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17 CALIFORNIA SPORTFISHING
18 PROTECTION ALLIANCE

19 **UNITED STATES DISTRICT COURT**
20 **EASTERN DISTRICT OF CALIFORNIA**

21 CALIFORNIA SPORTFISHING
22 PROTECTION ALLIANCE, a non-profit
23 corporation,

24 Plaintiff,

25 vs.

26 SIMS GROUP U.S.A. CORPORATION,
27 a corporation,

28 Defendant.

Case No. 2:05-CV-02382-GEB-DAD

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

29 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter
30 “CSPA”) is a non-profit public benefit corporation dedicated to the preservation, protection,
31 and defense of the environment, wildlife, and natural resources of California’s waters;

1 **Improvements to the Facility’s Storm Water Management System**

2 4. Within 30 days of the Court Approval Date, to the extent not already
3 implemented, Sims shall cease discharging storm water from any discharge point not
4 designated as such on the Facility map attached hereto as Exhibit A (all further references
5 herein to collection and discharge points refer to such points as identified on Exhibit A
6 hereto).

7 5. Understanding that time is of the essence, no later than July 1, 2007, Sims shall
8 complete construction and commence operation of a storm water management system
9 designed to retain and/or infiltrate the rainfall on the Facility from a 25-year/24-hour storm
10 event (the “Retention System”). The Retention System shall include the following
11 components:

12 a. “top hat” flow restrictor device, similar or functionally equivalent to the
13 type depicted on Exhibit D, attached hereto and incorporated by reference, at the inlet
14 to the catch basin currently upstream of Clarifier 1, as shown on Exhibit A;

15 b. catch basin and sump, similar or functionally equivalent to the type
16 depicted on Exhibit E, attached hereto and incorporated by reference, to collect storm
17 water from the driveway where existing Outfall No. 2 is located;

18 c. box culvert, similar or functionally equivalent to the type depicted on
19 Exhibit F, attached hereto and incorporated by reference, to be located in the area
20 shown on Exhibit A;

21 d. treatment box (such as an API or CPI separator), similar or functionally
22 equivalent to the type depicted on Exhibit G, attached hereto and incorporated by
23 reference, located in the area shown on Exhibit A;

24 e. infiltration trench consisting of an excavated pit filled with gravel, similar
25 or functionally equivalent to the type depicted on Exhibit H, attached hereto and
26 incorporated by reference, located in the area shown on Exhibit A;

1 f. engineered discharge outlet downstream of the infiltration trench
2 (“Engineered Outlet”), similar or functionally equivalent to the type depicted on
3 Exhibit I, attached hereto and incorporated by reference, located in the area shown on
4 Exhibit A;

5 g. grading, berms, piping and pumps as needed to convey all storm water
6 collected at the Facility to the box culvert, treatment box, infiltration trench and
7 Engineered Discharge outlet, similar or functionally equivalent to the type depicted on
8 Exhibit J;

9 h. rainfall gauge (“Rain Gauge”) to record the quantity of storm water
10 falling on the Facility on an hourly and daily basis similar or functionally equivalent to
11 the type depicted on Exhibit K;¹ and

12 i. “flow totalizer” (similar or functionally equivalent to the type depicted on
13 Exhibit L) to record the quantity of storm water, if any, discharged from the Engineered
14 Outlet (“Discharge Monitor”).

15 Components a., c., and d. collectively are referred to herein as the “Treatment System.” Sims’
16 obligation to install and operate the Retention System shall not be construed as a prohibition
17 against storm water discharges from the Facility during the term of this Consent Agreement
18 (except that Sims, under Paragraph 4 above, shall, within 30 days of the Court Approval Date,
19 cease discharging storm water from the Facility from any discharge point not designated as
20 such on the Facility map attached hereto as Exhibit A). Further, nothing herein shall be

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23 ¹ If for any reason the rain data provided by the Rain Gauge is incomplete or inaccurate, the
24 parties may use the rain data collected by the rain gauge operated by the California
25 Department of Resources, Division of Flood Management at the Stockton Fire Station as an
26 alternative source of rain data for the Facility. Hourly and daily rain fall data collected by the
27 Stockton Fire Station rain gauge can be obtained from the following website:
<http://cdec.water.ca.gov/cgi-progs/queryDaily?SFS>.

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1 construed as a limitation on CSPA’s right to seek to enjoin storm water discharges from the
2 Facility after this Consent Agreement has expired, or on Sims’ right to discharge storm water
3 in compliance with the terms of the General Permit.

4 6. Upon commencement of operation of the Retention System, the only Discharge
5 Point from the Facility shall be the Engineered Outlet described in paragraph 5(f), except in
6 the event of Force Majeure or as otherwise agreed to by the Parties.

