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9 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

10
11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 CALIFORNIA SPORTFISHING
14 PROTECTION ALLIANCE, a
California non-profit corporation,

15 Plaintiff,

16 vs.

17 JENSEN ENTERPRISES, INC. dba
18 JENSEN PRECAST, a California
19 corporation,

20 Defendant.

Civil Case No. 2:14-cv-01253 MCE DAD

CONSENT DECREE;
[PROPOSED] ORDER

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

1 **CONSENT DECREE**

2 The following Consent Decree is entered into by and between Plaintiff California Sportfishing
3 Protection Alliance (“Plaintiff” or “CSPA”), and Defendant Jensen Enterprises, Inc. dba Jensen Precast
4 (“Defendant”). The entities entering into this Consent Decree are each an individual “Settling Party” and
5 collectively the “Settling Parties.”

6 **WHEREAS**, CSPA is a non-profit public benefit corporation dedicated to the preservation,
7 protection, and restoration of the environment, the wildlife, and the natural resources of all waters of
8 California, including the Sacramento River, the American River, and the Sacramento-San Joaquin River
9 Delta;

10 **WHEREAS**, Defendant is an owner and/or operator of the concrete product manufacturing and
11 fabrication facility located at 5400 Raley Boulevard, in Sacramento, California 95838 (“Jensen Precast
12 Facility” or “Facility”);

13 **WHEREAS**, Plaintiff contends that Defendant discharges polluted storm water into Magpie
14 Creek, which flows to Steelhead Creek, which discharges to the Sacramento River.

15 **WHEREAS**, discharges from the Facility are regulated by the National Pollutant Discharge
16 Elimination System (“NPDES”) General Permit NO CAS000001 [State Water Resources Control
17 Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Storm Water
18 Permit”) and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or
19 “CWA”).

20 **WHEREAS**, on March 21, 2014, Plaintiff served Defendant, the United States Environmental
21 Protection Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”)
22 and the Regional Water Quality Control Board (“Regional Board”) with a notice of intent to file suit
23 (“Notice Letter”) under Sections 505(a) and (b) of the CWA, 33 U.S.C. § 1365(a) and (b). The Notice
24 Letter alleged violations of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and
25 1342, and violations of the Storm Water Permit.

26 **WHEREAS**, on May 21, 2014, Plaintiff filed a complaint against Defendant, in the United
27 States District Court, Eastern District of California (Case No. 2:14-cv-01253-MCE-DAD) alleging
28 ongoing violations of the CWA (hereinafter “Complaint”).

1 **WHEREAS**, Defendant denies all allegations in the Notice Letter and Complaint;

2 **WHEREAS**, Plaintiff and Defendant have agreed that it is in the Settling Parties' mutual
3 interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the
4 allegations set forth in the Complaint without further proceedings and without any admission of liability
5 on the part of the Defendant.

6 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree shall be made in
7 compliance with all applicable Federal and State laws and local rules and regulations.

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

- 10 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
11 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);
- 12 2. Venue is appropriate in the Eastern District pursuant to Section 505(c)(1) of the Clean
13 Water Act, 33 U.S.C. § 1365(c)(1), because the Facility at which the alleged violations took place is
14 located within this District;
- 15 3. The Complaint states claims upon which relief may be granted pursuant to Section 505 of
16 the Clean Water Act, 33 U.S.C. § 1365;
- 17 4. Plaintiff has standing to bring this action;
- 18 5. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of
19 this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court
20 to resolve any pending motion to enforce this Consent Decree.

21 **I. AGENCY REVIEW AND TERM OF CONSENT DECREE.**

22 6. Plaintiff shall submit this Consent Decree to the United States Department of Justice and
23 the United States Environmental Protection Agency (collectively "Federal Agencies") within three (3)
24 days of the final signature of the Settling Parties for agency review consistent with 40 C.F.R. § 135.5. In
25 the event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree to
26 meet and confer within a reasonable amount of time to attempt to resolve the issue(s) raised by the
27 Federal Agencies.

28 7. The term "Effective Date" as used in this Consent Decree shall mean the last day for the
Federal Agencies to comment on the Consent Decree, i.e., the forty-fifth (45th) day following the

1 Federal Agencies' receipt of the Consent Decree, or the date on which the Federal Agencies provide
2 notice that they require no further review, whichever occurs earlier.

3 8. This Consent Decree will terminate three (3) years from the Effective Date, unless there
4 is an ongoing, unresolved dispute regarding Defendant's compliance with this Consent Decree, in which
5 case the Consent Decree will terminate upon final resolution of the dispute.

6 **II. COMMITMENTS OF THE SETTLING PARTIES.**

7 **A. Storm Water Pollution Control Best Management Practices.**

8 9. It is the express purpose of the Parties entering into this Consent Decree to further the
9 objectives set forth in the Clean Water Act and to resolve those issues alleged by CSPA in its
10 Complaint. In light of these objectives and as set forth fully below, Defendant agrees, *inter alia*, to
11 comply with the provisions of this Consent Decree, the requirements of the Storm Water Permit, and all
12 applicable provisions of the CWA.

