

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

**TENNESSEE  
CLEAN WATER NETWORK,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 3:09-cv-00557**

**DAVID TRANTANELLA,**

**Defendant.**

**CONSENT DECREE**

WHEREAS the parties to this Consent Decree are Plaintiff Tennessee Clean Water Network (“Plaintiff”), and Defendant David Trantanella (“Defendant”) (the “Parties”);

WHEREAS Plaintiff filed a Complaint in this action on December 14, 2009, pursuant to Section 505 of the Clean Water Act (CWA), 33 U.S.C. § 1365, alleging that stormwater discharges from construction of the Casa Bella Subdivision violate the CWA and the permit issued to Defendant thereunder;

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is an adequate and equitable resolution of the claims in the above-captioned case;

WHEREAS, a copy of the proposed Consent Decree was received by the Attorney General of the United States and the Administrator of the United States

Environmental Protection Agency more than forty-five (45) days before entry of this Consent Decree as required by 33 U. S. C. § 1365(c)(3);

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and in consideration of the mutual promises and covenants contained herein, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. For purposes of the entry of this Consent Decree, the Parties agree that the Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. § 1331 or 33 U.S.C. § 1365(a). For purposes of the entry of this Consent Decree, the Parties agree that venue lies in this District pursuant to Section 505(c)(1) of the CWA, because it is the judicial district in which the alleged violations occurred.

#### II. COVERAGE

2. The provisions of this Consent Decree shall apply to, and be binding upon, the Parties and their respective officers, directors, shareholders, successors, affiliates, parent companies, subsidiaries, heirs, and assigns; provided, however, that the obligation to make any payments remaining due under paragraphs 4 and 6 shall not be affected by a change in ownership of all, or any portion of, the land now owned by Defendant within the Casa Bella Subdivision.

3. Defendant agrees not to challenge the terms of this Consent Decree in any bankruptcy proceeding.

### III. SUPPLEMENTAL ENVIRONMENTAL PROJECT

4. Defendant shall pay \$7,500 to Conservation Fisheries, Inc. as a Supplemental Environmental Project ("SEP") to implement a new program to propagate several types of darters to be re-introduced into the Holston River system. Defendant shall execute any and all instruments necessary to ensure that the \$7,500 payment is used by Conservation Fisheries, Inc. for the intended purpose. Payments shall be made according to the following schedule:

- a. \$2,500 upon entry of this Consent Decree;
- b. \$2,500 six months after the date of entry of this Consent Decree; and
- c. \$2,500 twelve months after the date of entry of this Consent Decree.

5. The Parties agree that the SEP shall take the place of any civil penalties that might have been awarded for any violations of the CWA that might have been found had this matter progressed to trial.

### IV. COSTS OF LITIGATION

6. Defendant shall pay \$12,000 to Plaintiff for its reasonable costs of litigation in this matter according to the following schedule:

- a. \$2,000 upon entry of this Consent Decree;
- b. \$2,000 on the first day of each of the five months immediately following entry of this Consent Decree.

7. Plaintiff shall bear its own attorneys' and experts' fees and any other costs incurred in connection with this action that are in excess of the amount set forth to be paid by Defendant to Plaintiff in Paragraph 6 above.

V. DISCHARGE LIMIT, MONITORING, AND STIPULATED PENALTIES

8. During the term of this Consent Decree, Defendant shall not discharge stormwater with turbidity that exceeds a daily average of 280 NTU. An unintentional discharge that occurs as a result of a storm event that is equal to, or greater than, a 2-year, 24-hour rain event or during which .5 inches or more rain falls in one hour or less (an “Exempt Storm Event”) shall not constitute a violation of this paragraph.

9. If the turbidity of a stormwater discharge, other than an unintentional discharge resulting from an Exempt Storm Event, exceeds a daily average of 280 NTU during the term of this Consent Decree, Defendant shall pay stipulated penalties to Conservation Fisheries, Inc. within 30 days of Defendant’s receipt of such results according to the following penalty matrix:

	281-500 NTU	501-750 NTU	751 NTU or greater
1 <sup>st</sup> time	\$0	\$0	\$500
2 <sup>nd</sup> time	\$0	\$500	\$750
3 <sup>rd</sup> time	\$500	\$750	\$1,000
4 <sup>th</sup> time and thereafter	\$750	\$1,000	\$1,250

10. For the purposes of determining compliance with paragraph 8:

a. Defendant shall engage an independent third-party sampler to take discharge samples and measure the turbidity thereof using EPA Method 180.1. Defendant shall propose a qualified third-party sampler for Plaintiff’s approval, which shall not unreasonably be withheld.

b. Defendant shall pay all costs for third-party turbidity sampling.

c. The independent third-party sampler shall take all discharge samples from the end of the outlet pipe coming from the outlet box of the sediment pond.

d. Third party sampling shall be conducted three times per month for the first

six months from the date of entry of this consent decree if there are discharges on at least three days during the month. If at least 75% of the daily average turbidity results for a consecutive six month period are at or below 280 NTU, then the sampling requirement shall be reduced to once per month when there is a discharge.

