

1 ELLEN M. MAHAN
2 Deputy Section Chief
3 Environmental Enforcement Section
4 Environment & Natural Resources Division
5 United States Department of Justice

6 SHEILA McANANEY
7 Illinois Bar No. 6309635
8 Environmental Enforcement Section
9 Environment & Natural Resources Division
10 United States Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044
13 Telephone: (202) 616-6535
14 Facsimile: (202) 616-2427 (Fax)
15 Email: sheila.mcananey@usdoj.gov

16 Attorneys for the United States

17 UNITED STATES DISTRICT COURT FOR THE
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA and)
21 NORTH COAST UNIFIED AIR)
22 QUALITY MANAGEMENT DISTRICT)

23 Plaintiffs,)

24 v.)

25 BLUE LAKE POWER, LLC,)

26 Defendant.)
27)
28)

No. 3:16-cv-00961

**NOTICE OF LODGING OF
PROPOSED CONSENT DECREE
AND REQUEST THAT COURT
TAKE NO ACTION AT THIS
TIME**

1 Plaintiff, the United States of America, on behalf of the U.S. Environmental Protection
2 Agency (EPA), hereby lodges with this Court the accompanying proposed Consent Decree in the
3 above-captioned action. No action is required of the Court at this time.

4 Final approval of the Consent Decree by the United States is contingent upon the review
5 of public comment. Pursuant to the regulations at 28 C.F.R. § 50.7 and Paragraph 103 of the
6 proposed Consent Decree, the public will have thirty (30) days in which to submit comments to
7 the United States on the proposed Consent Decree. The 30 day period will begin on the date that
8 notice of the lodging of the Consent Decree is published in the Federal Register. If, after
9 reviewing the public comments, the United States concludes that the Consent Decree should be
10 entered, the United States will seek the entry of the Consent Decree as a final order of the Court.

11 WHEREFORE, the United States respectfully requests that this Court receive the
12 proposed Consent Decree for lodging only, and that it abstain from acting upon the same until
13 the 30-day public comment period has expired and the United States advises the Court whether,
14 after evaluation of any comments received from the public, the United States supports entry of
15 the Consent Decree.

16 Respectfully submitted this 26th day of February, 2016

17 /s/ Sheila McAnaney
18 SHEILA McANANEY
19 Trial Attorney
20 Environmental Enforcement Section
21 Environment & Natural Resources
22 Division
23 United States Department of Justice
24 P.O. Box 7611
25 Washington, D.C. 20044 7611
26 (202) 616-6535 (Tel.)
27 (202) 616-2427 (Fax)
28 Sheila.McAnaney@usdoj.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2016, I caused the foregoing NOTICE OF LODGING OF CONSENT DECREE AND REQUEST THAT COURT TAKE NO ACTION AT THIS TIME to be electronically filed with the Clerk of the Court using this Court’s CM/ECF system, which will send notice of such filing to counsel of record for all parties.

I further certify that this date I caused a true and correct copy of said filing to be transmitted via electronic mail and First Class Mail to counsel for defendant Blue Lake Power, LLC and plaintiff North Coast Unified Air Quality Management District as listed below.

/s/ Sheila McAnaney
SHEILA McANANEY
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice

Counsel served via electronic mail and First Class Mail

Jane E. Luckhardt
Day Carter Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864
jluckhardt@daycartermurphy.com
Counsel for Defendant Blue Lake Power, LLC

Nancy Diamond
District Counsel
Law Offices of Nancy Diamond
82 G Street, Suite 3
Arcata, CA 95521
Counsel for Plaintiff North Coast Unified Air Quality Management District

1 ELLEN M. MAHAN
Deputy Section Chief
2 SHEILA McANANEY (IL Bar No. 6309635)
Trial Attorney
3 Environmental Enforcement Section
Environment & Natural Resources Division
4 United States Department of Justice
P.O. Box 7611
5 Washington, D.C. 20044
Telephone: (202) 616-6535
6 sheila.mcananey@usdoj.gov

