

CITY COUNCIL/REDEVELOPMENT AGENCY

AGENDA ITEM 6.02

July 28, 2009

TO: Mayor and City Council

FROM: Richard E. Nosky, Jr., City Attorney

SUBJECT: **SETTLEMENT AGREEMENT THAT WILL RESOLVE THE LITIGATION IN CALIFORNIA SPORTFISHING PROTECTION ALLIANCE v. CITY OF STOCKTON, EASTERN DISTRICT CASE NO. CV 08-02184 LKK-KLM**

RECOMMENDATION

It is recommended that a resolution be adopted approving a settlement agreement in *California Sportfishing Protection Alliance v. City of Stockton*, Eastern District Case No. CV 08-02184 LKK-KLM.

Summary

The City has been engaged in litigation regarding the operation of the City's sanitary sewer system. The City was sued by the California Sportfishing Protection Alliance (CSPA) under allegations that the City had violated the federal Clean Water Act. The settlement agreement presented for City Council approval (the "Settlement Agreement") will settle this case. The City Council approved the proposed settlement in principal during the closed session of June 16, 2009.

DISCUSSION

Background

This matter is a citizen suit under the federal Clean Water Act (the "Act"). Under the Act, a citizen may bring an action to address continuing violations of the Act through declaratory and injunctive relief and the imposition of civil penalties. The Act imposes strict liability on violators, there being no need to prove that the violation occurred through negligence or some intentional activity. A prevailing plaintiff may also collect attorney fees and litigation costs.

In the suit, CSPA alleges that the City has violated the Act by causing the occurrence of an excessive number of overflows in the City's sanitary sewer system and that those overflows have been harmful to the environment. The complaint asks the Court to find the City in violation of the Act, enjoin the City from further violations, impose civil penalties, and award the plaintiff its attorney fees and litigation costs.

SETTLEMENT AGREEMENT THAT WILL RESOLVE THE LITIGATION IN CALIFORNIA SPORTFISHING PROTECTION ALLIANCE v. CITY OF STOCKTON, EASTERN DISTRICT CASE NO. CV 08-02184 LKK-KLM

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The Settlement Agreement is in the form of a consent decree, meaning that the settlement would form the basis of an order enforceable by the Court and effective for at least five years.

Present Situation

The Settlement Agreement contains two distinct elements: First, there is the direct payment to the plaintiffs for their attorney's fees and costs in the amount of \$250,000, an environmental "mitigation payment" in the form of a \$300,000 donation to the non-profit Rose Foundation that will be used to fund some portion of an environmental betterment project to be undertaken by that foundation, and a payment of \$15,000 for future monitoring of the City's compliance with the terms of the Settlement Agreement. Second, the agreement provides that the City will significantly reduce its incidents of sanitary sewer overflows by making significant and necessary investments in its existing sewer collections processes and infrastructure.

The Settlement Agreement will require the City to engage in certain operational activities, including the preparation of operating procedures for the sanitary sewer system and the potential preparation of action plans aimed at reducing overflows. In addition, the City will be required to consider certain changes to the Municipal Code. Among the Municipal Code changes to be considered are requirements for inspection and repair of private sewer laterals when properties are sold or when significant building improvements are undertaken and a requirement regarding the installation of grease interceptors at new or remodeled food service establishments.

In addition to the operational activities set out above, the City will be required to: (1) conduct closed circuit television inspections of 1000 miles of the sanitary sewer system within the next five years; (2) clean all gravity sewers 15 inches or smaller in diameter; and (3) conduct grease interceptor inspections annually for all food service establishments.

FINANCIAL SUMMARY

Staff has estimated that to complete these requirements with in-house staff would require an additional vector and camera truck with associated staff and one additional inspector. The total five year cost for life of Consent Decree is estimated at \$4,065,000.

SETTLEMENT AGREEMENT THAT WILL RESOLVE THE LITIGATION IN CALIFORNIA SPORTFISHING PROTECTION ALLIANCE v. CITY OF STOCKTON, EASTERN DISTRICT CASE NO. CV 08-02184 LKK-KLM

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The break down is as follows:

Items	Cost	Account Number	Total
Items Included in 2009-10 Municipal Utilities Budget:			
First year cost for Grease Interceptor Inspector	\$100,000	431-4341-572	
Purchase of Vactor	\$300,000	431-4332-606	
CSPA Attorney'S Fees	\$250,000	431-4311-572	
CSPA Monitoring Costs	\$15,000	431-4311-572	
Operational Plans And Procedures	\$100,000	431-4332-571	\$765,000
Immediate appropriation needed from fund balance:			
Mitigation Payment	\$300,000	431-4311-572	\$300,000
Appropriation will be requested from City Council as items are brought forward for approval:			
Purchase of Camera truck	\$300,000		
Collections Staff	\$460,000		\$760,000
The following items will be budgeted for costs incurred in year 2-5 as part of the Municipal Utilities Budget, Wastewater fund:			
Cost for Grease Interceptor Inspector year 2-5	\$400,000		
Collections Staff costs for year 2-5	\$1,840,000		\$2,240,000
Total estimated cost*			\$4,065,000

*The financial estimate does not include any estimate for repair costs for sanitary sewer pipelines.

Respectfully submitted,



RICHARD E. NOSKY, JR.
CITY ATTORNEY

REN:JML:th

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT RESOLVING THE LITIGATION IN CALIFORNIA SPORTFISHING PROTECTION ALLIANCE v. CITY OF STOCKTON, EASTERN DISTRICT CASE NO. CV 08-02184 LKK-KLM

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Settlement Agreement between the City of Stockton and California Sportfishing Protection Alliance is hereby authorized and approved.
2. That the City Manager and/or City Attorney are hereby authorized to execute the Settlement Agreement, in substantially the form as attached hereto as Exhibit "A."
3. That the City Manager and/or City Attorney are hereby authorized to take all actions appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED _____.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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City Atty: _____
Review _____
Date July 20, 2009

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13 *Attorneys for Plaintiff*
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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17

18 CALIFORNIA SPORTFISHING PROTECTION
19 ALLIANCE, a non-profit corporation,

20 Plaintiff,

21 v.

22 CITY OF STOCKTON, a municipal corporation,
23

24 Defendant.
25
26
27
28

Civil Case No.: CV 08-02184-LKK-KLM

[PROPOSED] CONSENT DECREE

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 City of Stockton (“City” or “Defendant”).
4 The entities entering into this Consent Decree are each referred to herein as “Settling Party” and
5 collectively as “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 San Joaquin River and the Sacramento-San Joaquin River Delta;

9 **WHEREAS**, the City is a municipal corporation and is the permittee on the *Waste Discharge*
10 *Requirements for City of Stockton Regional Wastewater Control Facility*, National Pollutant
11 Discharge Elimination System (“NPDES”) Permit No. CA0079138, Order No. R5-2008-0154 (“2008
12 Stockton WWTP Permit”) and the previous NPDES permit *Waste Discharge Requirements for City*
13 *of Stockton Regional Wastewater Control Facility*, National Pollutant Discharge Elimination System
14 (“NPDES”) Permit No. CA0079138, Order No. R5-2002-0083 (“2002 Stockton WWTP Permit”);

15 **WHEREAS**, the City is a permittee on the *Waste Discharge Requirements for City of*
16 *Stockton and County of San Joaquin Storm Water Discharges from Municipal Separate Storm Sewer*
17 *System, San Joaquin County*, National Pollutant Discharge Elimination System (“NPDES”) Permit
18 No. CAS083470, Order No. R5-2007-0173, California Regional Water Quality Control Board –
19 Central Valley Region (“2007 Stockton Stormwater Permit”) and the previous NPDES permit *Waste*
20 *Discharge Requirements for City of Stockton and County of San Joaquin Storm Water Discharges*
21 *from Municipal Separate Storm Sewer System, San Joaquin County*, National Pollutant Discharge
22 Elimination System (“NPDES”) Permit No. CAS083470, Order No. R5-2002-0181, California
23 Regional Water Quality Control Board – Central Valley Region, as amended by Resolution
24 No. R5-2003-0133 (“2002 Stockton Stormwater Permit”);

25 **WHEREAS**, on July 1, 2008, CSPA provided the Defendant, the Administrator and the
26 Regional Administrator for Region IX of the United States Environmental Protection Agency
27 (“EPA”), the Executive Director of the California State Water Resources Control Board (“State
28 Board”), and the Executive Officer of the California Regional Water Quality Control Board, Central