13 10. In addition to maintaining the current structural and non-structural Best Management
14 Practices ("BMPs") described in the Facility's Storm Water Pollution Prevention Plan ("SWPPP"),
15 attached hereto as Exhibit A, Defendant shall (1) develop and implement BMPs identified herein, and
16 (2) develop and implement additional BMPs necessary to comply with the provisions of this Consent
17 Decree and the Storm Water Permit, including but not limited to those that achieve the Best Available
18 Technology Economically Achievable ("BAT") and the Best Conventional Treatment Technology
19 ("BCT") and to comply with the Storm Water Permit's Receiving Water Limitation C(1) and C(2).

20 11. **Impervious Surfaces.**

21 a. Sweeper. Prior to the 2014/2015 Wet Season,¹ Defendant shall continue to
22 implement BMPs to ensure that all impervious surfaces of the Facility, including the production and
23 storage areas, are swept with a sweeper at the conclusion of each day the Facility is in operation, and
24 with a regenerative sweeper two (2) times a week.

25 b. Prior to the 2014/2015 Wet Season, Defendant shall install, and thereafter
26 maintain, a truck tire wash at the exits of Facility to minimize the tracking of pollutants from the Facility
27 to Vinci Road. The truck tire wash shall be used on each truck that exits the Facility.

28 _____
¹ The Wet Season is October 1 – May 30.

1 a. Finished Product Storage Areas, Concrete Mixing and Forming Areas. Prior to the
2 2014/2015 Wet Season, Defendant shall continue to implement BMPs to sweep all dust from hard
3 surfaces that are accessible at least once a month and prior to any precipitation event where more than
4 0.1 inches of rain is predicted in Sacramento with a minimum likelihood of occurrence of fifty-percent
5 (50%) by the National Weather Service, to remove aggregates, cement dust, sand, dirt debris and metals.
6 To the extent practicable, Defendant shall cover all exposed finished concrete products prior to and
7 during a rain event where more than 0.1 inches of rain is predicted in Sacramento with a minimum
8 likelihood of occurrence of fifty-percent (50%) by the National Weather Service. The covering shall
9 remain in place for the duration of the rain event.

10 c. Defendant agrees to close or otherwise cover all dumpsters prior to and during
11 rain events. The entire dumpster shall be closed and any covering used shall be intact and free of holes
12 and tears.

13 12. **Containment.**

14 a. Hazardous Waste Storage Areas. Prior to the 2014/2015 Wet Season, all
15 hazardous waste shall be stored indoors when possible, or under cover, in above ground containers with
16 secondary containment.

17 b. Vehicle Maintenance, diesel fuel, hydraulic fluid storage and use. Defendant shall
18 continue to conduct all regular and routine vehicle maintenance indoors. Defendant agrees that
19 secondary containment shall be used in the diesel and fuel storage areas, and the chemical storage areas.
20 Defendant shall develop and implement BMPs to prevent the exposure of fuel and vehicle fluids from
21 exposure to storm water including having spill response kits.

22 c. Aggregate Materials. Prior to the 2014/2015 Wet Season, Defendant shall develop
23 and implement BMPs to ensure all aggregate material storage areas are maintained to prevent migration
24 of materials from the designated storage areas. Defendants shall sweep all materials back into their
25 respective storage locations at the end of each day the Facility is in operation. Prior to and during rain
26 events, Defendant shall cover or tarp, which shall be intact and free of holes and tears, all sand storage
27 areas, and use straw waddles around all other aggregate material storage areas.

28 13. **Perimeter Inspection and Storage.**

1 a. Defendant shall inspect and maintain the perimeter of the Facility prior to each
2 Wet Season and repair the perimeter border, as needed, to prevent storm water and/or unauthorized non-
3 stormwater from discharging from the Facility perimeter.

4 b. Prior to the 2014/2015 Wet Season, Defendant shall cease, and thereafter prevent,
5 the storage of materials outside of the Jensen Precast Facility boundaries.

6 c. Defendant only uses Vinci Avenue for short-term parking of trailers waiting to be
7 hitched and picked up for off-site transport. Defendant shall cease using Vinci Avenue for this activity
8 or for any industrial activity and/or operations by December 31, 2015. Until activities are no longer
9 conducted on Vinci Avenue, Defendant shall develop and implement BMPs, such as using straw
10 waddles and drain inlet protection at the storm drain inlets, and to the extent practicable shall use
11 covering to prevent exposure of pollutants, resulting from Defendant's use of this area of Vinci Avenue,
12 to storm water. After each trailer is picked up, Defendant shall sweep the area, and inspect for staining,
13 spills, leaks, or contamination, and shall implement BMPs to clean the area.

