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21 PROTECTION ALLIANCE

22 [Additional Counsel listed on following page]

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

25 CALIFORNIA SPORTFISHING
26 PROTECTION ALLIANCE, a non-profit
27 corporation,

28 Plaintiff,

vs.

CITY OF CHICO,

Defendant.

Case No. 2:10-CV-01347-MCE-KJM

[PROPOSED] CONSENT DECREE

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

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1 The following Consent Decree is entered into by and between Plaintiff California
2 Sportfishing Protection Alliance (“Plaintiff” or “CSPA”), and Defendant City of Chico, a
3 municipal corporation (“the City”). The Plaintiff and Defendant are hereinafter collectively
4 referred to as the Parties.

5 **RECITALS**

6 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”)
7 is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of
8 California, dedicated to the preservation, protection, and defense of the environment, wildlife,
9 and natural resources of California’s waters. Bill Jennings is the Chairperson of CSPA and a
10 member of CSPA;

11 **WHEREAS**, the City is a municipal corporation organized under the laws of the State
12 of California that owns and operates an approximately 1,079 acre air transportation facility (the
13 “Facility” or “Airport”), with approximately 30 acres associated with industrial activity,
14 located at 150 Airpark Boulevard in Chico, California. Discharges of storm water from areas
15 associated with industrial activities on the Facility are regulated pursuant to State Water
16 Resources Control Board Water Quality Order No. 91-13-DWQ as amended by Water Quality
17 Order No. 92-12 DWQ and Water Quality Order No. 97-03 DWQ, National Pollutant
18 Discharge Elimination System General Permit No. CAS000001, Waste Discharge
19 Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding
20 Construction Activities (hereinafter, the “General Permit”);

21 **WHEREAS**, storm water from the Facility flows to tributaries to Sycamore Creek,
22 which ultimately flows into Big Chico Creek, the Sacramento River, and the Sacramento-San
23 Joaquin Delta (a 1993 map of the Facility, which will be updated pursuant to this agreement, is
24 attached hereto as Exhibit A and incorporated herein by reference);

25 **WHEREAS**, on or about April 2, 2010, Plaintiff provided notice of the City’s alleged
26 violations of the Act, and of its intention to file suit against the City, to the Administrator of
the United States Environmental Protection Agency (“EPA”); the Administrator of EPA
28 Region IX; the Executive Director of the State Water Resources Control Board (“State

1 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley
2 Region (“Regional Board”); and to the City, as required by the Act, 33 U.S.C. § 1365(b)(1)(A);

3 **WHEREAS**, CSPA filed a complaint (“Complaint”) against the City (*California*
4 *Sportfishing Protection Alliance v. City of Chico, et al.*, Case No. 2:10-CV-01347-MCE-KJM)
5 in the United States District Court, Eastern District of California, on June 1, 2010. A true and
6 correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as
7 Exhibit B and incorporated by reference;

8 **WHEREAS**, contemporaneously with the execution of this Consent Decree by the
9 Parties, CSPA filed a request for dismissal with prejudice of all claims in the Complaint
10 against Ruben Martinez, an individual and the only defendant in this action other than the City;

11 **WHEREAS**, the City denies the occurrence of any and all of CSPA's claims in its 60-
12 Day Notice Letter and Complaint and maintains that it has complied at all times with the
13 provisions of the General Permit;

14 **WHEREAS**, for purposes of this Consent Decree, the Parties stipulate that venue is
15 proper in this Court, and that the City does not contest the exercise of jurisdiction by this Court
16 to enter this Consent Decree;

17 **WHEREAS**, this Consent Decree shall be submitted by CSPA via certified mail (return
18 receipt requested) and email to the United States Department of Justice and the United States
19 Environmental Protection Agency for the 45-day statutory review period, pursuant to
20 33 U.S.C. § 1365(c); and shall thereafter be submitted for approval by the Court, the date of
21 which approval shall be referred to herein as the “Court Approval Date;”