7 **Improvements to the Facility’s Sweeping Practices**

8 7. Understanding that time is of the essence, no later than 30 days after the Court
9 Approval Date, Sims shall purchase or lease a Tennant Model 6650 or functionally equivalent
10 industrial sweeper (the “Primary Sweeper”). Thereafter, Sims shall sweep all areas of the
11 Facility accessible to the Primary Sweeper on a twice-weekly basis during the Wet Season and
12 on a weekly basis during the Dry Season, unless more frequent sweeping is required under the
13 sweeping program in paragraph 9 below.

14 8. No later than 30 days after the Court Approval Date, Sims shall purchase an
15 additional vacuum-assisted system that is capable of accessing areas of the Facility that cannot
16 be reached by the Primary Sweeper (the “Secondary Sweeper”). Thereafter, Sims shall sweep
17 all areas of the Facility that are to be swept with the Secondary Sweeper pursuant to the
18 Sweeping Program (described in paragraph 9 below) on a twice-weekly basis during the Wet
19 Season and on a weekly basis during the Dry Season, unless more frequent sweeping is
20 required under the sweeping program in paragraph 9.

21 9. Within 60 days after the Court Approval Date, Sims shall implement a revised
22 sweeping program (“Sweeping Program”) for the Facility that shall, at a minimum: (i) ensure
23 that sweeping and cleaning practices are designed to minimize tracking and other dispersal of
24 pollutants on paved areas of the Facility and to minimize the tracking and other dispersal of
25 pollutants from the Facility to areas outside the Facility; (ii) identify areas of the Facility that
26 are to be swept with the Primary Sweeper, areas that are to be swept with the Secondary

1 Sweeper, areas that must be swept manually, and areas where sweeping is not feasible (such as
2 under stockpiles of metal or other recyclable materials); (iii) specify the frequency with which
3 each area of the Facility is to be swept, consistent with the terms of this Agreement, both
4 during the Dry Season and the Wet Season; (iv) identify triggers for more frequent ad hoc
5 sweeping or cleaning (e.g., visual accumulation of dust or debris); (v) specify that, at least
6 annually, Sims shall conduct a thorough inspection of the Facility, and to the extent warranted
7 by this inspection, perform additional Facility sweeping or cleaning to remove significant
8 accumulations of finely divided metals, dust, shavings, or other pollutants that could become
9 entrained in storm water discharged from the Facility (in the event of a discharge), and that
10 would not otherwise be removed by the Treatment System; (vi) prohibit the discharge of any
11 waste fluids or solid wastes generated in site cleaning and sweeping to storm drain inlets or
12 waterways; and (vii) require that Sims shall collect and dispose of all wastes generated during
13 Facility cleaning and sweeping in a manner that complies with all applicable local, state, and
14 federal laws. This Sweeping Program shall be incorporated into Sims' SWPPP and followed
15 throughout the term of this Consent Agreement.

16 10. Commencing with the Court Approval Date and ending upon commencement of
17 operation of the Retention System (the "Construction Period"), on a twice-weekly basis, Sims
18 shall utilize a regenerative sweeper to sweep all areas of the Facility that may reasonably and
19 safely be accessed by such equipment. Sims shall not be required to sweep the Facility with a
20 regenerative sweeper once the Retention System is operational.

21 **Inspection, Maintenance and Monitoring**

22 11. Within 30 days of the Court Approval Date, Sims shall further amend its
23 SWPPP to include a requirement that all waste storage containers at the Facility shall either be
24 stored indoors or, if stored outdoors, shall be covered at all times during the Wet Season,
25 except when in the process of being loaded or unloaded, to prevent dust, shavings, and other
26 materials from being blown or washed outside the waste storage containers.

1 12. Within 30 days of the Court Approval Date, Sims shall implement a revised
2 Facility maintenance schedule consistent with this Consent Agreement, including employee
3 training materials and inspection schedules and logs, which schedules and logs shall be
4 incorporated into the Facility SWPPP.

5 13. Within 30 days of the Court Approval Date, Sims agrees to amend its SWPPP to
6 require it to contemporaneously maintain appropriate logs of all cleaning, sweeping,
7 maintenance and inspection activities at the Facility pertaining to storm water BMPs, which
8 shall include the name of the person or persons conducting the activity, the date such activities
9 took place, and whether such activities took place in the morning or afternoon.

10 14. Within 30 days of the Court Approval Date, Sims agrees to amend its SWPPP to
11 require the inspection and, if necessary, maintenance, of all storm water collection and
12 discharge points at the Facility on a weekly basis during the Wet Season to ensure that they are
13 functioning properly. Such inspections and maintenance shall occur weekly and just prior to
14 forecasted storm events that may reasonably result in storm water discharges from the Facility.
15 Sims shall record the results of all such inspections in the applicable Facility inspection logs.