1 Valley Region (“Regional Board”) with a Notice of Violation and Intent to File Suit (“Notice Letter”)
2 under section 505(a) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”),
3 33 U.S.C. § 1365(a). The Notice Letter alleged that Defendant violated and continues to violate the
4 Clean Water Act for discharges of pollutants in violation of the 2002 Stockton WWTP Permit;

5 **WHEREAS**, on September 16, 2008, Plaintiff filed its complaint in the United States District
6 Court for the Eastern District of California (“District Court”) against Defendant, Case
7 No. CV-08-2184-LKK-KJM (hereinafter “Complaint”);

8 **WHEREAS**, on September 17, 2008, Plaintiff sent Defendant a letter notifying the Defendant
9 of Plaintiff’s intent to seek a peremptory writ of mandate ordering the Defendant to comply with the
10 Clean Water Act, the Porter-Cologne Water Quality Control Act (“Porter-Cologne”), the Statewide
11 Waste Discharge Requirements for Sanitary Sewer Systems - State Water Resources Control Board
12 Order No. 2006-0003 (“SSO WDR”), the 2002 Stockton WWTP Permit, the San Joaquin County
13 Ordinance and City of Stockton Municipal Code;

14 **WHEREAS**, on October 13, 2008, CSPA provided the Defendant, the EPA, the State Board,
15 and the Regional Board with a Supplemental Notice of Violation and Intent to File Suit
16 (“Supplemental Notice Letter”) under section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a).
17 The Supplemental Notice Letter alleged that Defendant violated and continues to violate the Clean
18 Water Act for discharges of pollutants in violation of the 2002 Stockton WWTP Permit;

19 **WHEREAS**, on October 30, 2008, Plaintiff filed its first amended complaint in this case
20 (Case No. CV-08-2184-LKK-KJM) (hereinafter “First Amended Complaint”);

21 **WHEREAS**, Defendant denies CSPA’s allegations that it has violated the Clean Water Act
22 and/or any of the permits as alleged in the First Amended Complaint, denies that it failed to perform
23 its duties under the Clean Water Act, Porter-Cologne, the SSO WDR, the San Joaquin County
24 Ordinance, or the Stockton Municipal Code as alleged in the First Amended Complaint, and denies it
25 has liability to CSPA or other citizen groups;

26 **WHEREAS**, the Parties, through their authorized representatives and without either
27 adjudication of the First Amended Complaint’s claims or admission by Defendant of any alleged
28 violation or other wrongdoing, have chosen to resolve this action through settlement and avoid the

1 costs and uncertainties of further litigation;

2 **NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of
3 which is hereby acknowledged, the Parties each hereby agree as follows:

4 **I. GENERAL OBJECTIVES**

5 1. The objectives of this Consent Decree are:

6 a. To ensure that Defendant uses, implements, and improves ways, means, and
7 methods to prevent sanitary sewer overflows;

8 b. To ensure that the City uses, implements, and improves ways, means, and
9 methods to prevent violations of, or comply with, applicable permits, laws, and regulations as related
10 to sanitary sewer overflows.

11 **II. DEFINITIONS**

12 2. Unless otherwise expressly defined herein, terms used in this Consent Decree, which
13 are defined in the CWA, Porter-Cologne, or in regulations implementing these statutes, have the
14 meaning assigned to them in the applicable statutes, regulations, or rules. Whenever terms listed
15 below are used in this Consent Decree, the following definitions apply:

16 a. "2002 Stockton WWTP Permit" means *Waste Discharge Requirements for*
17 *City of Stockton Regional Wastewater Control Facility*, National Pollutant Discharge Elimination
18 System ("NPDES") Permit No. CA0079138, Order No. R5-2002-0083, California Regional Water
19 Quality Control Board – Central Valley Region.

20 b. "2008 Stockton WWTP Permit" means *Waste Discharge Requirements for*
21 *City of Stockton Regional Wastewater Control Facility*, National Pollutant Discharge Elimination
22 System ("NPDES") Permit No. CA0079138, Order No. R5-2008-0154, California Regional Water
23 Quality Control Board – Central Valley Region.

24 c. "2002 Stockton Stormwater Permit" means *Waste Discharge Requirements for*
25 *City of Stockton and County of San Joaquin Storm Water Discharges from Municipal Separate Storm*
26 *Sewer System, San Joaquin County*, National Pollutant Discharge Elimination System ("NPDES")
27 Permit No. CAS083470, Order No. R5-2002-0181, California Regional Water Quality Control Board
28 – Central Valley Region, as amended by Resolution No. R5-2003-0133.

1 d. "2007 Stockton Stormwater Permit" means *Waste Discharge Requirements for*
2 *City of Stockton and County of San Joaquin Storm Water Discharges from Municipal Separate Storm*
3 *Sewer System, San Joaquin County*, National Pollutant Discharge Elimination System ("NPDES")
4 Permit No. CAS083470, Order No. R5-2007-0173, California Regional Water Quality Control Board
5 – Central Valley Region.

6 e. "CCTV" means closed-circuit television.

7 f. "City" means the City of Stockton located in San Joaquin County, California.

8 g. "Condition Assessment Inspection" means an inspection of a sewer reach by
9 CCTV that results in documentation of a Condition Assessment Rating for the inspected sewer reach.

10 "Condition Assessment Inspection" does not include CCTV inspection for cleaning quality
11 assurance/quality control, spill follow-up, FOG source investigations, or other types of CCTV
12 inspection unless those inspections yield a Condition Assessment Rating for the entire sewer reach.

13 h. "Condition Assessment Rating" means an assignment of the condition given
14 based on the Pipeline Assessment and Certification Program Standard ("PACP").

15 i. "CSPA" means California Sportfishing Protection Alliance.

16 j. "day" means a calendar day. In computing any period of time under this
17 Consent Decree, where the last day of such period is a Saturday, Sunday, Federal or State or City
18 Holiday, or City Furlough Day, the period runs until the close of business on the next day that is not a
19 Saturday, Sunday, Federal or State or City Holiday, or City Furlough Day. In no event shall the
20 number of City Furlough Days used for computing time periods as defined here exceed 14 days in a
21 calendar year.

22 k. "Easement Sewers" means sanitary sewers upon, over, across, or through land
23 not owned by the City but which the City owns an easement upon, over, across, and/or through for
24 the purpose of maintaining and providing sanitary sewer services, including for the purpose of
25 installing or maintaining sanitary sewer infrastructure.

26 l. "FOG" means fats, oil, and grease.

27 m. "FSE" means Food Service Establishment, any facility where food is served
28 and intended for individual portion service, and includes the site at which individual portions are

1 provided.

2 n. "Grease interceptor" is as defined in the Stockton Municipal Code and
3 Stockton Standard Plans and Specifications.

4 o. "Lower Lateral Spill" or "Lower Lateral SSO" means an unintentional
5 discharge, release, or spill of sewage caused by a blockage or other problem in a Lower Lateral
6 owned by the City of Stockton, and has the same meaning as those terms defined in Section A.1. of
7 the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, State Water
8 Resources Control Board Order No. 2006-0003, or any amendment thereto, and which currently
9 means: "any overflow, spill, release, discharge or diversion of untreated or partially treated
10 wastewater from a sanitary sewer system.

11 p. "Lower Lateral" means the lateral line owned by the City connecting a home
12 or other structure to the City's sewer main extending from the sewer main to the back of the public
13 right-of-way or City clean out, whichever is applicable to the lateral connection. Lower Laterals are
14 generally connected to Private Laterals.

15 q. "NPDES" means National Pollutant Discharge Elimination System.

16 r. "Private Lateral" means the private sanitary sewer lateral or line connecting a
17 home or other structure to the Lower Lateral, generally extending from the outside of the foundation
18 of the structure to the public right-of-way or the City's cleanout, whichever is applicable.

19 s. "Sanitary Sewer Overflow" or "SSO" has the same meaning as those terms are
20 defined in Section A.1. of the SSO WDR, or any amendment thereto, and which currently means:
21 "any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from
22 the Stockton Collection System. SSOs include: (i) Overflows or releases of untreated or partially
23 treated wastewater that reach waters of the United States; (ii) Overflows or releases of untreated or
24 partially treated wastewater that do not reach waters of the United States; and (iii) Wastewater
25 backups into buildings and on private property that are caused by blockages or flow conditions within
26 the publicly owned portion of a sanitary sewer system." For purposes of this definition, "waters of
27 the United States" has the meaning as set forth in 40 C.F.R. § 122.2.

28 t. "Sanitary Sewer Overflow Emergency Response Plan" shall mean the current

1 version of the City’s Sanitary Sewer Overflow Emergency Response Plan as of the Effective Date, as
2 submitted to the State Board pursuant to the SSO WDR.