22 **WHEREAS**, at the time the Consent Decree is submitted for approval to the United
23 States District Court, CSPA shall request a dismissal of the Complaint with prejudice and the
24 Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this
25 Consent Decree as provided herein;

26 **WHEREAS**, the Parties agree through their authorized representatives and without
27 either adjudication of CSPA's claims or admission by the City of any alleged violation or other
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1 wrongdoing, and have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter
2 and Complaint through settlement and avoid the cost and uncertainties of further litigation;

3 **WHEREAS**, the Parties wish to compromise, resolve, settle, and terminate any and all
4 disputes or claims between them as to the allegations set forth in the 60-Day Notice Letter and
5 Complaint and as a result consent to the entry of this Consent Decree without trial of any
6 issues and stipulate that in order to settle the Claims, this Consent Decree should be entered.
7 This Consent Decree constitutes a settlement of disputed claims. It is not an admission of
8 jurisdiction over or liability for the allegations set forth in the 60-Day Notice Letter and
9 Complaint or an admission of any fact. Should this proposed Consent Decree fail to be entered
10 for any reason, this proposed Consent Decree, and any statement or other provision contained
11 in this proposed Consent Decree shall have no legal effect and shall not be used for any
12 purpose in any subsequent proceeding in this or any other litigation;

13 **AND WHEREAS**, the Parties agree, and this Court by entering this Consent Decree
14 finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement
15 of this matter will avoid prolonged and complicated litigation between the Parties, and that this
16 Consent Decree is fair, reasonable, and in the public interest.

17 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES,**
18 **AND ORDERED, ADJUDGED AND DECREED BY THE COURT, AS FOLLOWS:**

19 **I. COMMITMENT OF THE CITY**

20 **1. Compliance With General Permit & Clean Water Act.** The City shall operate
21 the Facility in full compliance with the requirements of the General Permit and the Clean
22 Water Act, subject to any defenses available under the law.

23 **2. The City's Implementation of Specific Storm Water Best Management**
24 **Practices.** The City shall implement the following storm water control measures/best
25 management practices ("BMPs") in the time frames provided below:

26 (a) The City shall maintain in good working order all storm water collection
27 and treatment systems currently installed or to be installed pursuant to this Consent
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Decree, including but not limited to, existing housekeeping measures;

(b) Sweeping. Beginning ninety (90) days after the Court Approval Date, the City shall develop and implement a sweeping program for the following parking lots in the Facility: 1) the lot behind Aero Union off of Ryan Avenue; 2) the lot south of the cul-de-sac at the west end of Piper Avenue; 3) the terminal parking lot; and 4) the lot on the northwest corner of Boeing Avenue and Fortress Street (collectively, “Sweeping Areas”). The City shall sweep the Sweeping Areas with a regenerative sweeper prior to the commencement of each rainy season and on additional occasions during the rainy season as necessary in the judgment of the City. In the event that the sweeper operator observes ponded or free oil in the Sweeping Areas, the sweeper operator shall apply oil absorbent to the ponded or free oil prior to sweeping. All waste generated from sweeping activities will be managed in accordance with applicable regulations;

(c) Spill Kits. Within ninety (90) days of the Court Approval Date, the City shall deploy additional spill kits in the de-icing area and in the drum storage area of the Facility;

(d) Fire Retardant Mixing Tanks. The City shall implement the following BMPs with regard to the fire retardant mixing tanks at the Facility:

- (i) Within ninety (90) days of the Court Approval Date, the City shall develop and implement an inspection program to insure the integrity of the fire retardant mixing tanks.
- (ii) Within ninety (90) days of the Court Approval Date, the City shall develop and implement spill response procedures for the fire retardant mixing tanks.
- (iii) Within ninety (90) days of the Court Approval Date, the City shall formalize procedures to manage and/or dispose of material captured in the two 5,000 gallon holding tanks in the fire retardant mixing area.

1 (iv) Prior to the 2011-2012 Wet Season, the City shall modify the
2 removable dam and associated trench in the fire retardant mixing
3 area to contain spilled material and prevent it from travelling
4 further down the storm drain in dry weather. The City will also
5 develop procedures prior to the 2011-2012 Wet Season to remove
6 and properly dispose of captured spilled fire retardant material
7 from the trench.

