

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into between Plaintiffs NORTHERN CALIFORNIA RIVER WATCH a non-profit corporation, and COAST ACTION GROUP, together designated herein after as “River Watch,” on behalf of itself and its members, and Defendants CLINTON FOLGER, RUTH STADNIK, and NICK BRODRICK, Individually and in their capacities as members of GREEN PASTURES VALLEY, LLC, together designated hereinafter designated as “Green Pastures Valley,”(Plaintiffs and Defendants collectively referred to as “the Parties”) , with respect to the following facts and objectives.

RECITALS

WHEREAS, on or about February 22, 2010, River Watch, on behalf of itself and its members, and after serving a Notice of Violations on Green Pastures Valley, LLC, filed its Complaint in the above action, alleging Green Pastures Valley, LLC was in violation of the Endangered Species Action (“ESA”) 16 U.S.C. § 1531 *et seq.* for diversions of water from Felta Creek on real property located at 1470 Felta Road, Healdsburg, California, in violation of ESA Sections 9 and 10 which allegedly resulted in the kills of fish listed as endangered under the ESA; and,

WHEREAS, River Watch on September 1, 2010 and November 26, 2010, served additional Notices of Violations under the ESA on Clinton Folger, Ruth Stadnik and Nick Brodrick, as individuals and members of Green Pastures Valley, LLC and Green Pastures Valley, LLC for alleged violations of 16 U.S.C. § 1531 *et seq.* for diversions of water from Felta Creek on real property located at 1470 Felta Road, Healdsburg, California, in violation of ESA Sections 9 and 10 which allegedly resulted in the kills of fish listed as endangered under the ESA; and,

WHEREAS, River Watch has amended its initial Complaint by filing a First, Second and Third Amended Complaint, which requests declaratory and injunctive relief, for each alleged violation of the aforementioned laws and statutes, and an award to River Watch of its litigation costs, including reasonable attorney fees and costs; and,

WHEREAS, the parties participated in formal mediation on February 16, 2011, which did not result in resolution of the action; and have continued to negotiate, through their attorneys, and have reached an agreement on terms resolving all issues raised in the Third Amended Complaint;

WHEREAS this settlement incorporates measures that will address the environmental concerns raised by the plaintiffs, River Watch and Green Pastures Valley, through their authorized representatives and without either adjudication of River Watch's claims or admission by Green Pastures Valley of any alleged violation or other wrongdoing, have chosen to resolve in full River Watch's allegations in the Notice of Violations and Third Amended Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS River Watch and Green Pastures Valley agree that it is in their mutual interests to enter into this Settlement Agreement and Release of Claims setting forth the terms and conditions appropriate to resolving the allegations set forth in the Third Amended Complaint;

AGREEMENT

For good and valuable consideration, River Watch and Green Pastures Valley hereby agree as follows:

EFFECTIVE DATE

1. The "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF GREEN PASTURES VALLEY

2. **Injunction Against Diversion During Frost Season.** Green Pastures Valley shall refrain from diverting water from Felta Creek for the purpose of frost protection until such time as Felta Creek is no longer designated as critical habitat for protected fisheries under the ESA.

3. **Removal of Weir.** Within one (1) year from the effective date of this Agreement, Green Pastures Valley shall consult with the California Department Of Fish and Game and the National Marine Fisheries Service ("NMFS") regarding

removal of the weir placed in Felta Creek by Arthur Folger in 1952. If either agency concludes that the weir should be removed, Green Pastures Valley shall remove the weir within one year from the effective date of this Agreement. If Green Pastures Valley is not required to remove the weir, Green Pastures Valley shall render the weir inoperable.