3 u. “sewer segment” means any section of publicly owned sewer line or pipe
4 located between: (1) two manholes/maintenance holes; (2) a pump station and a
5 manhole/maintenance hole; (3) a pump station or a manhole/maintenance hole and a headworks
6 structure; or (4) a sewer line or pipe otherwise identifiable as a discrete section.

7 v. “SSMP” means the Sewer System Management Program developed and
8 implemented by Stockton for the Stockton Collection System in accordance with the SSO WDR.
9 The goal of an SSMP is to provide a plan and schedule to properly manage, operate, and maintain all
10 parts of the sanitary sewer system. This will help reduce and prevent SSOs, as well as mitigate any
11 SSOs that do occur. The bulk of Stockton’s SSMP includes collection system condition monitoring;
12 collection system operations, maintenance and repair; a FOG program; legal authority; and an SSO
13 response plan. Sections of Stockton’s SSMP are still being developed.

14 w. “SSO WDR” means Statewide General Waste Discharge Requirements for
15 Sanitary Sewer Systems, State Water Resources Control Board Order No. 2006-0003, as amended by
16 Order No. WQ 2008-0002-EXEC.

17 x. “Stockton Collection System” means the sewer pipes and lines, manholes or
18 maintenance holes, pump stations, and all appurtenances thereto under ownership of the City of
19 Stockton that are used to convey wastewater generated by residential, commercial, and industrial
20 sources to the Stockton WWTP. For purposes of this Consent Decree, the Stockton Collection
21 System does not include private laterals or other privately owned or operated infrastructure that
22 connects to the Stockton Collection System.

23 y. “Stockton WWTP” means the wastewater treatment facility and all equipment,
24 storage, and other infrastructure used by Stockton to treat sanitary sewage located downstream of the
25 headworks to such facility until its point of discharge.

26 z. “Upper Lateral” means the private sanitary sewer lateral or line connecting a
27 home or other structure to the Lower Lateral, generally extending from the outside of the foundation
28 of the structure to the public right-of-way or the City’s cleanout, whichever is applicable.

1 aa. “year” shall mean a calendar year, unless otherwise specified.

2 **III. JURISDICTION AND VENUE**

3 3. Plaintiff alleges that: a) this District Court has jurisdiction over the subject matter of
4 the claims asserted by Plaintiff pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C.
5 § 1365(a)(1), 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising
6 under the Constitution and laws of the United States), and 28 U.S.C. § 1367(a), which provides
7 supplemental jurisdiction for claims based on state law, including, but not limited to, California Code
8 of Civil Procedure § 1085, the California Water Code §§ 13000 *et seq.* (the “Porter-Cologne Water
9 Quality Control Act” or “Porter-Cologne”), San Joaquin County Ordinance, Title 5, and the City of
10 Stockton Municipal Code, Chapter 7; b) venue is proper in this judicial district pursuant to
11 sections 309(b) and 505(c) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C.
12 §§ 1391(b) and (c); and c) the First Amended Complaint filed herein states claims for which relief
13 can be granted. For purposes of settlement, the Settling Parties waive all objections that they may
14 have to the Court's jurisdiction to enter and retain jurisdiction over this Consent Decree.

15 **IV. EFFECT OF CONSENT DECREE**

16 4. Plaintiff does not, by their consent to this Consent Decree, warrant or aver in any
17 manner that the Defendant’s compliance with this Agreement will constitute or result in compliance
18 with any Federal or State law or regulation. Nothing in this Agreement shall be construed to affect or
19 limit in any way the obligation of the Defendant to comply with all applicable Federal, State and
20 local laws and regulations governing any activity required by this Consent Decree.

21 5. Nothing in the Consent Decree shall be construed as an admission by Defendant, and
22 does not intend to imply any admission as to any fact, finding, issue of law, or violation of law, nor
23 shall compliance with this Consent Decree be construed as an admission by Defendant of any fact,
24 finding, conclusion, issue of law, or violation of law.

25 **V. APPLICABILITY**

26 6. The provisions of this Consent Decree apply to and bind the Settling Parties, including
27 any successors or assigns. The Settling Parties certify that their undersigned representatives are fully
28 authorized to enter into this Consent Decree, to execute it on behalf of the Settling Parties, and to

1 legally bind the Settling Parties to its terms.

2 7. The Settling Parties agree to be bound by this Consent Decree and not to contest its
3 validity in any subsequent proceeding to implement or enforce its terms. By entering into this
4 Consent Decree, the Defendant does not admit liability for any purpose as to any allegation or matter
5 arising out of the Notice Letter, Supplemental Notice Letter and/or First Amended Complaint.

6 8. No change in ownership or corporate or other legal status of the Defendant or any
7 transfer of the Defendant's assets or liabilities shall in any way alter the responsibilities of the
8 Defendant or any of its successors or assigns thereof, under this Consent Decree. In any action to
9 enforce this Consent Decree, the Defendant shall not raise as a defense the failure by any of its
10 agents, servants, contractors, employees, and successors or assigns to take actions necessary to
11 comply with this Consent Decree.

12 VI. EFFECTIVE DATE AND TERMINATION DATE

13 9. The term "Effective Date," as used in this Consent Decree, shall mean the last date for
14 the United States Department of Justice to comment on the [proposed] Consent Decree, i.e., the
15 45th day following the United States Department of Justice's receipt of the [proposed] Consent
16 Decree and Stipulated Dismissal.

17 10. This Consent Decree will terminate five (5) years from the Effective Date if the City
18 meets its SSO Reduction Performance Standard for the year 2013 (as set forth in Section VII below).
19 Failure to comply with the SSO Reduction Performance Standard in 2013 will result in year to year
20 extensions of the Consent Decree until the City achieves an SSO rate of no more than five (5) SSOs
21 per 100 miles of sewer in a year, in accordance with Section VII below. If either Settling Party has
22 invoked the dispute resolution process pursuant to Section XVIII and the dispute has not been
23 resolved at the time the Consent Decree would otherwise terminate, the Consent Decree shall
24 continue in effect until the dispute is resolved, either through mutual agreement of the Settling Parties
25 or by the Court.

26 VII. SSO AND SPILL REDUCTION PERFORMANCE STANDARDS

27 11. SSO Reduction. It is the goal of this Consent Decree to reduce Stockton Collection
28 System SSOs, which are comprised of spills from both sewer mains and Lower Laterals. The City

1 shall reduce its SSOs from sewer mains and Lower Laterals as provided in Table 1 and subsections of
2 this paragraph, which set forth the SSO Reduction Performance Standards that the City must meet.

Calendar Year	Maximum Number of SSOs Per 100 Miles of Sewer /Year ¹
2009	24
2010	20
2011	15
2012	10
2013	5

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9 Table 1 – SSO Reduction Performance Standards

10 a. For purposes of establishing the SSO Reduction Performance Standards, a
11 SSO of 50 gallons or less caused by a blockage or defect in a Lower Lateral and not reaching a
12 surface water body will not be counted.

13 b. For purposes of establishing the SSO Reduction Performance Standards, the
14 miles of sewer lines excluding Lower Laterals as of the Effective Date equals 918.65 miles, and
15 subsequently updated in the Annual Report required under Section XV of this Consent Decree.

16 c. Compliance with SSO Reduction Performance Standards shall be determined
17 using the miles of sewer excluding lower laterals reported by the City in each year's Annual Report
18 required under Section XV of this Consent Decree.

19 d. Compliance or non-compliance with the SSO Reduction Performance Standard
20 shall be documented by the City in each year's Annual Report required under Section XV of this
21 Consent Decree.

22 e. Failure to meet the SSO Reduction Performance Standards shall be a violation
23 of this Consent Decree and subject to the dispute resolution process set forth in Section XVIII.

24 f. In order to assist in reaching the above SSO Reduction Performance Standards,
25 the City shall implement the programs described hereafter.

26 **VIII. SSO INVESTIGATION, RESPONSE AND REPORTING**

27 12. The terms, conditions, obligations, and requirements of the City's current Sanitary
28

¹ Miles of Sewer in this table means miles of main line sewers plus miles of force mains.

1 Sewer Overflow Emergency Response Plan are incorporated into this Consent Decree, and are
2 enforceable pursuant to this Consent Decree.

3 13. The City recognizes that proper identification of the cause of SSOs is essential to
4 prevention of future SSOs.

