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3 Santa Rosa, CA 95402-5469
4 Tel. (707) 528-8175
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5 lhm28843@sbcglobal.net

6 Attorneys for Plaintiff
7 CALIFORNIA RIVER WATCH

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 CALIFORNIA RIVER WATCH, a
11 501(c)(3) nonprofit, public benefit
Corporation,

12 Plaintiff,

13 v.

14 HUMBERTO CASTANEDA; MARIA
15 BERTHA CASTANEDA; DOES
1 - 10, Inclusive,

16 Defendants.
17 _____/

Case No.: 3:13-cv-01700 WHA

~~PROPOSED~~ ORDER OF ENTRY OF
CONSENT DECREE, AND DISMISSAL

COMPLAINT FILED: June 24, 2013

Honorable William H. Alsup
U.S. District Court Judge

18
19 ~~PROPOSED~~ ORDER OF ENTRY OF CONSENT DECREE, AND DISMISSAL

20 WHEREAS, the Parties in the above captioned action have reached a settlement, the
21 specific terms of which are set forth in the ~~Proposed~~ Consent Decree, attached hereto as
22 Exhibit A.

23 IT IS HEREBY ORDERED that the ~~Proposed~~ Consent Decree is fully incorporated
24 herein by reference, and is entered as an Order of the Court.

25 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over Case No. CV-
26 01700 WHA for the sole purpose of enforcing compliance by the Plaintiff and Defendants with
27 the terms of the ~~Proposed~~ Consent Decree. The court will only retain
28 jurisdiction until the end of 2016 unless good cause is shown

by June 6, 2014, to extend it further.

1 IT IS FURTHER ORDERED that the above captioned action against Defendants is
2 dismissed with prejudice.

3 **IT IS SO ORDERED.**

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5 DATED: May 30, 2014.



6 WILLIAM ALSUP
7 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

Jack Silver, Esquire SB# 160575
Law Office of Jack Silver
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Attorneys for Plaintiff
CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH,
a 501(c)(3) nonprofit, public benefit
Corporation,

Plaintiff,

v.

HUMBERTO CASTANEDA; MARIA
BERTHA CASTANEDA; DOES
1 - 10, Inclusive,

Defendants.

Case No.: 3:13-cv-01700 WHA

~~PROPOSED~~ **CONSENT DECREE
AND ORDER**

COMPLAINT FILED: June 24, 2013

Honorable William H. Alsup
U.S. District Court Judge

I. RECITALS

A. DEFENDANTS HUMBERTO CASTANEDA and MARIA BERTHA CASTANEDA (“the Castanedas”) are individuals residing in the County of Sonoma who have an ownership interest in the property located at 2859 Fulton Road in the area of Sonoma County designated as Fulton and assigned Sonoma County Assessor’s Parcel Numbers 059-060-043 and 059-060-044 (the “Property”), which is the subject of the Complaint and the First Amended Complaint.

B. PLAINTIFF California River Watch (“CRW”) has filed this action pursuant to the citizen suit provision of the federal Endangered Species Act (“ESA”) 16 U.S.C. § 1531 *et seq.*, codified at 16 U.S.C. § 1540(g)(1)(A), to enjoin the Castanedas from alleged ongoing

violations of the ESA and alleged violations of regulations pertaining to the Sonoma California Tiger Salamander (“SCTS”) listed as endangered pursuant to ESA § 4.

C. The Castanedas do not admit any of the allegations contained in the Complaint or First Amended Complaint, and neither the Castanedas’ consent to entry of this Consent Decree nor any provision herein shall be construed as an admission of fact or liability for any purpose whatsoever.

D. CRW and the Castanedas (the “Parties”) have consented to the entry of this Consent Decree and Order without trial of any issues, and without admission by the Castanedas of any alleged liability, violation or wrongdoing. The Parties have chosen to resolve in full CRW’s allegations as set forth in the First Amended Complaint, and hereby stipulate that, in order to settle the claims alleged against the Castanedas in CRW’s Complaint and First Amended Complaint (“FAC”) and to avoid the delays and expenses of litigation, this Consent Decree should be entered. In mutual consideration for the resolution of CRW’s allegations, the Parties agree to the terms described herein. This Consent Decree constitutes a final judgment with respect to and a settlement of disputed claims.