14 14. **Capturing Sprinkler/Hydrant Testing Water and Preventing Non-Storm Water**
15 **Discharges.**

16 a. Prior to the 2014/2015 Wet Season, Defendant shall ensure that no water resulting
17 from Jensen's sprinkler testing is discharged from the Facility prior to being dechlorinated.

18 b. Prior to the 2014/2015 Wet Season, Defendant agrees to develop and implement
19 BMPs to block off drainage inlets at the Facility when water is used at the Facility, including but not
20 limited to, for dust suppressant, and vehicle cleaning or washing.

21 15. **Coring Area.**

22 a. Prior to the 2014/2015 Wet Season, Defendant shall develop and implement
23 BMPs, such as berming, to prevent the runoff of water from the Coring Area to any drainage other than
24 the designated drain inlet leading to the sump system.

25 b. Prior to the 2014/2015 Wet Season, Defendant agrees to mitigate fugitive dust
26 from the Coring Area, and sweep all dust from hard surfaces that are accessible at least once a month
27 and prior to any precipitation event where more than 0.1 inches of rain is predicted in Rocklin with a
28 minimum likelihood of occurrence of fifty-percent (50%) by the National Weather Service rain event to

1 remove cement dust and metals.

2 c. To the extent practicable, Defendant agrees to cover all exposed concrete items
3 with a covering that shall be intact and free of holes and tears, prior to any precipitation event where
4 more than 0.1 inches of rain is predicted in Rocklin with a minimum likelihood of occurrence of fifty-
5 percent (50%) by the National Weather Service. The covering shall remain in place for the duration of
6 the rain event.

7 **B. Storm Water Discharge Locations and Treatment.**

8 16. Defendant shall maintain current BMPs, and if necessary, develop and implement
9 additional BMPs to prevent storm water from discharging from the Facility via any location except
10 Discharge Points S-1, S-2 and S-3, identified on the Facility site map attached as Exhibit 1.

11 a. Discharge Point S-1 is located in the northwestern section of the Facility, and
12 collects storm water from several storm drain inlets throughout the northern portion of the Facility
13 before discharging to the municipal storm drain system.

14 b. Discharge Point S-2 collects storm water flows from the southeastern portion of
15 the Facility, which discharges to the municipal storm drain system on Vinci Avenue.

16 c. Discharge Point S-3 collects storm water flows from the southwestern portion of
17 the Facility, which discharges to the municipal storm drain system on Vinci Avenue.

18 17. Defendant agrees to maintain the *StormVault* storm water retention system, which has a
19 capacity of approximately 77,800 gallons. Defendant shall implement and maintain, at a minimum, the
20 following drain inlet protections at each of the Facility inlets which may include the following: silt sack,
21 rock bags, absorbent booms, terratube filters, and straw wattles to allow filtration and ponding prior to
22 discharge to the drain inlet.

23 **C. Storm Water Sampling.**

24 18. Sampling. During the life of this Consent Decree, Defendant shall collect storm water
25 samples from each location storm water is discharged from the Facility from at least five (5) “qualifying
26 rain events” per Wet Season. The Facility’s storm water discharge locations shall be identified on the
27 Facility site map, which shall be included in the SWPPP and M&RP. To the extent water is stored or
28 contained, Defendant shall sample the stored or contained water at the Facility discharge location, before

1 it is released even if not during operating hours, as required by Section 5(a) of the Storm Water Permit.

2 All sampling shall be conducted as described in subparagraphs a. through i below.

3 a. A “qualifying rain event” is one where: (1) a discharge occurs during operating hours,
4 and (2) there was no storm water discharge for three days prior to the rain event.

5 b. If, prior to March 1, Defendant has been unable to collect samples from two (2)
6 qualifying storm events, Defendant shall satisfy the sampling requirements of this Consent Decree by
7 sampling non-qualifying storm events.

8 c. Defendant shall analyze each storm water sample for the contaminants set forth in
9 Table 1. Defendant can discontinue its storm water sample analysis of a parameter listed in Table 1 if (1)
10 the concentration of the parameter does not exceed the Table 1 level in at least four (4) consecutive
11 storm water samples and (2) Defendant certifies and demonstrates that the parameter is not used or
12 associated with its industrial activity. Defendant shall contact Plaintiff at least ninety (90) days prior to
13 discontinuing analysis for any required parameter by providing a written explanation for their decision
14 and all relevant laboratory reports and supporting documentation.

15 d. A laboratory accredited by the State of California shall analyze all samples collected
16 pursuant to this Consent Decree.

17 e. The laboratory shall use analytical methods adequate to detect the individual
18 contaminants at or below the values specified in Table 1.