5 14. Within ninety (90) days of the effective date of this Consent Decree the City shall
6 prepare and implement a standard operating procedure (“SSO Cause Determination SOP”) aimed at
7 the proper and consistent determination of the cause of each SSO. At a minimum, for main line
8 blockages the City shall ensure that its responders open the maintenance hole downstream of where
9 the cause of the blockage appears, insert a trap, and observe and report FOG, roots, or specific types
10 of debris that appear to have been the cause of the SSO. For Lower Lateral blockages, at a minimum
11 the City shall ensure that responders identify any material retained on the cleaning tools used to clear
12 the blockage. The City shall provide a copy of the SSO Cause Determination SOP to CSPA for
13 review and comment within seven (7) days of its finalization. CSPA shall provide the City, in
14 writing, with all recommended revisions to the SSO Cause Determination SOP within twenty-one
15 (21) days of receipt of such SSO Cause Determination SOP. The City shall consider each of CSPA’s
16 recommended revisions and indicate within forty-five (45) days of receipt whether the City accepts
17 each such recommendation for revision. If the City does not accept each of CSPA’s
18 recommendations, and remaining differences cannot be informally resolved promptly between the
19 Settling Parties, then CSPA may seek dispute resolution pursuant to Section XVIII of this Consent
20 Decree. In any such dispute resolution process, the City shall demonstrate that the elements or
21 actions set forth in the SSO Cause Determination SOP are designed to ensure causes of the SSOs can
22 be readily and accurately determined. To the extent the Settling Parties do not dispute specific
23 original provisions of the SSO Cause Determination SOP or specific recommended revisions, the
24 City shall implement all undisputed provisions or revisions. After the Settling Parties have reached
25 agreement on the SSO Cause Determination SOP or after the dispute resolution process resolves any
26 dispute concerning the SSO Cause Determination SOP, the City shall begin implementation of the
27 SSO Cause Determination SOP as an enforceable requirement of this Consent Decree within sixty
28 (60) days of agreement or upon the schedule set forth therein.

1 15. Within one hundred eighty (180) days upon reaching agreement with CSPA regarding
2 the SSO Cause Determination SOP, the City shall complete training of all City personnel that
3 respond to SSOs in the methods and practices used to identify the root causes of SSOs and shall
4 certify to CSPA that the training has been completed. All new employees who may respond to SSOs
5 shall be trained in the methods and practices used to identify the root causes of SSO and the City
6 shall maintain records of such training.

7 16. The cause of the SSO shall be reported in the State Board's California Integrated
8 Water Quality System ("CIWQS") and entered into and maintained in a City database. The
9 information in the database shall be used in evaluating the City's programs. The City shall include in
10 its Annual Report required under Section XV of this Consent Decree, a summary of SSO causes
11 determined by analysis of its database.

12 17. In the first two Annual Reports required by Section XV of this Consent Decree, the
13 City shall provide to CSPA a compilation of individual SSO Reports for each spill it reported to the
14 State Board. The City may discontinue providing CSPA with compilations of individual spill reports
15 after the first two Annual Reports required under Section XV of this Consent Decree, unless CSPA
16 requests in writing that the City continue to provide such compilations.

17 18. In the Annual Report required under Section XV of this Consent Decree, the City shall
18 provide CSPA with a summary of any changes to the total quantity of sewer line that will affect the
19 calculation of the SSO Reduction Performance Standards.

20 19. The City shall include as part of its Sanitary Sewer Overflow Emergency Response
21 Plan procedures that require the City to notify as soon as practicable the County of San Joaquin's
22 Emergency Dispatch of any SSO occurring within the County of San Joaquin's jurisdictional area of
23 the Stockton Urbanized Area MS4 ("County's MS4 Jurisdiction") from the Stockton Collection
24 System if the SSO has discharged to, or threatens to discharge to, the County MS4. The City's
25 notification to the County in no event shall be longer than that required by the SSO WDR to notify
26 the State Office of Emergency Services after learning of an SSO occurring from the Stockton
27 Collection System that has discharged to, or threatens to discharge to the County's MS4. The City's
28 obligation to notify the County of San Joaquin shall in no way halt the City's emergency response

1 actions to capture and/or recover any SSO from the Stockton Collection System. For any SSO from
2 the Stockton Collection System that discharges to, or threatens to discharge to the County's MS4, the
3 City shall take all feasible steps to prevent the SSO from reaching waters of the United States, and
4 will work cooperatively with the County to:

- 5 a. control pump stations, as necessary;
- 6 b. obtain access to the County's MS4, as necessary; and
- 7 c. use reasonable best efforts to respond SSOs to the County's MS4 in a
8 cooperative manner.

9 **IX. SSO REDUCTION ACTION PLAN**

10 20. If any Annual Report required under Section XV of this Consent Decree, provided by
11 the City to CSPA documents compliance with the then-applicable SSO Reduction Performance
12 Standards, the City shall have no obligation to prepare a SSO Reduction Action Plan as set forth
13 herein. However, if an Annual Report required under Section XV of this Consent Decree documents
14 SSOs in excess of the SSO Reduction Performance Standards set forth in this Consent Decree, the
15 City shall submit to CSPA by June 1st of that same year a SSO Reduction Action Plan. An SSO
16 Reduction Action Plan prepared pursuant to this section shall specify the actions taken in the calendar
17 year for which the Annual Report was submitted, and shall specify additional measures to be taken
18 during the next calendar year and thereafter, which are designed to achieve compliance with the SSO
19 Reduction Performance Standards set forth in this Consent Decree. The SSO Reduction Action Plan
20 shall include a proposed schedule for implementation of all actions proposed.

21 21. CSPA shall provide the City, in writing, with all recommended revisions to the SSO
22 Reduction Action Plan within forty-five (45) days of receipt of such SSO Reduction Action Plan.
23 The City shall consider each of CSPA's recommended revisions and indicate within forty-five (45)
24 days of receipt whether the City accepts each such recommendation for revision. If the City does not
25 accept each of CSPA's recommendations, and remaining differences cannot be informally resolved
26 promptly between the Settling Parties, then CSPA may seek dispute resolution pursuant to
27 Section XVIII of this Consent Decree. In any such dispute resolution process, the City shall
28 demonstrate that the elements or actions set forth in the SSO Reduction Action Plan are designed to

1 achieve compliance with the SSO Reduction Performance Standards set forth in Section VII of this
2 Consent Decree, and, taken as a whole, constitute good engineering and operational approaches to
3 achieving compliance. To the extent the Settling Parties do not dispute specific original provisions of
4 the SSO Reduction Action Plan or specific recommended revisions, the City shall implement all
5 undisputed provisions or revisions. After the Settling Parties have reached agreement on the SSO
6 Reduction Action Plan or after the dispute resolution process resolves any dispute concerning the
7 SSO Reduction Action Plan, the City shall begin implementation of the SSO Reduction Action Plan
8 as an enforceable requirement of this Consent Decree within sixty (60) days of agreement or upon the
9 schedule set forth therein.

10 22. The City shall address in the SSO Reduction Action Plan the various elements of such
11 a plan that it believes will be necessary to achieve future compliance with the SSO Reduction
12 Performance Standards. The City may include any or all elements in the SSO Reduction Action Plan
13 in its SSMP.

14 **X. SEWER CONDITION ASSESSMENT/REHABILITATION/REPLACEMENT**

15 23. Within one hundred twenty (120) days of the Effective Date of the Consent Decree,
16 the City shall prepare a schedule for CCTV inspection and condition assessment of all gravity sewers
17 in its collection system. The City shall provide CSPA with its CCTV inspection schedule
18 immediately upon setting it, and no later than one hundred twenty (120) days from the Effective Date
19 of the Consent Decree. In subsequent years, as part of its Annual Report required by Section XV of
20 this Consent Decree, the City shall provide its schedule for CCTV inspection for the next year.

21 24. The inspections in the schedule proposed in Paragraph 23 shall be prioritized in the
22 following order: First, inspect sanitary sewers with known or suspected structural deficiencies;
23 second, inspect sanitary sewers that have experienced blockages; third, inspect sanitary sewers
24 15 inches and smaller in diameter greater than ten (10) years old; fourth, inspect sanitary sewers
25 greater than 15 inches in diameter greater than ten (10) years old.

26 25. Within five (5) years of the Effective Date of the Consent Decree, the City shall
27 complete a one-time CCTV inspection and condition assessment of all gravity sewer line segments in
28 the Stockton Collection System that are ten (10) years old or older. In no event shall the City inspect

1 and assess less than eighty (80) miles of sewer each year until all required sewers are inspected as
2 required by this paragraph. Sewers inspected within the last five (5) years need not be re-inspected
3 under this program. In order to ensure the inspection of all required sewers, the City shall:

- 4 • inspect at least 8.7% (or 80 miles) of the required sewers within one year of the Effective
5 Date;
- 6 • inspect at least 20% of the required sewers within two years of the Effective Date;
- 7 • inspect at least 40% of the required sewers within three years of the Effective Date;
- 8 • inspect at least 70% of the required sewers within four years of the Effective Date; and
- 9 • complete the inspection of 100% of the required sewers within five years of the effective
10 date.

