

1 JASON R. FLANDERS (SBN 238007)
2 ANTHONY M. BARNES (SBN 199048)
3 AQUA TERRA AERIS LAW GROUP
4 409 45th Street
5 Oakland, CA 94609
6 Phone: 916-202-3018
7 Email: jrf@atalawgroup.com
8 amb@atalawgroup.com

9 Attorneys for Plaintiff
10 ECOLOGICAL RIGHTS FOUNDATION

11 MATTHEW K. NARENSKY (SBN 215604)
12 WINSTON & STRAWN LLP
13 101 California Street
14 San Francisco, CA 94111-5840
15 Telephone: 415-591-6867
16 Email: mnarensky@winston.com

17 Attorneys for Defendant
18 BADGER CREEK LIMITED

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF KERN

21 ECOLOGICAL RIGHTS FOUNDATION, a
22 a California nonprofit public benefit
23 corporation,

24 Plaintiff,

25 v.

26 BADGER CREEK LIMITED,

27 Defendant.

CASE NO. BCV-16-101227

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 31, 2016

Trial Date: None set

28 **1. INTRODUCTION**

1.1 On March 31, 2016, Plaintiff Ecological Rights Foundation, (“ERF”), a California non-profit public benefit corporation, as a private enforcer, and in the public interest,

1 initiated this action by filing a Complaint for Permanent Injunction, Civil Penalties and Other
2 Relief (the “Complaint”) pursuant to the provisions of California Health and Safety Code
3 section 25249.5 *et seq.* (“Proposition 65”), against Badger Creek Limited (“BCL”). In this
4 action, ERF alleges that BCL failed to comply with the requirements of Proposition 65,
5 including, but not limited to, BCL’s discharge of Proposition 65-listed chemicals into the
6 ground waters of the Tulare Lake Basin.

7 **1.2** ERF and BCL are hereinafter referred to individually as a “Party” or collectively
8 as the “Parties.”

9 **1.3** For purposes of this Consent Judgment, the Parties agree that BCL is a business
10 entity that qualifies as a “person in the course of business” within the meaning of Proposition 65.

11 **1.4** BCL operates an underground water disposal well that is the subject of this suit.
12 This well’s American Petroleum Institute Identification Number (“API No.”) is 02986511 (the
13 “Disposal Well”).

14 **1.5** The Complaint is based on allegations contained in ERF’s Notice of Violation
15 dated March 24, 2016, that was served on the California Attorney General, other public
16 enforcers, and BCL (the “Notice”). A true and correct copy of the Notice is attached as Exhibit
17 A. More than 60 days have passed since the Notice was mailed and uploaded to the Attorney
18 General’s website, and no designated governmental entity has filed a complaint against BCL
19 with regard to the alleged violations.

20 **1.6** ERF’s Notice and Complaint allege that BCL has knowingly discharged
21 wastewater, containing chemicals listed under Proposition 65 in significant quantities, into
22 sources of drinking water covered by Proposition 65.

23 **1.7** BCL denies all material allegations contained in the Notice and Complaint.
24 BCL further denies that the operation of the Disposal Well has violated Proposition 65, or any
25 other laws or regulations. BCL maintains that the Disposal Well is and has always been used
26 and operated in full compliance with all permits and all applicable laws and regulations.

27 **1.8** The Parties have entered into this Consent Judgment in order to settle,
28 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. This

1 Consent Judgment is intended to fully resolve all claims, demands and allegations related to the
2 operation of the Diposal Well, including, without limitation, all claims, demands and
3 allegations set forth in the Notice and in the Complaint.

4 **1.9** Nothing in this Consent Judgment shall constitute or be construed as an
5 admission by any of the Parties, or by any of their respective officers, directors, shareholders,
6 employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees,
7 customers, suppliers, distributors, wholesalers, contractors or retailers. Nothing in this Consent
8 Judgment shall be construed as an admission by the Parties of any fact, finding, issue of law, or
9 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
10 an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
11 purpose. Nothing in this Consent Judgment shall constitute or be construed as giving rise to
12 any presumption or inference of admission or concession by the Parties as to any fault,
13 wrongdoing or liability.

