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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

vs.

SIERRA CHEMICAL COMPANY, dba,
NEVADA SIERRA CHEMICAL
COMPANY, an Nevada company,

Defendant.

Case No. 2:13-CV-00792-KJM-KJN

**[PROPOSED] SETTLEMENT
AGREEMENT**

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

WHEREAS, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA") is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California's waters;

WHEREAS, Defendant Sierra Chemical Company dba Nevada Sierra Chemical Company (hereinafter "SCC") operates an approximately 7-acre bleach and other chemical manufacturing facility in Stockton, California (the "Facility");

WHEREAS, the Facility is owned by Nevada Ventures, LLC ("NVL") and leased to SCC;

1 WHEREAS, CSPA and Defendant collectively shall be referred to as the “Parties;”

2 WHEREAS, CSPA alleges that the Facility collects and discharges storm water from the
3 Facility into the City of Stockton’s storm water drainage system, which discharges the storm water from
4 the Facility into French Camp Slough, which flows into the San Joaquin River and the Sacramento-San
5 Joaquin River Delta (“the Delta”) (a map of the Facility is attached hereto as Exhibit A and
6 incorporated herein by reference);

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

12 WHEREAS, on or about February 15, 2013, Plaintiff provided notice, alleging SCC’s
13 violations of the Act (“Notice Letter”), and of its intention to file suit against Defendant and others, to
14 the Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator
15 of EPA Region IX; the U.S. Attorney General; the Executive Director of the State Water Resources
16 Control Board (“State Board”); the Executive Officer of the Regional Water Quality Control Board,
17 Central Valley Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
18 1365(b)(1)(A) (a true and correct copy of CSPA’s Notice Letter is attached as Exhibit B and
19 incorporated herein by reference);

20 WHEREAS, CSPA filed its original complaint against Defendant herein in the United States
21 District Court, Eastern District of California, on April 22, 2013 (hereinafter referred to as “the
22 Action”);

23 WHEREAS, the complaint alleges, *inter alia*, that Defendant’s unlawful discharges of storm
24 water have violated the General Permit and will continue to do so unless enjoined and that
25 Defendant’s unlawful discharges will continue unless essential structural and non-structural controls
26 are implemented as part of Best Management Practices (“BMP”);

27 WHEREAS, the complaint as relief seeks, *inter alia*, that Defendant be enjoined from
28 discharging stormwater until adequate stormwater controls, including BMPs, are installed and that
29

1 Defendant take appropriate actions to restore the quality of navigable waters impaired by its activities;

2 WHEREAS, Defendant denies the occurrence of the violations alleged in the Notice Letter and
3 the Action and maintains that SCC has complied at all times with the provisions of the General Permit
4 and the Clean Water Act;

5 WHEREAS, the Parties agree that it is in their mutual interest to resolve the Action as to all
6 entities and persons named in the Notice Letters and the Action without further litigation and enter
7 into this Settlement Agreement (“Agreement”);

8 WHEREAS, for purposes of this Agreement, the Parties stipulate that venue is proper in this
9 Court, and that Defendant does not contest the exercise of jurisdiction by this Court to dismiss this
10 matter with prejudice under the terms of this Agreement;

11 WHEREAS, this Agreement shall be submitted to the United States Department of Justice
12 (“DOJ”) for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c);

13 WHEREAS, at the time the Agreement is submitted for review, CSPA shall submit a Notice of
14 Settlement and inform the Court of the expected dismissal date;

15 AND WHEREAS, upon expiration of the statutory review period, the Parties shall file with the
16 Court a Stipulation and Order (attaching this Agreement) that shall provide that the Complaint and all
17 claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2)
18 and retain jurisdiction for the enforcement of this Agreement as provided herein (the date of entry of
19 the Order to dismiss shall be referred to herein as the “Court Dismissal Date”).