8 (e) De-Icing Chemicals. With the understanding between the Parties that
9 nothing in this Consent Decree affects or modifies the carrier's FAA approved ground
10 de-icing program, which governs the type, usage, quantity and method of application of
11 de-icing chemicals, within ninety (90) days of the Court Approval Date, the City shall
12 implement the following BMPs for use of de-icing chemicals:

- 13 (i) Adequate spill response equipment and materials will be
14 maintained in locations accessible to and near areas where spills of
15 de-icing chemicals may occur.
- 16 (ii) Containers of de-icing chemicals will be stored within secondary
17 containment.
- 18 (iii) De-icing material storage and handling activities will be restricted
19 to trained personnel only.
- 20 (iv) The de-icing chemicals will be applied in accordance with the
21 manufacturer's chemical- and product-specific instructions and
22 guidelines.
- 23 (v) De-icing chemical application equipment and the surfaces of the
24 de-icing area will be inspected following de-icing material
25 application, and accumulated/pooled residual fluids observed
26 during the inspection will be cleaned up using dry cleanup
27 methods.
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1 (vi) Procedures to manage and dispose of the cleanup materials will be
2 developed and implemented.

3 **3. SWPPP Amendments/Additional BMPs.** Within 30 days of the Court
4 Approval Date, the City shall formally amend the Storm Water Pollution Prevention Plan
5 (“SWPPP”) for the Facility to reflect current Facility conditions and activities and to
6 incorporate all of the relevant requirements of this Consent Decree.

7 (a) The amended SWPPP shall include all of the information required by the
8 General Permit, including but not limited to, the following information: (i)
9 responsible individuals, (ii) current tenants, (iii) Facility boundaries, including
10 portions of the Facility where industrial activities occur, (iv) drainage patterns
11 within the Facility, (v) identification of storm water discharge points, (vi)
12 identification of BMPs and their locations throughout the Facility, and (vii)
13 identification of potential Contaminants of Concern (“COCs”).

14 (b) The amended SWPPP shall include visual inspection checklists for the
15 following areas of the Facility: “T” Hangars, Fueling Areas, De-icing Areas, and
16 other areas where tenants conduct industrial activities that are exposed to storm
17 water.

18 (c) The amended SWPPP shall state that intentional fire retardant drops onto
19 the Facility from aircraft in flight are expressly prohibited.

20 (d) The amended SWPPP shall incorporate all changes, improvements,
21 sample log forms, and BMPs set forth in or resulting from this Consent Decree.

22 (e) The City shall amend the maps in the SWPPP to include all of the
23 information required by paragraph 4 of Section A of the General Permit,
24 including but not limited to, the Facility boundaries, delineation of areas where
25 industrial activities occur, the direction of storm water flow and runoff within
26 each drainage area, the location of the storm water collection and conveyance
27 system, the location of structural control measures that affect storm water
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1 discharges, and the areas of soil erosion. These amended maps shall include an
2 amended version of the 1993 map attached hereto as Exhibit A. The City shall
3 ensure that all maps, tables, and text comply with the requirements of the
4 General Permit.

5 (f) A copy of the amended SWPPP shall be provided to CSPA within thirty
6 (30) calendar days of completion.

7 **4. Updated Notice Of Intent To Comply With The General Permit.** Within one
8 hundred and twenty (120) calendar days after the Court Approval Date, the City shall file an
9 updated Notice of Intent (“NOI”) to comply with the General Permit with the State Water
10 Resources Control Board. The updated NOI shall reflect current Facility conditions and
11 activities and shall include any additional Facility information obtained by the City during the
12 process of updating the Facility’s SWPPP.