14 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
16 other or future legal proceeding unrelated to these proceedings.

17 **1.11** The Effective Date of this Consent Judgment is the date on which it is entered as
18 a Judgment by this Court, except as to the requirements of Paragraphs 3.2.1-3.2.3 of this
19 agreement, which shall be effective upon full execution of this agreement by the Parties.

20 **2. JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
24 over BCL as to the acts alleged in the Complaint, that venue is proper in Kern County, and that
25 this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims
26 up through and including the Effective Date which were or could have been asserted in this action
27 based on the facts alleged in the Notice and Complaint.
28

1 **3. INJUNCTIVE RELIEF**

2 **3.1** Pursuant to California Code of Regulations, tit. 14, ch. 4, art. 3, sec. 1779.1(b),
3 effective April 20, 2016, an underground injection project approved by the Division of Oil,
4 Gas, and Geothermal Resources (the “Division”) for injection into one of the 11 aquifers
5 enumerated in section 1779.1(b)(1), shall cease injection by December 31, 2016, unless and
6 until the U.S. Environmental Protection Agency (the “US EPA”) determines that the aquifer or
7 the portion of the aquifer where injection is occurring meets the criteria for aquifer exemption.
8 The Santa Margarita formation within the boundaries of the Kern River Field (the “Santa
9 Margarita Aquifer”) is identified as one of the 11 aquifers in section 1779.1(b)(1)(F).

10 **3.2** Accordingly, BCL agrees to cease all injections of wastewater into the Santa
11 Margarita Aquifer, unless and until the US EPA determines that the Santa Margarita Aquifer or
12 the portion of the Santa Margarita Aquifer where injection is occurring meets the criteria for
13 aquifer exemption, according to the following schedule:

14 **3.2.1** By September 1, 2016, BCL will provide ERF with a preliminary plan for
15 the disposal of the subject wastewater, including a list of all anticipated permits needed.

16 **3.2.2** By September 9, 2016, ERF may provide written comment to BCL
17 regarding the preliminary plan and anticipated permits needed.

18 **3.2.3** By October 1, 2016, BCL will provide to ERF, and submit the necessary
19 permit application(s) to initiate its plan for the disposal of the subject wastewater. BCL will
20 provide to ERF copies of additional permit applications, if any, at the time they are submitted.

21 **3.2.3** ERF shall retain the right to participate fully in any and all agency permit
22 approval process(es) considering the foregoing permit application(s).

23 **3.2.4** No later than December 31, 2016, BCL agrees to cease all injections of
24 wastewater into the Santa Margarita Aquifer unless and until the US EPA determines that the
25 Santa Margarita Aquifer or the portion of the Santa Margarita Aquifer where injection is
26 occurring meets the criteria for aquifer exemption.
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1 **4. SETTLEMENT PAYMENT**

2 **4.1** BCL shall make a total settlement payment of \$117,500.00 (“Total Settlement
3 Payment”) to ERF within thirty (30) days of the Effective Date (the “Due Date”), payable to
4 “Aqua Terra Aeris Attorney Client Trust.” The Total Settlement Payment shall be apportioned
5 as follows:

6 **4.2** \$52,500 shall be considered a civil penalty pursuant to California Health and
7 Safety Code §25249.7(b)(1). ERF shall remit 75% (\$39,375) of the civil penalty to the Office
8 of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking
9 Water and Toxic Enforcement Fund in accordance with California Health and Safety Code
10 §25249.12(c). ERF will retain the remaining 25% (\$13,125) of the civil penalty.