19 f. Except for pH, all samples collected from the Facility shall be delivered to the
20 laboratory as necessary to ensure that sample “hold time” is not exceeded for each contaminant sampled.
21 For field measurements, such as pH, Defendant shall use portable instruments, and not pH paper, which
22 shall be calibrated and used according to manufacturers’ instructions and approved industry
23 methodology.

24 g. Defendant shall request that sample analysis results be reported to it within ten (10)
25 days of laboratory receipt of the sample, or as soon as possible without incurring “rush” charges.

26 h. Defendant shall request that all sample results for metals be reported by the laboratory
27 in both total and dissolved concentrations.

28 i. Defendant shall provide CSPA with the complete laboratory results, including a copy

1 of the Quality Assurance/Quality Control and the laboratory report for all samples collected at the
2 Facility, within seven (7) calendar days of receiving the results.

3 **D. Reduction of Pollutants in Discharges.**

4 19. Contaminant Reduction. Defendant shall develop and implement BMPs to reduce
5 pollutants in storm water discharges to levels below those in Table 1² The presence of any contaminant
6 in any discharge from the Facility in excess of the Benchmark values in Table 1 will not be considered a
7 breach of this Consent Decree provided Defendant has implemented BMPs that achieve BAT/BCT,
8 including, but not limited, to those identified in the Facility's SWPPP and in this Consent Decree.

9 **Table 1. Benchmark Values for Facility Discharges**

Contaminant	Values	Source of Value
Total Suspended Solids	100 mg/L	2008 EPA Benchmark
Total Recoverable Copper	0.0123 mg/L	2008 EPA Benchmark
Total Recoverable Lead	0.069 mg/L	2008 EPA Benchmark
Total Recoverable Zinc	0.11 mg/L	2008 EPA Benchmark
Oil and Grease	15 mg/L	2008 EPA Benchmark
Total Recoverable Aluminum	0.750 mg/L	2008 EPA Benchmark
Total Cadmium	0.0018 mg/L	2008 EPA Benchmark
Total Recoverable Iron	1.0 mg/L	2008 EPA Benchmark
Total Recoverable Mercury	0.0014 mg/L	2008 EPA Benchmark
Biochemical Oxygen Demand	30 mg/L	2008 EPA Benchmark
Chemical Oxygen Demand	120 mg/L	2008 EPA Benchmark
pH	6.5-8.5 units	Basin Plan

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19 20. Action Plan for Table 1 Exceedances. If the result(s) from any sampling event(s)
20 conducted during a Wet Season reveals any contaminant at a concentration above the numeric values
21 specified in Table 1, Defendant shall submit a plan to Plaintiff for reducing the level of the
22 contaminant(s) to Table 1 levels ("Action Plan"). An Action Plan shall be submitted by June 1 following
23 the Wet Season during which the numeric value exceedance(s) occurs.

24 21. Action Plan Requirements. Each Action Plan submitted shall include at a minimum: (1)
25 the identification of the contaminant(s) discharged in excess of the numeric value(s); (2) an assessment
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28 ² Several of the values in the table are hardness dependent, as indicated in boldface type. Values based
on 2008 EPA Benchmarks assume a hardness range of 75-100 mg/l CaCO₃ and can be adjusted
accordingly, *see* 2008 EPA Benchmarks, Appendix J.

1 of the source of each contaminant discharged in excess of the numeric value(s); (3) the identification of
2 additional BMPs, including both preventing the exposure of pollutant and pollutant sources to storm
3 water and treating storm water prior to discharge from the Facility that will reduce pollutant
4 concentrations; and (4) time schedules for implementation of the proposed BMPs. The time schedule(s)
5 for implementation shall ensure that all BMPs are implemented as soon as possible but at least by the
6 beginning of the upcoming Wet Season (i.e., by October 1) unless the Settling Parties agree on a later
7 date based on the time needed to design, procure, and install the necessary equipment. Any disputes over
8 the deadline for implementation of additional BMPs identified in an Action Plan shall be resolved
9 pursuant to the dispute resolution provisions of this Consent Decree, set out in Section III below.

10 22. Action Plan Review. CSPA shall have thirty (30) days upon receipt of Defendant's
11 Action Plan to provide Defendant with comments on the Action Plan. Within fifteen (15) days of
12 Defendant's receipt of CSPA's comments on the Action Plan, Defendant shall consider CSPA's
13 comments and shall either incorporate them into the Action Plan or, if Defendant declines to accept one
14 or more of CSPA's comments, provide CSPA with a written explanation of the grounds for rejection.
15 Disputes regarding the adequacy of a particular BMP shall not impact the schedule for implementing
16 any other BMP set forth in the Action Plan. Any disputes as to the adequacy of the Action Plan shall be
17 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section III
18 below.

19 23. Defendant shall contact Plaintiff to request an extension of any deadline set forth in this
20 Consent Decree, if necessary, to implement any structural BMPs requiring agency approval. Plaintiff's
21 consent to Defendant's requested extension shall not be unreasonably withheld.