The Court having considered the representations of the Parties, NOW THEREFORE, before taking any testimony, and without any adjudication of any fact or law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. CONSENT DECREE

1. Jurisdiction. The Court has jurisdiction over the subject matter and the Parties in this action pursuant to ESA § 11(g)(1)(A), 16 U.S.C. § 1540(g)(1)(A). The basis for assignment of this case to the Northern District of California, pursuant to 16 U.S.C. § 1540(g)(3)(A), is that the violations of the ESA complained of herein are alleged to have taken place on property and land located within this District; and, pursuant to 28 U.S.C. § 139, the Castanedas reside in and/or conduct business within this District.

2. Effective Date. The Effective Date of this Consent Decree shall be the last date on which the signature of a party to this Consent Decree is executed.

3. Required Tasks. Without any admission of fact, wrongdoing, or liability, the Castanedas agree to the following:

A. Perimeter Ditch Area. Within six (6) months from the Effective Date of this Consent Decree the Castanedas shall prepare the "Perimeter Ditch Area," as fully described in Exhibit A and Table 1 attached and fully incorporated into this Consent Decree. From the Effective date of this Consent Decree and for the duration of their ownership and/or control of the Property, the Castanedas shall preserve the Perimeter Ditch Area in its present state, and shall allow the Perimeter Ditch Area to fill with water naturally from rainfall and runoff, and drain naturally from soil infiltration and flow to adjacent properties; provided, however, that the Castanedas shall be permitted to maintain the Perimeter Ditch Area to ensure proper water drainage in order to prevent water stagnation attractive to mosquitos or flooding. Maintenance includes, but is not limited to, clearing vegetation overgrowth and widening certain areas of the ditch. Any such maintenance on the Perimeter Ditch Area shall occur only: (1) during times when the ditch does not contain water; or (2) if there is an emergency that requires immediate action, including, but not limited to flash flooding and fire. The Castanedas shall not disturb the native soils or vegetation in the ditch/swale portion of the Perimeter Ditch Area including, but not limited to, the use of equipment or mowing (except during June through August) except as necessary to maintain and/or repair the Perimeter Ditch Area. With the exception of restrictions pertaining to pesticide use, *infra*, section 3.B., full use of farm equipment and activities necessary for vineyard management are permitted in the 10-foot setback portion of the Perimeter Ditch Area, so long as such activities do not Harass or Harm, as those terms are interpreted within the meaning of Section 9 of the ESA, the SCTS. Notwithstanding any other provision in this Consent Decree, the Parties agree that the Castanedas' obligation under Subsection A is in effect only so long as the SCTS is a listed species within the meaning of ESA.

B. Pesticide Use. From the Effective date of this Consent Decree and for the duration of their ownership and/or control of the Property, the Castanedas shall refrain from the application on said land of any herbicide, rodenticide or other chemical agents

(collectively, “Chemical Agents”) generally known to be harmful to the SCTS. For clarity with regard to use limitations and to which Chemical Agents are permitted on the Property, the Castanedas may rely on the California Department of Pesticide Regulation’s Endangered Species Custom Realtime Internet Bulletin Engine (“PRESCRIBE”) online database application, as applied to the Property which is identified in PRESCRIBE by township number 08N, range number 08W, section number 31. Notwithstanding any other provision in this Consent Decree, the Parties agree that the Castanedas’ obligation under Subsection B is in effect only so long as the SCTS is a listed species within the meaning of ESA.

C. Payment of Costs. CRW has incurred extensive fees and costs in the prosecution of this action, as detailed in Exhibit B to this Consent Decree. CRW agrees to waive its attorney fees. The Castanedas will pay CRW costs in the amount of \$20,000.00 within 12 (twelve) months of entry of this consent decree provided that some payment is made every quarter.

