

SETTLEMENT AGREEMENT & MUTUAL RELEASE

This Settlement Agreement (hereinafter the “Agreement”), dated this 22nd day of September, 2020, is made and entered into by and among the Natural Resources Defense Council, Inc., a non-profit 501(c)3 organization (“NRDC”) and El Dorado County, a political subdivision of the state of California (the “County”) (collectively the “Parties”), who agree as follows:

RECITALS

A. On May 28, 2019, NRDC filed a verified petition for writ of mandate against the County, and subsequently, an amended verified petition for writ of mandate in an action captioned *NRDC v. El Dorado County*, Superior Court of California, El Dorado County, Case No. PC20190271 (“Action”). In the Action, NRDC alleged that the County was not in compliance with the Water Conservation in Landscaping Act, Gov. Code §§ 65591-99 (“Act”), and its 2015 implementing regulations. The County denies that NRDC is entitled to the relief requested in the Action.

B. After extensive meet and confer discussions, and following a Dispute Resolution Conference, the Parties agree that it is in their best interests to settle the Action without further litigation.

C. Therefore, without admitting fault or liability, the Parties have agreed to resolve all potential claims that exist between them arising out of the allegations asserted in the Action, as further set forth below.

AGREEMENT

1. Required action under this Agreement.

a. No later than thirty (30) days from the date this Agreement is fully executed, the County shall make a one-time contribution of \$55,000 (fifty-five thousand dollars) to the El Dorado County Water Agency, an Agency duly authorized by the El Dorado County Water Agency Act, Chapter 96 of the 1959 Water Agency Act (“Water Agency”), which shall be used by the Water Agency pursuant to the terms and conditions set forth in a separate Funding Agreement by and between the County and the Water Agency (“Funding Agreement”), the terms of which are hereby incorporated and which is attached hereto as Exhibit A. NRDC expressly acknowledges that it is not an express or implied third-party beneficiary of the Funding Agreement. The County shall confirm to NRDC that the contribution has been made within 48 hours of the contribution.

b. The County shall provide NRDC with copies of the annual reports the Water Agency is required to submit to the Contract Administrator under Article 4 of the Funding Agreement. These reports shall be provided electronically to Edward R. Osann, Natural Resources Defense Council, at <eosann@nrdc.org>, with a copy sent to B.J. Chisholm and Meredith Johnson at Altshuler Berzon LLP, 177 Post Street, Ste. 300, San Francisco CA 94108, and shall be provided within 10 days of the County's receipt of the reports. The County shall also provide NRDC and its Counsel with copies of the "Landscape Documentation Package" for each project(s) to be undertaken by the Water Agency pursuant to the Funding Agreement (as described in Exhibit A to the Funding Agreement, "Scope of Work") prior to its installation, and shall make a reasonable effort to provide each such Landscape Documentation Package within 10 days of the County's receipt. NRDC shall have 14 days from the date of its receipt of each such Landscape Documentation Package to provide any comments thereon to the County and the Water Agency. Neither the County nor the Water Agency is obligated to respond to any comments by NRDC. Furthermore, neither the County nor the Water Agency is obligated to make any modifications, additions, or changes whatsoever to the Landscape Documentation Package based on comments by NRDC.

2. If the County fails to complete each of the actions specified by paragraph (1)(a), NRDC shall have the right to declare this Agreement null and void. If NRDC has invoked that right, this Agreement shall be null and void and the Parties may pursue their respective litigation positions. Any failure by the County to complete the actions specified by paragraph (1)(b) shall not be grounds for NRDC to declare this Agreement null and void. Instead, the Parties shall meet and confer and informally resolve any such failure in good faith. Upon execution of the Funding Agreement, the County shall inform NRDC of the anticipated date on which it expects to receive annual reports under the Funding Agreement. Should the County fail to provide an annual report as set forth in paragraph (1)(b), NRDC must first notify the County that it has not provided the required annual report and request the annual report. The County will then have thirty (30) days to provide the requested update. Should the County fail to provide copies of the "Landscape Documentation Package" as specified by paragraph (1)(b), the County shall provide the Landscape Documentation Package to NRDC within 48 hours upon discovering any such failure.

3. The Parties agree that the terms of this Agreement shall be enforceable in a court of

law, and that either Party has the right to move to enforce the Agreement's terms.

4. Understanding of Agreement. The Parties acknowledge that they have carefully read this Agreement; that they understand its effect; and that they understand the provisions of this Agreement and knowingly and voluntarily agree to be bound by them.

