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JACK NOBLE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

JACK NOBLE,

Defendant.

Case No. 16-cv-06178-SBA (DMR)

CONSENT DECREE

WHEREAS Plaintiff United States of America has filed a Complaint in this action alleging that Defendant Jack Noble violated and remains in violation of the Clean Water Act (“CWA”) section 301(a), 33 U.S.C. § 1311(a) and in violation of the Endangered Species Act (“ESA”) section 9, 16 U.S.C. § 1538;

WHEREAS the Complaint alleges that Defendant Jack Noble’s CWA and ESA violations resulted from earthmoving activities occurring beginning approximately 2013 on real property including the “Van Duzen River Ranch” and neighboring properties (collectively, the “Ranch”), located near the Van Duzen River in Humboldt County, California;

WHEREAS the Complaint requests that the Court award injunctive relief and civil penalties;

WHEREAS Defendant does not admit the facts as alleged in the Complaint and does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS the Parties recognize that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation among the Parties, and the Court by entering this Consent Decree finds that it is fair, reasonable, and in the public interest;

THEREFORE, before the taking of any testimony, and without the adjudication or admission of any issue of fact or law except as provided in Section I of this Consent Decree, and

with the consent of the Parties by their authorized representatives, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION, VENUE, AND SUFFICIENCY OF COMPLAINT

1. This Court has jurisdiction over the subject matter of the Complaint pursuant to at least 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391(b) and (c).

3. For purposes of this Consent Decree, including any action to enforce this Consent Decree, Defendant consents to personal jurisdiction and venue.

4. For purposes of this Consent Decree, including any action to enforce this Consent Decree, the Parties agree, and the Court finds, that the Complaint states claims upon which relief can be granted pursuant to CWA sections 301(a) and 309(d), 33 U.S.C. §§ 1311(a) and 1319(d), and ESA sections 9 and 11, 16 U.S.C. §§ 1538(a) and 1540(c) and (e).

II. APPLICABILITY

5. This Consent Decree applies to and is binding upon the United States, and upon Defendant Jack Noble and his agents. This Consent Decree is not binding upon successors and assigns.

6. No transfer of ownership or control of the Van Duzen River Ranch, of any portion of the Van Duzen River Ranch, or of any less-than-fee-simple interest in the Van Duzen River Ranch or a portion thereof (such as an easement or lease) shall relieve Defendant Jack Noble from any of his obligations in this Consent Decree. As a condition of any such transfer, Defendant Jack Noble shall reserve all rights necessary to comply with this Consent Decree. At the time of such transfer, Defendant Jack Noble shall provide a copy of this Consent Decree to the transferee, shall obtain the transferee's acknowledgement thereof, and shall provide written notice of the transfer and a copy of such acknowledgement to the United States at the addresses specified in Section XI of this Consent Decree. Any attempted or actual transfer of any interest in the Van Duzen River Ranch by Defendant Jack Noble without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Defendant Jack Noble shall provide a copy of this Consent Decree to all officers and agents whose duties might reasonably include compliance with any provision of this Consent Decree, including any officers, directors, employees, agents, contractors, or consultants retained to perform Restoration Work required under this Consent Decree. To the extent that Defendant Jack Noble retains any contractor or consultant to perform Restoration Work, monitoring, or any other obligation required under this Consent Decree, Defendant Jack Noble shall condition any such contract upon performance that conforms to the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Defendant Jack Noble shall not raise as a defense the failure by any of his officers, directors, employees, agents, contractors, or consultants to take any actions necessary to comply with this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CWA and the ESA or in regulations promulgated pursuant to the CWA or the ESA shall have the meanings assigned to them in the CWA or ESA or such regulations, unless otherwise provided in this Consent Decree.

10. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“CDFW” shall mean the California Department of Fish and Wildlife and any of its successor departments or agencies.

“Complaint” shall mean the amended complaint filed by the United States in this action on the Lodging Date.

“Corps” shall mean the United States Army Corps of Engineers and any of its successor departments or agencies.

“CWA section 404” shall mean 33 U.S.C. § 1344.

“Day” whether or not capitalized, shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

“Discharge of pollutants” shall include any of the following activities conducted anywhere within the yellow area indicated in Exhibit 1:

a. the addition, redeposit, or redistribution of dredged or fill material such as rock, sand, gravel, soil, concrete, asphalt, rebar and metal, riprap, construction debris, biological material, trees and plants, excavated spoil, and industrial, municipal, and agricultural waste from a point source, including but not limited to a bulldozer, excavator, loader, or backhoe. Planting of trees and plants does not qualify as a discharge of pollutants.

b. “discharge of pollutants,” including “discharge of dredged material” or “discharge of fill material,” as otherwise defined by law, including the CWA and its implementing regulations.

“Effective Date” shall mean the date on which this Consent Decree is entered by the Court.

“EPA” shall mean the United States Environmental Protection Agency.

“Lodging Date” shall mean the date on which the United States files a notice to lodge the Consent Decree, before the notice and comment period on the Consent Decree.

“NMFS” shall mean the National Marine Fisheries Service, and any of its successor departments and agencies, of the National Oceanic and Atmospheric Administration.

“Other Debris” shall mean pieces of plastic, metal, and rubber that are greater than 9 inches long, including car bodies, flatcar bridges, and camper shells.

“Parties” shall mean the United States and Defendant Jack Noble.

“Restoration Work” shall mean work pursuant to Paragraph 26.a.-n, except for optional work at Site 9 for which Defendant may apply for a new CWA section 404 permit

“Ranch” shall mean the “Van Duzen River Ranch” as defined below as well as neighboring Humboldt County parcels with Assessor Parcel Numbers (“APN”) 204-062-001, 204-101-024, 204-041-09, 204-041-012, 204-111-005, 204-111-006, 204-101-02, 204-331-01, 204-331-05, 204-331-06, 204-410-08, 204-331-19, and 204-331-29.