11 26. The City will conduct a CCTV inspection of Lower Laterals under the following
12 conditions:

- 13 a. Within fifteen (15) days of any structural blockage causing an SSO (as
14 evidenced by pipe material, roots or backfill material captured on the cleaning tools);
- 15 b. Within thirty (30) days of any non-structural blockage causing an SSO;
- 16 c. Within sixty (60) days of any blockage not causing an SSO but does not allow
17 the passage of cleaning tools; or
- 18 d. Within ninety (90) days of a second blockage (where no SSO has occurred) in
19 any twelve (12) month period.

20 27. Any sewer line or Lower Lateral where the passage of the CCTV camera was blocked
21 by the condition of the pipe shall result in the segment being defined as failed. That sewer line or
22 Lower Lateral shall be repaired within 90 days and shall be re-inspected following the repair..

23 28. Sewer segments that are currently less than ten (10) years old but which reach the age
24 of ten (10) years during the life of this Consent Decree shall be inspected by CCTV and their
25 condition shall be assessed within one (1) year of reaching ten (10) years old.

26 29. Inspection under this section of the Consent Decree shall be accomplished using
27 CCTV. The sewer line defects will be coded using the Pipeline Assessment and Certification
28 Program (“PACP”) standard. The work products will include an inspection database (which may be

1 included as part of a larger database), PACP Grade Score, prioritized repair projects, and prioritized
 2 rehabilitation/replacement projects. The annual inspection quantity will include the sum of the
 3 lengths of all of the gravity sewers and Lower Laterals where inspection was completed. The
 4 inspection work will be completed using the City's CCTV crew and/or contract CCTV service.

5 30. The City is committed to correcting conditions that may cause an SSO within an
 6 appropriate timeframe. The City's timeframes for actions to correct observed conditions are shown
 7 on Table 2 (Timeframe for Actions to Correct Observed Defects)².

Observed Defect	Corrective Action	Time Frame (from date defect observed)	Other Action
PACP Grade 4 or 5 Maintenance Defect	Clean sewer or lower lateral	30 days	Place on hot spot cleaning or treatment schedule as appropriate
PACP Grade 3 Maintenance Defect	Clean sewer or lower lateral	4 months	Place on hot spot cleaning or treatment schedule as appropriate
PACP Grade 5 Structural Defect – Immediate Failure Likely	Repair or rehabilitate sewer or lower lateral	ASAP (no more than 90 days)	N/A
PACP Grade 5 Structural Defect – Immediate Failure Unlikely	Repair, rehabilitate, or re-inspect sewer or lower lateral	2 years	Reinspect within one year if corrective action not taken
PACP Grade 4 Structural Defect	Repair, rehabilitate, or re-inspect sewer or lower lateral	5 years	Reinspect within three years if corrective action not taken

21 Table 2 – Timeframe for Actions to Correct Observed Defects

22 31. In addition to actions required above, when an SSO occurs caused by a structural
 23 problem with a lower lateral (as evidenced by pipe material, roots or backfill material captured on the
 24 cleaning tools), the City shall, within fifteen (15) working days of the SSO, inspect the lower lateral
 25 with CCTV, assess its condition, and immediately repair defects that were the cause of the SSO. For
 26 all other Lower Lateral SSOs, the City shall conduct a CCTV inspection within thirty (30) days.

27 32. The Municipal Utilities Department for the City of Stockton shall propose and

28 ² Any action specified in Table 2 that would occur beyond the termination date of this Consent Decree as specified in
 paragraph 10 shall not be an enforceable action subject to the terms and conditions set forth herein.

1 recommend to the City Council the adoption of legislation that would require a homeowner to inspect
2 the upper/private lateral and make all necessary repairs within one hundred twenty (120) days where
3 the City has determined that an SSO was caused by roots or debris entering the lower lateral as a
4 result of defects in the private lateral.

5 33. In the Annual Report required under Section XV of this Consent Decree, the City shall
6 provide information regarding condition assessment, rehabilitation, and replacement. At a minimum
7 the Annual Report must include: the miles of sewer and lower lateral that were assessed in the
8 previous year; the miles of sewer assessed receiving each grade in the PACP grading system; and, a
9 summary of the mileage of and identification of sewers and Lower Laterals repaired, rehabilitated
10 and/or replaced during the previous year.

11 **XI. FATS, OILS AND GREASE PROGRAM**

12 34. The City shall continue to implement and improve its current FOG Control Program as
13 described in Section IX of the City's SSMP consistent with the terms set forth below. Facilities
14 permitted under the Federal Pretreatment Program will comply with the FOG Control Program
15 requirements to the extent that they are incorporated into those facilities' permits.

16 35. Within one hundred twenty (120) days of the effective date of the Consent Decree, the
17 Municipal Utilities Department for the City of Stockton shall propose and recommend to the City
18 Council the adoption of proposed amendments to Municipal Code Section 7-089.19. Grease
19 Interceptors to:

20 a. Require all new or substantially remodeled (greater than \$75,000) food service
21 establishments ("FSEs") to install a grease interceptor unless the FSE demonstrates that it does not
22 have the potential to discharge FOG in amounts greater than permitted to enter the City's sanitary
23 sewers.

24 b. Require all facilities operating a grease interceptor to maintain maintenance
25 and cleaning records for a period of no less than three (3) years and to make such records available
26 for public inspection at any time.

27 c. Add "schools" to the list of establishments already covered by that section of
28 the Code.

1 36. FOG Control Action Plan: Within one hundred eighty (180) days of the effective date
2 of this Consent Decree, the City shall prepare and submit to CSPA for review and comment a FOG
3 Control Action Plan applicable to all FSEs within the City’s service area. The FOG Control Action
4 Plan, at a minimum, shall include the following:

5 a. Identification of all FSEs in the City’s service area.

6 b. A schedule for, at least, annual inspections of all FSEs during which the
7 inspector shall, at a minimum: evaluate Best Management Practices (“BMPs”) designed to minimize
8 the discharge of FOG; assess the condition of grease removal device(s); measure grease levels in
9 grease interceptor(s); review grease removal records; and ensure that any deficiencies discovered in
10 previous inspections have been remedied.

11 c. Follow up inspections at all FSEs with deficiencies within thirty (30) days of
12 the original inspection. Provision for a second follow-up inspection if the deficiency was not
13 remedied by the time of the first re-inspection within fifteen (15) days of the initial re-inspection,
14 and, continuing re-inspections on a schedule consistent with the City’s compliance plan.

15 d. Provisions for inspections of all FSEs suspected of causing or contributing to
16 an SSO within five (5) working days of the occurrence of the SSO.

17 e. Provisions for inspection of all new or substantially remodeled FSEs within
18 ninety (90) days of the FSE start-up or remodel completion.

19 f. Distribution of outreach materials appropriate to FSEs informing FSE
20 operators of BMPs applicable to their establishments within one hundred twenty (120) days of the
21 adoption of the FOG Control Action Plan.

22 g. A mechanism for review and analysis of FOG inspection results.

23 h. An enforcement protocol to ensure compliance with FOG Control Action Plan
24 requirements, including record keeping requirements.

25 i. Twice a year outreach aimed at both educating residents that FOG discharges
26 cause SSOs and impose increased costs on the ratepayers, and providing residents with BMPs for
27 residential grease control.

28 j. A staffing plan and budgeted resources to support the implementation of the

1 FOG Control Action Plan.

2 k. A schedule for implementation of the FOG Control Action Plan.

3 37. CSPA shall provide the City, in writing, with all recommended revisions to the FOG
4 Control Action Plan within forty-five (45) days of receipt of the FOG Control Action Plan. The City
5 shall consider each of CSPA's recommended revisions and indicate within forty-five (45) days of
6 receipt whether the City accepts each such recommendation for revision. If the City does not accept
7 each of CSPA's recommendations, and remaining differences cannot be informally resolved
8 promptly between the Settling Parties, then CSPA may seek dispute resolution pursuant to
9 Section XVIII of this Consent Decree. In such dispute resolution process, the City shall demonstrate
10 that the elements or actions set forth in the FOG Control Action Plan are designed to achieve
11 compliance with the SSO Reduction Performance Standards set forth in Section VII of this Consent
12 Decree. To the extent the Settling Parties do not dispute specific original provisions or recommended
13 revisions, the City shall implement all undisputed provisions or revisions. After the Settling Parties
14 have reached agreement on the FOG Control Action Plan or after dispute resolution pursuant to
15 Section XVIII of this Consent Decree resolves any dispute concerning the FOG Control Action Plan,
16 the City shall begin implementation of the FOG Control Action Plan as an enforceable requirement of
17 this Consent Decree within sixty (60) days of agreement or upon the schedule set forth therein.