22 24. Defendant shall revise its SWPPP and/or Monitoring & Reporting Plan ("M&RP") as
23 applicable within thirty (30) days of receipt of Plaintiff's comments to reflect the changes to the Action
24 Plan. Defendant shall notify CSPA in writing when the Action Plan has been completely implemented,
25 and the SWPPP and/or M&RP has been revised.

26 **E. Visual Observations.**

27 25. All visual observations shall be conducted in accordance with the terms of the Storm
28 Water Permit and this Consent Decree. During the life of this Consent Decree, Defendant shall conduct

1 visual observations at each point where storm water is discharged during each rain event. Defendant
2 shall maintain logs of the visual observations which shall be included in Defendant's Annual Reports
3 submitted to the Regional Board, and within ten (10) days of Plaintiff's written request.

4 **F. Employee Training.**

5 26. Within sixty (60) days of the Effective Date, Defendant shall conduct additional
6 employee training in order to familiarize employees at the Facility with the requirements of the Storm
7 Water Permit and this Consent Decree. The training program shall include use of written training
8 materials needed for effective implementation of the training program. Defendant shall also ensure that
9 there are a sufficient number of employees assigned to implement the BMPs and conduct other
10 compliance activities required by the Storm Water Permit and this Consent Decree, and that these
11 employees are properly trained to perform the required activities.

12 27. The training program shall require at least the following:

13 a. Non-Storm Water Discharge Training. Defendant shall train employees on the Storm
14 Water Permit's prohibition of non-storm water discharges, so that employees know what non-storm
15 water discharges are, which can result from improper practices that may produce non-storm water
16 discharges at the Facility, and how to detect and prevent them;

17 b. BMP Training. Defendant shall train employees on BMP implementation and
18 maintenance to ensure that BMPs are implemented effectively to prevent or minimize the exposure of
19 pollutants to storm water, to prevent or minimize the discharge of contaminated storm water, and to
20 ensure the proper treatment of storm water at the Facility;

21 c. Sampling Training. Defendant shall designate an adequate number of employees to
22 ensure the collection of storm water samples from each discharge location as required by this Consent
23 Decree and/or the Storm Water Permit. The training shall include the proper sampling protocols,
24 including chain of custody requirements, to ensure storm water samples are properly collected, stored,
25 and submitted to a certified laboratory.

26 d. Visual Observation Training. Defendant shall provide training to all individuals
27 performing visual observations at the Facility pursuant to this Consent Decree and/or the Storm Water
28 Permit that includes when visual observations are required, the different types of visual observations

1 required, and instruction on proper record keeping under the Storm Water Permit.

2 28. Training shall be provided on an annual basis, or as otherwise required to ensure
3 compliance with the terms of this Consent Decree, by a private consultant or a representative of
4 Defendant who is familiar with the requirements of this Consent Decree and the Storm Water Permit.
5 The training shall be repeated as necessary to ensure that employees are familiar with the requirements
6 of this Consent Decree, the Storm Water Permit, and the Facility's SWPPP and M&RP, as appropriate
7 to the particular employee's job descriptions. Any new employee who is responsible for implementation
8 of any portion of the SWPPP, the M&RP, or compliance with other terms of the Storm Water Permit or
9 Consent Decree shall receive training within ten (10) days after being hired, or before being responsible
10 for compliance with the terms of the Storm Water Permit or Consent Decree.

11 29. Defendant shall maintain training records to document compliance with Section II.F of
12 this Consent Decree, and shall make these records available for Plaintiff's review at the Facility. The
13 Training Program shall be specified in the SWPPP and Defendant shall modify the SWPPP as necessary
14 to reflect the training program required by this Consent Decree.

15 **G. Storm Water Pollution Prevention Plan and Monitoring and Reporting Plan.**

16 30. Within sixty (60) days of the Effective Date of this Consent Decree, Defendant shall
17 revise the Facility's SWPPP and/or M&RP as applicable to include:

- 18 a. All BMPs that are currently utilized at the Facility;
- 19 b. All BMPs identified and developed pursuant to this Consent Decree;
- 20 c. The specific individual(s) responsible for compliance with the Storm Water Permit
21 and this Consent Decree, including specifying which individual is responsible for each area of
22 compliance (e.g., John Doe, collecting samples);
- 23 d. A detailed site map that includes at a minimum all information required by the Storm
24 Water Permit and this Consent Decree;
- 25 e. A description of each industrial activity, all potential pollutant sources, and each
26 potential pollutant associated with each industrial activity and/or pollutant source;
- 27 f. Incorporate the requirements of the Storm Water Permit and this Consent Decree.