“Van Duzen River Ranch” shall mean Humboldt County parcels APNs 204-101-003, 204-101-026, 204-063-013, 204-111-009, 204-111-011, 204-063-014, 204-063-011, 204-071-005,

204-071-006, and 204-071-010, as well as all easements or other property interests held by Defendant Jack Noble or Mary Noble in Humboldt County parcels APN 204-101-001, 204-101-002, 204-331-001, 204-331-005, 204-331-006, 204-101-008, 204-331-019, 204-331-029, 204-111-009, 204-111-005, 204-111-006, 204-251-012.

IV. SCOPE, EFFECT, AND RESERVATION OF RIGHTS

11. This Consent Decree resolves the civil claims of the United States for the violations of the CWA and the ESA alleged in the Complaint and claims for violations of the CWA and ESA that the United States could have brought with respect to the transactions or occurrences alleged in the Complaint or any related transactions or occurrences on the Site that occurred before the Lodging Date.

12. It is the express purpose of the Parties in entering this Consent Decree to further the objectives set forth in CWA section 101, 33 U.S.C. § 1251.

13. The Parties acknowledge that, as of the Effective Date of this Consent Decree, Nationwide Permit 32, 82 Fed. Reg. 1,992 (Jan. 6, 2017), provides CWA section 404 authorization, subject to the general, regional, and San Francisco District conditions applicable to Nationwide Permit 32, as listed in Appendix 1, and the conditions provided in this Consent Decree, for any discharge of dredged or fill material that is necessary for Defendant to conduct the Restoration Work set forth in Paragraph 26.a.-n. of this Consent Decree, excluding optional work at Site 9 that would require the reuse of material otherwise required to be removed for which Defendant may seek separate CWA section 404 authorization.

14. This Consent Decree is not and shall not be interpreted to be a permit under any federal, state, or local laws or regulations. Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any applicable federal, state, and local laws, regulations, and permits, except as set forth in Paragraph 11 of this Consent Decree. The United States does not warrant that Defendant's compliance with any aspect of this Consent Decree will result in compliance with any provision of federal, state, or local laws, regulations, or permits. Further, in any future Clean Water Act permit application, except for the CWA section 404 Nationwide Permits 32 for Restoration Work, Defendant Jack Noble may not rely

upon (a) any provision of this Consent Decree, including Restoration Work on the Ranch, as part of any avoidance and minimization measures demonstration; or (b) any provision of this Consent Decree as part of any compensatory mitigation proposal.

15. Except as provided in Paragraph 13, nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to CWA section 404(c), 33 U.S.C. § 1344(c).

16. The United States reserves all legal and equitable remedies available to enforce this Consent Decree and applicable law, except as expressly stated in Paragraph 11 of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain remedies under the CWA or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 11 of this Consent Decree.

17. Defendant Jack Noble warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and has the financial ability to perform the Restoration Work. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendant, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendant was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

18. If Defendant commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendant's debts, or seeking to adjudicate Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other

similar official for Defendant or for all or any substantial part of Defendant's assets, Defendant agrees as follows:

a. Defendant's obligations under this Consent Decree may not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendant's obligations under this Consent Decree may be avoided under 11 U.S.C. § 547; (ii) Defendant was insolvent at the time this Consent Decree was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Consent Decree do not constitute a contemporaneous exchange for new value given to Defendant.

b. If Defendant's obligations under this Consent Decree are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Consent Decree and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided in Paragraph 11, above. Defendant agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendant shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendant shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such claims, actions, or proceeding that are brought by the United States within ninety calendar days of written notification to Defendant that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date of the Complaint filed in the action referenced in Paragraph 11; and (iii) the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendant acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

19. Defendant Jack Noble warrants that he has all necessary rights to access all properties upon which Restoration Work is required so that he may perform the Restoration Work.

V. REMEDIAL PROVISIONS

A. CIVIL PENALTY

20. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendant Jack Noble shall pay a civil penalty to the United States in the amount of ten thousand dollars (\$10,000).

21. Payment to the United States shall be made in accordance with written instructions to be provided to Defendant Jack Noble by the United States Department of Justice following entry of this Consent Decree. Promptly upon payment, Defendant Jack Noble shall provide written notice thereof to the United States at the addresses specified in Section XI of this Consent Decree. Promptly upon payment, Defendant shall send notice that payment has been made to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America v. Jack Noble*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-20923.

22. Defendant Jack Noble shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X in calculating any federal income tax owed.

B. INJUNCTIVE RELIEF

23. Except as provided in Paragraph 27 of this Consent Decree, Defendant Jack Noble and his agents are permanently enjoined from discharging any pollutants as defined by this Consent Decree, including concrete debris and riprap, anywhere within the yellow area marked in Exhibit 1, without receiving a new (post-Effective Date) CWA section 404 permit from the Corps authorizing the discharge. For areas marked in blue in Exhibit 1, Defendant Jack Noble and his agents are enjoined from conducting any activities specifically listed in Subparagraph 23(a) without receiving a new (post-Effective Date) CWA section 404 permit from

the Corps. The obligations of this Paragraph only terminate when Defendant Jack Noble or his agents completely cease to operate or conduct any work on the Ranch. If Defendant Jack Noble acquires an approved jurisdictional determination, as defined by 33 C.F.R. § 331.2, the areas where discharges are prohibited in Exhibit 1 will be supplanted by the areas at and below ordinary high water mark in the approved jurisdictional determination for the corresponding stretch of the Van Duzen River for the duration of the approved jurisdictional determination, unless and until either party acquires a new jurisdictional determination. Upon request, Defendant will allow reasonable access to the Van Duzen River Ranch to facilitate the acquisition of a jurisdictional determination. Except as explicitly provided in Paragraph 27, Defendant Jack Noble will be prohibited from discharging any pollutants below the ordinary high water mark delineated in the approved jurisdictional determination or further approved jurisdictional determination without first receiving a new (post-Effective Date) CWA section 404 permit from the Corps authorizing the discharge.