20 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
21 **PARTIES AS FOLLOWS:**

22 **I. COMMITMENT OF DEFENDANT SCC**

23 **1. Compliance With General Permit & Clean Water Act.** Beginning immediately, and
24 throughout the term of this Agreement, SCC shall continue implementing all measures needed to
25 operate the Facility in compliance with the requirements of the General Permit and the Clean Water
26 Act, subject to any defenses available under the law.

27 **2. Implementation of Specific Storm Water Best Management Practices.** Within 10
28 days of the later of the Court Dismissal Date or February 15, 2014 (unless an alternative deadline is
29

1 stated herein, and subject to force majeure events), as to all subparagraphs except (b) (which contains
2 its own timeline for performance), SCC shall enter into a contract for the construction and
3 implementation of the following storm water control measures/best management practices (“BMPs”),
4 which contract shall obligate the contractor to complete work within 45 days of execution of that
5 contract (unless an alternative deadline is stated herein, and subject to force majeure events). As to all
6 subparagraphs except (b), SCC within 10 days of the contractor’s completion of the work shall provide
7 CSPA with a sworn declaration that performance has occurred accompanied by photographs or other
8 reasonable evidence documenting performance:

9 **(a) Elimination of Previously Unidentified East Discharge Point.** In the area
10 East of the cooling towers in the middle of the Facility’s eastern boundary, SCC shall construct
11 secondary containment of the cooling towers to prevent any off-site discharges from this area of the
12 Facility. In the event that there are any off-site discharges after SCC’s installation of secondary
13 containment, the parties agree to meet and confer concerning additional actions to eliminate any such
14 discharges. The precise locations of these Facility improvements is reflected on Exhibit A.

15 **(b) Investigation of Possible Unidentified West Discharge Point.** SCC will,
16 during the entire term of this Agreement, investigate the area immediately West of the large detention
17 basin in the Southern portion of the Facility and adjacent to the Facility fence, to evaluate whether it is
18 discharging storm water off-site and if so, what measures should be taken to address the condition.
19 Should SCC conclude that any discharge is occurring, on or before October 1, 2014¹, it shall address
20 such discharge in an appropriate manner, for example by elimination of the off-site discharge through
21 the construction of a berm or the establishment of an additional sampling location. SCC will advise
22 CSPA as to the status of the investigation by July 1st of each year during the term of this Agreement,
23 and shall at that time notify CSPA of its plans and consider any comments that CSPA may offer.

24 **(c) Installation of Roll-Over Berm Bisecting the Northern Parking Area.** SCC
25 shall construct a 4-inch roll-over curb to bisect the Northern Parking Area in an east-west direction, as
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28 ¹ In the event that a discharge is discovered in the 2014-2015 Wet Season, the implementation deadline
29 shall be or before October 1, 2015, and if a discharge is discovered in the 2015-2016 Wet Season, the
implementation deadline shall be on or before October 1, 2016.

1 set forth on Exhibit A (see Drawing Detail). The northern half of the Northern Parking Area, which is
2 east of the driveway shall be used exclusively for employee parking, which prohibition shall be
3 prominently explained in appropriate signage.

4 **(d) Installation of Retention Cell along Northern Facility Boundary.** SCC shall
5 construct a retention cell as set forth on Exhibit A (See Section Drawing A-A) with an inlet to collect
6 all storm water flows from the southern half of the Northern Parking Area. The retention cell shall
7 have a minimum capacity of 5,300 cubic feet and shall include a concrete filter box with accessible
8 cover, filters, and inlet/outlet controls as set forth on Exhibit A.

9 **(e) Installation of Retention Cell along Eastern Facility Boundary.** SCC shall
10 construct a retention cell along the Eastern Facility boundary as set forth on Exhibit A (See Section
11 Drawing B-B).