13 **5. Storm Water Monitoring and Sampling.** The City shall collect and analyze
14 samples from four (4) Qualifying Storm Events (to the extent that such Qualifying Storm
15 Events occur) consistent with the requirements and protocols set forth in the General Permit, in
16 each of the two Wet Seasons occurring during the term of this Consent Decree (2010-2011 and
17 2011-2012).¹ Further, the City shall continue to perform visual and analytical monitoring of
18 the storm water discharge location near the southwest corner of the Facility (“Discharge
19 Monitoring Location”).

20 **6. Sampling Parameters.** The storm water sample results shall be compared with
21 the values set forth in the below table. If the results of any such samples exceed the parameter
22 values set forth in this table, the City shall comply with the “Action Memorandum”
23 requirements set forth below. All samples shall be analyzed for each of the constituents listed

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25 ¹ “Qualifying Storm Events” means those events in which (i) the samples taken are preceded by at least three
26 (3) working days during which no storm water discharges from the Facility have occurred (the three (3)
27 working days may be separated by non-working days such as weekends and holidays provided that no storm
28 water discharges occur during the three (3) working days and the non-working days); and, (ii) the samples are
collected within the first hour that flow is observed at the Discharge Point. Sample collection is only required
of storm water discharges that occur during scheduled Facility operating hours and that are preceded by at least
(3) three working days without storm water discharge.

1 in the below table by a laboratory accredited by the State of California or by measurement with
2 properly calibrated field instruments. All samples collected from the Facility shall be delivered
3 to the laboratory as soon as possible to ensure that sample “hold time” is not exceeded.
4 Analytical methods used by the laboratory shall be adequate to detect the individual
5 constituents at or below the values specified in the below table. Sampling results shall be
6 provided to CSPA within thirty (30) days of the City’s receipt of the laboratory report from
7 each sampling event pursuant to the Notice provisions below.

Parameter	Value
pH	6.0 – 9.0
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Ammonia	19 mg/L
Biological Oxygen Demand	30 mg/L
Chemical Oxygen Demand	120 mg/L

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17 **7. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**
18 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Clause 5
19 above exceeds the evaluation levels set forth in the above table, or if the City fails to collect
20 and analyze samples from four (4) Qualifying Storm Events, the City shall prepare a written
21 statement discussing the exceedance(s) and /or failure to collect and analyze samples from four
22 (4) Qualifying Storm Events, the possible cause and/or source of the exceedance(s), and
23 additional measures, if any, that will be taken to address and eliminate the problem and future
24 exceedances (“Action Memorandum”). The Action Memorandum shall be provided to CSPA
25 not later than July 15 following the conclusion of each Wet Season. Recognizing that a
26 SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional
27 measures may include, but are not limited to, taking confirmation samples, further material
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1 improvements to the storm water collection and discharge system, changing the frequency of
2 Facility sweeping, changing the type and extent of storm water filtration media or modifying
3 other industrial activities or management practices at the Facility. Such additional measures, to
4 the extent feasible, shall be implemented immediately and in no event later than 60 days after
5 the due date of the Action Memorandum, except where 1) structural changes require longer
6 than 60 calendar days to complete; 2) weather-related conditions render immediate
7 implementation infeasible; or 3) the Parties agree in writing to defer implementation of
8 specific measures in order to effectively meet and confer. Within thirty (30) calendar days of
9 implementation of any such additional measures, the City's SWPPP shall be amended to
10 include all additional BMP measures designated in the Action Memorandum.

11 **8.** CSPA may review and comment on an Action Memorandum and suggest any
12 additional pollution prevention measures it believes are appropriate. CSPA will provide the
13 City with any such comments and suggestions within sixty (60) days of its receipt of the Action
14 Memorandum; however, CSPA's failure to do so shall not be deemed to constitute agreement
15 with the proposals set forth in the Action Memorandum. Upon request by CSPA, the City
16 agrees to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the
17 contents and sufficiency of the Action Memorandum. If, after meeting and conferring on the
18 Action Memorandum, the Parties fail to reach agreement on additional measures, either of the
19 Parties may bring a motion before the Magistrate Judge consistent with the dispute resolution
20 procedures described below within this Consent Decree.

