

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

BEAR CREEK RECOVERY, an Oregon
non-profit corporation, and
SUSAN HANSEN, an individual,

Plaintiffs,

v.

CITY OF MOLALLA, an Oregon
municipal corporation.

Defendant.

Case No.: 3:14-cv-00513-YY

AMENDED CONSENT DECREE

Bear Creek Recovery and Susan Hansen (collectively “Plaintiffs”) and the City of Molalla, Oregon (“City” or “Defendant”), hereafter collectively the “Parties,” enter into the following Amended Consent Decree:

WHEREAS, Defendant owns and operates a municipal wastewater treatment plant (“WWTP”) located at 12424 Toliver Road, Molalla, Oregon 97038 (the “Facility”), which is permitted to discharge municipal treated effluent to the Molalla River and to distribute recycled water to approved irrigation fields under a National Pollutant Discharge Elimination System Permit (“NPDES Permit”) issued by the Oregon Department of Environmental Quality (“DEQ”) on June 1, 2014 and previously on December 11, 2009;

WHEREAS, On March 31, 2014, after notices to the City, the DEQ and the U.S. Environmental Protection Agency (“EPA”), Plaintiffs Bear Creek Recovery and Susan Hansen (“Plaintiffs”) commenced this citizen suit alleging that the City violated the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., and seeking declaratory and injunctive relief, civil penalties, costs and expenses, and attorneys’ fees. Plaintiffs’ Complaint and First Amended Complaint alleged that the City discharged municipal treated effluent and other pollutants into the navigable waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and in violation of the conditions and limitations set forth in the City’s NPDES Permit and Reclaimed Water Use Plan (“RWUP”) as issued and approved by DEQ.

WHEREAS, the Parties settled the above lawsuit via the Consent Decree entered on September 4, 2015 (Dkt No. 33), here being amended pursuant to Paragraph 44 of said Consent Decree;

WHEREAS, the City, despite improving its operations and maintenance while under the September 4, 2015 Consent Decree, did not meet certain deadlines contained within that Consent Decree, and could not comply with other provisions due to performance limitations of its WWTP;

WHEREAS, Plaintiffs issued a Notice of Request for Resolution for Violations of Consent Decree on February 1, 2018, alleging violations of the Consent Decree, pursuant to Paragraph 42 of said Consent Decree;

WHEREAS, the City has been preparing a Wastewater Facility and Collection System Master Plan (the “Wastewater Master Plan”) to guide the construction of a new WWTP and maintain the collection infrastructure;

WHEREAS, Plaintiffs and the City agree that settlement of these matters is in the best interest of the Parties and the public;

WHEREAS, Plaintiffs and the City agree that amending the Consent Decree by mutual agreement and without additional litigation is the most appropriate means of resolving this action; and

WHEREAS, Plaintiffs, the City and their respective counsel consent to entry of this Amended Consent Decree without trial, adjudication, or admission of any issue of fact or law with respect to Plaintiffs' claims or allegations and without admission of any fact, allegations, or legal argument contained in Plaintiffs' sixty (60) day notice, Complaint or Amended Complaint in this action, or Notice of Request for Resolution for Violations of Consent Decree.

NOW THEREFORE, upon consideration and mutual promises herein contained, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

1. For the purposes of this Amended Consent Decree, the Parties agree that this Court has jurisdiction over the Parties and the subject matter of this action pursuant to 33 U.S.C. §§ 1251, *et seq.* and 28 U.S.C. §§ 1331, *et seq.*

2. For the purpose of this Amended Consent Decree, the Parties agree that the Complaint and First Amended Complaint state a claim upon which relief may be granted against the City.

II. APPLICABILITY

3. The undersigned representative for each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Amended Consent Decree and to legally bind the Party or Parties and its successors in interest.

4. This Amended Consent Decree shall apply to, and be binding upon, the Parties and upon their successors and assigns. The provisions of this Amended Consent Decree shall also inure to the benefit of and be binding upon the Parties' officials, agents, representatives, officers,

directors, employees, successors, and assigns. Changes in the organizational form or status of a Party shall have no effect on the binding nature of this Amended Consent Decree or its applicability.