12
13 **3. Changes to Facility Monitoring & Reporting Program (“M&RP”).** Within 15
14 days of the Court Dismissal Date, SCC shall revise and submit to the Regional Board a revised M&RP
15 substantially in the form attached hereto as Exhibit C, which shall, at a minimum include the sampling
16 parameters Al, Fe, COD, N+N as N, PO4 (Phosphate), SO4 (Sulfate), M2SO3 (Sulfite), NH3 and Cl.
17 In the event that sampling from a given discharge point is found below the detection limit for any non-
18 Table D parameter on three consecutive sampling events, Defendant will be entitled to discontinue
19 sampling for that parameter at that discharge point. If both SC and COD are exceeded during a
20 sampling event, potassium permanganate will be added to the Facility Monitoring & Reporting
21 Program as a sampling parameter for all future sampling events during the term of this agreement. If
22 both SC and pH are exceeded during a sampling event, perchlorate (ClO4) will be added to the Facility
23 Monitoring & Reporting Program as a sampling parameter for all future sampling events during the
24 term of this agreement.

25 **4. Installation of Automated Rain Gauge.** Defendant shall install and properly
26 maintain an automated rain gauge at the Facility recording daily rainfall at the Facility and
27 maintaining records of the rainfall recorded by the gauge in the Facility SWPPP for the two-year life
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1 of this Agreement. Facility personnel shall use this data to facilitate the assessment of Qualifying
2 Storm Events as that phrase is used in the General Permit.

3 **5. SWPPP Amendments/Additional BMPs.** Within 15 days of the Court Dismissal
4 Date for this Agreement, SCC shall formally amend the Facility SWPPP to incorporate all of the
5 relevant requirements of this Agreement, as well as revise the Facility map associated with the
6 SWPPP. These revisions shall reflect all current site conditions and practices.

7 **6. Sampling Frequency.** SCC shall collect and analyze samples from four (4) storm
8 events, as qualified in the General Permit² for sampling purposes, in each of the two Wet Seasons
9 occurring during the term of this Agreement (2014-2015 and 2015-2016). The storm water sample
10 results shall be compared with the values set forth in Exhibit D, attached hereto, and incorporated
11 herein by reference. If the results of any such samples exceed the parameter values set forth in Exhibit
12 D, SCC shall comply with the “Action Memorandum” requirements set forth below.

13 **7. Sampling Parameters.** All samples shall be analyzed for each of the constituents
14 listed in Exhibit D by a laboratory accredited by the State of California. All samples collected from
15 the Facility shall be delivered to the laboratory as soon as possible, and reasonable efforts taken to
16 ensure that sample “hold time” is not exceeded (for example performing field testing for specific
17 parameters where feasible). It is understood by the Parties that Chlorine and Sulfites have extremely
18 short hold times of 15 minutes and that neither field testing nor prior laboratory arrangements are
19 feasible to analyze within these time constraints. As such, provided laboratory analysis occurs as
20 promptly as possible under the circumstances, exceeding the hold times for either or both of these two
21 parameters shall not constitute a violation of this Agreement. Analytical methods used by the
22

23 ² “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken
24 are preceded by at least three (3) working days during which no storm water discharges from the Facility have
25 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being
26 sampled; and (iii) the samples are collected during daylight operating hours. General Permit, Section B.5.b.
27 Hence, for clarity, during each of the two Wet Seasons, four Qualifying Storm Events need to be sampled so the
28 number of sampling events may be less than four if in a given season there are not four Qualifying Storm
29 Events. However, and in addition, consistent with General Permit Section B.8.b., in the event that SCC can
demonstrate good cause as to why it was unable to collect samples of storm water discharges within the first
hour of discharges occurring during an otherwise qualifying storm event, SCC may collect storm water
discharge samples as soon as practicable during an otherwise qualifying storm event occurring during daylight
operating hours.

laboratory shall be adequate to detect the individual constituents at or below the values specified on Exhibit D. Sampling results shall be provided to CSPA within ten (10) business days of SCC's receipt of the laboratory report from each sampling event pursuant to the Notice provisions below.

8. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-and-Confer. If any sample taken during the two (2) Wet Seasons referenced in Paragraph 7 above exceeds the evaluation levels set forth in Exhibit D, or if SCC fails to collect and analyze samples from four (4) Qualifying Storm Events during any Wet Season as required herein, then SCC shall prepare a written statement discussing the exceedance(s) and/or failure to collect and analyze samples from four (4) Qualifying Storm Events, the possible cause and/or source of the exceedance(s), and additional measures that will be taken to address and eliminate future exceedances and/or failures to collect required samples ("Action Memorandum"). The Action Memorandum shall be provided to CSPA not later than July 15 following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, taking confirmation samples, further material improvements to the storm water collection and discharge system, changing the type and frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than sixty (60) days after the due date of the Action Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum.³ Upon request by CSPA, SCC

³ Notwithstanding anything herein to the contrary, if SCC believes that the exceedence is attributable to naturally occurring background concentrations for a given parameter and the General Permit then in existence so permits, SCC may pursue a Natural Background Pollutant Source Demonstration as its action under the Action Memorandum .

1 agrees to meet and confer in good faith (at the Facility, if requested by either Party) regarding the
2 contents and sufficiency of the Action Memorandum.

3 **9. Inspections During The Term Of This Agreement.** In addition to any site
4 inspections conducted as part of any meet-and-confer process concerning an Action Memorandum as
5 set forth above, SCC shall permit representatives of CSPA to conduct one physical inspection of the
6 Facility during the term of this Agreement (2014-2015 and 2015-2016). This inspection shall be
7 performed by CSPA's counsel and consultants and may include sampling, photographing, and/or
8 videotaping and CSPA shall provide SCC with a copy of all sampling reports, photographs and/or
9 video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical inspection,
10 except that SCC shall have the right to deny access if circumstances would make the inspection unduly
11 burdensome and pose significant interference with business operations or any party/attorney, or the
12 safety of individuals. In such case, SCC shall specify at least three (3) dates within the two (2) weeks
13 thereafter upon which a physical inspection by CSPA may proceed. SCC shall not make any
14 alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48)
15 hour advance notice and the start of CSPA's inspection that SCC would not otherwise have made but
16 for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any
17 actions taken in compliance with any applicable laws or regulations. Nothing herein shall be
18 construed to prevent SCC from continuing to implement any BMPs identified in the SWPPP during
19 the period prior to an inspection by CSPA or at any time.
20

21 **10. SCC Communications To/From Regional and State Water Boards.** During the
22 term of this Agreement, SCC shall provide CSPA with copies of all documents submitted to, or
23 received from, the Regional Water Board or the State Water Board concerning storm water discharges
24 from the Facility, including, but not limited to, all documents and reports submitted to the Regional
25 Water Board and/or State Water Board as required by the General Permit. Such documents and
26 reports shall be provided to CSPA pursuant to the Notice provisions set forth below and
27 contemporaneously with SCC's submission(s) to, or, receipt from, such agencies.
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1 **11. SWPPP Amendments.** Pursuant to the Notice provisions set forth below, SCC shall
2 provide CSPA with a copy of any amendments to the Facility SWPPP made during the term of the
3 Agreement within thirty (30) days of such amendment.

4 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

5 **12. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation to address and
6 redress any potential harms from the Clean Water Act violations alleged in CSPA's Complaint,
7 Defendant agrees to pay the sum of \$37,500 to the Rose Foundation for Communities and the
8 Environment ("Rose Foundation") for projects to improve water quality in the San Joaquin River and
9 the Sacramento-San Joaquin River Delta ("the Delta"). Such sums shall not be used for lobbying or
10 political purposes. Such mitigation payment shall be remitted directly to the Rose Foundation at: Rose
11 Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, CA 94612 within fifteen (15) days
12 of the Court Dismissal Date.