21 **9. Specific Conductivity Monitoring Program.** Within thirty (30) days of the
22 Court Approval Date, the City shall develop and implement a monitoring program designed to
23 assess the source(s) that have been contributing to specific conductivity in excess of 200
24 $\mu\text{mhos/cm}$ in the Facility's storm water discharge as evidenced in some of the prior storm
25 water samples collected at the Facility's Discharge Monitoring Location.

26 (a) Conductivity Memorandum. During the 2010-2011 Wet Season, the City
27 shall study the source of specific conductivity in the storm water at the Facility's
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1 Discharge Monitoring Location. Regardless of whether that 2010-2011 Wet Season
2 study results in a tentative estimate/hypothesis or a fact-based conclusion as to the
3 source of the specific conductivity exceedances, Defendants shall prepare a
4 memorandum (“Conductivity Memorandum”), which will be e-mailed to CSPA no later
5 than July 15, 2011. If sufficient data cannot be collected during the 2010-2011 rainy
6 season to produce a fact-based conclusion as to the source of specific conductivity in
7 excess of 200 $\mu\text{mhos/cm}$ at the Facility’s Discharge Monitoring Location, then the City
8 shall continue to study the issue during the 2011-2012 Wet Season and thereafter
9 prepare another Conductivity Memorandum which will be e-mailed to CSPA no later
10 than July 15, 2012. The Conductivity Memoranda described above will include an
11 explanation of the possible cause(s) and/or source(s) of any conductivity exceeding 200
12 $\mu\text{mhos/cm}$ at the Discharge Monitoring Location and additional technically and
13 economically feasible BMPs, if any, that will be taken to further reduce the possibility
14 of future specific conductivity excursions above 200 $\mu\text{mhos/cm}$ from industrial areas of
15 the Facility. Implementation of such additional BMPs, if any, in the Conductivity
16 Memorandum shall be in accordance with the Action Memorandum provisions
17 described above in Clause 7, and any dispute regarding the Conductivity Memorandum
18 shall be governed by the dispute resolution provisions described above in Clause 8.

19 **10. Inspections During The Term Of This Consent Decree.** In addition to any site
20 inspections conducted as part of the meet-and-confer process concerning an Action
21 Memorandum as set forth above, the City shall permit representatives of CSPA to perform one
22 (1) physical inspection of the Facility per year during normal daylight business hours during
23 the term of this Consent Decree provided that CSPA provides the City with at least one week
24 prior written notice via email and facsimile transmission. These inspections shall be
25 performed by CSPA’s counsel and/or consultants and may include sampling, photographing,
26 and/or videotaping and CSPA shall promptly provide the City with a copy of all sampling
27 reports, photographs and/or video. The City shall have the right to deny access if
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1 circumstances would make the inspection unduly burdensome and pose significant interference
2 with business operations or any party/attorney, or the safety of individuals. In such case, the
3 City shall specify at least three (3) dates within the two (2) weeks thereafter upon which a
4 physical inspection by CSPA may proceed. The City shall not make any alterations to Facility
5 conditions during the period between receiving CSPA's initial one week advance notice and
6 the start of CSPA's inspection that Defendants would not otherwise have made but for
7 receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting
8 any actions taken in compliance with any applicable laws or regulations. Nothing herein shall
9 be construed to prevent the City from continuing to implement any BMPs identified in the
10 SWPPP during the period prior to an inspection by CSPA or at any time.

11 **11. City's Communications with Regional and State Boards.** During the term of
12 this Consent Decree, Defendants shall provide CSPA via email with copies of all documents
13 submitted to the Regional Board or the State Board concerning storm water discharges from
14 the Facility, including, but not limited to, all documents and reports submitted to the Regional
15 Board and/or State Board as required by the General Permit. Such documents and reports shall
16 be provided to CSPA pursuant to the Notice provisions herein at Clause 27 below and
17 contemporaneously with Defendants' submission to such agencies.

18 **12. SWPPP Amendments.** The City shall provide CSPA with a copy of any
19 amendments to the Facility SWPPP made during the term of the Consent Decree within thirty
20 (30) days of such amendment.