18 38. In the Annual Report required under Section XV of this Consent Decree the City shall
19 document the activities carried out under the FOG Control Action Plan during the previous year. The
20 report shall at a minimum: summarize activities under the FOG Control Action Plan; document
21 inspections, re-inspections, and results of inspections; provide an enforcement log for the previous
22 year, which summarizes enforcement actions; summarize FOG outreach efforts; present the City's
23 analysis of the effectiveness of the previous year's FOG Control Action Plan; include any changes to
24 the FOG Control Action Plan to be implemented in the subsequent year; and discuss budget and
25 staffing levels for the previous and current years.

26 XII. SEWER CLEANING, HOT SPOTS, AND LATERAL PROGRAMS

27 39. Routine Cleaning. The City shall clean all of its gravity sanitary sewer reaches, fifteen
28 (15) inches in diameter or smaller in the Stockton Collection System at least once within five (5)

1 years of the Effective Date of this Consent Decree. Lower Laterals shall be cleaned as needed.

2 40. Hot Spot Cleaning Program. The City shall improve its hot spot (preventive
3 maintenance) cleaning program. The City shall continue to implement its hot spot cleaning program
4 as set forth in Attachment A. Within sixty (60) days of the effective date of the Consent Decree, the
5 City shall implement and use the cleaning and evaluation methodology set forth below in Figure 1
6 (“Preventive Maintenance Scheduling Flow Chart”).

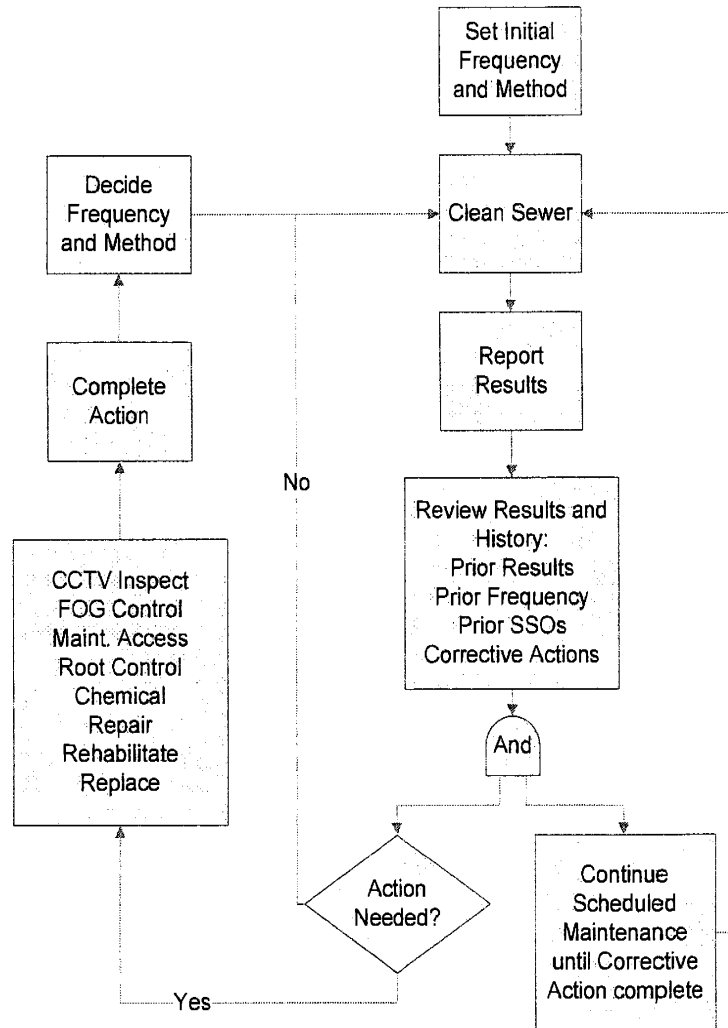


Figure 1 - Preventive Maintenance Scheduling Flow Chart

41. The City shall collect all observations made by its sewer cleaning crews in accordance with the SSO Cause Determination SOP regarding the extent and nature of materials removed during the cleaning process. The observations shall be recorded in the City's database. The City shall maintain or change the frequency of its hot spot cleaning for a sewer line segment based on the Sewer Cleaning Results Matrix set forth in Table 3 below in accordance with the section labeled Action.

	Clear	Light	Moderate	Heavy
Debris	Code: CL No observable debris	Code: DL Minor amount of debris 15 minutes or less to clean 1 pass	Code: DM Less than 5 gallons of debris per line segment 15-30 minutes to clean 2-3 passes	Code: DH More than 5 gallons of debris per line segment More than 30 minutes to clean More than 4 passes Operator concern for future stoppage
Grease	Code: CL No observable grease	Code: GL Minor amounts of grease 15 minutes or less to clean 1 pass	Code: GM Small "chunks" No "logs" 15-30 minutes to clean 2-3 passes	Code: GH Big "chunks" or "logs" More than 30 minutes to clean More than 4 passes Operator concern for future stoppage
Roots	Code: CL No observable roots	Code: RL Minor amounts of roots 15 minutes or less to clean 1 pass	Code: RM Thin stringy roots No "clumps" 15-30 minutes to clean 2-3 passes	Code: RH Thick roots Large "clumps" More than 30 minutes to clean More than 4 passes Operator concern for future stoppage
Debris: Structural pipe fragments soil, rock, etc.	Code: CL No observable materials	Code: SL Specify material (if possible) Minor amounts of material	Code: SM Specify material Less than 5 gallons of material per line segment	Code: SH Specify material More than 5 gallons of material per line segment Operator concern for future stoppage
Action	Decrease frequency to next lower frequency after 3 consecutive CL results (e.g. 6 months to 12 months)	Continue current maintenance frequency	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)

Note: Time frames for cleaning and quantities of materials removed are based on a 15-inch, 500-foot long segment.

Table 3 - Sewer Cleaning Results Matrix

1 42. Changes in cleaning frequency based upon cleaning results shall be as follows: no
2 reduction in cleaning frequency shall be made in a sewer line segment with a previous history of
3 SSOs without the approval of an appropriate collection system maintenance supervisor; three (3)
4 consecutive results of “clear” will result in the cleaning frequency being reduced to the next lower
5 cleaning frequency, and; results of “medium” or “heavy” will result in the cleaning frequency being
6 increased to the next highest frequency.

7 43. Sewer Cleaning Quality Assurance/Quality Control Program: The City shall institute
8 and maintain a quality assurance/quality control (“QA/QC”) program adequate to ensure proper and
9 complete cleaning of sewers. The quality assurance/quality control program shall consist of spot
10 checking the cleaning quality in a minimum of two percent by sewer segment of the cleaned sewers
11 on a monthly basis using CCTV to ensure adequate cleaning. If the cleaning is found to be
12 inadequate, the sewer segment will be re-cleaned within thirty (30) days. If more than ten (10)
13 percent of the spot checked segments require re-cleaning in any given month, spot checking of the
14 system shall be increased to five (5) percent. Where spot checking of the system has increased to five
15 (5) percent pursuant to this section, such spot checking will not be reduced to two (2) percent until
16 three consecutive months show two (2) percent or less of the pipes inspected required re-cleaning. If
17 a required inspection frequency increase is identified with a crew leader, the increased inspection
18 schedule will only apply to that crew leader and his/her crew.

19 44. If scheduled or hot spot cleaning of a segment or area cannot be properly
20 accomplished due to pipe condition or access limitations, the condition of the segment shall be
21 considered failing and shall be repaired within one hundred twenty (120) days.

22 45. The City shall identify the sewer lines cleaned and the results of its QA/QC program
23 each year in the Annual Report required by Section XVIII of this Consent Decree.

24 **XIII. PRIVATE LATERALS**

25 46. Within 180 days of this Consent Decree, the Municipal Utilities Department for the
26 City of Stockton shall propose and recommend to the City Council the adoption of amendments to
27 the Municipal Code to:

28 a. Require inspection of private laterals as a condition to sale of a property,

1 b. Require inspection of private laterals as a condition to obtaining a building
2 permit if the value of the construction for non-residential structures either exceeds \$150,000, or
3 exceeds \$75,000 and involves one or more plumbing fixtures connected to the City's sewer system;

4 c. Require inspection of private laterals as a condition to obtaining a building
5 permit if the value of construction for residential structures either exceeds \$50,000, or exceeds
6 \$25,000 and involves one or more plumbing fixtures connected to the City's sewer system; and,

7 d. Set standards for evaluating the condition of private laterals subject to the
8 provisions in subsections (a)-(c) above.