16 **Sampling Program**

17 15. After the parties' execution of this Agreement and through the Construction
18 Period, Sims shall collect four (4) storm water samples from each Facility Discharge Point, in
19 accordance with the sampling requirements set forth in Section B.5 of the General Permit
20 ("Qualifying Storm Events"). In the event that no Qualifying Storm Events have occurred by
21 February 7, 2007, Sims shall continue to make best efforts to collect the requisite four samples
22 from storm events that are non-qualifying due solely to the fact that they are not preceded by
23 three (3) working days during which no storm water discharges have occurred (hereafter,
24 "Non-qualifying Storm Events"). Samples from Non-qualifying Storm Events may be used to
25 satisfy the sampling requirements of this paragraph if fewer than four Qualifying Storm Events
26 occur prior to completion of the Construction Period. In the event that Sims fails to timely

1 eliminate any storm water discharge points not so designated on Exhibit A, pursuant to
2 Paragraph 4 above, Sims shall additionally be required to collect four (4) storm water samples
3 from each of those discharge points, per Wet Season, in accordance with the sampling
4 requirements set forth in Section B.5 of the General Permit, until eliminated.

5 16. As described in Paragraph 6 above, upon commencement of operation of the
6 Retention System on or before July 1, 2007, the only Discharge Point from the Facility shall
7 be the Engineered Outlet described in paragraph 5(f), except in the event of Force Majeure or
8 as otherwise agreed to by the Parties. Sims shall collect samples of all discharges from the
9 Engineered Outlet that occur during working hours during each of the 2007-2008 and 2008-
10 2009 Wet Seasons, including discharges that result from Qualifying Storm Events and Non-
11 Qualifying Storm Events. To the extent any discharge points other than the Engineered Outlet
12 exist after July 1, 2007, Sims shall also collect four (4) storm water samples per Wet Season
13 from each such discharge point, in accordance with Paragraph 15; analyze each sample for
14 each of the constituents listed in Exhibit C consistent with the requirements of Paragraph 19
15 below; and comply with the Action Memorandum requirements described below, as
16 applicable.

17 17. After the Parties' execution of this Agreement and through the Construction
18 Period, Sims shall maintain a storm event log at the Facility for those dates on which storm
19 events have occurred, including the date, weather conditions, and estimated duration of any
20 discharges from the Facility. Subsequent to the Construction Period, the recordings of the
21 Discharge Monitor shall serve to document discharges from the Facility. Storm event logs and
22 the Discharge Monitor records shall be made available to CSPA within five (5) working days
23 of a written request by CSPA.

24 18. Sims shall analyze each storm water discharge sample, including all discharges
25 from the Engineered Outlet, for each of the constituents listed in Exhibit C.

1 19. All storm water samples collected pursuant to this Consent Agreement shall be
2 analyzed by a laboratory accredited by the State of California. All samples collected from the
3 Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold
4 time” is not exceeded. Sims shall request that sample results shall be reported to it within ten
5 (10) days of laboratory receipt of the sample. Analytical methods used by the laboratory shall
6 be adequate to detect the individual constituents at or below the values specified on Exhibit C.
7 All sampling results shall be provided to CSPA within seven (7) days of Sims’ receipt of such
8 sampling results from the laboratory.

9 **Retention System Evaluation**

10 20. **Capacity.** The Retention System shall be designed to retain a 25-year/24-hour
11 storm event (the “Design Storm”), and shall have a total volumetric capacity of at least 32,118
12 cubic feet (the “Design Capacity”). The Design Capacity of the Retention System has been
13 calculated without regard to, and independently of, infiltration.² Within ten (10) days of the
14 end of the Construction Period, Sims’ shall provide CSPA with a certification, including
15 supporting documentation, that the Retention System meets the Design Capacity.

16 21. If the Parties are unable to agree on whether the Retention System meets the
17 Design Capacity, within fifteen (15) days’ written notice from CSPA, Sims shall be required
18 to provide CSPA with a written statement supporting its view that the Retention System meets
19 the Design Capacity. The Parties shall then meet and confer within seven (7) days of Sims’
20 transmittal of its statement. If the Parties fail to meet and confer or the meet-and-confer does
21 not resolve the issue, after at least seven (7) days have passed after the meet-and-confer
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25 ² Sims represents that the total surface area of the Facility, other than areas covered by
26 roofs, is 137,650 square feet, and that runoff from roof areas is collected in gutters and
27 discharged directly to the street. The Design Capacity is based upon 2.8 inches of rainfall over
28 137,650 square feet.