5. This Amended Consent Decree shall apply to the City's compliance with its NPDES Permit and incorporated DEQ-approved documents, including the RWUP, the Biosolids Management Plan, but not the 2015 I/I Assessment and Reduction Plan.

III. SETTLEMENT AND RELEASE OF CLAIMS

6. Upon entry, the prior Consent Decree, entered on September 4, 2015, shall terminate and this Amended Consent Decree shall become effective. This Amended Consent Decree shall be deemed to settle and release all claims asserted by Plaintiffs Bear Creek Recovery and Susan Hansen in this case as alleged in Plaintiffs' Complaint, First Amended Complaint, and the Notice of Request for Resolution for Violations of Consent Decree, as well as any pending and future claims, suits, and administrative actions related to wastewater collection, treatment, recycled water distribution, and treated wastewater discharge by the City, including, but not limited to, violations of the September 4, 2015 Consent Decree, all operations or maintenance of the WWTP and related infrastructure (e.g., the collection system, the recycled water distribution lines, and the discharge line from WWTP to Outfall 001), discharge to the Molalla River, and land application of recycled water or biosolids by the City through the date of the termination of this Amended Consent Decree, other than claims to enforce this Amended Consent Decree. Plaintiffs' exclusive remedy for any violation of the terms of this Amended Consent Decree shall be enforcement of this Amended Consent Decree.

7. The City releases and discharges Plaintiffs, their representatives, assigns, officers, and attorneys, including those who have held office in the past, from any and all liabilities, penalties, costs, and causes of action of every nature existing as of the date this Amended Consent

Decree is entered, that relate to Plaintiffs' 60-day notice of filing of this lawsuit, and the filing of this lawsuit, excepting compliance with the terms and conditions of this Amended Consent Decree.

8. The City represents and warrants that it is capable of satisfying all monetary obligations imposed by this Amended Consent Decree.

9. This Amended Consent Decree is a settlement of disputed facts and law, and shall not constitute evidence in any legal proceeding or an admission of, or adjudication with respect to, any matter alleged in or arising out of the Complaint or First Amended Complaint, or admissions or evidence of any wrongdoing or misconduct on the part of the Parties or any successor.

IV. OBLIGATIONS OF THE PARTIES

10. In addition to this Amended Consent Decree, Defendant shall comply with all terms and conditions of its NPDES Permit and the following incorporated DEQ-approved documents: the RWUP, Biosolids Management Plan, and the 2018 Mutual Agreement and Order ("MAO") regarding the NPDES Permit entered into between the City and DEQ. Should the NPDES Permit or the incorporated DEQ-approved documents be amended or modified during the term of this Amended Consent Decree, the version of the NPDES Permit or the incorporated documents in effect at the time of the relevant incident shall be used for determining compliance with this Amended Consent Decree. The Parties recognize that the 2015 I/I Assessment and Reduction Plan is out of date, and failure to comply with the provisions of the 2015 I/I Assessment and Reduction Plan shall not be a violation of the Amended Consent Decree. The City has entered into an MAO with DEQ that contains interim effluent limitations for weekly and monthly average and daily maximum discharge of Total Suspended Solids (TSS). Plaintiffs do not accept any interim permit limits as valid without formal modification of the City's NPDES Permit. However, for purposes of this Amended Consent Decree, Plaintiffs agree to waive stipulated payments and enforcement for any exceedances of the Permit limits that do not exceed the interim TSS limits of the 2018

MAO. This Amended Consent Decree places additional obligations on the City beyond the requirements of the NPDES Permit and incorporated DEQ-approved documents, and any DEQ approved MAO. The City agrees to the following obligations as full and complete satisfaction of the claims covered by this Amended Consent Decree.

Information Sharing

11. Beginning on the effective date of this Amended Consent Decree and continuing until the date on which this Amended Consent Decree is terminated pursuant to Paragraph 44, Defendant shall post on its website copies of formal communications, whether written or electronic, that the City submits to or receives from DEQ concerning the City's compliance with the NPDES Permit and any successor NPDES Permit authorizing treated effluent and recycled water discharges from the Facility. This includes, but is not limited to, monthly discharge monitoring reports ("DMRs"), recycled water annual reports, annual inflow and infiltration reports, monthly summary reports, biosolids reports, and inspection reports. The City shall post such documents on its website no later than thirty (30) days after the end of each calendar quarter during which those documents were received or generated by the City, and such documents shall remain posted for at least a 90-day period or for such longer period as does not inhibit the continued effective functioning of the City's website. Additionally, the City shall post on its website, copies of any formal requests to modify the NPDES permit or incorporated DEQ-approved documents and any emergency discharge permit requests no later than fourteen (14) days after the transmission of such document(s).