9 e. Require any defects in the private lateral that causes the private lateral to fail
10 the inspection be remedied prior to sale or as part of the Qualifying Remodel. Defects causing a
11 private lateral to fail the inspection shall include but not be limited to the following: pipe failure;
12 open joints; and/or openings in the pipe, which allow root intrusion.

13 f. Require the private lateral owner, within one hundred twenty (120) days of
14 notification by the City, to remove roots from their laterals that are growing into Lower Laterals as
15 determined by the City and make all necessary repairs to the private lateral necessary to prevent a
16 reoccurrence of roots intrusion that reaches the lower lateral.

17 **XIV. CHEMICAL ROOT CONTROL PROGRAM**

18 47. The City shall continue to implement and improve its chemical root control program
19 to supplement hot spot and routine cleaning to assure compliance with the SSO Reduction
20 Performance Standards in Section VII of this Consent Decree.

21 **XV. ANNUAL REPORT**

22 48. By March 1 of each year that this Consent Decree remains in effect, the City shall
23 submit an Annual Report to CSPA. The Annual Report shall:

24 a. Include the specific annual reporting requirements as set forth in Sections VII,
25 VIII, X, XI, and XII of this Consent Decree.

26 b. Provide details relevant to the City's implementation of, and compliance with,
27 this Final Consent Decree during the preceding year, including any program modifications during the
28 prior calendar year or delays.

1 c. Assess the City's progress towards meeting the requirements of the Consent
2 Decree.

3 **XVI. PAYMENT OF LITIGATION COSTS, MONITORING OF CONSENT DECREE**
4 **COMPLIANCE, AND MITIGATION PAYMENT**

5 49. Litigation Fees and Costs. To help defray CSPA's attorneys, consultant, and expert
6 fees and costs, and any other costs incurred as a result of investigating, filing this action, and
7 negotiating a settlement, Defendant shall pay Plaintiff the sum of Two Hundred Fifty Thousand
8 Dollars (\$250,000) which shall include all attorneys' fees and costs for all services performed by and
9 on behalf of CSPA by its attorneys and consultants up to and through the Effective Date of this
10 Consent Decree. The payment shall be made within twenty-one (21) days of the Effective Date of
11 this Consent Decree. The payment shall be made in the form of a check payable to "Lawyers for
12 Clean Water Attorney Client Trust Account" addressed to: 1004 O'Reilly Avenue, San Francisco,
13 CA 94129, sent overnight delivery, and shall constitute full payment for all costs of litigation
14 incurred by CSPA that have or could have been claimed in connection with or arising out of CSPA's
15 lawsuit, up to and including the Effective Date.

16 50. Compliance Monitoring. To compensate Plaintiff for time to be spent by legal staff or
17 technical consultants reviewing compliance reports and any other documents, or participating in any
18 meet and confer process under this Consent Decree. To this end, the Defendant shall pay Ten
19 Thousand Dollars (\$15,000) within twenty-one (21) days of the Effective Date of this Consent
20 Decree. Payment shall be made payable to "Lawyers for Clean Water Attorney Client Trust
21 Account" addressed to 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery.

22 51. Mitigation Payment. To remediate perceived environmental harms resulting from the
23 allegations in the First Amended Complaint, Defendant shall pay to the Rose Foundation for
24 Communities and the Environment the total sum of Three Hundred Thousand Dollars (\$300,000)
25 ("the Mitigation Payment") to be used to fund environmental project activities that will benefit the
26 Sacramento-San Joaquin River Delta and its watershed. Payment shall be made within thirty (30)
27 days of the Effective Date of this Consent Decree, to:

1 The Rose Foundation for Communities and the Environment
2 6008 College Avenue, Suite 10
3 Oakland, California 94618
4 Attention: Tim Little

5 **XVII. COMMITMENTS OF CSPA**

6 52. Submission of Consent Decree to Federal Agencies. CSPA shall submit a copy of this
7 Consent Decree to EPA and the United States Department of Justice (“DOJ”) within three (3) days of
8 its execution for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires
9 forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts,
10 copies of which shall be provided by CSPA to Defendant upon request. In the event that EPA or
11 DOJ comment negatively on the provisions of this Consent Decree, the Settling Parties agree to meet
12 and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

13 **XVIII. BREACH OF CONSENT DECREE AND DISPUTE RESOLUTION PROCEDURES**

14 53. Force Majeure. Defendant shall notify CSPA pursuant to the terms of this paragraph,
15 when implementation of the requirements set forth in this Consent Decree, within the deadlines set
16 forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendant,
17 due to circumstances beyond the control of Defendant or its agents, and which could not have been
18 reasonably foreseen and prevented by the exercise of due diligence by Defendant. Any delays due to
19 Defendant’s failure to make timely and bona fide applications and to exercise diligent efforts to
20 comply with the terms in this Consent Decree in normal inclement weather shall not, in any event, be
21 considered to be circumstances beyond Defendant’s control. Financial inability shall not, in any
22 event, be considered to be circumstances beyond Defendant’s control.

23 a. If Defendant claims impossibility, it shall notify CSPA in writing within thirty
24 (30) days of the date that Defendant first knew of the event or circumstance that caused or would
25 cause a violation of this Consent Decree, or the date Defendant should have known of the event or
26 circumstance by the exercise of due diligence. The notice shall describe the reason for the
27 nonperformance and specifically refer to this Section of this Consent Decree. It shall describe the
28 anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken
or to be taken by Defendant to prevent or minimize the delay, the schedule by which the measures
will be implemented, and the anticipated date of compliance. Defendant shall adopt all reasonable

1 measures to avoid and minimize such delays.

2 b. The Settling Parties shall meet and confer in good-faith concerning the non-
3 performance and, where the Settling Parties concur that performance was or is impossible, despite the
4 timely good faith efforts of Defendant, due to circumstances beyond the control of Defendant that
5 could not have been reasonably foreseen and prevented by the exercise of due diligence by
6 Defendant, new performance deadlines shall be established.

7 c. If CSPA disagrees with Defendant's notice, or in the event that the Settling
8 Parties cannot timely agree on the terms of new performance deadlines or requirements, either
9 Settling Party shall have the right to invoke the Dispute Resolution Procedures pursuant to Section
10 XVIII of this Consent Decree. In such proceeding, Defendant shall bear the burden of proving that
11 any delay in performance of any requirement of this Consent Decree was caused or will be caused by
12 force majeure and the extent of any delay attributable to such circumstances.

13 54. The Dispute Resolution Procedures set forth in Paragraphs 55 and 56 shall be the
14 exclusive mechanism for resolving disputes between the Settling Parties with regard to any aspect of
15 this Consent Decree.

16 55. Informal Dispute Resolution. The Settling Parties agree to engage in Informal Dispute
17 Resolution pursuant to the terms of this paragraph:

18 a. If a dispute under this Consent Decree arises, or any Settling Party believes
19 that a breach of this Consent Decree has occurred, the Settling Parties shall meet and confer
20 (telephonically or in-person) within twenty-one (21) days of receiving written notification of a
21 request for such meeting. During the meet and confer proceeding, the Settling Parties shall discuss
22 the dispute and make best efforts to devise a mutually acceptable plan, including implementation
23 dates, to resolve the dispute. The Settling Parties may, upon mutual written agreement, extend the
24 time to conduct the meet and confer discussions beyond twenty-one (21) days.

25 b. If any Settling Party fails to meet and confer within the timeframes set forth in
26 paragraph 55(a), or the meet and confer does not resolve the dispute, after at least twenty-one (21)
27 days have passed after the meet and confer occurred or should have occurred, either Settling Party
28 shall be entitled to initiate the Formal Dispute Resolution procedures outlined in Paragraph 56 below.

1 until the report is filed, up to thirty (30) days for a total amount of \$3,000.

2 b. For any report more than thirty (30) days late, the City shall pay \$5,000.

3 c. For any report more than ninety (90) days late, the City shall pay \$10,000.

4 d. The above penalties are cumulative, as applicable, to a maximum penalty of
5 \$18,000 per report.

