analyze
19 each storm water sample collected for each of the constituents listed in Exhibit C. As to
20 those constituents shown on Exhibit C (except Oil & Grease, TSS, pH, Specific Conductance
21 and Iron), where there is no detection of any of said constituents in four consecutive samples
22 (two of which samples can be samples collected in the 2009-2010 Wet Season) at a given
23 discharge point, sampling for that constituent at that specific discharge point may be
24 discontinued.

25 11. **Sample Quality Controls, Reporting.** All storm water samples collected
26 pursuant to this Consent Agreement shall be analyzed by a laboratory accredited by the State
27 of California for such analysis. All samples collected from the Facility shall be delivered to
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1 the laboratory as soon as possible to ensure that sample “hold time” is not exceeded. Sample
2 results shall be reported to COUNTY within ten (10) days of laboratory receipt of the
3 sample. Analytical methods used by the laboratory shall be adequate to detect the individual
4 constituents at or below the values specified on Exhibit C. Sampling results shall be
5 provided to CSPA within ten (10) calendar days of Defendants’ receipt of the laboratory
6 report from each sampling event.

7 12. **Action Memorandum Requirements.** At the conclusion of each Wet Season
8 during the term of this Agreement, COUNTY shall compare the constituent concentrations
9 found in its storm water samples with the values set forth in Exhibit C. If any sample result
10 for any constituent exceeds the benchmark value specified on Exhibit C for that constituent,
11 COUNTY shall prepare a written statement addressing each such exceedance(s), the possible
12 cause and/or source of the exceedance, revisions to existing or additional non-structural and
13 structural BMPs proposed to be implemented to attempt to reduce or prevent subsequent
14 exceedances of the values specified on Exhibit C, and a reasonable schedule to implement
15 the proposed measures (Action Memorandum). The Action Memorandum shall be provided
16 to CSPA upon completion, but in no event later than July 1st following each of the 2010-2011
17 and 2011-2012 Wet Seasons. BMP revisions and additions may include, but are not limited
18 to, further material improvements to the storm water collection and discharge system,
19 increasing frequency of facility sweeping, changing the type and extent of storm water
20 filtration media or modifying other industrial activities or management practices at the
21 Facility.

22 13. **CSPA Evaluation of Action Memorandum.** CSPA may review and comment
23 on an Action Memorandum and suggest any additional pollution prevention measures it
24 believes are appropriate. Upon written request by CSPA within twenty-one days of receipt of
25 said Memorandum, COUNTY agrees to meet and confer in good faith regarding the contents
26 of the Action Memorandum, the adequacy of the recommended BMPs in reducing
27 constituent levels in storm water discharges to levels at or below those specified on Exhibit
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1 C, and any suggestions by CSPA regarding additional pollution prevention measures. Upon
2 request by CSPA, any such meet and confer may occur at the Facility so that CSPA may
3 conduct a site inspection. If within 15 days of the meet and confer, the parties do not agree
4 on the adequacy of the additional measures set forth in the Action Memorandum, and the
5 parties cannot otherwise resolve the dispute, CSPA may file a motion for appropriate
6 injunctive relief with the District Court. The Parties shall be entitled to seek fees and costs
7 incurred in any such motion, and such fees and costs shall be awarded, pursuant to the
8 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and
9 applicable case law interpreting such provision. Any concurrence or failure to provide
10 comments to an Action Memorandum by CSPA with regard to the reasonableness of any
11 additional measures proposed or implemented by COUNTY shall not be deemed to be an
12 admission by CSPA of the adequacy of such measures should they fail to reduce the
13 constituent concentrations in storm water discharged from the Facility to levels at or below
14 the values specified on Exhibit C.

15 14. **Inspections.** In addition to any site inspections as set forth above , COUNTY
16 shall permit representatives of CSPA to perform up to three (3) physical inspections of the
17 Facility (which may include sampling, photographing, and/or videotaping) during the term of
18 this Consent Agreement. Said inspection dates shall be selected by CSPA subject to meet
19 and confer with the COUNTY to ensure that any such inspection is not unduly disruptive to
20 the operation of the facility. All such inspections shall occur during normal business hours
21 and shall be preceded by forty-eight (48) hours notice. Defendants shall not make any
22 alterations to Facility conditions during the period between receiving CSPA's notice and the
23 start of the inspection that Defendants would not otherwise have made but for receiving
24 notice of CSPA's request to allow a physical inspection of the Facility. Nothing here shall
25 be construed to prevent Defendants from continuing to implement any BMPs identified in its
26 SWPPP during the period prior to such an inspection.

1 15. **Reporting Obligations.** During the term of this Consent Agreement,
2 COUNTY shall contemporaneously provide CSPA with copies of all documents submitted to
3 the Regional Board or State Board, concerning storm water discharges from the Facility,
4 including but not limited to, all Annual Reports, correspondence or other communications
5 submitted to the Regional Board or State Board as required by the General Permit. Such
6 documents and reports shall be provided to CSPA pursuant to the Notice provisions herein
7 and contemporaneously with Defendants’ submission to such agency.