13 **13. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
14 expert, consultant and attorneys' fees and costs associated with monitoring SCC's compliance with
15 this Agreement, Defendants agree to contribute \$6,250 to a compliance monitoring fund maintained
16 by counsel for CSPA as described below. Payment shall be made within fifteen (15) days of the Court
17 Dismissal Date. Compliance monitoring activities may include, but shall not be limited to, site
18 inspections, review of water quality sampling reports, review of annual reports, discussions with
19 representatives of SCC concerning the Action Memoranda referenced above, and potential changes to
20 compliance requirements herein, preparation for and participation in meet-and-confer sessions, water
21 quality sampling and analysis, and compliance-related activities.

22 **14. Reimbursement of Fees & Costs.** Defendant agrees to reimburse CSPA in the
23 amount of \$40,000 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees
24 and costs, and all other costs incurred as a result of investigating the activities at the Facility, bringing
25 the Action and negotiating a resolution in the public interest. Payment shall be made payable to the
26 "Law Offices of Andrew L. Packard Attorney-Client Trust Account" and remitted to Plaintiff's
27 counsel within fifteen (15) days of the Court Dismissal Date.
28

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

2 **15. Meet & Confer Obligation.** With the exception of the timelines set forth above for
3 addressing exceedances of values specified on Exhibit D and an Action Memoranda, if a dispute under
4 this Agreement arises, or either Party believes that a breach of this Agreement has occurred, the
5 Parties shall meet and confer within seven (7) days of receiving written notification from the other
6 Party of a request for a meeting to determine whether a violation has occurred and to develop a
7 mutually agreed upon plan, including implementation dates, to resolve the dispute. If the Parties fail
8 to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have
9 passed after the meet-and-confer occurred or should have occurred, either Party shall be entitled to all
10 rights and remedies under the law, including filing a motion with the District Court of California,
11 Eastern District, which shall retain jurisdiction over the Action for the limited purposes of
12 enforcement of the terms of this Agreement. The Parties shall be entitled to seek fees and costs
13 incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set
14 forth in the then-applicable federal Clean Water Act and any applicable case law interpreting such
15 provisions.

16 **16. CSPA's Waiver and Release.** Upon issuance of the Court's Order dismissing this
17 Action with prejudice, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,
18 assigns, directors, officers, agents, attorneys, representatives, and employees, releases Defendant, all
19 persons named in CSPA's Notice Letter, and NVL, and their respective officers, directors, employees,
20 shareholders, parents, subsidiaries, and affiliates, and each of their respective predecessors, successors
21 and assigns, and each of their agents, attorneys, consultants, and other representatives (each a
22 "Released Defendant Entity") from, and waives all claims which arise from or pertain to the Action,
23 including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions,
24 mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum
25 incurred or claimed or which could have been claimed in this Action, for the alleged failure of
26 Defendant to comply with the Clean Water Act at the Facility, up to the Court Dismissal Date.
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1 **17. Defendant's Waiver and Release.** Upon issuance of the Court's Order dismissing
2 this Action with prejudice, Defendant, on its own behalf and on behalf of any Released Defendant
3 Entity under its control, releases CSPA (and its officers, directors, employees, members, parents,
4 subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and
5 other representative) from, and waives all claims which arise from or pertain to the Action, including
6 all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum
7 incurred or claimed or which could have been claimed for matters associated with or related to the
8 Action.

9 **18.** The Parties acknowledge that they are familiar with section 1542 of the California
10 Civil Code, which provides: "A general release does not extend to claims which the creditor does not
11 know or suspect to exist in his or her favor at the time of executing the release, which if known by him
12 or her must have materially affected his or her settlement with the debtor." The Parties hereby waive
13 and relinquish any rights or benefits they may have under California Civil Code section 1542 with
14 respect to any other claims against each other arising from, or related to, the allegations and claims as
15 set forth in the 60-Day Notice and/or the Complaint.