4. **Creek Level Monitoring.** Within five (5) months from the entry of the effective date of this agreement, Green Pastures Valley shall pay all costs to install and maintain the following monitoring devices in Felta Creek:

a. A telemetric “real time” monitoring device, (depth, air temperature and water temperature taken at intervals not less than every fifteen minutes) found to be most suitable to the geographic location, located as near as practicable to a point approximately 150 feet upstream from the Green Pastures Valley downstream property line.

i. The name brand and exact location of the monitoring device shall be determined in consultation with Green Pastures Valley, David Hines, or other representative of NMFS, and a representative of the provider of such monitoring device, such as Neil Hancock of Azonde Technology Products. The Parties have discussed using Azonde as the provider of the monitoring device but are open to using other providers, if determined to be more suitable.

ii. The information from the monitoring device shall be transmitted directly to NMFS.

iii. Green Pastures Valley shall be responsible for maintaining a working real time monitor at the chosen location until May 1, 2020.

iv. If the real time monitor needs to be repaired or replaced after May 1, 2020, Green Pastures Valley shall replace it with a creek level data

logger, unless Green Pastures Valley prefers to maintain a real time monitor in the designated location.

v. If, in the expert opinion of Neil Hancock and David Hines, the installation of a real time monitor is not viable at a cost no greater than fifteen thousand dollars (\$15,000.00), Green Pastures Valley shall install a creek level data logger at the chosen downstream location.

vi. Green Pastures Valley shall grant access on request through its property to employees of NMFS or any other agency mutually agreeable to the parties, for the purpose of downloading data from the data logger, provided there is no unreasonable disruption of operations of Green Pastures Valley.

b. A creek level data logger placed as close as practicable to a point 150 feet downstream from the Green Valley Pastures upstream property line, such point to be chosen in consultation with Green Pastures Valley and David Hines or other representative of the NMFS. Green Pastures Valley shall grant access on request through its property to employees of NMFS or any other agency mutually agreeable to the parties, for the purpose of downloading data from the data logger, provided there is no unreasonable disruption of operations of Green Pastures Valley.

c. The creek level monitoring devices identified above shall be maintained at Green Pastures Valley's property, according to the above terms, for as long as the property is operated as a vineyard.

5. **Consistency with Regulatory Orders.** Green Pastures Valley shall be relieved of any obligation under this Agreement which is in conflict with or redundant to the requirements of an Order by any regulatory agency. A requirement under this Agreement not required by a regulatory Order, such as installation of the monitoring

devices, which can be carried out without violating any requirement in a regulatory Order, shall not be considered in conflict with the regulatory Order.

6 **Attorneys Fees and Costs.** Green Pastures Valley agrees to reimburse River Watch for fees and costs in the amount of thirty thousand dollars (\$30,000). Within fifteen (15) days of the Effective Date of this Agreement Green Pastures Valley shall pay to River Watch the sum of ten thousand dollars (\$10,000) as a first installment. Green Pastures Valley shall make two successive payments of ten thousand dollars (\$10,000). The second payment shall be made prior to the expiration of twelve (12) months from the first payment. The third payment shall be made prior to the expiration of twenty-four (24) months from the first payment. Said payments shall constitute full and complete satisfaction of any and all claims by Plaintiffs River Watch and/or Coast Action Group for attorneys' fees and costs in connection with this matter and for any fees associated with enforcement and monitoring of this Agreement, with the exception of any subsequent action taken to enforce this Agreement in a court of law or by arbitration. Each payment shall be in the form of a check in the sum of \$10,000.00 made payable to "Northern California River Watch." Payment shall be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469; or, if the payment is mailed via FedEx, UPS or other overnight service, to the Law Office of Jack Silver, 100 E Street, Suite 318, Santa Rosa, CA 95404.

COMMITMENTS OF RIVER WATCH

7. **Dismissal with Prejudice.** Within five (5) days of receipt of the first payment by Green Pastures Valley to River Watch, as set forth in Paragraph 6 above, River Watch shall file a Stipulation to Dismiss with Prejudice and [Proposed] Order Thereon pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(ii), with the United States District Court for the Northern District of California specifying that River Watch is dismissing with prejudice all claims in the Third Amended Complaint. If the District Court elects not to enter the Order, this Agreement is null and void..

8. River Watch shall provide notice to Green Pastures Valley of the District Court's entry of order dismissing this matter with prejudice.

ENFORCEMENT

9. The Parties agree that the District Court for the Northern District of California shall retain jurisdiction to enforce the terms of this Agreement.