28 31. Additional and Ongoing Revisions to SWPPP and M&RP. Defendant shall revise the

1 SWPPP and M&RP if there are any changes in the Facility's operations that may possibly affect the
2 quality of storm water discharges at the Facility, including but not limited to changes to storm water
3 discharge point(s) or changes or additions to the BMPs at the Facility resulting from an Action Plan.
4 Defendant shall submit any revised SWPPP and M&RP to CSPA for review and comment within five
5 (5) days of completion. CSPA shall provide comments, if any, to Defendant within thirty (30) days of
6 receipt of any revised SWPPP and M&RP. Within thirty (30) days of receiving comments from CSPA,
7 Defendant shall incorporate CSPA's comments into any revised SWPPP and M&RP or shall justify in
8 writing why any comment is not incorporated. Any disputes as to the adequacy of the SWPPP and
9 M&RP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in
10 Section III below.

11 32. Commenting on the SWPPP and M&RP Revisions. Defendant shall submit the revised
12 SWPPP and M&RP to CSPA for review and comment as soon as they are completed, but in any event
13 no later than sixty (60) days after the Effective Date. CSPA shall provide comments, if any, to
14 Defendant within thirty (30) days of receipt of the revised SWPPP and M&RP. Within thirty (30) days
15 after receipt of comments from CSPA, Defendant shall incorporate CSPA's comments into the SWPPP
16 and M&RP, or shall justify in writing why any comment is not incorporated. Any disputes over the
17 adequacy of the revised SWPPP and M&RP shall be resolved pursuant to the dispute resolution
18 provisions of this Consent Decree, set out in Section III below.

19 **H. Compliance Monitoring and Reporting.**

20 33. Site Inspections. Each year for the life of this Consent Decree, Plaintiff and its
21 representatives may conduct up to two (2) noticed site inspections per Wet Season per year at the Facility
22 during the life of this Consent Decree, one (1) dry weather additional inspection (for a total of three (3)
23 per year), plus an additional inspection if there is a dispute regarding compliance with the terms of this
24 Consent Decree. The site inspections shall occur during normal business hours, and Plaintiff shall
25 provide Defendant with three (3) days notice of an intended inspection. If a Wet Season inspection is
26 noticed, CSPA will continue to follow the weather forecast, and will confirm the Wet Season inspection
27 at least twenty-four (24) hours prior to the start of the inspection in an effort to ensure CSPA catches a
28 rain event producing a discharge during the inspection. During inspections, Plaintiff's representatives

1 must wear safety goggles, hard hats, vests, and appropriate clothing and footwear and remain in the
2 presence of Defendant's representatives at all times.

3 34. During the site inspection, Plaintiff and/or its representatives shall be allowed access to
4 the Facility's SWPPP, M&RP, and other monitoring records, reports, and sampling data for the Facility.
5 In addition, during the site inspection, Plaintiff and/or its representatives may collect samples of
6 discharges from the Facility. Any samples collected by Plaintiff shall be submitted to a certified
7 California laboratory for analysis in accordance with the provisions of Paragraph 14 of this Consent
8 Decree. Copies of the complete laboratory reports shall be provided to Defendant within five (5)
9 business days of receipt. Plaintiff shall bear all costs of inspection, sampling, and analysis using funds
10 provided by Defendant pursuant to Paragraph 32.

11 35. Compliance Monitoring and Oversight. Defendant shall pay Plaintiff Four Thousand
12 Dollars (\$4,000.00) per year during the term of the Consent Decree to help defray Plaintiff's costs of
13 monitoring and overseeing Defendant's compliance with this Consent Decree. Payment shall be made
14 within sixty (60) days after the Effective Date. Defendant's check shall be made payable to: "Lawyers
15 for Clean Water Attorney Client Trust Account" and shall be delivered by certified mail or overnight
16 delivery to: Lawyers for Clean Water, Inc., 1004-A O'Reilly Avenue, San Francisco, California 94129.
17 Upon request, Plaintiff shall provide Defendant with documentation of the fees and costs incurred in
18 connection with compliance monitoring and oversight activities. Any unexpended compliance
19 monitoring funds remaining at the termination of this Consent Decree shall be refunded to Defendant
20 within ten (10) business days after the date of termination. Upon request, Plaintiff will provide
21 Defendants with a summary of the fees and costs incurred in connection with compliance monitoring
22 and oversight activities.

23 36. Action Plan Payments. If Defendant is required to submit an Action Plan to CSPA
24 pursuant to this Consent Decree, Defendant shall make a Four Thousand Dollars (\$4,000.00) Action
25 Plan payment made payable to: "Lawyers for Clean Water Attorney Client Trust Account," and shall
26 deliver such payment by certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004-A
27 O'Reilly Avenue, San Francisco, California 94129 at the time the Action Plan is submitted to CSPA.