16 **19. CSPA's Covenant Not to Sue.** For the period beginning on the Court Dismissal
17 Date and ending on the Termination Date of this Agreement, CSPA agrees that neither CSPA, its
18 officers, executive staff, members of its governing board nor any organization under the control of
19 CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against
20 Defendant or NVL seeking relief for alleged violation of the Clean Water Act or violation of the
21 General Permit at the Facility. CSPA further agrees that, beginning on the Court Dismissal Date of
22 this Agreement and ending on the Termination Date of this Agreement, CSPA will not support other
23 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against
24 Defendant or NVL that may be proposed by other groups or individuals who would rely upon the
25 citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean
26 Water Act or the General Permit.

27 **20. Agency Review.** Within five (5) business days of the mutual execution of this
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1 Agreement, Plaintiff shall submit this Agreement to the United States Department of Justice ("DOJ")
2 for the statutory 45-day agency review period set forth in 33 U.S.C. §1365(c) and submit a Notice of
3 Settlement to the federal District Court.

4 **21. Case Disposition.** Within seven (7) days of the expiration of the agency review
5 period, the Parties shall file with the Court a Stipulation and Order providing that:

6 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant
7 to Federal Rule of Civil Procedure 41(a)(2); and,

8 b. the Court shall retain and have jurisdiction over the Parties with respect to
9 disputes arising under this Agreement. Nothing in this Agreement shall be construed as a
10 waiver of any Party's right to appeal from an order that arises from an action to enforce the
11 terms of this Agreement.

12 **IV. MISCELLANEOUS PROVISIONS**

13 **22.** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly
14 litigation. Nothing in this Agreement shall be construed as, and Defendant expressly does not intend
15 to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance
16 with this Agreement constitute or be construed as an admission by Defendants of any fact, finding,
17 conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise
18 affect the obligation, responsibilities, and duties of the Parties under this Agreement.

19 **23.** The Agreement shall be effective upon the Court Dismissal Date. The Agreement shall
20 terminate on the "Termination Date," which shall be September 30, 2016.

21 **24.** The Agreement may be executed in one or more counterparts which, taken together,
22 shall be deemed to constitute one and the same document. An executed copy of this Agreement shall
23 be valid as an original.

24 **25.** In the event that any one of the provisions of this Agreement is held by a court to be
25 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

26 **26.** The language in all parts of this Agreement, unless otherwise stated, shall be construed
27 according to its plain and ordinary meaning. This Agreement shall be construed pursuant to California
28 law, without regarding to conflict of law principles.
29

1 27. The undersigned are authorized to execute this Agreement on behalf of their respective
2 Parties and have read, understood and agreed to be bound by all of the terms and conditions of this
3 Agreement.

4 28. All agreements, covenants, representations and warranties, express or implied, oral or
5 written, of the Parties concerning the subject matter of this Agreement are contained herein. This
6 Agreement and its attachments are made for the sole benefit of the Parties, and no other person or
7 entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise
8 expressly provided for therein.

9 29. **Notices.** Any notices or documents required or provided for by this Agreement or
10 related thereto that are to be provided to CSPA pursuant to this Agreement shall be hand-delivered or
11 sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by
12 electronic mail transmission to the email addresses listed below:

13 Bill Jennings, Executive Director
14 California Sportfishing Protection Alliance
15 3536 Rainier Avenue
16 Stockton, CA 95204
17 E-mail: DeltaKeep@me.com

18 With copies sent to:

19 Andrew L. Packard
20 Law Offices of Andrew L. Packard
21 100 Petaluma Boulevard North, Suite 301
22 Petaluma, CA 94952
23 Tel: (707) 763-7227
24 E-mail: Andrew@packardlawoffices.com

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

29 Larry Meester
 Operations Manager
 Sierra Chemical Company
 1010 Industrial Dr,
 Stockton, CA 95206
 Tel: (775) 398-2109
 Larry.Meester@sierrachem.com