11 **4.3** \$25,000 shall be distributed to ERF, in lieu of further civil penalties, for use
12 toward reducing Californians’ exposures to Proposition 65 listed chemicals in drinking water,
13 and toward increasing California consumers’, workers’ and communities’ awareness of health
14 hazards posed by Proposition 65 listed chemicals, and reducing such exposures.

15 **4.4** \$37,500 shall be considered reimbursement for attorneys’ fees and litigation
16 costs of Aqua Terra Aeris Law Group.

17 **4.5** \$2,500 shall be considered reimbursement for Plaintiff’s expert witness or other
18 legal fees and costs incurred in review of the deliverables under, and monitoring compliance
19 with, this Consent Judgment.

20 **4.6** In the event that BCL fails to remit the Total Settlement Payment owed under
21 Section 4 of this Consent Judgment on or before the Due Date, BCL shall be deemed to be in
22 material breach of its obligations under this Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may be modified only (i) by written stipulation of the Parties
25 and (ii) upon entry by the Court of a modified consent judgment.
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1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
4 Consent Judgment.

5 **7. APPLICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
7 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
8 divisions, affiliates, franchisees, licensees, contractors, customers, distributors, wholesalers,
9 retailers, predecessors, successors, and assigns.

10 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

11 **8.1** This Consent Judgment is a full, final and binding resolution between ERF, on
12 behalf of itself and in the public interest, and BCL and its respective officers, directors,
13 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
14 franchisees, licensees, contractors, customers, distributors, wholesalers, retailers, predecessors,
15 successors, and assigns (collectively, the "Released BCL Parties")

16 **8.2** ERF, on behalf of itself and in the public interest, hereby finally, fully and
17 forever waives, releases and discharges the Released BCL Parties from any and all claims,
18 actions, causes of action, suits, demands, liabilities, damages, losses, penalties, fees, costs and
19 expenses (including, without limitation, attorneys' fees and expenses) that that were asserted in
20 the Notice and Complaint, up to and including the Effective Date.

21 **8.3** ERF, on its own behalf only, including its respective officers, directors,
22 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
23 franchisees, licensees, contractors, customers, distributors, wholesalers, retailers, predecessors,
24 successors, and assigns, and not in its representative capacity, also hereby finally, fully and
25 forever waives, releases and discharges the Released BCL Parties from any and all claims,
26 actions, causes of action, suits, demands, liabilities, damages, losses, penalties, fees, costs and
27 expenses (including, without limitation, attorneys' fees and expenses) that relate to or arise out
28 of the operation of the Disposal Well, up to and including the Effective Date.

1 **8.4** ERF on its own behalf only, on the one hand, and BCL on its own behalf only,
2 on the other, further waive and release any and all claims they may have against each other for
3 all actions or statements made or undertaken in the course of seeking or opposing enforcement
4 of Proposition 65 in connection with the Notice or Complaint up through and including the
5 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
6 right to seek to enforce the terms of this Consent Judgment.

7 **8.5** ERF on its own behalf only, on the one hand, and BCL on its own behalf only,
8 on the other, acknowledge that this Consent Judgment is expressly intended to cover and
9 include all known and unknown claims up through the Effective Date, including all rights of
10 action therefore. The Parties acknowledge that the claims released in Sections 8.2, 8.3 and 8.4
11 above may include unknown claims, and nevertheless waive California Civil Code section
12 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
16 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
17 OR HER SETTLEMENT WITH THE DEBTOR.

18 ERF on its own behalf only, on the one hand, and BCL on its own behalf only, on the other,
19 acknowledge and understand the significance and consequences of this specific waiver of
20 California Civil Code section 1542, and hereby expressly waive and relinquish any and all
21 protections, privileges, rights and benefits they may hold under Section 1542.

22 **8.6** Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance with Proposition 65 by any releasee regarding the alleged discharges of
24 Proposition 65 chemicals to sources of drinking water as set forth in the Notice and the
25 Complaint.