e. Defendant shall notify the third-party sampler on each occasion when the sediment pond will be discharging. The third-party sampler will independently decide whether to take a sample on that date.

f. For the purposes of this Consent Decree, the turbidity of one sample constitutes the daily average turbidity unless additional samples are taken and measured.

g. By the 10<sup>th</sup> day of each month, Defendant shall provide a certification to Plaintiff regarding any discharge that occurred during the prior month. The certification shall: list each date on which there was a discharge; indicate when the third-party sampler was notified, or that no notification occurred because the discharge was unintentional and resulted from an Exempt Storm Event, in which case the certification shall list how much, and during what timeframe, the rainfall occurred; indicate whether any samples were taken; and indicate, and provide documentation of, the results of all sampling. If a violation of paragraph 8 occurred, Defendant shall document payment of stipulated penalties per paragraph 9. The certification shall be signed by Defendant and sent to Plaintiff at P.O. Box 1521, Knoxville, TN 37901.

## VI. EFFECTIVE DATE

11. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

## VII. RETENTION OF JURISDICTION

12. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree or effectuating or enforcing compliance with the terms of this Decree.

## VIII. MODIFICATION

13. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties, or by order of the Court. If a modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

## IX. TERMINATION

14. This Consent Decree will terminate upon the earlier of three years after the date when the Consent Decree is entered by the Court, or upon six consecutive months of turbidity samples that do not exceed a daily average of 280 NTU. If no sample is taken during a given month, that month shall not count as part of the six consecutive months, nor will it break the continuity of other consecutive months, of turbidity samples that do not exceed a daily average of 280 NTU. Notwithstanding the foregoing, in no event shall the Consent Decree terminate prior to twelve months after the date when the Consent Decree is entered by the Court, nor prior to the performance of the obligations set forth in Paragraphs 4 and 6 of this Consent Decree.

15. The Plaintiff agrees to execute and file with the Court a Notice of Termination of Consent Decree upon the occurrence of any of the termination events set forth in Paragraph 14 above.

#### X. FINAL JUDGMENT AND RELEASE OF CLAIMS

16. Upon entry, this Consent Decree shall become effective and shall constitute a final judgment of the Court as to the Parties. The Consent Decree shall be deemed to settle all claims asserted by Plaintiff in this case, as well as any future claims and suits related to the discharge of construction-related stormwater from the Casa Bella Subdivision through the date of termination of this Consent Decree under paragraph 16. Accordingly, Plaintiff releases Defendant from all pending and potential claims and causes of action related to violations of the CWA for construction-related stormwater discharges from the Casa Bella Subdivision through the date of termination of this Consent Decree under paragraph 16, other than claims to enforce this Consent Decree. This release includes, but is not limited to, all claims and violations that were or could have been alleged in the Plaintiff's sixty-day notice to Defendant prior to the filing of this action and all claims and violations that were or could have been alleged in the Complaint filed in this action.

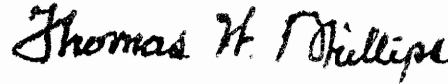
#### XI. GENERAL PROVISIONS

17. The Plaintiff's claims in this action are disputed by Defendant, and this Consent Decree represents the compromise of such disputed claims. This Consent Decree and compliance with this Consent Decree shall not constitute, or be construed as,

and are not intended to be, an admission concerning the validity of any such claim, or an acknowledgement by Defendant of any wrongdoing or liability, all such wrongdoing and liability being expressly denied.

18. In the event that the Court should reject this proposed Consent Decree, it shall be of no further force and effect and the parties shall return to their position prior to its lodging with the Court.

DATED and ENTERED this 31<sup>st</sup> day of JAN., 2011.



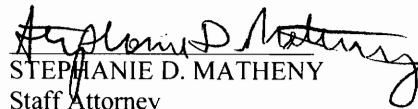
Judge Thomas W. Phillips  
United States District Judge

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the requirements of 33 U.S.C. § 1365(c)(3):

For Plaintiff Tennessee Clean Water Network:

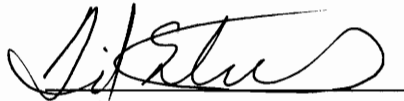


RENEE VICTORIA HOYOS  
Executive Director  
Tennessee Clean Water Network  
P.O. Box 1521  
Knoxville, TN 37901  
Telephone: 865-522-7007x100  
Facsimile: 865-525-4988

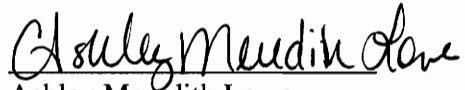


STEPHANIE D. MATHENY  
Staff Attorney  
Tennessee Clean Water Network  
P.O. Box 1521  
Knoxville, TN 37901  
Telephone: 865-522-7007x102  
Facsimile: 865-525-4988

For Defendant David Trantanella:



David Trantanella



Ashley Meredith Lowe  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC  
265 Brookview Centre Way, Suite 600  
Knoxville, Tennessee 37919  
Direct: 865.549.7207  
Fax: 865.633.7207  
[alowe@bakerdonelson.com](mailto:alowe@bakerdonelson.com)