

## AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement (“Amendment”) is entered into between Santa Barbara Channelkeeper (“Channelkeeper”) and the City of San Buenaventura (“City”) regarding the action entitled Santa Barbra Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 (“Action”). Channelkeeper and the City may be collectively referred to as “Parties” and individually as “Party”. This Amendment is entered into and effective on the date defined in Section 2 below (“Effective Date”). This Amendment is made in light of the following recited facts (each a “Recital”).

### RECITALS

A. On September 30, 2019, the Parties executed a Settlement Agreement in the Action which settled past disputes while preserving certain claims and defenses for future alleged violations.

B. On June 24, 2020, at a Status Conference in the Action, Channelkeeper expressed an intent to file a motion for interim relief against the City regarding flow in the Ventura River at Foster Park, and the Court ordered Channelkeeper and the City to meet and confer regarding the motion.

C. The Parties met and conferred on multiple occasions, and now desire to settle claims for interim relief regarding flow at Foster Park through this Amendment.

### TERMS

Now, therefore, in consideration of the commitments made in this Amendment, Channelkeeper and the City amend the Settlement Agreement as follows:

1. The Parties amend and modify the Settlement Agreement by adding the follows terms, which supersede, modify or amend the terms of the Settlement Agreement:

1.1 When daily average flows as measured at the VR-1 gage fall below 4.0 CFS for 3 consecutive days, the City will shut down wells Nye 7 and 8 before noon on the following business day.

1.2 If daily average flows as measured at the VR-1 gage fall below 3.0 CFS on any day of the time period in Section 1.1 above, the City would also shut down the subsurface intake at the same time as the shutdown in Section 1.1 above.

1.3 If the daily average flows as measured by the VR-1 gage fall below 4.0 CFS for 3 consecutive days, but stay above 3.0 CFS during that period, the City would shut down wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake until the daily average flows fall below 3.0 CFS for three consecutive days.

1.4 The City shall monitor the impact of pumping on instream flows for the life of this agreement. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections 1.1 to 1.3 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the parties shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are unable to agree, either party may pursue any available legal remedy they have related to this issue by seeking resolution of the issue via the Court.

1.5 Other than as provided in Section 1.4, Channelkeeper agrees not to seek other interim relief regarding flow. This settlement relating to interim flows in no way impacts Channelkeeper's ability to comment on, support, or challenge the physical solution proposed by any party in the Action.

1.6 The City shall continue to implement this revised flow regime at least until entry of the stipulated judgment and physical solution.

1.7 The revised flow regime may be temporarily modified or suspended under emergency conditions. Emergency conditions include Act of God, unforeseen pipe failure, and the inability of the City to obtain sufficient usable replacement water from Casitas Municipal Water District or other sources to serve its customers. The City shall promptly notify Channelkeeper in writing whenever such an emergency condition exists. The notification shall include the justification for the modification, and supporting documentation. If necessary, the parties shall meet and confer about the modification or suspension to limit its impact on Southern California steelhead and other impacted species.

1.8 If the City seeks to modify the flow regime pursuant to Section 1.7 above because it is unable to obtain replacement water from Casitas Municipal Water District, the City shall provide Channelkeeper with 30 days written notice, if such notice is feasible in light of water management plans or testing trends, or as much advance notice as is feasible when the inability results from an unexpected event. If the modification is based on the inability to obtain replacement water from Casitas, the City shall implement the following specific water conservation measures in the impacted service area during the emergency period of modification or suspension:

1.8.1 City Actions.

- a. Encourage maximum conservation by all customers and users in the impacted area.
- b. No outdoor irrigation using potable water will be allowed.
- c. All water use not required for health and safety is prohibited.

- d. Suspend the issuance of any new development approvals and new water connections in the impacted area other than those required to be processed by state law. Building permits which do not create new demand for water or which are for emergencies, public safety and water conservation may be exempted by the City Manager.

1.8.2 Water Customer Actions.

- a. Comply with mandatory water conservation regulations.
- b. Prohibition of all outside water use unless necessary for the preservation of health and safety and the public welfare.
- c. Watering with hand-held five gallon maximum bucket, filled at exterior hose bib or interior faucet (not by hose) shall be allowed at any time. This will assist in preserving vegetable gardens or fruit trees.
- d. The filling of swimming and wading pools is prohibited.

1.9 Channelkeeper acknowledges that the City currently plans to construct the Foster Park notching project this fall in accordance with the Settlement Agreement. In the unlikely event that the implementation of the notching project impacts the City's ability to implement the revised flow regime, or in the possible event that the notching project temporarily impacts the City's ability to use VR-2 to monitor downstream impacts of the pumping regime, the Parties shall meet and confer to discuss any modifications or suspensions of the flow regime or the monitoring process as necessary to complete the notching project.

1.10 The City and Channelkeeper will work in good faith to prepare a joint press release regarding this amendment to the Settlement Agreement. In addition, the City and Channelkeeper will meet and confer on whether they can work collaboratively on other public relations efforts to raise awareness of the need to protect the Ventura River Watershed and its habitat, including protections for the Southern California steelhead.

2. This Amendment shall become effective immediately upon execution by the Parties. This Amendment may be executed in counterparts. When the Parties and their respective attorneys have signed and delivered at least one such counterpart of the other Party, each counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to the Parties. No original signatures shall be required to establish the validity or authenticity of this Amendment.

3. Except as superseded, modified or amended by this Amendment, the Settlement Agreement remains in full force and effect. In the event of conflict between the terms of the Settlement Agreement and the terms of this Amendment, the terms of this Amendment shall govern.

4. All agreements, covenants, representations and warranties, expressed or implied, oral or written, by each Party to this Amendment are contained in this Amendment. No other

agreement, covenants, representations or warranties, expressed or implied, oral or written, have been made by the Parties concerning this Amendment. All prior and contemporaneous conversations, covenants and warranties concerning this Amendment are merged in this Amendment. This is a fully integrated document.

5. This Amendment shall be deemed drafted by all Parties with the advice of counsel for the purposes of interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem*.

**(Signatures on following page)**

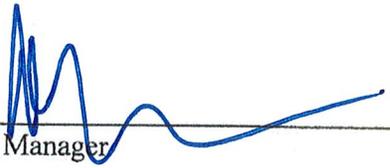
Dated: 8/19/2020

SANTA BARBARA CHANNELKEEPER

By: 

Dated: 8/20/2020

CITY OF SAN BUENAVENTURA

By:   
City Manager

APPROVED AS FOR FORM:

Dated: 20 August 2020

SYCAMORE LAW, INC.

By:   
DANIEL COOPER  
Attorneys for Petitioner SANTA  
BARBARA CHANNELKEEPER

Dated: August 20, 2020

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SAN BUENAVENTURA