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

22 **13. Mitigation Payment In Lieu Of Civil Penalties.** In recognition of the good-
23 faith efforts by the City to comply with all aspects of the General Permit and the Clean Water
24 Act, and as mitigation of the Clean Water Act violations alleged in CSPA's Complaint,
25 Defendants agree to pay the sum of \$18,000 within thirty (30) days after the Court Approval
26 Date to the Rose Foundation for Communities and the Environment for projects to improve
27 water quality in Sycamore Creek, Big Chico Creek and/or the Sacramento River.

1 **14. Attorneys' Fees and Costs.** The City agrees to reimburse CSPA in the amount
2 of \$25,000 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees
3 and costs, and all other costs incurred as a result of investigating the activities at the Facility,
4 bringing the Action and negotiating a resolution in the public interest. Such payment shall be
5 made to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within thirty
6 (30) days after the Court Approval Date. This payment represents a compromise by CSPA, but
7 it shall constitute full payment for all costs of litigation, including investigative, expert and
8 attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection
9 with CSPA's claims, up to and including the Court Approval Date of this Consent Decree.

10 **15. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
11 expert, consultant and attorneys' fees and costs associated with monitoring the City's
12 compliance with this Consent Decree, the City agrees to contribute \$3,000 for each of the two
13 years covered by this Consent Decree (\$6,000 total for the life of the Consent Decree), to a
14 compliance monitoring fund maintained by counsel for CSPA as described below.
15 Compliance monitoring activities may include, but shall not be limited to, site inspections,
16 review of water quality sampling reports, review of annual reports, discussions with
17 representatives of the City concerning the Action Memoranda referenced above, and potential
18 changes to compliance requirements herein, preparation for and participation in meet-and-
19 confer sessions, water quality sampling and analysis, and compliance-related activities. The
20 City shall make such payment in the amount of \$6,000 made payable to the Law Offices of
21 Andrew L. Packard Attorney-Client Trust Account within thirty (30) days of the Court
22 Approval Date. This payment represents a compromise by CSPA, but it shall constitute full
23 payment for all costs of monitoring the City's compliance with this Consent Decree, including
24 investigative, expert and attorneys fees and costs incurred by CSPA that have or could have
25 been claimed in connection with CSPA's monitoring of the City's compliance with this
26 Consent Decree, up to and including the termination Date of this Consent Decree, with the
27 exception of costs of litigation incurred in dispute resolution procedures under Clause 16
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1 below.

2 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

3 **16.** With the exception of the timelines set forth above for addressing exceedances of
4 values specified within the Clause 6 table above and the Action Memoranda, if a dispute under
5 this Consent Decree arises, or either Party believes that a breach of this Consent Decree has
6 occurred, the Parties shall meet and confer within seven (7) days of receiving written
7 notification from the other Party of a request for a meeting to determine whether a violation
8 has occurred and to develop a mutually agreed upon plan, including implementation dates, to
9 resolve the dispute. If the Parties fail to meet and confer, or the meet-and-confer does not
10 resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred
11 or should have occurred, either Party shall be entitled to all rights and remedies under the law,
12 including filing a motion with the United States District Court for the Eastern District of
13 California, which shall retain jurisdiction over the Action for the limited purposes of
14 enforcement of the terms of this Consent Decree. The Parties shall be entitled to seek fees and
15 costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the
16 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and
17 applicable case law interpreting such provision.

18 **17. CSPA Waiver and Release.** Upon Court approval and entry of this Consent
19 Decree, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,
20 assigns, directors, officers, agents, attorneys, representatives, and employees, releases the City
21 and its officers, directors, employees, and elected officials, and each of their predecessors,
22 successors and assigns, and each of their agents, attorneys, consultants, and other
23 representatives (each a “Released City Party”) from, and waives all claims which arise or could
24 have arisen from or pertain to the Action, including, without limitation, all claims for
25 injunctive or equitable relief, damages, penalties, fines, sanctions, mitigation, fees (including
26 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or
27 which could have been claimed in this Action, for storm water discharged from the Facility, up
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1 to the Court Approval Date of this Consent Decree.