12. The City shall host quarterly meetings for the Plaintiffs as well as any interested members of the public to hear updates on the City's wastewater compliance status, work on the wastewater collection, treatment, and/or disposal systems completed in the previous quarter, as

well as a summary of work planned on the plant and system for the following quarter. Such meetings will occur on:

- a. The first Wednesday of March;
- b. The first Wednesday of June;
- c. The first Wednesday of September; and
- d. The first Wednesday of December.

Should the City need to re-schedule the meeting due to unavailability of City staff or consultants, the City shall provide the Plaintiffs' attorneys and the public with notice at least seven (7) days prior to the meeting, and work with Plaintiffs' attorneys to find a mutually agreeable date to reschedule. Notification to the public will be provided by the City posting notice on the City's website.

13. Fourteen (14) days prior to each quarterly meeting, the City shall post on its website a report describing the work completed on the plant and system in the previous three (3) months, including a summary of expenditures, and a summary of the performance of the collection, treatment, and disposal systems with respect to the City's NPDES permit. Such reports shall also include a summary of any Certifications of Capacity issued by the City during the previous three (3) months.

14. In the first week of each month that does not feature a quarterly in-person meeting, the City shall post an update to the City's website listing any violations of the Permit or this Amended Consent Decree in the previous month, as well as any compliance challenges anticipated in the next month.

15. Within forty-five (45) days of any deadline contained within this Amended Consent Decree, including deadlines in the compliance schedule included in Paragraph 8.A of the

incorporated MAO, the City shall provide the Plaintiffs with documentation demonstrating compliance with the associated Amended Consent Decree terms.

16. The Parties shall work together to prepare annual joint status reports for the Court containing confirmation of compliance with the Amended Consent Decree, including compliance with any necessary stipulated payments, identification of any issues that may require modification of the Amended Consent Decree, and time left before termination of the Amended Consent Decree. Such reports shall be transmitted by January 31 of each year this Amended Consent Decree is in effect.

Plant Operation and Maintenance

17. Within ninety (90) days of the entry of this Amended Consent Decree, the City shall retain an outside consultant (the “Compliance Specialist”) to track the City’s compliance with the Amended Consent Decree and the Permit, as well as any MAO entered into by the City with DEQ. In addition to overseeing and providing advice regarding the City’s compliance, the Compliance Specialist will direct the preparation of the report described in Paragraph 13.

18. Within ninety (90) days of the entry of this Amended Consent Decree, the City shall evaluate whether the installation of floating mixers in the lagoons or growing duckweed on the lagoon pond surface would be cost-effective methods for improving treatment at the current WWTP while the new WWTP is being built. Upon completing such evaluation, the City shall provide a report to Plaintiffs detailing whether either method will be implemented and, if not, explaining why the method is not a cost-effective means of improving treatment at the Facility. Such report shall be due within thirty (30) days after the completion of the evaluation.

19. If at any time during the period of this Amended Consent Decree, the City discharges treated effluent to the Molalla River outside the seasonal discharge restriction contained within its Permit, or in violation of the dilution requirement provided in Table A2 of the City’s

NPDES permit, the City shall, prior to any such discharge, place visible signage notifying the public of any such discharge at the following locations: 1) the Molalla River outfall; and 2) at the Highway 211 bridge on both the east and west access trails leading to the Molalla River. The signage shall state: “Warning: Treated Wastewater Discharge, Avoid Contact.” The City shall also post notification of such discharge on its website.

20. The City shall conduct an in-person or remote check of the facility’s SCADA computer operating system at least once every twenty-four (24) hours to ensure that the facility is operating properly.

21. The City shall maintain a secondary high-level alarm system, separate from the SCADA computer operating system, which will alert the City of operational malfunctions at the facility that cause the Aeration Basin to rise above its standard operating level. This secondary alarm system shall be intended to alert the City to the overflowing of the Aeration Basin in the event the SCADA system fails to issue such an alert.

