

## Settlement Agreement

The Lake Cuyamaca Recreation and Park District (“District”) and Save Our Forest and Ranchlands (“SOFAR”) (collectively “Parties”) hereby enter into the following Settlement Agreement (“Agreement”):

Deleted:

### Recitals

WHEREAS, District is a public agency established in 1962 to maintain and manage Lake Cuyamaca and its associated recreational activities, including fishing, boating, hunting and hiking; and

WHEREAS, facilities at Lake Cuyamaca, which include restrooms, camping sites, fish cleaning stations, and a restaurant, generate an average of 2,400 gallons wastewater per day; and

WHEREAS, District has conducted environmental review under the California Environmental Quality Act (“CEQA”) and its Board of Director’s has approved a Mitigated Negative Declaration for a wastewater infiltration system (the “Project”) to be constructed, maintained and operated on District property for the treatment and disposal of wastewater generated at its aforementioned facilities; and

WHEREAS, the Project site includes 5,571 feet of distribution lines encompassing less than six-acres within the approximately 37.5-acre District Property, just to the northwest of the intersection of Highway 79 and the Sunrise Highway; and

WHEREAS, SOFAR has participated in the public review and comment process for the Project required by CEQA, has provided comments expressing concerns that the Project has the potential to have significant impacts on the environment, and is contemplating litigation to challenge the adequacy of the CEQA review for the Project; and

WHEREAS, representatives for the Parties have met and conferred regarding SOFAR’s concerns about the Project, and the Parties desire to resolve their differences and enter into this Agreement under the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of California, the Parties do hereby agree to the following Agreement:

### **1. Settlement Terms and Conditions**

A. **Emergency Response Plan.** As part of the Project, the District shall implement the Emergency Response Plan set forth in Exhibit A to this Agreement in order to facilitate water quality and resource protection in the area of the Project. The Emergency Response Plan includes the actions the District shall take in the event of a mechanical malfunction, or partial or total failure of the Project facilities.

B. **Water Quality Monitoring.** The District will be required, pursuant to the issuance of final Waste Discharge Requirements (“WDRs”) by the San Diego Regional Water Quality

Control Board (“Board”), to conduct water quality monitoring in conjunction with the operation of the Project. The Board requires WDRs for the Project to ensure that the Project does not cause an exceedance of the water quality objectives set forth in the Board’s Basin Plan for the area of the Project. It is anticipated that the WDRs will include requirements that the District will monitor water quality impacts from the Project by observing groundwater levels and testing water quality in two monitoring wells. Regardless of whether the WDRs require monitoring at two locations, the District shall install and conduct quarterly monitoring at two monitoring wells. One well will be located immediately downslope from the leach field system. The second well will be located across Highway 79 adjacent to the fenced boundary of Lake Cuyamaca on Helix Water District property. Quarterly groundwater sampling will be conducted at each of the wells to evaluate water quality for constituents of concern and to assess the direction of groundwater movement in the area of the Project. All testing will be in accordance with the specific requirements set forth in the WDRs for water quality monitoring.

1. The District shall provide SOFAR with a copy of the final WDRs issued by the Board for the Project.

2. The District shall provide SOFAR with copies of the groundwater monitoring results from the testing required by this Agreement and the Board pursuant to the WDRs for review by SOFAR, or an independent third party of SOFAR’s choice.

3. The District shall provide SOFAR or its representative with at least ten (10) days prior notice of each quarterly sampling effort of groundwater wells for as long as such sampling is required. SOFAR, or its representative, shall be provided access to the District monitoring wells simultaneous with District sampling efforts so that it may collect companion groundwater samples for submission to a licensed laboratory simultaneous with the District’s sampling for independent analysis. SOFAR’s independent sampling and analysis shall, at a minimum, be conducted in accordance with the standards and conditions required under the WDRs for the Project, or their equivalent.

4. Should the analysis of the simultaneous samples taken pursuant to section 1.B.3. result in different values which are statistically significant from each other, a third sampling effort shall be undertaken by an independent certified laboratory mutually agreeable to both parties at a date and time agreed to by both parties. The costs of the third sampling and analysis shall be shared equally by the parties.

C. **Revegetation Plan.** The District shall implement the revegetation plan for the Project site set forth in Exhibit B to this Agreement. The revegetation plan includes various requirements, limitations and performance criteria. The District shall be under no obligation to provide for irrigation at the Project site. It is understood and agreed by the Parties that there is no independent water supply available for irrigation at the Project site, nor is it feasible to provide water to the Project site from off-site sources.

D. **Conservation Easement.** Prior to the settlement discussions between the Parties, the District and The Nature Conservancy (“TNC”) entered into negotiations whereby the District would grant a conservation easement to TNC to preserve the open space values on the District

Property. The “Deed of Conservation Easement” executed between the District and TNC is attached hereto and incorporated herein as Exhibit C. The Parties recognize that even if certain uses are permitted uses under the Conservation Easement, those uses may require additional permitting, District or other agency approval, and/or CEQA compliance.

The Deed of Conservation Easement granted by the District to TNC is fully transferable. It is anticipated that TNC will grant its rights under the aforesaid conservation easement to a third party at or near the time TNC completes its transaction involving its property near the District Property. In the event TNC assigns its rights under the Deed of Conservation Easement, the third party grantee of the Deed of Conservation Easement to TNC is required to be mutually agreeable to the District, TNC and SOFAR.