RELEASE

10. In consideration of the above, and except as otherwise provided by this Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, forever releases, Green Pastures Valley and their successors, assigns, officers, employees and all persons, firms and corporations having an interest in, Green Pastures Valley from all environmental claims, liabilities, or causes of action, known or unknown, arising from or connected with the allegations and claims as set forth, or which could have been set forth, in the Notice regarding alleged violations which occurred up to the effective date of this Agreement.

GENERAL PROVISIONS

11. **Notice.** Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notices between the Parties regarding this Agreement shall be made through the following addresses:

For Green Pastures Valley

Clinton Folger, Registered Agent
Green Valley Pastures, LLC
1470 Felta Road
Healdsburg, CA 95448

For River Watch

Northern California River Watch
P.O. Box 817
Sebastopol, CA 95472

With Copy to:

Stephen M. Gallenson, Esquire
Law Offices of Andrian & Gallenson
1100 Mendocino Avenue
Santa Rosa, CA 95402

Jack Silver, Esquire
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-8175

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

13. **Advice of Attorneys.** Each party herein has evaluated its respective position with regard to this matter through its own investigation and through its attorneys. Each party acknowledges that it enters into this Agreement upon the advice of their respective attorneys, that they have read this Agreement, discussed it with their attorneys, that the terms and conditions of this Agreement are fully understood and that they freely and voluntarily enter into this Agreement.

14. **Governing Law.** This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State.

15. **Severability.** Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement; but rather, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

16. **Authority.** Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute this Agreement and bind said Party to the terms hereof.

17. **Warranty of No Assignment.** River Watch warrants and represents that it has not previously assigned or transferred, or purported to assign or transfer, any claims arising out of the Notice to any person or entity. This Agreement is not assignable to any other party.

18. **Successors.** This Agreement shall be binding upon the Parties and each of their successors, heirs, assigns, agents, directors, officers, partners, managers, owners, supervisors, consultants, employees, representatives, members, attorneys and insurance carriers, and shall inure to the benefit of the Parties and each of the Parties' successors, heirs, assigns, agents, directors, officers, partners, managers, owners, supervisors, employees, representatives, attorneys and insurance carriers.

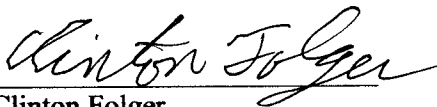
19. **Counterparts and Signatures.** This Agreement may be executed in several counterparts, all of which counterparts shall constitute one and the same instrument. Any Party may transmit its execution of this Agreement by facsimile or electronic mail, in which case such Party shall provide the original execution

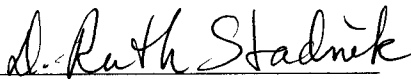
page within three (3) business days to all other Parties. A Party's execution page transmitted by electronic mail or facsimile may be used as though it were an original signature notwithstanding the fact that the Party did not provide an original signature.

20. **Construction of Agreement.** The parties acknowledge that this Agreement is the product of informed negotiating among the parties, and if any part of this Agreement is deemed ambiguous or in conflict, it shall be construed as it if were drafted jointly by all parties.

Dated: August 18, 2011

Green Pastures Valley, LLC

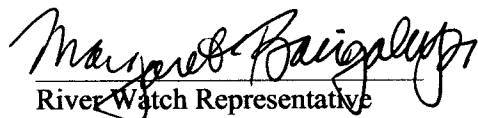
By 
Clinton Folger
Registered Agent

By 
Ruth Stadnik

By 
Nick Brodrick

Dated: August 24, 2011

Northern California River Watch

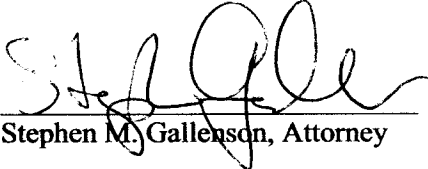
By 
River Watch Representative

APPROVED AS TO FORM:

For Green Pastures Valley

Dated: August 22, 2011


Law Offices of Andrian & Gallenson

By 
Stephen M. Gallenson, Attorney

For Northern California River Watch

Dated: August 27, 2011

Law Office of Jack Silver

By 
Jack Silver, Attorney