22. In the event of an overflow of wastewater from the facility to Bear Creek, the City shall notify the public and all downstream landowners with property directly adjoining Bear Creek within one mile of the overflow point within twenty-four (24) hours of discovering the overflow. Public notification shall be by posting on the City’s website. Notification to downstream landowners shall be either by phone, email, or door-to-door contact.

23. As required by Oregon law and regulation, the City will submit any plans and specifications for collection system and treatment plant upgrades or expansions to DEQ for review and approval. A Certification of Capacity stating that the City agrees to provide sewer service and has sewerage system and treatment capacity to do so at its currently operating WWTP, must be included with all plan and specification reviews submitted by the City to DEQ, per OAR 340-052-0015(3)(c). The City shall provide a copy of any such certification to Plaintiffs within fourteen

(14) days of submitting it to DEQ. The City will include Plaintiffs and Plaintiffs' counsel on its public notification list for all development applications subject to public notice requirements.

24. Within sixty (60) days of the entry of this Amended Consent Decree, the City shall (1) provide notice of the results of the 2017 lagoon leak test, a link to the final report, and a summary of the work to be completed under the Master Plan to all registered well owners within a 1/4 mile (1320 ft.) radius of the Facility's storage lagoons, and (2) publish notice in the local newspaper summarizing the results of the 2017 lagoon leak test and explaining the work to be completed under the Master Plan. Such notice shall include a link to the City's website, where the public can find additional information, including contact information for the relevant City and DEQ officials.

Recycled Water Irrigation

25. The City shall comply with its DEQ-approved RWUP. Regardless of the class of water approved for application in the RWUP, the City shall conduct monitoring of its recycled water being applied to the Coleman Ranch or Cemetery properties sufficient to evaluate whether that water is meeting the Class A standards defined in OAR Chapter 340, Division 55.

26. Each year, prior to the commencement of the irrigation season, the City shall meet with all irrigators and their staff to train them on compliance with the RWUP and any specific issues of concern at their properties, including the potential for overspray, compliance with setbacks, prevention of ponding, and evaluation of run-off potential.

27. The City shall supervise and instruct irrigators and their staff to ensure that the placement and use of all hand-line sprinklers used for irrigation with City recycled water on the North Coleman Ranch property complies with the RWUP including any applicable setback requirements and to prevent ponding and run-off resulting from such irrigation. The City will not use, or permit the use of, any hand-line sprinklers on the South Coleman Ranch property. If it is

determined by DEQ in the future that use of the hand-line sprinklers may be accomplished in compliance with the RWUP, the City may use such sprinklers on the South Coleman Ranch Property, provided the City supervises the placement and use of said sprinklers in the same manner specified for the North Coleman property.

28. The City shall manage, through specific direction to the irrigators, the rotational pattern, placement, and irrigation schedule of the “Big Gun” sprinklers and reels used for irrigation of the City recycled water on the Coleman Ranch property.

29. The City shall conduct daily monitoring of all active irrigation sites during the irrigation season for compliance with the RWUP, including on-site inspections for ponding and run-off. The City shall maintain records of all irrigation site inspections. Such records shall include the information necessary to document compliance with the RWUP, including, as necessary, the location, date and time of the inspection, any issues identified by the inspector and corrective actions taken (if any), any moisture block readings and allowable gross irrigation rate calculations that may apply, any piezometer readings that may apply, the amount of water applied, and any other data deemed relevant by the City. The City shall also collect and maintain the data necessary to determine the City’s compliance with the NPDES Permit’s standards for recycled water.

30. Within ninety (90) days of entry of this Amended Consent Decree, the City shall ask the owners of Coleman Ranch for permission to install visible markers at Coleman Ranch marking any setbacks and buffer zones required by the RWUP and, if permission is granted, shall work with Coleman Ranch to install such markers within ninety (90) days of permission being granted. The City shall use reasonable efforts to ensure the markers are cattle-resistant, but the City shall not be responsible for replacing such markers if cattle or other wildlife destroy them.