1 occurred or should have occurred, the Parties shall resolve the matter through the Dispute
2 Resolution procedures set forth herein below.

3 **22. Infiltration Rate.** The Retention System shall be constructed to achieve an
4 infiltration rate equivalent to 0.1 inches per day of rainfall on the Facility (the “Infiltration
5 Rate”). The ability of the Retention System to achieve the Infiltration Rate shall be evaluated
6 by using the Excel-based Retention System Performance Model developed by Geomatrix (the
7 “Performance Model”),³ which is described in Exhibit M and is incorporated herein by
8 reference, in the following manner: If a discharge from the Engineered Outlet occurs during
9 the Wet Season (the “Discharge Date”), Sims shall enter into the Performance Model all rain
10 data from the beginning of that Wet Season (i.e., October 1), or the first date preceding the
11 start of that Wet Season on which more than 0.1 inch of rain occurred at the Facility, up to the
12 day immediately preceding the Discharge Date, as recorded by the Rain Gauge unless for any
13 reason the rain data provided by the Rain Gauge is incomplete or inaccurate, in which case the
14 rain data collected by the rain gauge operated by the California Department of Resources,
15 Division of Flood Management at the Stockton Fire Station may be used as an alternative
16 source of rain data for the model. If the Performance Model calculates that the Retention
17 System would have discharged on the Discharge Date, based on the assumption that the
18 Retention System achieved both the Design Capacity and the Infiltration Rate, then the
19 Retention System shall be deemed to have achieved the Infiltration Rate. On the other hand, if
20 the Performance Model calculates that the Retention System would not have discharged on the
21 Discharge Date, based on the assumption that the Retention System achieved both the Design
22 Capacity and the Infiltration Rate, then the Retention System shall be deemed not to have
23 achieved the Infiltration Rate.

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26 ³ The computer file name of the Performance Model is “Retention System Performance
27 Model.xls.”

1 confer does not resolve the issue, after at least seven (7) days have passed after the meet-and-
2 confer occurred or should have occurred, CSPA shall have the right to invoke the Dispute
3 Resolution procedures set forth below.

4 **Action Memoranda**

5 25. Underperforming Scenario; Discharges from Points other than the Engineered
6 Outlet. If the Retention System is determined (by the Parties or the Court) to be
7 Underperforming, or if discharges occur from discharge points other than the Engineered
8 Outlet, within thirty (30) days thereafter, Sims shall prepare, and submit to CSPA for review,
9 an Action Memorandum discussing the circumstances surrounding the discharge and the
10 measures, if any, that Sims proposes to take to improve storm water controls at the Facility,
11 either through expansion of the Retention System to achieve the Infiltration Rate or such other
12 means as may be necessary to ensure that the Facility achieves BAT/BCT, including without
13 limitation, revisions to existing or additional structural or non-structural BMPs and a
14 reasonable schedule to implement the proposed measures (“Action Memorandum”).
15 Revisions to existing structural or non-structural BMPs, or additional structural or non-
16 structural BMPs, may include, but are not limited to, further material improvements to the
17 Retention System or other elements of the Facility’s storm water collection and discharge
18 system, changing the frequency of facility sweeping, changing the type and extent of storm
19 water filtration media, or modifying other industrial activities or management practices at the
20 Facility.

21 26. The parties acknowledge that it is possible, under certain meteorological
22 conditions, that discharges may occur from the Engineered Outfall notwithstanding the fact
23 that the Retention System has been determined, in accordance with the provisions of
24 Paragraph 22, to be achieving the Infiltration Rate. While Sims believes the Performance
25 Model is a reliable indicator of whether the Retention System is able to manage the rainfall
26 from a 25-year/24-hour storm event, both Parties agree that the vagaries of rainfall events

1 make it impossible to predict the actual performance of the system. While it is Sims'
2 expectation that the Retention System will effectively eliminate most of the storm water
3 discharges from the Facility (as well as improve the quality of any water that is actually
4 discharged), CSPA remains skeptical of this outcome.