E. Waiver and Release of Rights and Claims

1. For valuable consideration as set forth in this Agreement and the covenants, terms, conditions and restrictions contained herein, each of the Parties and its assignees, transferees, successors, employees, agents, attorney, insurers and representatives shall waive any and all claims, demands, actions, causes of actions, suits, or controversies, whether in law or equity, had, owned or held, or now have, own or hold, or hereafter may have, own, or hold which arise out of or otherwise pertain to the adequacy of the CEQA review for the Project or to facts occurring prior to the date of this Agreement related to the Project.

2. SOFAR shall not contest or aid any other party in contesting any permits or approvals for the Project including but not limited to the issuance of the WDRs by the Board and cancellation of the Williamson Act contract by the County of San Diego. With respect to this paragraph, the limitations on SOFAR extend only to the use of SOFAR’s name, funds, and to actions taken by SOFAR staff, attorneys, planners, and president, Duncan McFetridge.

3. The waiver and release above is a general release. The Parties to this Agreement are aware of the provisions of California Civil Code Section 1542, which read 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 his settlement with the debtor.

The Parties hereby expressly, knowingly, and voluntarily waive all the rights and benefits of Section 1542 and any other similar law of any jurisdiction in order for the express terms of the general releases contained herein to be given full force and effect.

F. The District shall pay to SOFAR the sum \$10,000 within thirty (30) days of the execution of this Agreement.

**2. Effect of Agreement**

This Agreement, including the releases and other agreements contained herein, shall be binding upon, and inure to the benefit of, the heirs of law, predecessors, successors, assigns, employees, principals, agents, officers, directors, partners and attorneys of the Parties.

**3. No Admission of Liability**

This Agreement is entered into in the spirit of compromise to resolve disputed claims. None of the statements or promises contained in this Agreement shall be construed as any admission of liability for any purpose.

**4. Entire Agreement**

This Agreement in writing constitutes the entire agreement of settlement and release between the Parties, and there are no other agreements expanding or modifying its terms. The provisions of this Agreement can only be modified or amended in a writing by both Parties which expressly states that modification or amendment of this Agreement is intended.

**5. Warranty Against Assignment of Claims**

SOFAR represents and warrants that it has not heretofore, and shall not hereafter, assign, transfer, or purport to assign or transfer, to any other person or entity, any rights, claims, or causes of action herein released or discharged. Furthermore, SOFAR shall defend and indemnify the District from and against any rights, claims, or causes of action which have actually been assigned or transferred contrary to the foregoing warranties and any and all loss, expenses and/or liabilities arising directly or indirectly out of the breach of any of the foregoing representations or warranties.

**6. Warranty of Authority**

Each individual executing this Agreement on behalf of any party represents that he/she has been authorized by said party to execute this document, and does so execute this document on behalf of said party.

**7. Advice of Counsel**

The Parties to this Agreement have read the entire Agreement and have been given the opportunity to seek advice of counsel prior to executing this Agreement. No party to this Agreement shall deny its validity on the basis that the party did not have the advice of counsel.

**8. Ambiguities and Uncertainties**

Each party to this Agreement participated, or had the opportunity to participate, in the preparation of this Agreement; and in the event of an ambiguity, the terms of this Agreement shall not be construed against any party. Accordingly, the parties hereby waive the benefit of California Civil Code Section 1654 and any successor or amended statute, providing that in cases

of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

**9. Choice of Law**

This Agreement shall be interpreted and enforced under the laws of the State of California without regard to conflict of laws principles. Any action at law or equity, or other judicial proceeding for the enforcement of this contract or any provision thereof, shall be instituted only in the federal or state courts of California, County of San Diego.

**10. Attorney's Fees and Costs**

Except as otherwise specifically provided herein, each party shall bear their own attorney's fees and costs incurred in connection with the District's environmental review requirements for the Project, including any attorney's fees and costs of the settlement. In the event that any action is filed in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

**11. Severability**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding any such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**12. Good Faith Obligations**

The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this Agreement. The Parties also agree to execute any and all supplemental documents, and to take all additional lawful and reasonable actions, which may be necessary and appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Agreement.

**13. Headings**

The section and paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the clauses to which they appertain.

**14. Counterparts and Facsimile Signatures**

This Agreement may be executed in any number of counterparts, each copy of which shall have the same force and effect as the original Agreement. Facsimile signatures shall have the same force and effect as original signatures.

**15. Notices**

All notices and other communications provided for under this Agreement shall be in writing and shall be sent via certified mail to the following addresses:

If to District:

President Board of Directors  
Lake Cuyamaca Recreation and Park District  
15027 Highway 79  
Julian, CA 92036

With a copy to

Theodore J. Griswold Esq.  
Procopio Cory Hargreaves & Savitch LLC  
530 B Street, Suite 2100  
San Diego, CA 92101

If to SOFAR:

Duncan McFetridge  
Save Our Forest and Ranchlands  
P.O. Box 475  
Descanso, CA 91916

With a copy to

Rachel Hooper, Esq.  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth adjacent to their names.

\_\_\_\_\_  
Thomas Chapman, President Board of Directors  
Lake Cuyamaca Recreation and Park District

DATED this \_\_\_ day of April, 2004.

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Duncan McFetridge, President  
Save Our Forest and Ranchlands

DATED this \_\_\_ day of April, 2004.

Approved as to form and content:

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Theodore J. Griswold, Esq.  
Attorney for Lake Cuyamaca Recreation and Park District

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Rachel Hooper, Esq.  
Attorney for Save Our Forest and Ranchlands