28 37. Reporting and Documents. During the life of this Consent Decree, Defendant shall copy

1 Plaintiff on all documents related to water quality at the Facility that are submitted to the Regional
2 Board, the State Board, and/or any State or local agency or municipality. Such reports and documents
3 shall be provided to Plaintiff concurrently as they are sent to the agencies and/or municipalities. Any
4 correspondence related to Defendant's compliance with the Storm Water Permit or storm water quality
5 received by Defendant from any regulatory agency, State or local agency, county or municipality shall
6 be provided to CSPA within five (5) calendar days of receipt by Defendant.

7 **I. Environmental Project, Litigation Fees and Costs, and Stipulated Penalties.**

8 38. Environmental Mitigation Project. To remediate environmental harms as alleged in the
9 Complaint, Defendant shall pay Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) to be used
10 to fund environmental project activities that will benefit the Sacramento-San Joaquin River Delta and its
11 watershed ("the Mitigation Payment"). The Mitigation Payment shall be paid to the Rose Foundation for
12 Communities and the Environment, and mailed via certified mail or overnight delivery to: 6008 College
13 Avenue, Suite 10, Oakland, California 94618, Attention: Tim Little. The Mitigation Payment shall be
14 made within ninety (90) days of the Effective Date, and Defendant shall concurrently provide Plaintiff
15 with a copy of such payment.

16 39. CSPA's Fees and Costs. Defendant shall partially reimburse CSPA for its investigation
17 fees and costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a
18 result of investigating and preparing this lawsuit and negotiating a resolution of this matter, in an
19 amount totaling Fifty Seven Thousand Five Hundred Dollars (\$57,500.00). Such payment shall be made
20 within thirty (30) days of the Effective Date, payable to: "Lawyers for Clean Water Attorney Client
21 Trust Account" and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc.,
22 1004-A O'Reilly Avenue, San Francisco, California 94129.

23 40. Stipulated Payment. The Defendant shall make a stipulated payment of One Thousand
24 Dollars (\$1,000.00) for each missed deadline included in this Consent Decree. Payments for a missed
25 deadline shall be used to fund environmental project activities that will benefit the Sacramento-San
26 Joaquin River Delta and its watershed. The Stipulated Payment shall be paid to the Rose Foundation for
27 Communities and the Environment, and mailed via certified mail or overnight delivery to: 6008 College
28 Avenue Suite 10, Oakland, California 94618, Attention: Tim Little. Defendant shall make the Stipulated

1 Payment within thirty (30) days of a missed deadline. Defendant shall provide Plaintiff with a copy of
2 such payment at the time it is made.

3 41. Interest Payments. In the event of late payment of any of the sums due under this Consent
4 Decree, the Defendant shall pay ten percent (10%) APR interest to Plaintiff, which shall accrue from the
5 first day past the date the payment was due until the date Defendant tenders payment. All such payments
6 shall be made payable to: “Lawyers for Clean Water Attorney Client Trust Account” and delivered by
7 certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004-A O’Reilly Avenue, San
8 Francisco, California 94129.

9 **III. DISPUTE RESOLUTION.**

10 42. This Court shall retain jurisdiction over this matter until the Consent Decree terminates in
11 accordance with Paragraph 8 for the purposes of implementing and enforcing the terms and conditions
12 of this Consent Decree, and adjudicating all disputes among the Settling Parties that may arise under the
13 provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree with
14 all available legal and equitable remedies, including contempt.

15 43. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution
16 procedures of this Section by notifying all other Settling Parties in writing of the matter(s) in dispute.
17 The Settling Parties shall then meet and confer in good faith (either telephonically or in person) in an
18 attempt to resolve the dispute informally over a period of twenty (20) calendar days from the date of the
19 notice.

20 44. If the Settling Parties cannot resolve a dispute by the end of informal meet and confer
21 negotiations, the party initiating the dispute resolution provision may invoke formal dispute resolution
22 by filing a motion before the United States District Court for the Eastern District of California.

23 45. Burden of Proof.

24 a. Except as provided in subparagraph (b) below, the burden of proof for Formal
25 Dispute Resolution shall be in accordance with applicable law.

26 b. In the event of any disagreement or dispute between Plaintiff and Defendant over
27 the necessity or appropriateness of implementing any particular BMP or set of BMPs, Defendant shall
28 bear the burden of demonstrating that its BMPs, collectively, constitute BAT/BCT for the Facility, or

1 that they are in compliance with the terms of this Consent Decree. Plaintiff shall not be required to prove
2 that Defendant's BMPs do not constitute BAT/BCT.

3 46. Litigation costs and fees incurred in conducting meet and confer or otherwise addressing
4 and/or resolving any dispute, including an alleged breach of this Consent Decree, shall be awarded in
5 accord with the standard established by Section 505 of the Clean Water Act, 33 U.S.C. §§1365 and
6 1319, and case law interpreting that standard.