a. For areas marked in blue in Exhibit 1, Defendant Jack Noble and his agents are enjoined from discharging dredge and fill material in any manner that results in streambank protection or streambank rebuilding and from staging or stockpiling such material. The injunction does not apply to surface road repairs, blading roads, tillage for the production of food hay and fiber, planting, fertilizing, controlling weeds, mowing or trimming vegetation, or irrigating. This injunction does not apply to discharges caused by cattle or other livestock. Defendant can request that the United States add other normal ranching and farming activities to this list. If the United States refuses to add an activity, Defendant may invoke Dispute Resolution procedures under Section VIII of this Consent Decree and file a motion to resolve the dispute as provided in that section.

24. Paragraph 24 intentionally omitted.

25. New Permits for River Crossing. Within 15 days of the Effective Date, Defendant will apply for a CWA section 404 permit(s) for a summer bridge that will be used for both Restoration Work and may be used for other specified activities such as ranching.

From October 15 to January 15, Mr. Noble or his agents shall notify NOAA at least 48 hours in advance of any river crossing from the north side to the south side of the Van Duzen River on the Ranch over the subsequent seven (7) days that does not use a permitted bridge. Such notification to NOAA shall be made by an email to Jeff Jahn (Jeffrey.jahn@noaa.gov) and Matt Goldsworthy (matt.goldsworthy@noaa.gov). If email is unavailable, notice may be provided by leaving a voicemail with (707) 825-1621 and (707) 825-5173. If notice is provided by phone, an email notice shall be provided as soon as reasonably possible (unless Mr. Noble no longer has access to email). The contact information for NOAA may be modified in writing to Mr. Noble. The notice shall describe the time, location, and type of vehicle or equipment used for the river crossing. The time of crossing shall be described within a four-hour window (e.g., between 8 am and 12 pm) or smaller. The notice will include a more precise time of crossing (e.g., between 11 am and 12 pm) if such a time is known. The location shall be given by a map or a narrative description that allows someone to identify the location once on the property. Mr. Noble will only provide notice of river crossings when a crossing is actually anticipated. At the earliest reasonable time, Mr. Noble or his agents will notify NOAA if Mr. Noble no longer intends to cross the river as notified.

NOAA may elect to have Mr. Noble's river crossing observed (by NOAA, CDFW, the Corps, U.S. Fish and Wildlife Service, the California State Water Resources Control Board, and/or EPA, including their contractors), advise regarding whether the crossing may adversely impact protected species, or take no action at all. Mr. Noble agrees to provide access to his property for these observations, and upon request, will reasonably coordinate with the observer(s) by providing more specific estimated crossing times (e.g., between 11-12 pm) as such times become known, if such times become known.

For up to eight (8) "emergency" round trip river crossings per year, Mr. Noble is exempt from the above advance 48 hour-notice provision and instead shall provide an after-the-fact notification. An "emergency" under this paragraph is defined as a scenario where delaying crossing the river by 48 hours would create an unreasonable risk to life or property (e.g., unanticipated fence repair to prevent the potential escape of livestock, unanticipated need to

provide medical care, feed, or water to livestock, unanticipated need to protect against predators, evicting unauthorized trespassers). After-the-fact notification shall be made to NOAA within 24 hours of the emergency river crossing by sending an email to jeffrey.jahn@noaa.gov and matt.goldsworthy@noaa.gov (unless this contact information is modified in writing to Mr. Noble) unless Defendant Jack Noble no longer has access to email, in which case this notification shall be made by leaving a voicemail with (707) 825-1621 and (707) 825-5173. The after-the-fact notification shall describe the time, location, type of vehicle or equipment used, and purpose for the emergency river crossing.

Upon request by either party, the parties shall meet and confer on whether any notice provision should be modified, including on whether additional emergency crossings are needed and whether past claimed emergency crossings have been reasonably used to protect life and property. If the United States requests to meet and confer on whether past claimed emergency crossings have been reasonably used to protect life and property, Defendant shall provide a signed statement compliant with Paragraph 28 describing the emergency river crossing and the need for the river crossing.

Nothing in this paragraph or any statement, whether written or oral, that NOAA, NMFS, CDFW, the Corps, U.S. Fish and Wildlife Service, the California State Water Resources Control Board, and/or EPA, including their contractors, may provide (including any non-response from these agencies) shall be interpreted as providing any take coverage under the ESA. The United States reserves its position that year-round crossings may violate the ESA. Defendant Jack Noble reserves his position that his year-round crossings do not violate the ESA.

The obligations under this paragraph shall terminate when Defendant Jack Noble or his agents completely cease to operate or conduct any work on the Ranch or upon termination of this Consent Decree pursuant to Section XV, whichever occurs earlier.

