

## **SETTLEMENT AGREEMENT**

### **NORTHERN CALIFORNIA RIVER WATCH vs. GINA GALLO/ DRY CREEK GENERAL STORE**

#### **Recitals**

Northern California River Watch, a California nonprofit organization sent to Gina Gallo, individually and as the owner and operator of Dry Creek General Store, LLC, (hereafter, "Gallo" or "Dry Creek Store") a Notice of Violations dated October 23, 2009, claiming alleged violations of the Federal Clean Water Act, 33 U.S.C. § 1365(a), and an intent to bring an action in the U.S. District Court. On May 10, 2010, Northern California River Watch filed a Complaint for Injunctive Relief and Damages against Gallo in the Northern District of California, Case No. 3:10-CV-01999 SC. Attached hereto as Exhibit A is a true and correct copy of the case filed, which includes a copy of the October 23, 2009 letter, which matters combined involve the action referred to herein. The parties have come to the terms of a complete settlement of all of the claims raised, against Gina Gallo, the Dry Creek General Store, LLC, and any other owner of the Dry Creek Store.

#### **Remedial Measures**

Before December 31, 2011, the Dry Creek General Store LLC shall complete the implementation of one of the following three (3) remedial measures:

1. The relocation and/or installation of a new septic system and/or leach lines in compliance with all Sonoma County Regulations, or as approved by the County.
2. The installation of a mound/sand filtration system.
3. The installation of The White Knight Microbial Inoculator Generator (MIG), which provides rehabilitation of failed septic systems using a patented in-tank device and a proprietary blend of organic-consuming bacteria, or a similar treatment system.

#### **Payment of Fees and Costs**

Within fifteen (15) days of the date all parties to this Settlement Agreement have executed this Agreement, which date shall constitute the effective date of this Settlement Agreement, Gallo or the Dry Creek Store shall reimburse Northern California River Watch the sum of \$10,000.00 for its costs including without limitation expert, paralegal and investigator fees and attorney fees, with the exception of fees incurred to enforce this agreement in court. Payment shall be made payable to 'Northern California River Watch' and mailed to Jerry Bernhaut, Esquire, 100 E Street, Suite 318,

Santa Rosa, CA 95404. If either party files a breach of contract action to enforce this Agreement, the court shall have the authority to award attorney fees to the prevailing party. To the extent that there are multiple issues with a different party prevailing on one or more issue, the court may take those facts into account in awarding fees and costs.

### **Settlement and Release of Claims**

Upon the effective date of this Settlement Agreement, Northern California River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases and forever discharges Gallo and the Dry Creek Store, the property owners, their members, officers, employees, agents, successors and assigns, and any other person acting on Gallo or the Dry Creek Store's behalf, from all claims, liabilities, or causes of action, known or unknown, arising from or connected with the wastewater collection activities referred to, or which could have been referred to, in the Notice of Violations and the Complaint (see, Exhibit A attached hereto), including without limitation, any and all claims for violations of 33 U.S.C. §1365, or of administrative orders or directives of the Regional Water Quality Control Board, the Clean Water Act, the Porter Cologne Act, or any other federal or state law, or of any local law, ordinance or regulation governing such activities, which occurred at any time up to and including the effective date of this Settlement Agreement, and that may occur within the period of five (5) years thereafter.

### **Enforcement**

Northern California River Watch agrees that its exclusive remedy for a breach of this Settlement Agreement by Gallo shall be a breach of contract action in which Gallo shall not be liable for consequential or punitive damages.

As a further consideration for the making of said settlement and payment, it is expressly agreed that:

1. All claims, past, present or future, are disputed and this full and final settlement thereof shall never be treated as an admission of liability or responsibility at any time or in any manner whatsoever.
2. This release is expressly intended to cover and include all claims, several or otherwise, past, present or five (5) years in the future.
3. The releases set forth in this Settlement Agreement extend to unknown as well as known claims. Northern California River Watch hereby waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Northern California River Watch further covenants and agrees that, at least sixty (60) days before filing any such action to enforce this Settlement Agreement, it shall notify Gallo in writing of what actions or inactions by Gallo it deems to be in violation of this Settlement Agreement. Thereafter, the parties shall meet and confer in a good faith attempt to resolve their dispute. If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute prior to the filing of any action to enforce this Settlement Agreement.

**Dismissal of Complaint**

Within seven (7) court days of the payment of fees and costs by Gallo, Northern California River Watch shall cause to be dismissed with prejudice, its Complaint filed on May 10, 2010, U.S. District Court Case No. 3:10-CV-01999-SC.

Dated: Northern California River Watch  
By: \_\_\_\_\_

Dated: Dry Creek General Store, LLC  
By: \_\_\_\_\_

Dated: \_\_\_\_\_  
Gina Gallo

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_  
Jerry Bernhaut  
Attorney for Northern California River Watch

Dated: \_\_\_\_\_  
Timothy Byrd  
Attorney for Gina Gallo and Dry Creek General Store, LLC