

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members ("CRW"), and the City of Whittier ("City"). CRW and the City are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

RECITALS

- A. California River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.
- B. The City, organized under the laws of the State of California, owns and operates a collection system for the purpose of collecting and conveying for treatment wastewater from residential, commercial, and industrial sources to the Los Coyotes Water Reclamation Plant;
- C. On June 8, 2015, CRW served the City with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. On August 21, 2015, CRW filed suit in this matter, *California River Watch v. City of Whittier*, USDC Central Dist., Case No. 2:15-cv-06392 ("CRW Complaint").
- D. The City denies all of CRW's allegations that it is liable to CRW for any claims that were, or could have been asserted against the City based upon the Notice Letter and/or the CRW Complaint.
- E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter and the CRW Complaint, including the exchange of information regarding the Site, as well as engaging in a negotiation and technical dialogue regarding settlement.
- F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the City, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter.

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

TERMS AND CONDITIONS

1. Parties Bound By This Agreement and Length of Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the City, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The "Termination Date" of this Agreement is the date that all of the requirements under Sections 2 and 3 are finished by the City.

2. Actions By the City. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, the City shall perform the below specified projects. The City reserve the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors; and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the Regional Water Quality Control Board (or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to applicable environmental matters):

2.1 *Remedial Measures - Definitions*

a. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

b. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within two hundred (200) feet of surface waters.

c. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within two hundred (200) feet of surface waters.

d. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect
- 2 – Minor to moderate defect

1 – Minor defect

2.2 Remedial Measures - Actions

CRW contends that the following remedial measures are necessary to bring the City into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the City's ongoing noncompliance with the CWA. The City will undertake the following measures without admitting or conceding that it is not in compliance with the CWA and the Basin Plan.

a. Sewage Collection System Investigation and Repair

i. Within five (5) years repair or replace all sewer lines located within two hundred (200) feet of surface waters which have been rated as Significantly Defective or given a comparable assessment.

ii. The City of Whittier has a 30-year Capital Improvement Program (CIP) for Sewer System Replacement which it shall diligently pursue. The City shall:

- Strategically prioritize SSO prone locations for spot repair or replacement from manhole to manhole to reduce future SSOs;
- Repair or replace sewer pipe segments containing defects with a rating of four (4) based on the PACP rating system, if such defect resulted in a SSO or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;
- Sewer pipe segments that contain defects with a rating of 4 that are not repaired or replaced within five (5) years shall be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines that the grade 4 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall prioritize the repair/replacement based on SSO frequency and risk of future SSOs.
- Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall receive strategic priority based on SSO risk/history and be placed on the Spot Repair list until the full manhole to manhole sewer pipe can be replaced.

b. SSO Reporting and Response

i. Within one year from the effective date of this Agreement, the City Sewer Crew shall receive training on "Overflow Emergency Response Plan" pursuant to the approved Sewer System Management Plan and to continue to include in its reports submitted to the CIWQS State Reporting System the following items:

- The method or calculations and the actual calculations for estimating total spill volume, spill volume that reached surface waters and spill volume recovered as approved by the Water Board and Sanitary Sewer collection industry such as California Water Environmental Association/Southern Section Collection System Committee.
- A good faith effort to include an accurate estimate of the start time of a SSO based upon direct observation and witness inquiry instead of recording the start time of a SSO as the time the call was received or the SSO was reported.
- For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume. Photos will be taken with a camera that time and date the photo.
- Water quality sampling and testing as required by the Water Board. In addition, in the event that 1000 gallons or more of untreated or partially treated waste water enters surface waters, the City shall notify CRW via e-mail at -lhm28843@sbcglobal.net of any such event. CRW may choose to conduct water quality sampling in the vicinity of the spill and if it does so, will share the results from that sampling with the City. This notification requirement will cease five years after the effective date of this Agreement.
- Continue to provide the link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

c. Chemical Root Control

If the City uses chemical root control, the City shall use chemicals approved by the Los Angeles County Sanitation District for any chemical root control as recommended by the Water Board in the Notice of Violation dated July 1, 2015. All application shall comply with the recommendations of the manufacturer of the chemical and as required by Cal-OSHA. All chemical shall be considered sewage and will receive treatment at the LACSD. The City, through its contractor:

- Must insure that none of the root control agent escapes the sewer;
- Must identify the PACP rating in the section being treated, and maintain records, including a map identifying locations where treatment occurs. The amounts applied shall be per the chemical manufacturer's recommendation, and contractor shall keep a record of the amount applied at each location.
- Cannot apply root control agent to any line that has a PACP rating of 4 or 5 unless the City, through its contractor, can guarantee none of the root control agent will escape the sewer line through any line defect;
- Must not apply root control agent in any location where groundwater can be contaminated via infiltration or exfiltration;