26. Restoration Plan.

Restoration Work: Defendant shall perform the Restoration Work outlined below at the nine sites depicted in Exhibits 2-10. Defendant's contractor Pacific Watershed Associates, or another

contractor approved by the United States, shall oversee all Restoration Work. “Concrete” as described below does not include pieces of concrete that are less than 9 inches long.

a. Site 1: At Site 1, as shown in Exhibit 2, Defendant Jack Noble shall remove all visible concrete and Other Debris, including all concrete and Other Debris along the banks of the Van Duzen River and all concrete and Other Debris visible or encountered during the restoration of the site in the active water channel of the Van Duzen River. Defendant Jack Noble shall also remove metal pieces and car bodies from this site encountered during the restoration. All work described in this Subparagraph must be completed by October 1, 2018, except for the removal of the upstream pile of concrete and Other Debris at Site 1, as indicated on Exhibit 2, which must be completed by October 1, 2019.

b. Site 2: At Site 2, Defendant Jack Noble shall remove all concrete and other debris in the minimum removal location indicated in Exhibit 3 by October 1, 2018. Defendant Jack Noble shall also remove all concrete and Other Debris that Pacific Watershed Associates or other contractor approved by the United States selects for removal from the remainder of Site 2 as shown on Exhibit 3 by October 1, 2019. Defendant Jack Noble shall also remove all metal from the full extent of Site 2 and cut any visible exposed rebar flush with concrete blocks, and remove any concrete blocks with protruding rebar if the rebar cannot be cut by October 1, 2019. Where Defendant removes concrete and Other Debris that cause river banks to become exposed, he shall revegetate those locations with native riparian vegetation during the dormant season immediately following removal in accordance with Paragraph 26.j. At the two locations indicated in Exhibit 3, Defendant will revegetate elevated benches with native riparian vegetation (willows and cottonwoods) and conifers (redwoods and/or Douglas fir) during the dormant season immediately following removal in the minimum removal location in accordance with Paragraph 26.j.

c. Site 3: Defendant Jack Noble shall remove all metal and two railroad flat car bridges from Site 3 as shown in Exhibit 4. In addition to the removal described in the first sentence of this Paragraph, Defendant Jack Noble shall also remove approximately 80% of the concrete and Other Debris, as indicated on Exhibit 4. Following removal, Defendant will slope

back the banks of Site 3 from approximately 1 foot above the low flow water elevation to achieve an approximately 4:1 (horizontal:vertical) slope. In locations where a 4:1 ratio would cause damage to existing riparian vegetation, Defendant may slope back the banks to achieve at least a 3:1 (horizontal:vertical) slope. Defendant Jack Noble shall revegetate the newly sloped banks at Site 3 with native riparian vegetation (willows and cottonwoods) and conifers (redwoods and/or Douglas fir) in the locations shown in Exhibit 4. All revegetation shall be conducted according to the terms of Paragraph 26.j. All work described in this Subparagraph must be completed by October 1, 2018, except for the revegetation work, which may be completed during the dormant season immediately following removal consistent with Paragraph 26.j.

d. Site 4: Defendant Jack Noble shall remove all concrete and Other Debris from the full extent of Site 4 as shown in Exhibit 5, taking care to minimize disturbance to existing riparian vegetation. If concrete cannot be removed without destroying a cottonwood or willow tree greater than 8-inches in diameter, Defendant need not remove such concrete. Where Defendant removes concrete and Other Debris at Site 4, he shall revegetate the exposed bank with native riparian vegetation (willows and cottonwoods) according to the terms in Paragraph 26.j. All work described in this Subparagraph must be completed by October 1, 2019, except for the revegetation work, which may be completed during the dormant season immediately following removal consistent with Paragraph 26.j.

e. Site 5: Defendant Jack Noble shall remove all concrete and Other Debris from the full extent of Site 5 as shown in Exhibit 6, taking care to minimize disturbance to existing riparian vegetation. If concrete cannot be removed without destroying a cottonwood or willow tree greater than 8-inches in diameter, Defendant need not remove such concrete. Where Defendant removes concrete and Other Debris at Site 5, he shall revegetate the exposed bank with native riparian vegetation (willows and cottonwoods) according to the terms in Paragraph 26.j. All work described in this Subparagraph must be completed by October 1, 2019, except for the revegetation work, which may be completed during the dormant season consistent with Paragraph 26.j.

f. Site 6: Defendant Jack Noble shall remove all concrete, rock and Other Debris from the full extent of Site 6 as shown in Exhibit 7, taking care to minimize disturbance to existing riparian vegetation and large wood accumulation. All work described in this Subparagraph must be completed by October 1, 2019.

g. Site 7: Defendant Jack Noble shall remove all concrete and Other Debris that Pacific Watershed Associates or other contractor approved by the United States selects for removal from the full extent of Site 7 as shown in Exhibit 8. Defendant Jack Noble shall also remove all metal from Site 7, cut any visible exposed rebar flush with concrete blocks, and remove any concrete blocks with protruding rebar if the rebar cannot be cut. Where Defendant removes concrete and Other Debris at Site 7, he shall revegetate the exposed bank with native riparian vegetation (willows and cottonwoods) according to the terms in Paragraph 26.j. All work described in this Subparagraph must be completed by October 1, 2019, except for the revegetation work, which may be completed during the dormant season immediately following removal consistent with Paragraph 26.j.

h. Site 8: Defendant Jack Noble shall remove all concrete and Other Debris from the full extent of Site 8 as shown in Exhibit 9, taking care to minimize disturbance to existing riparian vegetation. All work described in this Subparagraph must be completed by October 1, 2019.

i. Site 9: Defendant Jack Noble shall remove all rock placed pursuant to the January 24, 2018 Emergency CWA 404 permit issued to Defendant by the Corps, concrete, and Other Debris from the full extent of Site 9 as shown in Exhibit 10. Following removal, Defendant will slope back the banks of Site 9 from approximately 1 foot above the low flow water elevation to achieve at least a 4:1 (horizontal:vertical) slope. Defendant Jack Noble shall revegetate with native riparian vegetation (willows and cottonwoods) and conifers (redwoods and/or Douglas fir) in the location shown in Exhibit 10. Defendant shall conduct revegetation according to the terms of Paragraph 26.j. All work described in this Subparagraph must be completed by October 1, 2019, except for the revegetation work, which may be completed during the dormant season immediately following removal consistent with Paragraph 26.j.