D. Task Confirmation. Within thirty (30) days of the completion of any of the remedial measures identified in Sections II. 3.A, 3.B. and 3.C. of this Consent Decree, the Castanedas shall provide CRW with written confirmation that the task has been completed, except that with respect to the task identified in Section 3.B., the Parties acknowledge completion of the task as of the effective date of this Consent Decree. In addition to the other confirmation provisions, the Castanedas will annually provide date-stamped photographs of the Perimeter Ditch Area taken anytime between February 1 and March 15.

E. Dismissal of Claims. Upon the entry of this Consent Decree, CRW shall file with the court a dismissal with prejudice of all claims alleged against the Castenadas in the FAC.

F. Release and Covenant Not To Sue. In consideration for the Castanedas’ agreement to perform the tasks described in Sections II 3.A-C., CRW covenants not to sue for and does hereby forever release, generally and specifically, and forever discharge the Castanedas from, any and all claims, demands, and causes of action of any kind whatsoever, whether known or unknown, suspected or unsuspected, asserted in the Complaint or FAC or

which have arisen or may arise from the conduct underlying the allegations in the Complaint or FAC, including, without limitation: (a) any common law claims; and (b) any claims arising under municipal, local, state, or federal ordinances, statutes, or other laws including, but not limited to, Sections 7, 9, or 10 of the ESA, 16 U.S.C. § 1531 et seq., and any regulations promulgated pursuant to any municipal, local, federal and state ordinance, statute, or other law that may arise from the conduct underlying the allegations in the Complaint or FAC.

4. Dispute Resolution. Any disputes with respect to any of the provisions of this Consent Decree shall be resolved through the following procedure:

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

B. If the Parties cannot informally resolve the dispute pursuant to the procedures set forth in subsection A, either party may seek relief through a claim filed before the Hon. William H. Alsup, U.S. District Judge who will retain jurisdiction over this Consent Decree. In the event that either party brings an action to enforce its rights under this Consent Decree, the relief the court is empowered to award is limited to injunctive relief to take action specified in this Consent Decree, and each party shall bear its own attorneys' fees and costs incurred in such a proceeding.

5. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally-recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW: Jack Silver, Esquire
Law Office of Jack Silver
Post Office Box 5469
Santa Rosa, CA 95402-5469
Tel:(707) 528-8175
Fax:(707) 528-8675
Email:warrioreco@yahoo.com

If to the Castenadas: Alan N. Bick
Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612-4412
Tel. 949-451-3800
Fax. 949-451-4220
Abick@gibsondunn.com

The foregoing addresses may be changed by Notice given in accordance with this Section.

Any Notice sent by certified mail shall be deemed received on the date shown in the proof of delivery. Any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided that the sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

6. Attorneys' Fees and Costs. Except as set forth in Section II. 3.C. above, each Party shall bear its own past and future costs and attorneys' fees relating to the subject matter of this Consent Decree.

7. Parties' Acknowledgment of Terms. This Consent Decree has been carefully and fully read and reviewed by CRW and the Castenadas and their respective counsel, who hereby represent that the contents of this Consent Decree are understood, and agree that this Consent

Decree is binding on each party or its respective predecessors, successors, and assigns and as described above.

8. Interpretation and Applicable Law. This Consent Decree shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

9. Counterparts. This Consent Decree may be executed in multiple counterparts, each of which shall evidence one and the same document.

10. Entire Consent Decree In Writing. This Consent Decree constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

11. Modification or Amendment. This Consent Decree or any of its provisions may be modified or amended only by written document executed by all Parties to this Consent Decree.

12. Severability. The invalidity or unenforceability of any provision of this Consent Decree shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Consent Decree shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Consent Decree shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Consent Decree in the particular jurisdiction in which

1 such adjudication is made.

2 13. Representations and Warranties. This Consent Decree is given voluntarily, free of
3 undue influence, coercion, duress, menace, or fraud of any kind. Neither Party, nor any
4 officer, agent, employee, representative, or attorney of or for either Party, has made any
5 statement or representation to the other Party regarding any fact relied upon in entering this
6 Consent Decree, and no Party is relying upon any statement, representation, or promise of the
7 other Party, nor of any officer, agent, employee, representative, or attorney of or for either
8 Party, in executing this Consent Decree or in making the settlement provided herein, except
9 as expressly stated in this Consent Decree.