7 BRIAN J. STRETCH (CSBN 163973)
Acting United States Attorney
8 ALEX G. TSE (CSBN 152348)
Chief, Civil Division
9 MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney
10 150 Almaden Boulevard, Suite 900
San Jose, California 95113
11 Telephone: (408) 535-5087
12 michael.t.pyle@usdoj.gov

13 Attorneys for Plaintiff United States of America
14 (Counsel cont'd on next page)

15 UNITED STATES DISTRICT COURT FOR THE
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA and)
19 NORTH COAST UNIFIED AIR)
QUALITY MANAGEMENT)
20 DISTRICT)
)
21 Plaintiffs,)
)
22 BLUE LAKE POWER, LLC,)
23)
24 Defendant.)
_____)

Case No.

CONSENT DECREE

25
26
27
28

1 NANCY DIAMOND (CSBN 130963)
District Counsel
2 Law Offices of Nancy Diamond
822 G Street, Suite 3
3 Arcata, CA 95521
Telephone: (707) 826-8540
4 Attorney for Plaintiff North Coast Unified Air
Quality Management District
5

6 JANE E. LUCKHARDT (CSBN 141919)
Day Carter Murphy LLP
7 3620 American River Drive, Suite 205
Sacramento, CA 95864
8 Telephone: (916) 246-7316
Attorney for Defendant Blue Lake Power LLC
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1

2 I. JURISDICTION AND VENUE 2

3 II. APPLICABILITY 2

4 III. DEFINITIONS 3

5 IV. CIVIL PENALTY 8

6 V. COMPLIANCE REQUIREMENTS 9

7 VI. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED

8 CONTROLS 19

9 VII. ENVIRONMENTAL MITIGATION 19

10 VIII. REPORTING REQUIREMENTS 20

11 IX. STIPULATED PENALTIES 22

12 X. FORCE MAJEURE 26

13 XI. DISPUTE RESOLUTION 27

14 XII. PERMITS 30

15 XIII. INFORMATION COLLECTION AND RETENTION 31

16 XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 33

17 XV. COSTS 34

18 XVI. NOTICES AND SUBMISSIONS 34

19 XVII. EFFECTIVE DATE 36

20 XVIII. RETENTION OF JURISDICTION 36

21 XIX. MODIFICATION 36

22 XX. TERMINATION 37

23 XXI. PUBLIC PARTICIPATION 38

24 XXII. SIGNATORIES/SERVICE 38

25 XXIII. INTEGRATION 38

26 XXIV. HEADINGS 39

27 XXV. FINAL JUDGMENT 39

28

1 WHEREAS, Plaintiffs UNITED STATES OF AMERICA, on behalf of the United States
2 Environmental Protection Agency (“EPA”), and the NORTH COAST UNIFIED AIR QUALITY
3 MANAGEMENT DISTRICT (“District”), have filed a Complaint concurrently with this Consent
4 Decree, alleging that Defendant BLUE LAKE POWER, LLC (“Blue Lake”) violated and/or
5 continues to violate the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7401 *et seq.*, including
6 the California State Implementation Plan (“SIP”) authorized by Section 110(a) of the Act, 42
7 U.S.C. § 7410 *et seq.*, through violations of authority to construct (“ATC”) permits, and
8 conditions therein, issued by the District related to Blue Lake’s ownership and operation of a
9 biomass fueled electric generating facility in the City of Blue Lake (the “Facility”);

10 WHEREAS, the Complaint seeks injunctive relief and the assessment of civil penalties
11 for alleged violations of the Clean Air Act and rules promulgated under the California SIP,
12 related to its ownership and operation of the Facility;

13 WHEREAS, EPA issued a notice of violation (“NOV”) to Blue Lake with respect to such
14 allegations on March 3, 2014;

15 WHEREAS, Blue Lake denies the violations alleged in the Complaint and the NOV and
16 does not admit to any liability arising out of the transactions or occurrences alleged in the
17 Complaint or the NOV;

18 WHEREAS, notwithstanding any provisions of this Consent Decree related to the
19 payment of a civil penalty, the United States, the District, and Blue Lake (the “Parties”) agree
20 that Blue Lake has not admitted, and the United States and the District have not proven to the
21 Court, the existence of any of the alleged violations;