6 59. In the case of a late report, the City shall send CSPA the report per Section XX of this
7 Consent Decree. CSPA shall notify the City of receipt of the late report and shall include an invoice
8 for the amount of the stipulated penalty, if any, due and payable. The City shall contact CSPA within
9 five (5) working days if the City disagrees with CSPA's stipulated penalty calculation and may meet
10 and confer with CSPA or seek Dispute Resolution pursuant to Section XVIII of this Consent Decree.
11 The City shall pay any stipulated payments due pursuant to this Consent Decree within thirty (30)
12 days after receipt of CSPA's invoice itemizing the stipulated payment liability, or thirty (30) days
13 after resolution of a dispute if the dispute resolution process has been invoked pursuant to
14 Section XVIII of this Consent Decree.

15 60. All payments of stipulated penalties described in this Consent Decree shall be paid by
16 the City to the Rose Foundation for Communities and the Environment and sent via overnight mail
17 to: Rose Foundation for Communities and the Environment, 6008 College Avenue, Oakland,
18 CA 94618, Attn: Tim Little. Nothing in this Consent Decree shall prevent CSPA from waiving any
19 stipulated penalties, which might be due under this Section, based on the outcome of the Informal
20 Dispute Resolution process, or based on the City's good faith efforts.

21 **XX. NOTICES AND SUBMISSIONS**

22 61. Defendant agrees to provide Plaintiff with all documents or reports required by this
23 Consent Decree. All documents shall be directed to the following individuals at the addresses
24 specified below unless specifically stated otherwise herein. Any change in the individuals or
25 addresses designated by any party must be made in writing to all Settling Parties.
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28

1 If to CSPA:

2 Daniel Cooper
3 Drevet Hunt
4 LAWYERS FOR CLEAN WATER, INC.
5 1004 O'Reilly Avenue
6 San Francisco, California 94129
7 Telephone: (415) 440-6520
8 Email: daniel@lawyersforcleanwater.com
9 drev@lawyersforcleanwater.com

10 Michael Lozeau
11 Douglas Chermak (Bar No. 233382)
12 LOZEAU | DRURY LLP
13 1516 Oak Street, #216
14 Alameda, CA 94501
15 Telephone: (510) 749-9102
16 Email: michael@lozeaudrury.com
17 doug@lozeaudrury.com

18 California Sportfishing Protection Alliance
19 Bill Jennings, Executive Director
20 3536 Rainier Avenue
21 Stockton, California 95204
22 Telephone: 209-464-5067
23 Fax: 209-464-1028
24 Email: deltakeep@aol.com

25 If to the City:

26 Paul S. Simmons
27 Kanwarjit S. Dua
28 Somach Simmons & Dunn
 813 Sixth Street, Third Floor
 Sacramento, CA 95814
 Telephone: (916) 446-7979
 Fax: (916) 446-8199
 Email: psimmons@somachlaw.com
 Email: kdua@somachlaw.com

1 City of Stockton
2 Richard "Ren" E. Nosky, Jr.
3 City Attorney
4 John Luebberke
5 Deputy City Attorney
6 City of Stockton
7 425 N. El Dorado Street
8 Stockton, CA 95202-1997
9 Telephone: (209) 937-8009
10 Fax: (209) 937-8898
11 Email: Ren.Nosky@ci.stockton.ca.us
12 john.luebberke@ci.stockton.ca.us

13 Stockton Municipal Utilities
14 Mark J. Madison
15 Director
16 2500 Navy Drive
17 Stockton, CA 95206
18 Telephone: (209) 937-8700
19 Fax: (209) 937-8708
20 Email: mark.madison@ci.stockton.ca.us

21 62. Defendant also agrees to make available to CSPA any existing documents within the
22 City's custody or control that are reasonably necessary to evaluate system performance and/or
23 compliance with this Consent Decree within thirty (30) days of written request by CSPA.

24 63. During the life of this Consent Decree, Defendant shall preserve at least one legible
25 copy of all records and documents, including computer-stored information, which relate to
26 performance of its obligations under this Consent Decree.

27 64. Any notice, report, certification, data presentation or other document submitted by
28 Defendant to CSPA pursuant to this Consent Decree, which discusses, describes, demonstrates, or
supports any finding or makes any representation concerning compliance or non-compliance with any
requirement(s) of this Consent Decree, shall contain the following certification, signed and dated by a
responsible official:

I certify, under penalty of perjury, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted and is, to the best of my knowledge and belief, true, accurate and complete.

1 **XXI. MUTUAL RELEASE OF LIABILITY**

2 65. Upon District Court approval and entry of this Consent Decree, the Settling Parties
3 and their successors, assigns, directors, officers, agents, attorneys, representatives, and employees,
4 releases all persons, including the City and their respective officers, council members, employees,
5 agents, attorneys, representatives, contractors, predecessors, successors and assigns, past and present,
6 from, and waives all claims, for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees
7 (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or
8 claimed in this action, including but not limited to the alleged failure of the City to comply with the
9 2002 Stockton WWTP Permit and the 2008 Stockton WWTP Permit, and for alleged violations of the
10 Clean Water Act, Porter-Cologne Water Quality Control Act, the 2002 Stockton Stormwater Permit,
11 2007 Stockton Stormwater Permit, the SSO WDR, the San Joaquin County Ordinance, and City of
12 Stockton Municipal Code as set forth in the Notice Letter, Supplemental Notice Letter, and/or First
13 Amended Complaint up to the Termination Date of this Consent Decree, except as provided for in
14 Sections XVIII and XIX of this Consent Decree. This release includes a release, and covenant not to
15 sue, for any claims of injunctive relief, damage, penalties, fines, sanctions, mitigation, fees (including
16 fees of attorneys, experts and others), costs, expenses or any other sum incurred or claimed based on
17 facts or allegations set forth in the Notice Letter, Supplemental Notice Letter, and/or First Amended
18 Complaint up to the Termination Date of this Consent Decree, except as provided for in
19 Sections XVIII and XIX of this Consent Decree.

20 66. Nothing in this Consent Decree limits or otherwise affects CSPAs right to address or
21 take any position that it deems necessary or appropriate in any formal or informal proceeding before
22 any judicial or administrative body on any other matter relating to Defendant, including expressly any
23 administrative or judicial challenge to the Regional Board’s decision to adopt the 2008 Stockton
24 WWTP Permit.

25 **XXII. GENERAL PROVISIONS**

26 67. Continuing Jurisdiction. The Parties stipulate that the District Court shall retain
27 jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising
28 hereunder as may be necessary or appropriate for the construction or execution of this Consent

1 Decree up to and including the Termination Date in paragraph 9.

2 68. Construction. The language in all parts of this Consent Decree shall be construed
3 according to its plain and ordinary meaning, except as to those terms defined in Section II above.

4 69. Choice of Law. The laws of the United States shall govern this Consent Decree.

5 70. Severability. In the event that any provision, paragraph, section, or sentence of this
6 Consent Decree is held by a Court to be unenforceable, the validity of the enforceable provisions
7 shall not be adversely affected.

8 71. Counterparts. This Consent Decree may be executed in any number of counterparts,
9 all of which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf)
10 and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of
11 this Consent Decree.

12 72. Modification of the Consent Decree. This Consent Decree, and any provisions herein,
13 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the
14 Settling Parties.

15 73. Full Settlement. This Consent Decree constitutes a full and final settlement of this
16 matter.

17 74. Integration Clause. This is an integrated Consent Decree. This Consent Decree is
18 intended to be a full and complete statement of the terms of the agreement between the Settling
19 Parties and expressly supersedes any and all prior oral or written agreements, covenants,
20 representations, and warranties (express or implied) concerning the subject matter of this Consent
21 Decree.

22 75. Authority. The undersigned representatives for CSPA and the City each certify that
23 he/she is fully authorized by the Settling Party whom he/she represents to enter into the terms and
24 conditions of this Consent Decree.

25 The Settling Parties hereby enter into this Consent Decree.

26 CITY OF STOCKTON

27 Date: _____

28 By: J. Gordon Palmer, Jr. City Manager

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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

Date: _____

By: Bill Jennings

APPROVED AS TO FORM:

For DEFENDANT CITY OF STOCKTON:

SOMACH SIMMONS & DUNN, PC

Date: _____

By: Kanwarjit S. Dua

For PLAINTIFF CALIFORNIA SPORTFISHING PROTECTION ALLIANCE:

LAWYERS FOR CLEAN WATER INC.

Date: _____

By: Daniel Cooper

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[PROPOSED] ORDER

IT IS HEREBY ORDERED that the above captioned action against all parties is dismissed with prejudice.

IT IS FURTHER ORDERED that, through the Termination Date specified in paragraph 10 of the Consent Decree, the Court shall retain jurisdiction over CSPA's claims against Defendant for the sole purpose of enforcing compliance by the Settling Parties with the terms of the Consent Decree;

IT IS SO ORDERED.

Date: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Honorable Lawrence K. Karlton