2 During the term of the Consent Decree, CSPA agrees that neither CSPA, its officers,
3 executive staff, or members of its governing board nor any organization under the control of
4 CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit
5 against the City seeking relief related to storm water discharged from the Facility. CSPA
6 further agrees that, during the term of the Consent Decree, CSPA will not support other
7 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against
8 the City arising from its operation of the Facility that may be proposed by other groups or
9 individuals who would rely upon the citizen suit provision of the Clean Water Act or state law
10 claims to challenge the City's management of storm water at the Facility.

11 **18. City's Waiver and Release.** The City, on its own behalf and on behalf of those
12 Released City Parties under its control, releases CSPA (and its officers, directors, employees,
13 members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its
14 agents, attorneys, and other representative) from, and waives all claims which arise from or
15 pertain to the Action, including all claims for fees (including fees of attorneys, experts, and
16 others), costs, expenses or any other sum incurred or claimed or which could have been
17 claimed for matters associated with or related to the Action.

18 **19.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation
19 and Order that shall provide that:

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

22 b. the Court shall retain and have jurisdiction over the Parties with respect to
23 disputes arising under this Consent Decree. Nothing in this Consent Decree shall be
24 construed as a waiver of any Party's right to appeal from an order that arises from an
25 action to enforce the terms of this Consent Decree.

26 **IV. MISCELLANEOUS PROVISIONS**

27 **20.** The Parties enter into this Consent Decree for the purpose of avoiding prolonged
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1 and costly litigation. Nothing in this Consent Decree shall be construed as, and the City
2 expressly does not intend to imply, an admission as to any fact, finding, issue of law, or
3 violation of law, nor shall compliance with this Consent Decree constitute or be construed as
4 an admission by the City of any fact, finding, conclusion, issue of law, or violation of law.
5 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,
6 and duties of the Parties under this Consent Decree.

7 **21.** The Consent Decree shall terminate on September 28, 2012.

8 **22.** The Consent Decree may be executed in one or more counterparts which, taken
9 together, shall be deemed to constitute one and the same document. An executed copy of this
10 Consent Decree shall be valid as an original.

11 **23.** In the event that any one of the provisions of this Consent Decree is held by a
12 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
13 affected.

14 **24.** The language in all parts of this Consent Decree, unless otherwise stated, shall be
15 construed according to its plain and ordinary meaning. This Consent Decree shall be construed
16 pursuant to California law, without regard to conflict of law principles.

17 **25.** The undersigned are authorized to execute this Consent Decree on behalf of their
18 respective parties and have read, understood and agreed to be bound by all of the terms and
19 conditions of this Consent Decree.

20 **26.** All agreements, covenants, representations and warranties, express or implied,
21 oral or written, of the Parties concerning the subject matter of this Consent Decree are
22 contained herein. This Consent Decree and its attachments are made for the sole benefit of the
23 Parties, and no other person or entity shall have any rights or remedies under or by reason of
24 this Stipulated Judgment, unless otherwise expressly provided for therein.

25 **27. Notices.** Any notices or documents required or provided for by this Consent
26 Decree or related thereto that are to be provided to CSPA pursuant to this Consent Decree shall
27 be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
28

1 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

2 Bill Jennings, Executive Director
3 California Sportfishing Protection Alliance
4 3536 Rainier Avenue
5 Stockton, CA 95204
6 E-mail: DeltaKeep@aol.com

7 With copies sent to:

8 Erik M. Roper
9 Law Offices of Andrew L. Packard
10 100 Petaluma Boulevard North, Suite 301
11 Petaluma, CA 94952
12 Tel: (707) 763-7227
13 E-mail: Erik@packardlawoffices.com

14 And to:

15 Robert J. Tuerck, Esq.
16 Jackson & Tuerck
17 P.O. Box 148
18 429 W. Main Street, Suite C
19 Quincy, CA 95971
20 Tel: 530-283-0406
21 Fax: 530-283-0416
22 E-mail: Bob@JacksonTuerck.com