5 27. Accordingly, to provide both Parties with a reasonable opportunity to evaluate
6 the actual retention and infiltration capabilities of the Retention System (and not as an
7 admission by Sims of any obligation to achieve constituent levels set forth in Exhibit C), the
8 following process is established: If during the term of this Agreement Sims experiences three
9 discharges from the Engineered Outlet during any Wet Season (other than discharges with
10 respect to which Sims has already taken action to increase the capacity and/or infiltration rate
11 of the Retention System pursuant to the Action Memorandum requirements of Paragraph 25
12 hereof), and unless the Parties agree that the discharges were attributable to unusual storm
13 patterns or excessive rainfall, Sims shall be required to provide CSPA, within 30 days, with an
14 Action Memorandum proposing one, or a combination, of the following courses of action: (1)
15 increase the retention capacity of the system; (2) increase the infiltration capacity of the
16 system; (3) install advanced treatment; or (4) take some other specific, tangible action to
17 further improve storm water controls at the Facility, e.g., increase the frequency of sweeping.
18 In preparing the Action Memorandum, nothing shall preclude Sims from taking into account
19 the quantity and quality of storm water that has been discharged when evaluating the need for,
20 and technical and economic feasibility of, possible system modifications. No actions taken by
21 Sims pursuant to this paragraph shall be construed as an admission or evidence that the
22 Retention System or any other BMP implemented by Sims fails to achieve BAT/BCT. During
23 the term of this agreement, Sims shall provide CSPA with Notice of the occurrence of the
24 second discharge from the Engineered Outlet in any Wet Season, within 15 days of the date of
25 such discharge.

1 written notice of each such physical inspection. Notwithstanding the foregoing, Sims shall
2 have the right to deny access to the Facility if circumstances would make the inspection
3 unduly burdensome and pose significant interference with business operations on the day
4 requested. In such case, Sims shall specify at least three (3) dates within the next fourteen (14)
5 calendar days upon which a physical inspection by CSPA may proceed. Sims shall not make
6 any alterations to Facility conditions during the period between receiving CSPA's notice and
7 the start of CSPA's inspection that Sims would not otherwise have made but for receiving
8 notice of CSPA's request to conduct a physical inspection of the Facility. Nothing herein shall
9 be construed to prevent Sims from continuing to implement any BMPs identified in its
10 SWPPP during the period prior to an inspection by CSPA.

11 31. In addition to the terms provided in paragraph 30, all inspections shall be subject
12 to the following conditions:

13 a. CSPA understands and acknowledges that the Facility is an active metal
14 recycling facility involving use of heavy machinery, trucking operations, rail
15 operations, scrap metal storage and handling, hazardous material storage, and other
16 active heavy industrial operations. CSPA, on behalf of its employees, agents,
17 contractors, and other authorized representatives ("CSPA Visitors"), is aware that
18 engaging in the inspection activities provided for in this Consent Agreement (the
19 "Activities") involves potential risks to the safety of the CSPA Visitors. CSPA and the
20 CSPA Visitors acknowledge that they are voluntarily participating in the Activities with
21 full awareness of the risks involved. Accordingly, CSPA and the CSPA Visitors
22 hereby agree to accept any and all risks of injury or death associated with conducting or
23 participating in the Activities, and hereby release and forever discharge Sims, its parent,
24 subsidiaries, and affiliates, invitees, contractors and subcontractors, and each of their
25 officers, directors, employees, agents, and representatives, and each of their successors
26 and assigns (each a "Sims Releasee"), from any and all liability for property damage,

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bodily injury or death that may be associated with entry onto the Facility and engagement in the Activities provided for in this Agreement, except to the extent that such property damage, injury or death was caused by the negligence or willful misconduct of Sims or any Sims Releasee.

b. For safety reasons, CSPA agrees that CSPA Visitors shall have access to the Facility only during normal business hours, except as otherwise expressly allowed by Sims. Prior to commencing the Activities, CSPA Visitors shall check in at the reception area at the Facility and request to see Buddy Stubblefield, Sims' Environmental Manager, or such other person as designated by Sims prior to the Activities (hereafter, "Sims' Representative"). The CSPA Visitors shall at all times be accompanied by Sims' Representative, and no CSPA Visitor shall conduct any Activities on any portion of the Facility unless accompanied by Sims' Representative.

c. CSPA Visitors shall perform all Activities in accordance with all applicable federal, state, and local laws, rules, regulations, orders, ordinances, permits, and requirements ("Laws") and Sims policies that govern the safe implementation of the Activities, including but not limited to those Laws pertaining to compliance with OSHA. Sims' Representative shall inform the CSPA Visitors of Sims' safety policies and requirements in advance of any Activities.

d. Sims shall have the right to stop or otherwise restrict any Activities based on its assessment of safety conditions in the vicinity of such Activities, provided, however, that CSPA Visitors shall remain responsible for their health, safety, and security during performance of the Activities. CSPA Visitors shall take all measures necessary to properly protect (i) all persons at or in proximity to the Activities from risk of injury and danger to health, and (ii) real and tangible personal property and equipment from damage or loss resulting from the Activities. If CSPA Visitors encounter any condition at the Facility that is potentially or actually unsafe during the

1 course of the Activities, they immediately shall cease such Activities and promptly
2 notify Sims's Representative.