Notwithstanding the foregoing, if by October 1, 2019, Defendant receives a new Clean Water Act section 404 permit from the Corps and all other necessary state and local permits authorizing the use of any material required to be removed from Site 9, in which case Defendant need not remove that material authorized to remain in place under the new permit, but Defendant must still remove all material not authorized by the new permit. If Defendant applies for a new Clean Water Act section 404 permit for discharge of no more than 210 cubic yards of additional rock at this site accompanied by vegetation of at least 11 old growth root wads, 7 live cottonwoods, 19 2nd growth redwoods, 20 2nd growth redwood logs, approximately 400 cottonwood or willow stem cuttings, and approximately 140 2-year old bare root redwood seedlings, and Defendant receives a new Clean Water Act section 404 permit from the Corps by May 31, 2019, but does not receive all other necessary state and local permits by that date, Defendant Jack Noble will notify the United States of his efforts to secure permits and the status of those permits, and the United States will grant a reasonable extension of the deadline by which to conduct the removal work required by this Subparagraph.

j. Revegetation: Riparian planting shall be done from November to March using willow and cottonwood cuttings, with the cuttings carefully inserted at approximately 8-foot or shorter centers. Defendant shall take care to minimize disturbance to existing riparian vegetation with any heavy equipment that may be used. Any willow and cottonwood cutting material used for riparian revegetation must be carefully removed from source material sites taking care to minimize damage to those source material sites. Conifer planting shall use redwood and/or Douglas fir container or bare root stock sourced from the coastal area, with trees planted into holes that are at least twice the width and depth of the seedling stock root ball. Conifer plant material or nursery stocks shall be obtained from a licensed and certified local nursery, inspected by Defendant's contractor to ensure healthy condition of the trees. Conifer container stock trees must be at least 2 years old. Defendant Jack Noble will provide a typical revegetation cross-section to the United States (including planting depths, densities, and species composition along the bank) for each site by November 1 of the year that removal actions are required to be completed at each site. The typical revegetation cross-section will illustrate, at

minimum, bank sloping (for sites where sloping is required), riparian vegetation planting locations on lower elevation portions, and conifer vegetation planting locations on higher elevation portions. If the United States identifies any deficiencies with Defendant's typical revegetation cross-section, the United States shall notify Defendant, and Defendant shall submit a revised cross-section within 30 Days.

k. **Monitoring and Replanting:** Defendant shall conduct revegetation monitoring once a year during the first two weeks of September to assess the survival rate of revegetation for at least the three years following the beginning of any required revegetation. Survival rates are given as a percentage of the original plantings. Riparian plantings should achieve at least a 80% survival rate through September 15 of the first year after planting, a 70% survival rate through September 15 of the second year, and a 60% survival rate through September 15 of the third year. Conifer plantings should achieve at least a 80% survival rate through September 15 of the first year after planting, a 70% survival rate through September 15 of the second year, and a 60% survival rate through September 15 of the third year. If the yearly survival rates are not achieved for riparian or conifer plantings at one or more Sites, the Defendant will replant the Site(s) during the November to March dormant season following the September monitoring to achieve the survival rate the following year. If the survival rate is again not achieved, Defendant shall conduct additional replanting during the next November to March dormant season until the survival rate is achieved. Defendant shall include the results of the revegetation assessment in the reports required by Subparagraph 26.q.

l. **Alcove Enhancement:** Defendant Jack Noble shall key woody material into the locations marked as Site 1 alcove, Sites 2/3 alcove, and Site 7 alcove in Exhibit 11 using the techniques detailed in Exhibit 12. Defendant shall use any existing large woody material contained in the source locations circled in Exhibit 11 that is found to be suitable and recoverable by Pacific Watershed Associates or other contractor approved by the United States. At least a total of seventy-five (75) large wood pieces (logs and/or large root wads) should be placed in the alcoves. On-site wood sources beyond the circled locations in Exhibit 11 may be used to meet the seventy-five (75) large wood pieces minimum. If on-site material is insufficient to meet the

seventy-five (75) large wood pieces minimum, Defendant may use offsite wood materials or he may place an excavator scoop of slash material instead of a large wood piece for up to thirty (30) large wood pieces, but he must still place at least fifteen (45) large wood pieces total in the alcoves. Defendant may also conduct some minor excavation at any of the alcove sites to ballast the large woody debris with the excavated material and enable and enhance the alcove footprint/backwater potential during winter/summer base flow conditions at the locations shown on Exhibit 11. All work required by this Subparagraph shall be completed by October 1, 2019, at the latest.

m. Tamarisk Removal: Defendant Jack Noble shall map existing tamarisk in the area marked on Exhibit 13. Defendant Jack Noble shall prepare a tamarisk removal plan that uses one of the scientifically valid removal methods detailed in Exhibit 13. Defendant will submit a proposed tamarisk removal plan to the United States within 120 Days of the Effective Date of this Consent Decree. All identified tamarisk will be removed during the winter seasons prior to March 15, 2019. If the United States identifies any deficiencies with Defendant's proposed tamarisk plan, the United States shall notify Defendant, and Defendant shall submit a revised tamarisk plan within 30 Days. Defendant shall conduct all removal work pursuant to the approved tamarisk plan.

n. Scarification and revegetation of roads: Defendant Jack Noble shall scarify all roads marked for scarification on Exhibit 14. Defendant Jack Noble shall conduct scarification with a grader or similar machinery equipped with a ripper bar that decompacts the road surface to a minimum depth of 6 inches. After scarifying these roads, Defendant Jack Noble shall revegetate with native grass seed by hand or light-duty ATV-based broadcast seeding on the scarified roads using approximately 30 lbs/acre seed-to-area rate. Within a week after completing broadcast seeding, Defendant Jack Noble shall also create vehicle barriers at both ends of all roads marked for scarification on Exhibit 14 using trenches, berms, and/or natural rock barriers. All work required by this Subparagraph shall be completed by October 1, 2019.