In addition, the City shall post on its website a map showing where a root control agent may be used throughout the sewer system and provide a contact number for the City to respond to questions.

d. Lateral Inspection/Repair Program

The City shall establish a mandatory private sewer lateral inspection and repair program triggered by any of the following events:

- i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer;
- ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
- iii. A change of the use of the structure served to a use that will result in a fifty percent (50%) higher flow than the current use;
- iv. Upon replacement or addition of a bathroom;
- v. Upon replacement or repair of any part of the sewer lateral;
- vi. Upon issuance of a building permit with a valuation of \$100,000 or more; and/or a fifty percent (50%) or more increase in the number of bedrooms over the prior total number of bedrooms;
- vii. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

In connection with such a program, the City shall comply with all applicable state and local laws concerning municipal code adoption, public hearing notice, and related requirements.

3. Actions by CRW and Payment of Fees and Costs by the City. In exchange for the delivery, execution, and performance of this Agreement, CRW and the City shall perform the following:

3.1. Submittal of Agreement to DOJ. Within five (5) business days after the Effective Date of this Agreement, CRW shall provide the Federal District Court for the Central District of California in Case No. 2:15-cv-06392 ODW (AGRx) with a Notice of Settlement, and shall submit this Agreement to the United States Department of Justice (“DOJ”) for the statutory 45-day agency review period set forth in 33 U.S.C. sec. 1365(c).

3.2. Filing Notice of Dismissal with Court. Within five (5) business days after the expiration of the DOJ review period discussed in Section 3.1, CRW shall file with the Federal District Court a Notice of Dismissal whereby the Complaint and all claims therein shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

3.3 Fees and Costs. Within ten (10) business days after the filing with the federal District Court the Notice of Dismissal discussed in Section 3.2, the City shall pay CRW the total sum of Fifty Seven Thousand Five Hundred Dollars (\$57,500.00) as full reimbursement for CRW’s investigative and attorneys’ fees and costs. Payment shall be made by check to “California River Watch” and mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469. Payment shall constitute full and complete satisfaction of any and all claims by CRW for attorneys’ fees and costs in connection with this matter up to and including the Effective Date.

4. Mutual Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the City, and the City against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act. CRW and the City, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge the City and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys’ fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims asserted in the Notice Letter under the Clean Water Act concerning the Site. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

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

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

5. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by the City, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by the City, which expressly denies any such liability or wrongdoing.

6. Delays in Schedule Implementation. In the event implementation by the City of the remedial measures set forth in Section 2 of this Agreement does not occur by the agreed to dates, despite the timely good faith efforts of the City to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, the City agrees to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days prior to any deadline set forth in Section 2, and shall describe the reasons for the anticipated delay.

7. Force Majeure. The City shall not be deemed in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of the City or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the City's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

8. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the City concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures. Failure to satisfy the payment condition in Section 3 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

8.1. Good Faith Negotiations. CRW and the City shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 8. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the

Agreement alleged to have been breached.

8.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

8.3. Waiver. By agreeing to these dispute resolution provisions, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

9. 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, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel: (707) 528-8175
Email: lhm28843@sbcglobal.net

If to the City: Public Works Director
City of Whittier
13230 Penn Street
Whittier, CA 90602
Tel: (562) 567-9500

With a copy to:

Richard D. Jones
Whittier City Attorney
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835

The foregoing addresses may be changed by Notice given in accordance with this Section 8. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided 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.

10. Attorneys' Fees. Other than the payment to CRW under Section 3 each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

11. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW, the City, and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

12. Interpretation and Applicable Law. This Agreement 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.

13. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

15. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

16. Entire Agreement In Writing. This Agreement 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.

17. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

18. Severability. The invalidity or unenforceability of any provision of this Agreement 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 Agreement shall be deemed amended to delete here from such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement 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 Agreement in the particular jurisdiction in which such adjudication is made.

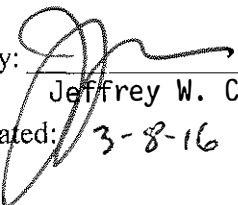
19. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

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

21. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

THE CITY OF WHITTIER

By: 
Jeffrey W. Collier, City Manager
Dated: 3-8-16

CALIFORNIA RIVER WATCH

By:



Larry Hanson
Board President

Dated:

2/26/2016