10 14. Parties Bound By This Agreement and Length of Agreement. This Agreement, and
11 each of its provisions, including all representations, warranties, and promises contained
12 herein, binds, and inures to the benefit of CRW and the Castanedas, and each of their
13 respective officers, directors, members, employees, contractors, heirs, assigns, present and
14 future affiliates, parents, subsidiaries, predecessors and successors in interest whether by
15 merger, consolidation, or otherwise, as well as their respective representatives, agents, and
16 administrators, past, present, and future.

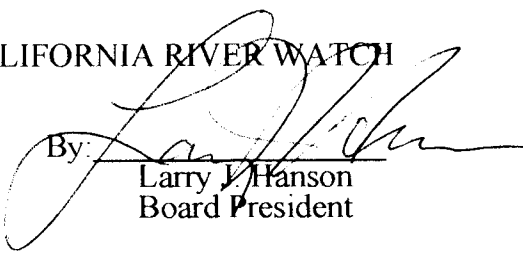
17 15. No Third Party Beneficiaries. This Consent Decree is not intended to confer any
18 rights or obligations on any third party or parties, and no third party or parties shall have any
19 right of action under this Consent Decree for any cause whatsoever. Subject only to the
20 express restrictions contained in this Consent Decree, all of the rights, duties and obligations
21 contained in this Consent Decree shall inure to the benefit of and be binding upon the Parties,
22 and their successors and assigns.

23 16. Authority. Each of the persons signing this Consent Decree on behalf of an entity
24 represents and warrants that he or she has actual authority and capacity to execute this
25 Consent Decree on behalf of the entity and to bind it to all of the terms of this Consent
26 Decree.

27 17. Final Judgment. Upon entry of this Consent Decree by the Court, this Consent Decree
28 shall constitute a final judgment of the Court as to the matters addressed herein.

1 IN WITNESS WHEREOF, the undersigned have caused this Consent Decree to be
2 executed by their duly authorized representatives.

3 Dated: 5/26/2014 CALIFORNIA RIVER WATCH
4

5 By: 
6 Larry J. Hanson
Board President

7 Dated: _____ HUMBERTO AND MARIA BERTHA CASTANEDA
8

9 By: _____
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11
12 IT IS SO ORDERED.

13 Dated and entered into this 30 day of May, 2014.
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15 _____
16 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE
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1 IN WITNESS WHEREOF, the undersigned have caused this Consent Decree to be
2 executed by their duly authorized representatives.

3
4 Dated: _____ CALIFORNIA RIVER WATCH

5 By: _____
6 Larry J. Hanson
Board President

7 Dated: 5/27/2014 HUMBERTO AND MARIA BERTHA CASTANEDA

8
9 By: 
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11
12 IT IS SO ORDERED.

13 Dated and entered into this ____ day of _____, 2014.

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15 _____
16 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT A

EXHIBIT A**Description of Perimeter Ditch Area**

See Figure 1 - Aerial photograph of Castaneda Property with redlined area approximating the Perimeter Ditch Area.

Measurements in Table 1 below are of the ditch/swale portion of the Perimeter Ditch Area. The Perimeter Ditch Area includes the ditch/swale portion described below as well as the setback from the ditch/swale portion to the adjacent neighboring property line, and a 10-foot setback from the edge of the ditch/swale portion extending into the Property.

TABLE 1

Distance¹	Width	Depth
10'	86"	8"
20'	72"	8"
30'	96"	15"
40'	72"	14"
50'	94"	15"
60'	88"	18"
70'	76"	18"
80'	88"	17"
90'	90"	15"
100'	90"	16"
110'	72"	12"
120'	72"	15"
130'	76"	15"
140'	73"	15"
150'	56"	15"
160'	82"	18"
170'	84"	17"
180'	79"	17"
190'	88"	16"
200'	93"	19"
210'	95"	19"
220'	74"	20"
230'	93"	20"
240'	92"	18"
250'	91"	17"
260'	92"	17"

¹ Distance refers to the distance from the northwest corner of the Perimeter Ditch Area going south along the property line to the southwest corner of the Perimeter Ditch Area then heading east along the property line. *See also* Figure 1 attached.