31. The City shall maintain a 24-hour voicemail and email hotline for reporting alleged violations of the RWUP. The City shall list the voicemail hotline and email account on the City's website. The City shall keep a record of all reports made to the hotline to be available to the public upon request under Oregon's Public Records Act.

Biosolids

32. The City shall comply with all terms and conditions of the 2013 Biosolids Management Plan as approved by DEQ or any future update of same.

33. The City shall continue its annual biosolids removal program. Once per calendar year, the City shall conduct a survey of the aeration basin and treatment lagoons to evaluate the level of solids build-up.

34. The City shall conduct a biosolids removal at least once each calendar year during the term of this Amended Consent Decree, removing accumulated biosolids to the extent practicable, given the City's budget and the availability of sites capable of accepting biosolids in compliance with its Biosolids Management Plan, and consistent with maintaining the biology in the lagoons necessary for treatment. A minimum of 80% of the biosolids accumulation identified in the February/March 2018 lagoon survey shall be removed by December 31, 2023. The accumulated biosolids shall be removed entirely by the completion of the new WWTP.

Inflow and Infiltration

35. The Parties recognize that the City's 2015 Inflow and Infiltration ("I/I") Assessment and Reduction Plan ("I/I Plan"), is out of date due to the creation of the Wastewater Master Plan, and as such, the City's future I/I reduction efforts will not track the I/I Plan. Failure to follow the I/I Plan or the schedule contained within shall not constitute a violation of this Amended Consent Decree.

36. The following seven projects have been identified in the Wastewater Master Plan as the highest priority projects for removing I/I from the collection system:

1. Replace/Rehabilitate existing 8-inch sewer along Fenton Avenue from TL_B_19 to TL_B_20.
2. Replace/Rehabilitate existing 8-inch sewer along Patrol Street from TL_B_2 to TL_B_27.
3. Replace/Rehabilitate existing 8-inch sewer along Lola Avenue from TL_A_33 to TL_A_25.
4. Replace/Rehabilitate existing 8-inch sewer from TL_A_22 to TL_A_21 along East 2nd [Avenue/Street] to TL_A_16 on Eckerd Avenue.
5. Replace/Rehabilitate existing 8-inch sewer along S. Swiegle from BC_A3_17 to BC_A3_7.
6. Replace/Rehabilitate existing 8-inch sewer beginning at the S. Molalla Pump Station, continuing to manhole BC_A1_2, and terminating at the clean-out located east of manhole BC_A1_3.
7. Replace/Rehabilitate existing 8-inch sewer along Fenton Avenue from TL_B_20 to TL_B_22.

The Parties recognize that the exact order of the completion of these projects may vary. The City shall complete one of the above identified projects by the end of 2019, another by the end of 2020, another by the end of 2021, another by the end of 2022, and another by the end of 2023. The order of completion shall be in the City's discretion.

37. Plaintiffs agree and confirm that the City's I/I program, if properly implemented and funded as described in this Amended Consent Decree, constitutes positive and beneficial action by the City on behalf of the environment, including the ecology and species of the Bear

Creek and Molalla watersheds, and the general public. Plaintiff Bear Creek Recovery shall publicize all City-posted plans and reports related to the City's I/I program by posting all such documents on the Bear Creek Recovery website, to the extent that website remains operational, and promoting the positive benefits of a properly implemented and fully funded I/I program.

V. ATTORNEYS' FEES AND COSTS

38. Within twenty (20) days of the effective date of this Amended Consent Decree, Defendant shall pay Plaintiffs' reasonable attorneys' fees and costs in the amount of Fifty Thousand Dollars and No Cents (\$50,000) by check payable and mailed to Crag Law Center, Attn: Maura Fahey, 3141 E Burnside Street, Portland, Oregon 97214. This payment shall constitute full and complete satisfaction of any claims Plaintiffs may have under the Clean Water Act for attorneys' fees and costs.

VI. STIPULATED PAYMENTS

39. To satisfy any and all outstanding issues regarding stipulated payments under the September 4, 2015 Consent Decree, the City shall include a budget allocation of at least One Hundred Eighty-nine Thousand, Five Hundred Dollars and No Cents (\$189,500) for biosolids and/or I/I removal work in its budget for fiscal year 2019-20, over and above any unexpended funds for biosolids or I/I removal work from fiscal year 2018-19.