Permit Application Requirements:

o. Defendant Jack Noble shall submit all complete permit applications required to conduct the Restoration Work required to be completed by October 1, 2018, along with all other Restoration Work at sites 1, 4, and 5, as described above in Paragraph 26.a.-n. to federal, state, and local agencies within fifteen (15) Days of the Effective Date of this Consent Decree. Defendant may submit one permit application to each permitting agency for all Restoration Work required to be completed by October 1, 2018, as well as for all other Restoration Work at sites 1, 4, and 5. The permit applications shall identify Pacific Watershed Associates or other qualified contractor as a construction monitor who can identify protected species that may appear during construction. Defendant Jack Noble shall submit all complete permit applications with all necessary fees required to conduct all remaining Restoration Work, as described above in Paragraph 26.a.-n., to state and local agencies by December 15, 2018. Defendant may submit one permit application to each permitting agency for all remaining Restoration Work. If any agency requests further information and/or modifications, Defendant Jack Noble shall respond to their requests in a timely manner, and will not disagree with any requested modifications in bad faith. If Defendant Jack Noble fails to receive all necessary permits, including any necessary summer bridge permits to do the required Restoration Work, by July 15, 2018, to conduct work required by the Consent Decree to be completed by October 1, 2018, and by July 15, 2019, for the remaining Restoration Work, Defendant Jack Noble shall notify the United States of his efforts to secure permits and the status of those permits, and the United States will grant a reasonable adjustment of the relevant deadlines specified in Paragraph 26.a.-n.

Completion Reports:

p. By no later than November 15, 2018, Defendant shall submit to the United States for review and approval, a report summarizing the Restoration Work completed by that time, together with a request for approval of completed Restoration Work. If the United States disapproves the request for approval of completed Restoration Work, Defendant shall correct the deficiencies identified by the United States by October 1 of the following year. A deficiency

shall not be considered a violation of this Consent Decree unless the United States so specifies in its disapproval. For the following four years, 2019-2022, by no later than November 15, Defendant shall submit to the United States for review and approval, a report summarizing the Restoration Work completed by November 1 of that year, including the survival rate of vegetation observed and any revegetation conducted pursuant to Paragraph.26.j., together with a request for approval of completed Restoration Work. The United States shall provide Defendant with written approval or disapproval within 60 days of receipt of the Completion Report with respect to the Restoration Work identified as completed in that Completion Report. If the United States disapproves, Defendant shall correct the deficiencies identified by the United States by October 1 of the following year and submit sufficient documentation to prove the correction. A deficiency shall not be considered a violation of this Consent Decree unless the United States so specifies in its disapproval. When determining whether to classify a deficiency as a violation of the Consent Decree, the United States will consider the significance of the deficiency, but this classification is not subject to dispute. If Defendant disputes any deficiency finding, including his obligation to pay stipulated penalties, Defendant may invoke Dispute Resolution procedures under Section VIII of this Consent Decree and file a motion to resolve the dispute as provided in that section.

27. Pre-Construction Notification and Objections at Portion of Site 7: In the absence of a new CWA section 404 permit authorizing such discharges, Defendant Jack Noble must submit pre-construction notifications to discharge any pollutants in the future within the portion of Site 7 shown in Exhibit 15. Any such pre-construction notifications must describe the extent, material, design and timing of future discharges. The pre-construction notification must be received by the United States at all of the addresses specified in Section XI at least forty-five (45) days in advance of the start date of the discharges. If the United States, including any federal agencies, objects to the pre-construction notification at least fourteen (14) days in advance of the start date, Defendant Jack Noble may not conduct the discharges described in the pre-construction notification without first obtaining a new Clean Water Act permit. The United States may object to any work that may, in its judgment, cause take of a listed species, destroy or

adversely modify critical habitat, exceed the scope of “maintenance” under the CWA, cause greater negative impacts to wild and scenic values of the Van Duzen River, or cause greater negative impacts to navigability than any structure currently in place at Site 7 as of the Effective Date. The United States’ decision is not subject to judicial review, except that if Defendant disputes the objection, he may invoke Dispute Resolution procedures under Section VIII of this Consent Decree and file a motion to resolve the dispute as provided in that section. Unless Defendant receives a new Clean Water Act section 404 permit authorizing such discharges, any discharge identified in the pre-construction notification made after an objection by the United States as described above (unless such objection is withdrawn or invalidated pursuant to the Dispute Resolution procedures) is a violation of this Consent Decree. Any discharge approved on the basis of falsely-submitted information is also a violation of this Consent Decree.

VI. SUBMISSIONS

28. Each submission of a completion report under Paragraph 26.p., documentation to prove correction of deficiencies under Paragraph 26.p., tamarisk plan under Paragraph 26.m., revegetation cross-section under Paragraph 26.j., Preconstruction notification under Paragraph 27, Notice of transfer under paragraph 6, Notice of dispute under Paragraph 35, Notice of force majeure Event under Paragraph 39, Notice of payment under Paragraph 46, and Notice of dispute under Paragraph 59, by Defendant Jack Noble under this Consent Decree shall be signed by Defendant Jack Noble and include the following certification:

“I certify under penalty of law 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. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

29. The reporting requirements of this Consent Decree do not relieve Defendant Jack Noble of any reporting obligations otherwise required by federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. RETENTION OF RECORDS AND ACCESS

31. Until 4 years after termination of this Consent Decree pursuant to Section XV, Defendant Jack Noble shall retain, and shall instruct his contractors, consultants, and other agents to preserve, all non-identical copies of all documents, records, or other information (including electronically stored information) in his or his contractors' or other agents' possession or control, or that come into his contractors' or other agents' possession or control, and that relate in any manner to Defendant's performance of his obligations under this Consent Decree. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. If Defendant asserts that any information is protected from disclosure under any privilege or protection recognized by federal law, and the United States disputes such assertion, the dispute may be resolved in accordance with Section VIII of this Consent Decree.