8 16. **Amending Facility SWPPP.** Within thirty (30) days after the Court Approval
9 Date, COUNTY shall amend the Facility SWPPP to incorporate all changes, improvements
10 and BMPs set forth in this Consent Agreement and otherwise agreed to by the Parties or
11 ordered by the Court. COUNTY shall provide a copy of the amended SWPPP to CSPA
12 within fourteen (14) days of amendment. COUNTY shall also provide CSPA with copies of
13 any other Facility SWPPP amendments made during the term of the Consent Agreement
14 within fourteen (14) days of such amendment.

15 **II. MITIGATION, FEES AND COSTS**

16 17. As mitigation of the Clean Water Act violations alleged in the Complaint,
17 COUNTY agrees to pay the sum of \$35,000 within twenty (20) days after the Court
18 Approval Date to the Rose Foundation for Communities and the Environment for projects
19 relating to the reduction, prevention or mitigation of, or research on, the effects of discharges
20 of pollutants in storm water to Lake County water bodies or, upon diligent efforts finding no
21 such project in Lake County, to the Sacramento-San Joaquin River Delta and the San
22 Francisco Bay.

23 18. COUNTY agrees to reimburse CSPA in the amount of \$55,000 to defray
24 CSPA’s reasonable investigative, expert, consultant, and attorney’s fees and costs all other
25 costs incurred as a result of investigation the activities at the Facility, preparing the Notices,
26 and negotiating a resolution of this action. Such payment shall be made payment to the Law
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1 Offices of Andrew L. Packard Attorney-Client Trust Account and remitted to the Law
2 Offices of Andrew L. Packard within seven (7) days after the Court approval date.

3 19. COUNTY agrees to contribute a total of \$10,000 per year for each of the two
4 years covered by this Consent Agreement for a total of \$20,000 to a compliance monitoring
5 fund maintained by CSPA to defray CSPA's reasonable costs associated with monitoring
6 COUNTY's compliance with this Consent Agreement which fees include the inspections
7 described in paragraph 14 herein. Compliance monitoring activities may include but shall
8 not be limited to site inspections, review of water quality sampling reports, review of annual
9 reports, discussions with representatives of COUNTY concerning the Action Memorandum
10 referenced above, preparation for and participation in meet and confer sessions and
11 mediation, water quality sampling, and compliance-related activities. The first such payment
12 shall be remitted to Law Offices of Andrew L. Packard within seven (7) days of the Court
13 Approval Date and the second such payment shall be remitted to the Law Offices of Andrew
14 L. Packard on or before May 1, 2010; both payments shall be made payable to the Law
15 Offices of Andrew L. Packard Attorney Client Trust Account.

16 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

17 20. If a dispute under this Consent Agreement arises, or either Party believes that a
18 breach of this Consent Decree has occurred, the Parties shall meet and confer within thirty
19 (30) days of receiving written notification from the other Party of a request for a meeting to
20 determine whether a violation has occurred and to develop a mutually agreed upon plan,
21 including implementation dates, to resolve the dispute. If the Parties fail to meet and confer
22 or the meet-and-confer does not resolve the issue, either Party shall be entitled to all rights
23 and remedies under the law, including filing a motion with the District Court of California,
24 Northern District, which shall retain jurisdiction over the Action for the limited purposes of
25 enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek
26 fees and costs incurred in any such motion, and such fees and costs shall be awarded,

1 pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C.
2 §1365(d), and applicable case law interpreting such provision.

3 **21. CSPA Waiver and Release of COUNTY.** Upon Court approval and entry of
4 this Consent Agreement, CSPA, on its own behalf and on behalf of its officers, directors,
5 employees, members, parent, subsidiaries, and affiliates, and each of their successors and
6 assigns, and its agents, attorneys, and other representatives, releases all persons including,
7 without limitation, COUNTY and their officers, directors, employees, shareholders, parents,
8 subsidiaries, and affiliates, and each of their predecessors, successors and assigns, and each
9 of their agents, attorneys, consultants, and other representatives (each a “Released Defendant
10 Party”) from, and waives all claims which arise from or pertain to this action, including,
11 without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions,
12 mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other
13 sum incurred or claimed or which could have been claimed for matters associated with or
14 related to the Notice issued by CSPA in this action, including, without limitation, all such
15 matters with respect to the alleged failure of COUNTY or any other person to comply with
16 all or any portion of the Clean Water Act at the Facility, up to the Court Approval Date
17 (hereinafter “Claims”), except as specifically provided for in this Consent Agreement;

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

26 **23. Stipulated Dismissal.** Upon the Court Approval Date, the Parties shall file
27 with the Court a Stipulation and Order that shall provide that:
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1 a. The Complaint and all claims therein shall be dismissed with prejudice
2 pursuant to Federal Rule of Civil Procedure 41(a)(2); and

3 b. The Court shall retain and have jurisdiction over the Parties with respect
4 to disputes arising under this Agreement.