3 e. CSPA shall limit the use and disclosure of any information obtained
4 during any Activities at the Facility to purposes solely related to CSPA's enforcement
5 of this Consent Agreement. At the end of each inspection visit, the CSPA Visitors shall
6 provide Sims with the opportunity to review and obtain copies of all photographs taken
7 and videotapes made during the inspection. Sims shall have the right to designate
8 certain photographs, videotapes or portions thereof as confidential, trade secret
9 information ("Confidential Information"); CSPA shall have the right to challenge any
10 such designation by bringing the matter to the Magistrate assigned to this matter for
11 resolution. In the event that CSPA desires to use any Confidential Information in
12 Dispute Resolution proceedings under this Consent Agreement, such Confidential
13 Information may only be used if it is first placed under an enforceable protective seal to
14 prevent public disclosure. CSPA's obligation to limit the use and disclosure of any
15 Confidential Information obtained during any Activities, as described herein, shall
16 survive the expiration of this Agreement.

17 f. Prior to each inspection of the Facility, CSPA agrees to inform each
18 CSPA Visitor that will participate in the Activities of the conditions in this paragraph
19 33 and to obtain the written consent of each CSPA Visitor to such conditions, replacing
20 references to CSPA as appropriate with references to that CSPA Visitor.

21 34. During the term of this Consent Agreement, Sims shall provide CSPA with
22 copies of all documents submitted to the Regional Board, the State Board, and the City of
23 Stockton, concerning storm water discharges from the Facility including, but not limited to, all
24 documents and reports submitted to the Regional Board and/or State Board as required by the
25 General Permit. Such documents and reports shall be provided to CSPA pursuant to the
26 Notice provisions herein and contemporaneously with Sims' submission to such agency.

1 35. Within thirty (30) days after the Court Approval Date and again within thirty
2 (30) days after the Parties reach agreement or Dispute Resolution proceedings have concluded
3 on the meet-and-confer requirements in paragraphs 21, 24 and 28, and again within 30 days
4 after any other additional BMPs are implemented by Sims independent of the Dispute
5 Resolution process, Sims shall amend the Facility SWPPP to incorporate all Facility changes,
6 improvements and BMPs set forth in this Consent Agreement or otherwise agreed to by the
7 Parties or ordered by the Court. Sims shall provide a copy of the amended SWPPP to CSPA
8 within fourteen (14) days of any amendment.

9 **II. MITIGATION; REIMBURSEMENT OF FEES AND COSTS**

10 36. Within seven (7) days after the Court Approval Date, Sims shall contribute
11 mitigation funds in the sum of \$112,500 to the Rose Foundation for Communities and the
12 Environment (“Rose Foundation”). These funds shall be designated for projects relating to the
13 reduction, prevention or mitigation of, or research on, the effects of discharges of pollutants in
14 storm water to the San Joaquin River and the Sacramento-San Joaquin River Delta.

15 37. Sims agrees to reimburse CSPA in the amount of \$125,000 to defray CSPA’s
16 reasonable investigative, expert, consultant and attorneys’ fees and costs, and all other costs
17 incurred as a result of investigating the activities at the Facility, preparing the Notice, and
18 negotiating a resolution of this action in the public interest. Such payment shall be made to
19 the Law Offices of Andrew L. Packard Attorney Client Trust Account within seven (7) days
20 after the Court Approval Date.

21 38. Sims agrees to contribute \$6,500 per year for each of the three years covered by
22 this Consent Agreement, to a compliance monitoring fund maintained by CSPA to defray
23 CSPA’s reasonable investigative, expert, consultant and attorneys’ fees and costs associated
24 with monitoring Sims’ compliance with this Consent Agreement. Compliance monitoring
25 activities may include but shall not be limited to, site inspections, review of water quality
26 sampling reports, review of annual reports, discussions with representatives of Sims

1 concerning the actions taken or proposed to be taken pursuant to the Action Memorandum
2 discussed above, and potential changes to compliance requirements herein, preparation for and
3 participation in meet-and-confer sessions and mediation, water quality sampling, and
4 compliance-related activities. The first such payment shall be made payable to the Law
5 Offices of Andrew L. Packard Attorney-Client Trust Account within seven (7) days of the
6 Court Approval Date; the second and third season payments shall be due on June 1, 2007 and
7 June 1, 2008, respectively. In the event that CSPA has not expended all of the compliance
8 monitoring funds for compliance activities at the Facility in a given year, any funds remaining
9 shall be rolled over into the next year and Sims' payment obligation under this paragraph for
10 the next year shall be reduced accordingly. If any unused compliance monitoring funds
11 remain at the expiration of this Consent Agreement, such funds shall be returned to Sims
12 within fourteen (14) days of the expiration date.