Distance¹	Width	Depth
270'	96"	18"
280'	121"	21"
290'	132"	24"
300'	134"	24"
310'	127"	24"
320'	132"	21"
330'	132"	21"
340'	156"	24"
350'	150"	24"
360'	138"	24"
370'	141"	22"
380'	116"	20"
390'	126"	24"
400'	129"	24"
410'	128"	26"
420'	123"	24"
430'	121"	24"
440'	138"	25"
450'	166"	24"
460'	152"	21"
470'	184"	24"
480'	162"	24"
490'	202"	24"
500'	208"	24"
510'	230"	24"
520'	227"	21"
530'	236"	24"
540'	246"	24"
550'	234"	21"
560'	282"	20"
570'	192"	24"
580'	234"	24"
590'	206"	24"
600'	199"	29"
610'	184"	31"
620'	177"	32"
630'	154"	27"
640'	140"	1"
650'	137"	19"
660'	150"	9"
670'	140"	1"

101735034.1

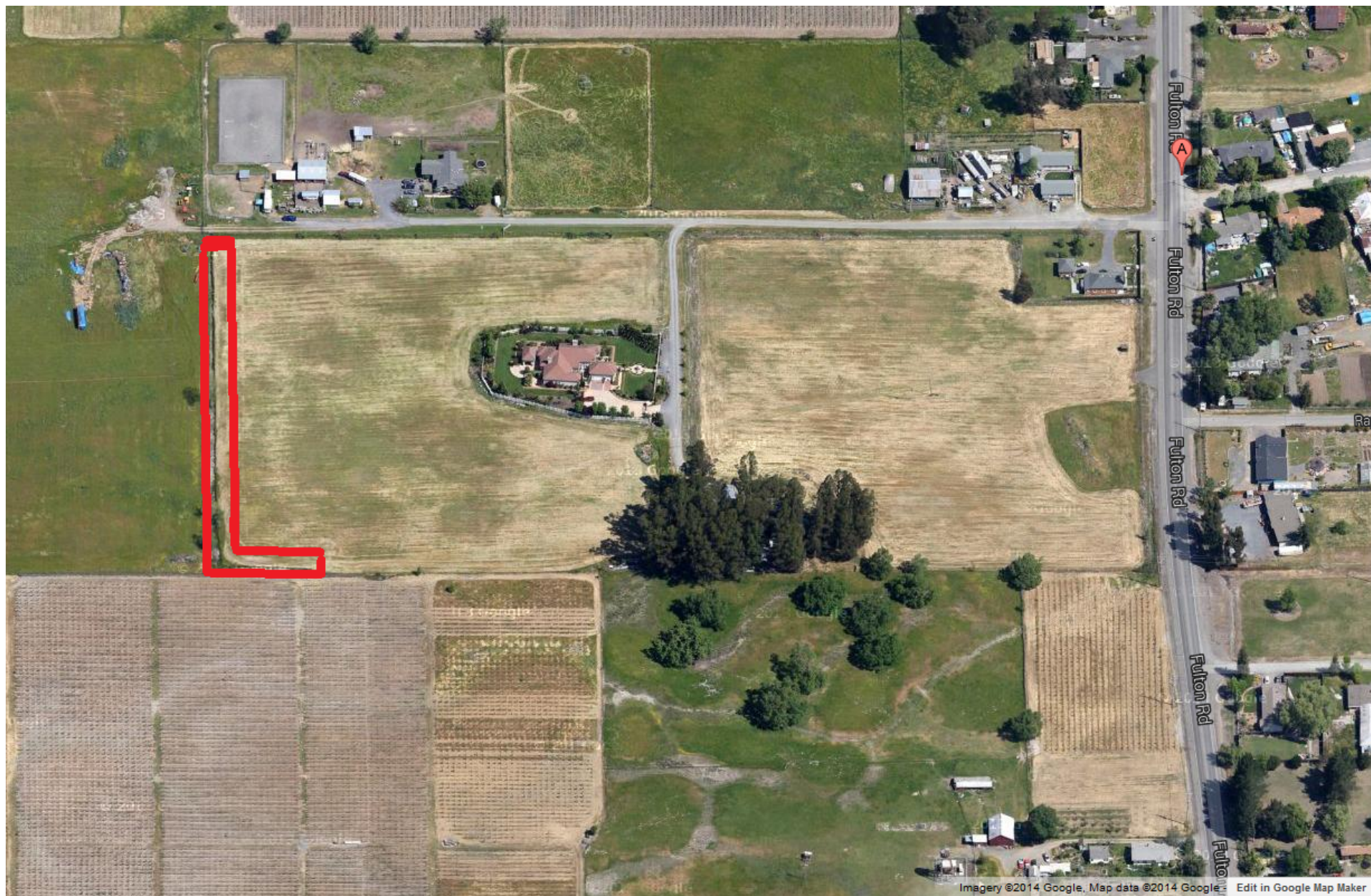


FIGURE 1

EXHIBIT B

1 Jack Silver, Esq. SB #160575
2 Law Office of Jack Silver
3 Jerry Bernhaut, Esq. SB # 206264
4 Post Office Box 5469
5 Santa Rosa, CA 95402-5469
6 Tel. (707) 528-8175
7 Fax.(707) 528-8675
8 lhm28843@sbcglobal.net

9 Attorneys for Plaintiff
10 CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH,
14 a 501(c)(3), nonprofit, public benefit
15 Corporation,

16 Plaintiff,

17 v.

18 HUMBERTO CASTANEDA; MARIA
19 BERTHA CASTANEDA; DOES 1 - 10,
20 Inclusive,

21 Defendants.
22 _____/

CASE NO.: 3:13-cv-01700 WHA

**DECLARATION OF JACK SILVER
RE PLAINTIFF'S ITEMIZATION OF
COSTS**

Trial Date: October 27, 2014
Judge: Hon. William H. Alsup

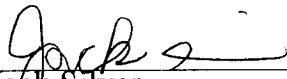
23 I, Jack Silver declare as follows:

- 24 1. I am currently a member of the State Bar of California and am admitted to practice before
25 all the United States District Courts in California, and the Ninth Circuit Court of Appeals.
- 26 2. I am the attorney for Plaintiff California River Watch in these proceedings.