7 **IV. MUTUAL RELEASE OF LIABILITY.**

8 47. CSPA's Release. Upon the Effective Date of this Consent Decree, CSPA, on its own
9 behalf and on behalf of its current and former officers, directors, employees, subsidiaries, and affiliates,
10 and each of their successors and assigns, and its agents, attorneys, and other representatives releases all
11 persons including, without limitation, Defendant and each of its current and former officers, directors,
12 members, employees, shareholders and each of their predecessors, successors and assigns, and each of
13 their agents, attorneys, consultants, and other representatives from, and waives all claims which arise
14 from or pertain to, this action, including all claims for injunctive relief, damages, penalties, fines,
15 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other
16 sum incurred or claimed, and/or claims that were asserted in CSPA's Complaint up to the Effective
17 Date.

18 48. Defendant's Release. Upon the Effective Date of this Consent Decree, Defendant, on its
19 own behalf and on behalf of its current and former officers, directors, employees, members, and each of
20 their successors and assigns, and its agents, attorneys, and other representatives releases CSPA (and its
21 current and former officers, directors, employees, members, parents, subsidiaries, and affiliates, and
22 each of their successors and assigns, and its agents, attorneys, and other representatives) from, and
23 waives all claims which arise from or pertain to this action, including all claims for fees (including fees
24 of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could
25 have been claimed for matters associated with or related to CSPA's Complaint up to the Effective Date.

26 49. Nothing in this Consent Decree limits or otherwise affects CSPA's right to address or
27 take any position that it deems necessary or appropriate in any formal or informal proceeding before the
28 Regional Board, EPA, or any other judicial or administrative body on any other matter relating to storm

1 water discharges from the Facility occurring or arising after the Effective Date of the Consent Decree,
2 but specifically excluding the discharges and all other matters addressed by this Consent Decree.

3 **V. MISCELLANEOUS PROVISIONS.**

4 50. No Admission of Liability. Neither this Consent Decree, the implementation of additional
5 BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding,
6 adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed as an
7 admission of violation of any law, rule, or regulation. Defendant maintains and reserves all defenses it
8 may have to any alleged violations that may be raised in the future.

9 51. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake, or natural
10 catastrophe; civil disturbance, or terrorism; restraint by court order or public authority or agency; or
11 action or non-action by, or inability to obtain the necessary authorizations or approvals from, any
12 governmental agency. Force Majeure shall not include normal inclement weather, economic hardship, or
13 inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone performance shall
14 have the burden of establishing that it could not reasonably have been expected to avoid the force
15 majeure event and which by exercise of due diligence has been unable to overcome the failure of
16 performance. The Settling Parties shall exercise due diligence to resolve and remove any force majeure
17 event.

18 52. Construction. The language in all parts of this Consent Decree shall be construed
19 according to its plain and ordinary meaning, except as to those terms defined in the Storm Water Permit,
20 the Clean Water Act, or specifically herein.

21 53. Choice of Law. The laws of the United States shall govern this Consent Decree.

22 54. Severability. In the event that any provision, paragraph, section, or sentence of this
23 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall
24 not be adversely affected.

25 55. Correspondence. All notices required herein or any other correspondence pertaining to
26 this Consent Decree shall be sent by overnight mail, or via electronic mail, with email confirmation of
27 receipt by the receiving party, to the following individuals:

28 If to Plaintiff:

1 Layne Friedrich
Layne@lawyersforcleanwater.com
2 Lawyers for Clean Water, Inc.
1004-A O'Reilly Avenue
3 San Francisco, California 94129

4 With copies to:

5 California Sportfishing Protection Alliance
Bill Jennings, Executive Director
6 Deltakeep@me.com
3536 Rainier Avenue
7 Stockton, California 95204

8 If to Defendant:

9 Diane Kindermann Henderson
Abbott & Kindermann, LLP
10 DKindermann@aklandlaw.com
2100 21st Street
11 Sacramento, California 95818

12 With copies to:

13 Jensen Precast
14 5400 Raley Boulevard
15 Sacramento, California 95838

16 Any change of address or addresses shall be communicated in the manner described above for
17 giving notices. In addition, the Settling Parties may agree to transmit documents electronically or by
18 facsimile.

19 56. Effect of Consent Decree. Except as provided herein, Plaintiff does not, by its consent to
20 this Consent Decree, warrant or aver in any manner that Defendant's compliance with this Consent
21 Decree will constitute or result in compliance with any Federal or State law or regulation. Nothing in
22 this Consent Decree shall be construed to affect or limit in any way the obligation of Defendant to
23 comply with all Federal, State, and local laws and regulations governing any activity required by this
24 Consent Decree.

25 57. Counterparts. This Consent Decree may be executed in any number of counterparts, all of
26 which together shall constitute one original document. Telecopy, email of a .pdf signature, and/or
27 facsimile copies of original signature shall be deemed to be originally executed counterparts of this
28 Consent Decree.