26 **8.7** Nothing in this Consent Judgment is intended to apply to any activities other
27 than the injection of wastewater at the Disposal Well.

28 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

 In the event that any of the provisions of this Consent Judgment are held by a court to be
unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

1 **10. GOVERNING LAW**

2 The terms and conditions of this Consent Judgment shall be governed by and construed in
3 accordance with the laws of the State of California.

4 **11. PROVISION OF NOTICE**

5 All notices required to be given to either Party to this Consent Judgment by the other shall
6 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
7 email may also be sent.

8 **FOR ECOLOGICAL RIGHTS FOUNDATION:**

9 Fredric Evenson,
10 Director, Ecological Rights Foundation
11 P.O. Box 1000
12 Santa Cruz, CA 95061
13 Tel: (831) 454-8216
14 Email: evenson@ecologylaw.com

15 With a copy to:

16 JASON R. FLANDERS
17 ANTHONY M. BARNES
18 AQUA TERRA AERIS LAW GROUP
19 409 45th Street
20 Oakland, CA 94609
21 Phone: 916-202-3018
22 Emails: jrf@atalawgroup.com
23 amb@atalawgroup.com

24 **BADGER CREEK LIMITED**

25 Daniel Consie
26 Badger Creek Limited
27 34759 Lencioni Ave,
28 Bakersfield, CA 93308

With a copy to:

MATTHEW K. NARENSKY
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111-5840
Telephone: 415-591-6867
Email: mnarensky@winston.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERF shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

11 This Consent Judgment may be executed in counterparts, which taken together shall be
12 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as
13 the original signature.

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective counsel for each
16 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
18 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
19 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
20 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
21 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
22 equally in the preparation and drafting of this Consent Judgment.

23 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

1 **16. ENFORCEMENT**

2 ERF may, by motion or order to show cause before the Superior Court of Kern County,
3 enforce the terms and conditions contained in this Consent Judgment. In any action brought by
4 ERF to enforce this Consent Judgment, ERF may seek whatever fines, costs, penalties, or
5 remedies as are provided by law for failure to comply with the Consent Judgment. To the extent
6 ERF alleges that the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERF shall not be limited to enforcement of this Consent Judgment,
8 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
9 law for the alleged failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

11 **17.1** This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter herein, and any and all
13 prior discussions, negotiations, commitments and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein have
15 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
16 herein, shall be deemed to exist or to bind any Party.

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
19 explicitly provided herein, each Party shall bear its own fees and costs.

20 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
21 **CONSENT JUDGMENT**

22 This Consent Judgment has come before the Court upon the request of the Parties. The
23 Parties request the Court to fully review this Consent Judgment and, being fully informed
24 regarding the matters which are the subject of this action, to:

25 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
26 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
27 been diligently prosecuted, and that the public interest is served by such settlement; and

28 (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 IT IS SO STIPULATED:

3 Dated: AUGUST 31, 2016

Ecological Rights Foundation
ECOLOGICAL RIGHTS FOUNDATION

By: *James Lampert*, EXEC. DIR
James Lampert, Director

6 Dated: August 31, 2016

BADGER CREEK LIMITED

Robert S. Hanna
By: ROBERT S. HANNA
His: AUTHORIZED SIGNATORY OF
REDWOOD III. UC, ITS GENERAL
PARTNER

10 APPROVED AS TO FORM:

11 Dated: August 31, 2016

AQUA TERRA AERIS LAW GROUP

By: *Jason R. Flanders*
Jason R. Flanders
Anthony M. Barnes
Attorneys for Plaintiff Ecological Rights
Foundation

16 Dated: August 31, 2016

WINSTON & STRAWN LLP

By: *Matthew K. Narensky*
Matthew K. Narensky
Attorney for Defendant Badger Creek
Limited

22 ORDER AND JUDGMENT

23 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
24 approved and Judgment is hereby entered according to its terms.

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26 Dated: _____, 2016

Judge of the Superior Court