22 WHEREAS, the United States reviewed Financial Information and determined Blue Lake
23 has a limited ability to pay a civil penalty in this matter;

24 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
25 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
26 among the Parties and that this Consent Decree is reasonable and in the public interest; and
27
28

Consent Decree

1 NOW, THEREFORE, before the taking of any testimony, without the adjudication or
2 admission of any issue of fact or law except as provided in Section I, and with the consent of the
3 Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the subject matter of this action, pursuant to
6 28 U.S.C. §§ 1331, 1345, 1355, 1367, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and
7 over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. §
8 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the
9 Complaint are alleged to have occurred in, and Blue Lake resides in and conducts business in,
10 this judicial district. For purposes of this Decree, or any action to enforce this Decree, Blue Lake
11 consents to the Court's jurisdiction over this Decree and any such action and over Blue Lake and
12 consents to venue in this judicial district.

13 2. For purposes of this Consent Decree, Blue Lake agrees that the Complaint states
14 claims upon which relief may be granted pursuant to Section(s) 113(a)(1)(C) and 113(b)(1) of
15 the Act, 42 U.S.C. §§ 7413(a)(1)(C) and 7413(b)(1).

16 **II. APPLICABILITY**

17 3. The obligations of this Consent Decree apply to and are binding upon the United
18 States and the District, and upon Blue Lake and any successors, assigns, or other entities or
19 persons otherwise bound by law.

20 4. No transfer of ownership or operation of the Facility, whether in compliance with
21 the procedures of this Paragraph or otherwise, shall relieve Blue Lake of its obligation to ensure
22 that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the
23 obligations required by Section V of this Decree and to be substituted for Blue Lake as a Party
24 under the Decree and thus be bound by the terms thereof, and (2) the United States and the
25 District consent to relieve Blue Lake of its obligations. The United States and the District may
26 refuse to approve the substitution of the transferee for Blue Lake if Plaintiffs determine that the
27 proposed transferee does not possess the requisite technical abilities or financial means. The
28 decision to refuse to approve the substitution of the transferee for Blue Lake shall not be subject

Consent Decree

1 to judicial review. If the United States and the District approve such a substitution, it shall
2 constitute a material change to this Decree within the meaning of Paragraph 97. At least 30 Days
3 prior to such transfer, Blue Lake shall provide a copy of this Consent Decree to the proposed
4 transferee and shall simultaneously provide written notice of the prospective transfer, together
5 with a copy of the proposed written agreement, to EPA Region IX, the United States Attorney
6 for the Northern District of California, the District, and the United States Department of Justice,
7 in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or
8 operation of the Facility without complying with this Paragraph constitutes a violation of this
9 Decree.

10 5. Blue Lake shall provide a copy of this Consent Decree to all officers, employees,
11 and agents whose duties might reasonably include compliance with any provision of this Decree,
12 as well as to the contractor retained to perform the Boiler Engineering Study described in
13 Paragraph 13 of this Consent Decree. Blue Lake shall condition that contract upon performance
14 of the work in conformity with Paragraph 13 of this Consent Decree.

15 6. In any action to enforce this Consent Decree, Blue Lake shall not raise as a
16 defense the failure by any of its officers, directors, employees, agents, or contractors to take any
17 actions necessary to comply with the provisions of this Consent Decree.

18 **III. DEFINITIONS**

19 7. Terms used in this Consent Decree that are defined in the Act or in regulations
20 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such
21 regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are
22 used in this Consent Decree, the following definitions shall apply:

23 a. "Ammonia Slip" shall mean the amount of unreacted ammonia contained
24 in emissions from the Main Stack when the SNCR system is operating as measured in parts per
25 million. Ammonia Slip shall be calculated by subtracting Baseline Ammonia from Stack
26 Ammonia;

27 b. "Baseline Ammonia" shall mean the average (arithmetic mean) of the
28 ammonia in emissions from the Main Stack, as initially measured pursuant to Paragraph 30 prior
Consent Decree