40. The City agrees to pay, during the term of this Amended Consent Decree, stipulated payments in the amount of Five Hundred Dollars and No Cents (\$500.00) per day for each day the City is in violation of the substantive terms and conditions of this Amended Consent Decree, except that the City shall pay increased stipulated payments in the amount of One Thousand Dollars and No Cents (\$1,000.00) per day for each day the City is in violation of Paragraph 34. The obligations of Paragraphs 10, 12, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39, and 43 shall be considered substantive terms. Such payments are due and

payable within thirty (30) days from the discovery of any violation(s). For effluent violations, discovery of the violations shall be deemed to have occurred upon submittal of the relevant discharge monitoring report to DEQ. Any violations of monthly or weekly average effluent limitations shall require a stipulated payment for each day in the relevant weekly or monthly period in accordance with *Oregon State Pub. Interest Research Grp., Inc. v. Pac. Coast Seafoods Co.*, 361 F. Supp. 2d 1232, 1241 (D. Or. 2005). Such payments shall be allocated for future work towards the completion of the biosolids removal program (as set out in Paragraphs 33 and 34) or to the I/I reduction program (as set out in Paragraph 36), except that such funds shall not count towards the City's funding obligations set forth in Paragraphs 39. The City will provide written notice to Plaintiffs that they have allocated stipulated payments pursuant to this paragraph at the time the payments are allocated. The notice shall set forth the nature of the violation(s).

41. The City agrees to pay, during the term of this Amended Consent Decree, stipulated payments in the amount of Five Hundred Dollars and No Cents (\$500.00) per occurrence for any violations of Paragraph 11, 13, 14, 15, & 40, including late or insufficient payment or late or insufficient notification. Such payments shall be allocated for future work towards the completion of the biosolids removal program (as set out in Paragraphs 33 and 34) or to the I/I reduction program (as set out in Paragraph 36), except that such funds shall not count towards the City's funding obligations set forth in Paragraphs 39. The City will provide written notice to Plaintiffs that they have allocated stipulated payments pursuant to this paragraph at the time the payments are allocated. The notice shall set forth the nature of the violation(s).

42. If, in their review of the monthly and quarterly reports prepared by the City, Plaintiffs identify any violations previously unidentified by the City or DEQ for which stipulated payment needs to be made, Plaintiffs shall provide notice to the City within thirty (30) days. If

such notice is not provided within those thirty (30) days, any violations clearly identifiable in such reports will be deemed to have started when such notice is given.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

43. By July 15, 2019, the City shall pay Fifteen Thousand Three Hundred Twelve Dollars and No Cents (\$15,312) for a Supplemental Environmental Project for habitat restoration or enhancement in the Molalla River Basin to a non-profit organization or governmental agency which the Parties mutually select.

VIII. TERM AND CONTINUING JURISDICTION

44. This Amended Consent Decree takes effect on the date it is entered by the Court. All provisions of this Amended Consent Decree shall terminate five (5) years (sixty (60) months) following the date this Amended Consent Decree is entered, or upon the beginning of operation of the new WWTP, whichever is sooner. Upon termination of this Amended Consent Decree, this case shall be dismissed with prejudice, with each party bearing its own costs and expenses except as otherwise provided in this Amended Consent Decree.

45. The Court shall retain jurisdiction over this matter until termination of this Amended Consent Decree as provided in Paragraph 44 and allow this case to be reopened without a filing fee for the purpose of allowing the Parties to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance with, and/or resolve any dispute regarding the terms or conditions of this Amended Consent Decree. In the event of a dispute regarding implementation of, or compliance with, this Amended Consent Decree, the Parties shall first attempt to informally resolve the dispute through meetings between the Parties by either Party serving written notice of request for resolution to the other Party and their counsel of record. If no resolution is reached within seventy-five (75) days from the date that the notice of dispute is served, the Parties may resolve the dispute by filing motions with the Court. The Parties agree

that the Court has the full authority available under federal or Oregon law to issue any orders or remedies the Court deems appropriate. Nothing in this paragraph is intended to limit the right of Plaintiffs to communicate reports or complaints directly to DEQ regarding the City's compliance with the NPDES permit aside from an action for formal enforcement of this Amended Consent Decree, provided Plaintiffs include the City on any such written communications by emailing an electronic copy to the City's reporting hotline maintained under Paragraph 31 of this Amended Consent Decree.