32. Until termination of this Consent Decree pursuant to Section XV, the United States, including its contractors and/or consultants, shall have the right to access the Van Duzen River Ranch, at all reasonable times, with reasonable advance notice of at least forty-eight (48) hours, in order to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted pursuant to this Consent Decree;
- c. take photographs related to monitoring the progress of activities required under this Consent Decree and assessing compliance with this Consent Decree; and
- e. assess compliance with this Consent Decree.

33. This Consent Decree in no way limits or affects the United States' or the Corps' otherwise existing rights of entry and inspection or any right to obtain information, nor does it

limit or affect any otherwise existing duty or obligation of Defendant Jack Noble to maintain documents, records, or other information.

VIII. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Consent Decree, the Parties shall attempt to resolve any and all disputes arising under or with respect to this Consent Decree through the dispute resolution procedures of this Section (“Dispute Resolution”).

35. A dispute shall be considered to have arisen when a written Notice of Dispute is transmitted to the opposing party at the addresses specified in Section XI. Such Notice of Dispute shall state clearly the matter in dispute. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the Defendant to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond 30 Days after the dispute has arisen, unless a longer period is agreed to in writing by the Parties.

36. If, after 30 Days of transmittal of the Notice of Dispute, the complainant concludes that the Parties have reached an impasse, then the complainant may seek resolution of the dispute by the Court. The Parties may continue to attempt to resolve the Notice of Dispute while the matter is pending before the Court.

37. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant Jack Noble under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties and interest, if applicable to the disputed matter, shall continue to accrue from the first Day of violation, but payment shall be stayed pending resolution of the dispute. If Defendant Jack Noble does not prevail on the disputed issue, stipulated penalties and interest, if applicable, may be assessed and paid as provided in Section X of this Consent Decree. If it is determined by the Court that Defendant Jack Noble did not violate the Consent Decree, no stipulated penalty or interest shall be assessed.

IX. FORCE MAJEURE

38. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant Jack Noble, of any person controlled by Defendant Jack Noble, or of Defendant Jack Noble’s contractors or consultants that delays or prevents the performance of any obligation under this Consent Decree despite Defendant Jack Noble’s best efforts to fulfill the obligation.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant Jack Noble shall provide notice to the United States, at the addresses specified in Section XI, within a reasonable time after Defendant first knew or should have known that the event might cause a delay. Defendant Jack Noble shall also provide an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if he intends to assert such a defense; and a statement as to whether, in the opinion of Defendant Jack Noble, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant Jack Noble shall include with any written notice required by this Section all relevant documentation.

40. If the United States agrees in writing that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event may be extended for such additional time as may be necessary to complete those obligations under the circumstances.

41. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree to the extension of time sought by Defendant, then Defendant may invoke Dispute Resolution procedures under Section VIII of this Consent Decree.

42. If Defendant invokes the Dispute Resolution procedures under Section VIII of this Consent Decree, Defendant shall have the burden of demonstrating that the delay or

anticipated delay has been or will be caused by a force majeure event; the number of Days of delay or anticipated delay that was or will be caused by such force majeure event; that the duration of the delay or the extension sought was or will be warranted under the circumstances; that Defendant could not have foreseen and prevented such delay; that Defendant exercised best efforts to prevent, avoid, minimize, and mitigate the delay and its effects; and that Defendant complied with the requirements of this Section.

X. STIPULATED PENALTIES

43. Defendant Jack Noble shall be liable for stipulated penalties to the United States for violations of this Consent Decree in accordance with this Section, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by this Consent Decree, including but not limited to failures to perform any Restoration Work within the specified time schedules established by or approved under this Consent Decree.

44. Stipulated penalties shall accrue for violating this Consent Decree in the amount of one thousand dollars (\$1,000) per Day for each Day that the violation persists.

45. Stipulated penalties under this Section shall begin to accrue on the Day a violation occurs and shall continue to accrue until the violation ceases.

46. Except as provided in this Section, Defendant Jack Noble shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand. Defendant Jack Noble shall make any such payment in accordance with written instructions to be provided by the United States. Upon such payment, Defendant Jack Noble shall provide written notice thereof to the United States at the addresses specified in Section XI of this Consent Decree.

47. If Defendant Jack Noble violates Paragraph 23, he must remove all material discharged in violation of Paragraph 23 as soon as weather and river conditions allow. If Defendant Jack Noble violates Paragraph 23 by discharging concrete anywhere within the yellow or blue areas marked in Exhibit 1, except as allowed by Paragraph 23, Defendant must permanently dispose of all concrete stored by Defendant for future use on the Ranch within sixty (60) days by transporting this material to a recycling or disposal facility at least five miles from

the Van Duzen River Ranch, or by hiring an appropriately licensed contractor to crush the concrete onsite and then remove the crushed aggregate offsite.

48. The United States may, in the unreviewable exercise of its discretion, reduce, or waive stipulated penalties otherwise due it under this Consent Decree.

49. Any disputes concerning the amount of stipulated penalties or the underlying violation that gives rise to the assessment of stipulated penalties are subject to the Dispute Resolution provisions of Section VIII. Stipulated penalties disputed by Defendant Jack Noble and any applicable interest shall continue to accrue as provided in this Consent Decree, but need not be paid until the following:

a. If the dispute is resolved by agreement between the Parties, Defendant Jack Noble shall pay the amount due under such agreement, together with any applicable interest, to the United States within thirty (30) Days of the effective date of the agreement.

b. If the dispute is taken to this Court, Defendant Jack Noble shall pay all accrued penalties determined by the Court to be owing, together with any applicable interest, to the United States within thirty (30) Days of receiving the Court's decision, except as provided in subparagraph c, below.

c. If any party appeals the Court's decision, Defendant Jack Noble shall pay all accrued penalties determined to be owing, together with any applicable interest, to the United States within fifteen (15) Days of receiving the final appellate decision.