5 24. **No Admission.** The Parties enter into this Consent Agreement for the purpose
6 of avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be
7 construed as, and COUNTY expressly do not intend to imply, an admission as to any fact,
8 finding, issue of law, or violation of law, nor shall compliance with this Consent Agreement
9 constitute or be construed as an admission by COUNTY of any fact, finding, conclusion,
10 issue of law, or violation of law. However, this paragraph shall not diminish or otherwise
11 affect the obligation, responsibilities, and duties of the Parties under this Consent Agreement.

12 **V. Miscellaneous Provisions**

13 25. The Consent Agreement shall terminate on October 1, 2012.

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

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

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

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

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

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1 31. **Impossibility of Performance.** Where implementation of the actions set forth
2 in this Agreement, within the deadlines set forth in those paragraphs, becomes impossible due
3 to weather and/or soil conditions, despite the timely good faith efforts of the COUNTY, the
4 COUNTY shall notify CSPA in writing within seven (7) days of the date that the failure
5 becomes apparent and shall describe the reason for the non-performance. The parties agree to
6 meet and confer in good faith concerning the non-performance and, where the parties concur
7 that the non-performance was or is impossible, despite the timely good faith efforts of the
8 COUNTY, new performance deadlines shall be established. In the event the parties cannot
9 timely agree upon the terms of such a stipulation, either of the parties has the right to invoke
10 the dispute resolution procedure described herein.

11 32. For the period beginning on the Effective date and ending on October 1, 2012,
12 CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board
13 nor any organization under the control of CSPA, its officers, executive staff, or members of
14 its governing board, will file any lawsuit against the COUNTY seeking relief for alleged
15 violations of the Clean Water Act or violations of the General Permit. CSPA further agrees
16 that beginning on the Effective date and ending on October 1, 2012, CSPA will not support
17 other lawsuits, by providing financial assistance, personnel time or other affirmative actions,
18 against the COUNTY that may be proposed by other groups or individuals who would rely
19 upon the citizen suit provision of the Clean Water Act to challenge the COUNTY's
20 compliance with the Clean Water Act or the General Permit.

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

26 Bill Jennings, Executive Director
27 California Sportfishing Protection Alliance

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3536 Rainier Avenue
Stockton, CA 95204
DeltaKeep@aol.com
Fax: 209-464-1028

With copies sent to:

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

And to:

Michael R. Lozeau
Law Office of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, CA 94501
E-mail: mrlozeau@lozeaulaw.com
Fax: (510) 749-9103

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

County of Lake
Attn: Public Services Director
333 Second Street
Lakeport, CA. 95453
Fax: 707-262-0973
Email: kim_c@co.lake.ca.us

With copies sent to:

Hon. Anita L. Grant, County Counsel
County of Lake
255 North Forbes Street

1 Lakeport, CA 95453
2 Fax: 707-263-2321
3 Email: Anitag@co.lake.ca.us

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

6 34. Signatures of the Parties transmitted by facsimile shall be deemed binding.

7 35. No Party shall be considered to be in default in the performance of any of its
8 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is
9 any circumstances beyond the Party's control, including, without limitation, any act of God,
10 war, fire, earthquake, flood, and restraint by court order or public authority. A Force
11 Majeure event does not include normal inclement weather, such as anything less than or
12 equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon
13 this paragraph shall have the burden of establishing that it could not reasonably have been
14 expected to avoid, and which by exercise of due diligence has been unable to overcome, the
15 Force Majeure.

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

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37. The settling Parties hereto enter into this Consent Agreement, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

Dated: _____ California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: _____ County of Lake

By: _____
Anthony Farrington, Chair
Lake County Board of Supervisors

By: _____
Anita L. Grant
County Counsel
County of Lake

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EXHIBIT A – Facility SWPPP Map

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EXHIBIT B -- CSPA's February 7, 2009 Notice of Violation

EXHIBIT C

Parameter	EPA Benchmark
Aluminum	0.75 mg/l
Arsenic	0.16854 mg/L
Cadmium	0.0159 mg/L
Chemical Oxygen Demand	120.0 mg/L
Copper	0.0636 mg/l
Iron	1.0 mg/l
Lead	0.0816 mg/L
Magnesium	0.0636 mg/L
Mercury	0.0024 mg/L
Oil & Grease	15.0 mg/L
Nitrate + nitrite	0.68 mg/L
pH	6.5 – 8.5
Selenium	0.2385 mg/L
Silver	0.318 mg/L
Specific Conductivity	200 µmho/cm
Total Suspended Solids	100.0 mg/L
Zinc	0.117 mg/l