23 Any notices or documents required or provided for by this Consent Decree or related thereto
24 that are to be provided to the City pursuant to this Consent Decree shall be sent by U.S. Mail,
25 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail
26 transmission to the email addresses listed below except that notification of site visits under
27 clause 10 shall be provided by e-mail and facsimile transmission:
28

Lori Barker, City Attorney
City of Chico
411 Main Street
Chico, CA 95928
Tel: (530) 896-7600
Fax: (530) 895-4780
lbarker@ci.chico.ca.us

With copies sent to:

Gregory J. Newmark
Meyers, Nave, Riback, Silver & Wilson
333 South Grand Avenue, Suite 1670
Los Angeles, CA 90071
Tel: (213) 626-2906

1 Fax: (213) 626-0215
2 gnewmark@meyersnave.com

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

5 **28.** Signatures of the Parties transmitted by facsimile or email shall be deemed
6 binding.

7 **29.** No Party shall be considered to be in default in the performance of any of its
8 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is
9 any circumstances beyond the Party's control, including, without limitation, any act of God,
10 war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure
11 event does not include normal inclement weather, such as anything less than or equal to a
12 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this
13 paragraph shall have the burden of establishing that it could not reasonably have been expected
14 to avoid, and which by exercise of due diligence has been unable to overcome, the Force
15 Majeure.

16 **30.** Where implementation of the actions set forth in this Consent Decree, within the
17 deadlines set forth above becomes impossible, despite the timely good faith efforts of the
18 Parties, the Party who is unable to comply shall notify the other in writing within seven (7)
19 calendar days of the date that the failure becomes apparent, and shall describe the reason for
20 the non-performance. The Parties agree to meet and confer in good faith concerning the non-
21 performance and, where the Parties concur that the non-performance was or is impossible,
22 despite the timely good faith efforts of one of the Parties, new performance deadlines shall be
23 established. In the event that the Parties cannot timely agree upon the terms of such a
24 stipulation, either of the Parties shall have the right to invoke the dispute resolution procedure
25 described herein.

26 **31.** If for any reason the United States Department of Justice, the United States
27 Environmental Protection Agency or the Court should decline to approve this Consent Decree
28 in the form presented, the Parties shall use their best efforts to work together to modify the

1 Consent Decree within thirty (30) days so that it is acceptable to the United States Department
2 of Justice, the United States Environmental Protection Agency or the Court. If the Parties are
3 unable to modify this Consent Decree in a mutually acceptable manner, this Consent Decree
4 shall become null and void.

5 **32.** This Consent Decree shall be deemed to have been drafted equally by the Parties,
6 and shall not be interpreted for or against any Party on the ground that any such party drafted
7 it.

8 **33.** This Consent Decree and the attachments contain all of the terms and conditions
9 agreed upon by the Parties relating to the matters covered by the Consent Decree, and
10 supersede any and all prior and contemporaneous agreements, negotiations, correspondence,
11 understandings, and communications of the Parties, whether oral or written, respecting the
12 matters covered by this Consent Decree. This Consent Decree may be amended or modified
13 only by a writing signed by the Parties or their authorized representatives, and then by order of
14 the Court. However, the Parties agree that the persons designated as recipients of notices
15 under clause 27, and/or the contact information for such persons, may be changed by written
16 agreement of the parties without a Court order.

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

25 The Parties hereto enter into this Consent Decree and respectfully submit it to the Court
26 for its approval and entry as an Order and Final Judgment.

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Dated: _____ California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: _____ City of Chico

By: _____
David Burkland, City Manager

APPROVED AS TO FORM:

LAW OFFICES OF ANDREW L. PACKARD

Dated: December ____, 2010

By: _____
Erik M. Roper
Attorneys for Plaintiff

CITY ATTORNEY FOR THE CITY OF CHICO

Dated: December ____, 2010

By: _____
Lori Barker
Attorneys for Defendant