50. If Defendant Jack Noble fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant Jack Noble's failure to pay any stipulated penalties.

51. The payment of stipulated penalties and interest, if any, shall not alter in any way Defendant Jack Noble's obligation to complete performance of the requirements of this Consent Decree.

52. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. The United States expressly reserves the right to seek any other relief it deems appropriate for Defendant Jack Noble's violation of this Consent Decree or applicable law, including but not limited to an action against Defendant Jack Noble for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XI. NOTICES AND COMMUNICATIONS

53. Except as provided herein, all notices and communications required under this Consent Decree shall be made to the Parties through each of the following persons and addresses:

a. **TO THE UNITED STATES:**

i. **TO THE DEPARTMENT OF JUSTICE:**

Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044

Chief, Wildlife and Marine Resources Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044

John.Do@usdoj.gov
Simi.Bhat@usdoj.gov

ii. **TO EPA:**

Director, Water Enforcement Division
U.S. EPA
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
MC 2243A
Room 2104B

Washington, DC 20460

Manager, Water Enforcement Section II
U.S. EPA Region 9
75 Hawthorne Street (ENF 3-2)
San Francisco, CA 94105

Lee.Bill@EPA.gov

Shepherdson.Melanie@EPA.gov

Speir.Jeffrey@EPA.gov

iii. TO THE CORPS:

Regulatory North Branch Chief
Army Corps of Engineers
San Francisco District
1455 Market Street, 16th Floor
San Francisco, CA 94103

Regulatory Project Manager
Army Corps of Engineers, San Francisco District
601 Startare Drive, Box 14
Eureka, California 95501

District Counsel
Army Corps of Engineers
San Francisco District
1455 Market Street, 16th Floor
San Francisco, CA 94103

Holly.n.costa@usace.army.mil

Jesse.l.anderson@usace.army.mil

Cameron.r.purchio@usace.army.mil

iv. TO NOAA/NMFS:

NMFS Arcata Office
1655 Heindon Road
Arcata, CA 95521

jeffrey.jahn@noaa.gov

matt.goldsworthy@noaa.gov

b. TO DEFENDANT JACK NOBLE:

Jack Noble
P.O. Box 365, Fortuna, CA 95540
707.725.3303; 707.845.6062 (cell)
mjnoble2@suddenlink.net

54. Designated notice recipients and/or addresses may be changed by written notice.

55. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XII. COSTS OF SUIT

56. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including reasonable attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant Jack Noble.

XIII. PUBLIC PARTICIPATION

57. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIV. MODIFICATION

58. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon the Court's approval.

XV. TERMINATION

59. This Consent Decree terminates ten (10) years following the Effective Date, unless, at that time Defendant Jack Noble is out of compliance with any provision of this Consent Decree, in which case this Consent Decree shall not expire until Defendant achieves compliance.

60. Irrespective of Paragraph 59 above, termination of this Consent Decree does not extinguish Paragraph 23, the obligations under which terminate as described in Paragraph 23, and any other Paragraphs necessary to enforce Paragraph 23, including Section X. Once Mr. Noble and his agents have ceased to operate or conduct any work on the Ranch, Paragraph 32 cannot be used to ensure compliance with Paragraph 23.

XVI. SIGNATURES/SERVICE

61. Each undersigned representative of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the United States. Defendant Jack Noble shall sign himself.

62. This Consent Decree may be signed in counterparts, such counterpart signature pages shall be given full force and effect, and its validity shall not be challenged on that basis.

XVII. INTEGRATION

63. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes any prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Appendices hereto and modifications made effective in accordance with Section XV of this Consent Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVIII. FINAL JUDGMENT AND RETENTION OF JURISDICTION

64. Upon its approval and entry by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant Jack Noble. The Parties waive

any rights to appeal such final judgment. Upon entry of this Consent Decree, all obligations under the stipulated orders entered in this case on November 25, 2016, April 17, 2017, and August 17, 2017, are dissolved.

65. This Court retains jurisdiction over this action for the purpose of resolving disputes arising under this Consent Decree, or entering orders modifying this Consent Decree, or effectuating or enforcing compliance with the terms of this Consent Decree.

XIX. APPENDIX

66. All Exhibits are included in the Appendix attached to and part of this Consent Decree.

IT IS SO ORDERED

Dated, entered, and made effective this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE

Respectfully submitted,

Dated:

JOHN THOMAS H. DO
SIMI BHAT
Trial Attorneys
United States Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7111
Washington DC 20044

ANDREA GELATT
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
P.O. Box 7111
Washington DC 20044

MICHAEL T. PYLE
Assistant United States Attorney
150 Almaden Boulevard, Suite 900
San Jose, California 95113

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 9:

Date

KATHLEEN JOHNSON
Director, Enforcement Division
U.S. Environmental Protection Agency, Region 9

Date

SYLVIA QUAST
Regional Counsel
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel
75 Hawthorne Ave.
San Francisco, CA 94105

Date

MELANIE SHEPHERDSON
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel
75 Hawthorne Ave.
San Francisco, CA 94105

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date

SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date

ROSEMARIE KELLEY
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date

MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency


Date

JEFFREY SPEIR
Attorney-Adviser
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

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Respectfully submitted,

Dated: June 4, 2018



JACK NOBLE
P.O. Box 365, Fortuna, CA 95540
707.725.3303; 707.845.6062 (cell)