- 27 3. I have personal knowledge concerning each and every cost stated in Plaintiff's Itemization
28 of Costs, attached to this Declaration as Exhibit A.
- 1 The cost of each item has been correctly stated.
- 2 These costs have been necessarily incurred in the case.
- 3 The services for which fees have been charged were actually and necessarily performed.
- 4 The expenses incurred during the course of litigation are those normally billed to fee-
paying clients and are the type of costs routinely charged to clients by attorneys in private
practice in the Bay Area.

1 8. The costs itemized herein are current and do not include any costs that might be incurred
2 in this case after April 22, 2014.

3 I declare under penalty of perjury under the laws of the United States that the foregoing
4 is true and correct to the best of my knowledge, information and belief.
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7 DATED: April 22, 2014
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Jack Silver

PLAINTIFF'S ITEMIZATION OF COSTS (as of April 22, 2014)**California River Watch v. Humberto Castaneda, et al.****CASE NO: 3:13-cv-01700 WHA**

DESCRIPTION OF COSTS	AMOUNT
Filing Fee	350.00
Witness Fees	165.00
Service Fees	1014.00
Depositions	1163.00
Reproduction ¹	284.00
Facsimiles	3.00
Postage	166.00
Legal Research Services	1202.00
Expert Fees ²	9237.00
Paralegal Services	2590.00
Investigator/Investigation	6673.00
TOTAL COSTS	22847.00

¹REPRODUCTION

Government records	142.00
Discovery documents	96.00
Visuals	12.00
Other	34.00
Reproduction Total	284.00

²EXPERT FEES

Hydrologist and wetlands/vernal pool	1800.00
Population Biologist	2517.00
Zoologist	4920.00
Expert Fees Total	9237.00