1 to installation of the SNCR when urea is not being injected into the Boiler. After installation of
2 the SNCR, Baseline Ammonia may be reconfirmed or reestablished periodically subject to EPA
3 approval, after consultation with the District;

4 c. “Blue Lake” shall mean Defendant Blue Lake Power, LLC;

5 d. “Boiler” shall mean the Zurn boiler used at the Facility to produce energy;

6 e. “Block Average” shall mean, for purposes of meeting an Emission Rate in
7 pounds per million British Thermal Units (lbs/MMBtu) set forth in this Consent Decree, the rate
8 of emission of CO or NO_x from the Main Stack expressed as lbs/MMBtu, and calculated in
9 accordance with the following procedure: first, sum the total pounds of the Pollutant in question
10 emitted from the Main Stack during the period covered by the Block Average Emission Rate, for
11 instance a 24-hour period, as measured pursuant to Section V; second, sum the total MMBtu
12 burned during the same period. A Block Average shall only be calculated once and will not
13 include any operating hours from the previous Block Average. For purposes of compliance with
14 the 24-hour Block Average Emission Rate set forth in Paragraph 19 during periods of Startup
15 and Shutdown, the Block Average may include periods that do not include Startup and Shutdown
16 as necessary to complete the requisite averaging period. For instance, if a startup only lasts 8
17 hours, then the emissions from the next 16 hours of operation will also be included in the Block
18 Average to complete the 24 hour averaging period;

19 f. “CD Emissions Reductions” shall mean any emissions reductions that
20 result from any projects, controls, or any other actions utilized to comply with this Consent
21 Decree;

22 g. “CEMS” or “Continuous Emission Monitoring System,” shall mean, for
23 obligations involving the monitoring of NO_x and CO under this Consent Decree, the total
24 equipment and software required to sample and condition (if applicable), to analyze, and to
25 provide a record of NO_x and CO Emission Rates, and the raw data necessary to support the
26 reported Emission Rates, and that have been installed and calibrated in accordance with 40
27 C.F.R. § 60.13 and 40 C.F.R. Part 60, Appendix B and Appendix F;

28
Consent Decree

1 h. "CO" shall mean carbon monoxide, measured in accordance with the
2 provisions of this Consent Decree;

3 i. "Complaint" shall mean the complaint filed by the United States and the
4 District in this action;

5 j. "Consent Decree" or "Decree" shall mean this consent decree;

6 k. "Continuously Operate" or "Continuous Operation" means that when a
7 pollution control technology or combustion control is required to be continuously used at a unit
8 pursuant to this Consent Decree, it shall be operated at all times such unit is in operation (except
9 as otherwise provided by Section X (Force Majeure)), consistent with the technological
10 limitations, manufacturers' specifications, good engineering and maintenance practices, and
11 good air pollution control practices for minimizing emissions (as defined in 40 C.F.R. §
12 60.11(d)) for such equipment and the unit.

13 l. "Day" shall mean a calendar day unless expressly stated to be a business
14 day. In computing any period of time under this Consent Decree, where the last day would fall
15 on a Saturday, Sunday, federal, or state holiday, the period shall run until the close of business of
16 the next business day;

17 m. "Demonstration Period" shall mean the twelve (12) month period
18 following twelve (12) months after EPA's approval of the Boiler Engineering Study Report as
19 set forth in Paragraph 20;

20 n. "District" shall mean the North Coast Unified Air Quality Management
21 District;

22 o. "Emission Rate" for a given Pollutant means the number of pounds of that
23 Pollutant emitted per million British thermal units of heat input (lb/MMBtu), measured in
24 accordance with the provisions of this Consent Decree;

25 p. "Effective Date" shall have the definition provided in Section XVII;

26 q. "EPA" shall mean the United States Environmental Protection Agency
27 and any of its successor departments or agencies;

28
Consent Decree

1 r. “ESP” shall mean the electrostatic precipitator currently used on the Main
2 Stack to control particulate matter emissions from the Boiler;

3 s. “Facility” shall mean the biomass fueled electric generating facility owned
4 by Blue Lake and located at 200 Taylor Way, Blue Lake, California, together with all that
5 property more particularly described as Parcel 1 and Parcel 2 on that ALTA/ACSM Land Title
6 Survey as depicted in Exhibit 1;