13 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT**
14 **AGREEMENT**

15 39. If a dispute under this Consent Agreement arises, or either Party believes that a
16 breach of this Consent Agreement has occurred, the Parties shall meet and confer within seven
17 (7) days of receiving written notification from the other Party of a request for a meeting to
18 determine whether a breach has occurred and to develop a mutually agreed upon plan,
19 including implementation dates, to resolve the dispute or cure the breach. If the Parties fail to
20 meet and confer or the meet-and-confer does not resolve the issue, after at least seven days
21 have passed after the meet-and-confer occurred or should have occurred, the Parties may
22 mutually agree to enter into a mediation process, the cost of which is to be borne by Sims.
23 Mediation shall be completed within sixty-five (65) days from the date the Parties agree to
24 enter into mediation or as soon thereafter as is possible in accordance with the mutually-
25 selected mediator. The Parties stipulate to retaining the San Francisco Office of JAMS to
26 conduct such mediation. If the Parties fail to resolve the issue through mediation, or if either

1 Party chooses not to enter into mediation, either Party shall be entitled to all rights and
2 remedies under the law, including filing a motion with the District Court of California, Eastern
3 District, which shall retain jurisdiction over the Action for the limited purposes of enforcement
4 of the terms of this Consent Agreement. The party who prevails on the motion or at the
5 mediation shall be entitled to reasonable investigative, consulting and attorneys' fees and costs
6 incurred in connection with the motion or the mediation process; all such fees and costs shall
7 be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33
8 U.S.C. §1365(d), and applicable case law interpreting such provisions.

9 **40. CSPA Waiver and Release of Sims.** Upon Court approval and entry of this
10 Consent Agreement, CSPA, on its own behalf and on behalf of its officers, directors,
11 employees, members, parent, subsidiaries, and affiliates, and each of their successors and
12 assigns, and its agents, attorneys, and other representatives:

13 a. releases all persons including, without limitation, Sims and its officers,
14 directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of
15 their predecessors, successors and assigns, and each of their agents, attorneys,
16 consultants, and other representatives (each a "Released Sims Party") from, and waives
17 all claims which arise from or pertain to this action, including, without limitation, all
18 claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees
19 (including fees of attorneys, experts, and others), costs, expenses or any other sum
20 incurred or claimed or which could have been claimed for matters associated with or
21 related to CSPA's September 9, 2005 Notice of Violation of the Clean Water Act
22 issued against Sims, or the Clean Water Act, the General Permit, or California's Health
23 & Safety Code Section 25249.5 *et seq.*, as those laws may relate to storm water
24 discharges from the Facility, (each and all a "Storm Water Law"), whether known or
25 unknown, including, without limitation, all such matters with respect to the alleged
26 failure of Sims or any other person to comply with all or any portion of any Storm

1 Water Law at the Facility, up to the Court Approval Date (hereinafter “Claims”), except
2 as specifically provided for in this Consent Agreement.

3 b. releases all persons, including, but not limited to, Sims and every
4 Released Sims Party from, and waives, all claims for injunctive relief, damages,
5 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
6 others), costs, expenses or any other sum incurred or claimed, or which could be
7 claimed with respect to any discharges of storm water from the Facility in alleged
8 violation of any Storm Water Law that may arise during the term of this Consent
9 Agreement.

10 c. covenants not to sue Sims or any Released Sims Party with respect to any
11 alleged violations of any Storm Water Law at the Facility that may arise during the
12 term of this Consent Agreement.

13 41. **Sims Waiver and Release of CSPA.** Sims, on its own behalf and on behalf of
14 those Released Sims Parties under its control, releases CSPA (and its officers, directors,
15 employees, members, parents, subsidiaries, and affiliates, and each of their successors and
16 assigns, and its agents, attorneys, and other representatives) from, and waives all claims which
17 arise from or pertain to this action, including all claims for fees (including fees of attorneys,
18 experts, and others), costs, expenses or any other sum incurred or claimed or which could have
19 been claimed for matters associated with or related to this Action.

20 42. Upon the Court Approval Date, the Parties shall file with the Court a Stipulation
21 and Order that shall provide that:

22 a. the Complaint and all claims therein shall be dismissed with prejudice
23 pursuant to Federal Rule of Civil Procedure 41(a)(2); and

24 b. the Court shall retain and have jurisdiction over the Parties with respect to
25 disputes arising under this Consent Agreement.

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28

1 43. The Parties enter into this Consent Agreement for the purpose of avoiding
2 prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and
3 Sims expressly does not intend to imply, an admission as to any fact, finding, issue of law, or
4 violation of law, nor shall compliance with this Consent Agreement constitute or be construed
5 as an admission by Sims of any fact, finding, conclusion, issue of law, or violation of law.
6 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,
7 and duties of the Parties under this Consent Agreement.