1 With copies sent to both:

2
3 Edmund A. Stec
4 Vice President-Environmental, Health,
5 Safety, Security and Commercial Services
6 Carus Corporation
7 315 Fifth Street
8 P. O. Box 599
9 Peru, IL 61354-0599
10 Tel: (815) 224-6538
11 ed.stec@caruscorporation.com

Andrew Perellis
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, IL 60603
(312) 460-5813
aperellis@seyfarth.com

12 Each Party shall promptly notify the other of any change in the above-listed contact information.

13 **30.** Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

14 **31.** No Party shall be considered to be in default in the performance of any of its
15 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any
16 circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,
17 earthquake, flood, any restraint by court order or public authority, and any delay or refusal of any
18 regulatory body to issue any permit needed to fulfill any Party's obligations under this Agreement. A
19 Force Majeure event does not include normal inclement weather, such as anything less than or equal to
20 a 100 year/24-hour storm event, or inability to pay, however, solely with respect to SCC's obligations
21 under Paragraph 2, intensive storm events precluding construction of BMPs from being timely
22 constructed shall constitute a force majeure event, as would delay in construction due to the need to
23 specially manage and dispose of any contaminated soil or debris encountered during construction.
24 Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not
25 reasonably have been expected to avoid, and which by exercise of due diligence has been unable to
26 overcome, the Force Majeure.

27 **32.** This Agreement shall be deemed to have been drafted equally by the Parties, and shall
28 not be interpreted for or against any Settling Party on the ground that any such party drafted it.

29 **33.** This Agreement and the attachments contain all of the terms and conditions agreed
upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior
and contemporaneous agreements, negotiations, correspondence, understandings, and communications

of the Parties, whether oral or written, respecting the matters covered by this Agreement. This Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives.

34. Upon the mutual agreement of SCC and NVL, SCC may assign to NVL all or any of its rights or obligations under this Agreement. Any such assignment shall be in writing with a copy provided to CSPA. Following the assignment, with respect to any obligation so assigned, CSPA agrees that NVL shall be solely responsible for meeting such obligation imposed by this Agreement.

35. Except in case of an emergency but subject to the regulatory authority of any applicable governmental authority, any breach of or default under this Agreement capable of being cured shall be deemed cured if, within five (5) business days of first receiving notice of the alleged breach or default, or within such other period approved in writing by the Party making such allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or, if the breach or default can be cured but is not capable of being cured within such five (5) business day period, has commenced and is diligently pursuing to completion such cure.

Dated: _____, 2014

California Sportfishing Protection Alliance

By: _____

Bill Jennings, Executive Director

Dated: _____, 2014

Sierra Chemical Company dba Nevada Sierra Chemical

By: _____

Susan Buchanan

Solely with respect to any rights or obligations assigned by SCC to NVL pursuant to Paragraph 36 of this Agreement, the undersigned agrees to be bound to this Agreement to the same extent as would SCC be bound in the absence of such assignment.

Dated: _____, 2014

Nevada Ventures LLC

By: _____

Stan Kinder

EXHIBIT A – Facility Site Map

EXHIBIT B – Notice of Violation

EXHIBIT C – SWPPP and Monitoring Plan

EXHIBIT D⁴

Parameter	Level of Potential Concern Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Total Organic Carbon	110 mg/l
Chemical Oxygen Demand	120 mg/L
Iron	1.0 mg/L
Nitrate & Nitrite as Nitrogen (N+N as N)	0.68 mg/l
Aluminum	0.75 mg/L
Phosphate (PO4)	2 mg/l
Sulfate (SO4)	N/A
Sulfite (M2SO4)	N/A
Ammonia (NH3)	19 mg/l
Chlorine (Cl)	N/A

⁴ If the next version of the General Permit is issued and contains levels of potential concern for any of the aforementioned parameters, then those levels will replace the levels of concern specified above to the extent that they address the same pollutant.