IX. GENERAL PROVISIONS

46. The Parties recognize that no consent decree can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent decree by the United States Attorney General and the Administrator of EPA pursuant to 33 U.S.C. § 1365(c)(3). Therefore, upon the signing of this Amended Consent Decree by the Parties, Plaintiffs shall serve copies of the Amended Consent Decree upon the Administrator of EPA and the United States Attorney General.

47. This Amended Consent Decree may be modified only upon the written consent of the Parties and the approval of the Court.

48. If for any reason the Court should decline to approve this Amended Consent Decree in the form presented, or if the United States Attorney General or Administrator of EPA provides comments on the presented form that indicate that the federal government will object to the Court's approval of the Amended Consent Decree, the Parties agree to try to negotiate a speedy resolution of such issues in a good faith attempt to cure any objection raised by the Court to the entry of this Amended Consent Decree or, if necessary, to address any legitimate and reasonable comments provided by the United States Attorney or Administrator of EPA.

49. Notification to any Party under this Amended Consent Decree will be deemed submitted on the date it is postmarked (with a delivery receipt). Notifications or copies required by this Amended Consent Decree to be made to Plaintiffs shall be mailed to: Crag Law Center, Attn. Maura Fahey, 3141 E Burnside Street, Portland, OR 97214. Notifications required by this Amended Consent Decree to be made to Defendants shall be mailed to: J.W. Ring, Ring Bender LLP, 621 S.W. Morrison Street, Suite 600, Portland, OR 97205. Upon reasonable notice, any Party may substitute a new name and address for the purpose of this paragraph of this Amended Consent Decree.

50. All activities under this Amended Consent Decree shall be performed in accordance with all applicable federal, state, and local laws and regulations.

X. ORDER

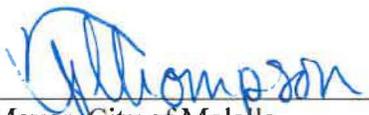
51. Upon consideration of the foregoing, this Court finds that this Amended Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. This Amended Consent Decree is approved and will constitute the final judgment between the Parties. The Court finds there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. This Court retains jurisdiction over both the subject matter of this Amended Consent Decree and the Parties for the duration of this Amended Consent Decree.

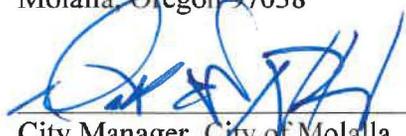
IT IS SO ORDERED THIS 26th DAY of March 2019.

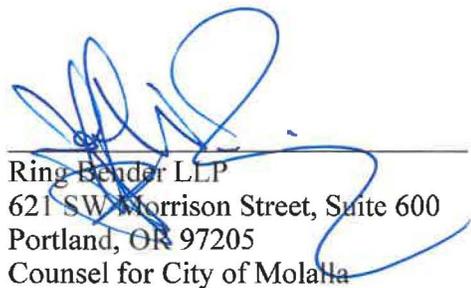
/s/ Youlee Yim You
United States Magistrate Judge

The UNDERSIGNED PARTIES enter into this Amended Consent Decree:

FOR DEFENDANT CITY OF MOLALLA, OREGON

By  _____ Date: 1-23-19
Mayor, City of Molalla
P.O. Box 248
Molalla, Oregon 97038

 _____ Date: 1-23-19
City Manager, City of Molalla
P.O. Box 248
Molalla, Oregon 97038

By  _____ Date: 1/29/19
Ring Bender LLP
621 SW Morrison Street, Suite 600
Portland, OR 97205
Counsel for City of Molalla

FOR PLAINTIFF BEAR CREEK RECOVERY

By: 
President, Bear Creek Recovery

Date: 1/18/2019


Crag Law Center
3141 E Burnside Street
Portland, OR 97214
Counsel for Bear Creek Recovery

Date: 1/24/2019

FOR PLAINTIFF SUSAN HANSEN

By: 
Susan Hansen

Date: 1/18/2019


Crag Law Center
3141 E Burnside Street
Portland, OR 97214
Counsel for Susan Hansen

Date: 1/24/2019