5. No Admission of Liability. The execution of this Agreement affects the settlement of claims that are disputed, contested, and denied. The Parties understand and agree that nothing in this agreement is intended to or shall be deemed or construed to be an admission of liability by any Party in any respect or to any extent whatsoever, and the Parties shall not make any representation to the contrary.

6. Costs and Attorneys' Fees in the Action. The Parties shall bear their own costs and attorneys' fees to date, including all costs and attorneys' fees incurred to prosecute and defend against the Action, the matters set forth in the Action, all matters relating to the Action, all matters referenced herein, and all matters relating to the dispute between them.

7. Entire Agreement. This Agreement contains the entire understanding and Agreement of the Parties with respect to the subject matter hereof. The Parties hereby acknowledge and represent that in releasing, discharging and settling certain claims and in executing and entering into this Agreement, no other party, nor any agent, attorney or other representative of any party has made any promise, representation, warranty, covenant, warning or inducement whatsoever, express or implied, except as contained in this Agreement, concerning all or any part of the subject matter hereof, to induce them to execute this Agreement. The Parties hereby acknowledge and represent that they have not executed this Agreement in reliance upon any promise, covenant, representation, warranty, warning or inducement not specifically contained in this Agreement.

8. Dismissal of Action. The County and NRDC agree, pursuant to Code of Civil Procedure Section 664.6 and otherwise, that the trial court in the Action can and will retain jurisdiction to enforce the terms of this Agreement. Within twenty (20) days of payment of the County's contribution set forth in paragraph 1(a), NRDC shall file a stipulation requesting that the court (1) dismiss the Action, in its entirety, with prejudice, and (2) retain jurisdiction for purposes of enforcing this Agreement. The dismissal shall not prohibit parties from seeking relief for failure to comply with the remaining terms of this Agreement.

9. No Oral Modifications. This Agreement may not be changed, nor may any

covenant, representation or other provision be waived, except by written agreement signed by both Parties.

10. Construction. Counsel for the represented Parties have negotiated, read and approved as to form the language of this Agreement, the language of which shall be construed in its entirety according to its fair meaning and not strictly for or against any of the Parties.

11. Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has the authority and capacity to make the promises and releases set forth in this Agreement.

12. Effective Date. The effective date of this Agreement shall be the date on which the last person to execute this Agreement does so, as reflected in the signature blocks below.

13. Applicable Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

14. Mutual Release. This Agreement is a full, final and binding resolution between the Parties, including their agents, employees, representatives, officers and successors and assigns, of claims and defenses related to NRDC's petition for writ of mandate and the facts alleged therein. The Parties hereby mutually release and forever discharge one another and their respective present and former agents, employers, employees, attorneys, independent contractors, officers, board members, partners, insurers, predecessors, successors and assigns, and each of them, from any and all claims, contentions, rights, debts, liabilities, demands, obligations, duties, promises, costs, expenses (including but not limited to attorneys' fees), liens, indemnification rights, damages, losses, actions, and causes of action, of any kind whatsoever, regardless of theory of recovery, whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, with respect to, pertaining to, or arising from, any of the matters set forth in the Action. This release specifically includes a knowing waiver of Civil Code Section 1542 as set forth below.

15. **Waiver of California Civil Code Section 1542.** Releasing Parties, and each of them, hereby waive any and all rights or benefits that any of them may have under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

16. Agreement Jointly Prepared. Regardless of who may have written or otherwise prepared this agreement, it shall be deemed as jointly prepared by all of the undersigned Parties.

17. No Admission of Liability. This Agreement constitutes a compromise and settlement of claims which are denied and contested and nothing in the settlement nor in this Agreement, or any document referred to herein, nor any act (including, but not limited to, the execution of this Agreement and/or the County's contribution listed in paragraph (1)(a)) shall be treated, construed or deemed as an admission by either Party hereto of any liability, fault, responsibility, or guilt of any kind as to any allegation or claim in the Action for any purpose whatsoever.

18. Full Knowledge of Agreement. The Parties understand and agree to the settlement, this Agreement and the terms and conditions contained herein and in the documents referred to herein, and have relied upon their own judgment, belief, knowledge, understanding and expertise after careful consideration with their own legal counsel concerning the legal effect of the settlement and all of the terms of this Agreement.

19. Counterparts. This Agreement and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

20. Waiver. No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving the breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. The Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

The foregoing is so stipulated and agreed between the undersigned parties.

For Natural Resources Defense Council, Inc.:

Edward R. Osann

Name: Edward R. Osann
Title: Senior Policy Analyst

July 31, 2020
Date

For El Dorado County:

Jim Veerkamp

Name
Title:

9/22/2020
Date

ATTEST: Kim Dawson
Clerk of the Board of Supervisors

By [Signature]
Deputy Clerk