8 **IV. Miscellaneous Provisions**

9 44. The Consent Agreement shall terminate on September 1, 2009.

10 45. The Consent Agreement may be executed in one or more counterparts which,
11 taken together, shall be deemed to constitute one and the same document.

12 46. In the event that any of the provisions of this Consent Agreement is held by a
13 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
14 affected.

15 47. The language in all parts of this Consent Agreement, unless otherwise stated,
16 shall be construed according to its plain and ordinary meaning.

17 48. The undersigned are authorized to execute this Consent Agreement on behalf of
18 their respective parties and have read, understood and agreed to all of the terms and conditions
19 of this Consent Agreement.

20 49. All agreements, covenants, representations and warranties, express or implied,
21 oral or written, of the Parties concerning the subject matter of this Consent Agreement are
22 contained herein.

23 50. **Notices.** Any notices or documents required or provided for by this Consent
24 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent
25 Agreement shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as
26

1 follows or, in the alternative, shall be sent by electronic mail transmission to the email
2 addresses listed below or by confirmed facsimile:

3
4
5 Bill Jennings, Executive Director
6 California Sportfishing Protection Alliance
7 3536 Rainier Avenue
8 Stockton, CA 95204
9 DeltaKeep@aol.com

10 With copies sent to:

11 Andrew L. Packard
12 Law Offices of Andrew L. Packard
13 319 Pleasant Street
14 Petaluma, CA 94952
15 andrew@packardlawoffices.com
16 Fax: (707) 763-9227

17 And to:

18 Michael R. Lozeau
19 Law Office of Michael R. Lozeau
20 1516 Oak Street, Suite 216
21 Alameda, CA 94501
22 mrlozeau@lozeaulaw.com

23 Any notices or documents required or provided for by this Consent Agreement or related
24 thereto that are to be provided to Sims pursuant to this Consent Agreement shall be sent
25 by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by
26 electronic mail transmission to the email addresses listed below or by confirmed facsimile:

27 Mr. Jimmie Buckland
28 Senior Vice President
Northwest Region
Sims Hugo Neu
600 South 4th Street
Richmond, California 94804
JBuckland@simshugoneu.com
Fax: (510) 412-5421

1 With copies sent to:

2 Scott Miller, Esq.
3 Chief Corporate Counsel - West
4 Sims Hugo Neu
5 110 Fifth Avenue, Seventh Floor
6 New York, New York 10011
7 SMiller@simshugoneu.com
8 Fax: (212) 604-0722

9 and to:

10 Margaret Rosegay, Esq.
11 Pillsbury Winthrop Shaw Pittman LLP
12 50 Fremont Street
13 San Francisco, CA 94105
14 margaret.rosegay@pillsburylaw.com
15 Fax: (415) 983-1200

16 Each party shall promptly notify the other of any change in the above-listed contact
17 information.

18 51. Signatures of the Parties transmitted by facsimile shall be deemed binding.

19 52. No Party shall be considered to be in default in the performance of any of its
20 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is
21 any circumstances beyond the Party's reasonable control, including, without limitation, any
22 act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A
23 Force Majeure event does not include normal inclement weather or inability to pay. Any Party
24 seeking to rely upon this paragraph shall have the burden of establishing that it could not
25 reasonably have been expected to avoid, and which by exercise of due diligence has been
26 unable to overcome, the Force Majeure.

27 53. If for any reason the Court should decline to approve this Consent Agreement in
28 the form presented, the Parties shall use their best efforts to work together to modify the
Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties
are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent
Agreement shall become null and void.

1 54. The settling Parties hereto enter into this Consent Agreement and submit it to the
2 Court for its approval and entry as a final judgment pursuant to the stipulated dismissal
3 referenced in Paragraph 42 above.

4
5 Dated: _____ California Sportfishing Protection Alliance

6
7
8 By: _____
9 Bill Jennings, Executive Director

10
11 Dated: _____ Sims Group USA Corporation

12
13 By: _____
14 Jimmie Buckland, Senior Vice President

EXHIBIT C

| Constituent | Level |
|------------------------|--------------|
| Aluminum | 0.75 mg/l |
| Cadmium | 0.0159 mg/L |
| Chemical Oxygen Demand | 120 mg/L |
| Copper | 0.0636 mg/l |
| Iron | 1.0 mg/l |
| Lead | 0.0816 mg/L |
| Manganese | 0.05 mg/L |
| Mercury | 0.0024 mg/L |
| Oil & Grease | 15 mg/L |
| pH | 6.5 – 8.5 |
| Specific Conductivity | 200 µmho/cm |
| Total Suspended Solids | 100 mg/L |
| Zinc | 0.117 mg/L |