7 t. “Financial Information” shall mean balance sheets, tax returns, financial
8 statements, cash flow statements, projections, and all other financial information whether
9 provided orally or in writing that Blue Lake made available to the United States prior to the Date
10 of Lodging of this Consent Decree;

11 u. “Main Stack” shall mean the stack on the Boiler at the Facility where
12 gases are released to the atmosphere post combustion of fuel;

13 v. “NH₃” shall mean ammonia, as determined in accordance with the
14 provisions of this Consent Decree;

15 w. “NO_x” means oxides of nitrogen, measured in accordance with the
16 provisions of this Consent Decree;

17 x. “OFA” or “Over-Fire Air” means a gas conveyance system consisting of
18 an induction fan(s), ductwork, injection ports & nozzles, sensors and digital controls used for the
19 purpose of enhancing the combustion of gaseous fuel at a location above the primary combustion
20 zone;

21 y. “Operating Hour” shall mean any hour during which any material has
22 been burned in the Boiler;

23 z. “Operating Day” shall mean any day during which any material has been
24 burned in the Boiler;

25 aa. “Paragraph” shall mean a portion of this Decree identified by an Arabic
26 numeral;

27 bb. “Parties” shall mean the United States, the District, and Blue Lake;
28

Consent Decree

1 cc. "PM₁₀" shall mean particulates of less than 10 microns in diameter, as
2 measured in accordance with the provisions of this Consent Decree;

3 dd. "Pollutant" shall mean NO_x, CO, NH₃, and PM₁₀;

4 ee. "Rolling Average" shall mean, for purposes of complying with an
5 Emission Rate in pounds per million per BTU (lb/MMBtu) set forth in this Consent Decree, the
6 rate of emission of NO_x, CO, or PM₁₀ from the Main Stack, respectively, expressed as
7 lb/MMBtu, and calculated in accordance with the following procedure: first, sum the total
8 pounds of the Pollutant in question emitted from the Main Stack during the last Operating Hour
9 or Day, depending upon the period of compliance set forth for the applicable Emission Rate, and
10 the previous hours or days of operation to make the full length of the rolling average period (for
11 instance, if it is an 8-hour rolling average, then add the pounds of Pollutant emitted for the last 7
12 Operating Hours to the pounds calculated for the most recent hour); second, sum the total
13 MMBtu burned in the Boiler during the same Operating Hour or Day, depending upon the period
14 of compliance set forth for the applicable Emission Rate, and the previous number of Operating
15 Hours or Operating Days to make the full length of the Rolling Average period; and third, divide
16 the total number of pounds emitted from the Main Stack during the period in question by the
17 total MMBtu burned during the same period. A new Rolling Average Emission Rate shall be
18 calculated for each new Operating Hour or Operating Day;

19 ff. "Section" shall mean a portion of this Decree identified by a roman
20 numeral;

21 gg. "Shutdown" shall mean the period beginning with curtailment of fuel feed
22 and concluding when the recorded Main Stack temperature reaches 150°F and remains so for at
23 least one hour;

24 hh. "SNCR" or "Selective Non-Catalytic Reduction" means a pollution
25 control device for the reduction of NO_x emissions through the use of selective non-catalytic
26 reduction technology that utilizes ammonia or urea injection into the boiler;

27 ii. "Stack Ammonia" shall mean the concentration of ammonia in emissions
28 from the Main Stack as determined by source testing after the SNCR is installed and operational;

Consent Decree

1 jj. “Startup” shall mean the period beginning with the introduction of fuel to
 2 the Boiler following a period in which the Boiler is not in operation, and concluding when the
 3 Boiler has reached a normal operating temperature (as specified by the manufacturer);

4 kk. “State” shall mean the State of California;

5 ll. “United States” shall mean the United States of America, acting on behalf
 6 of EPA.

7 **IV. CIVIL PENALTY**

8 8. Within 30 Days after the Effective Date of this Consent Decree, Blue Lake shall
 9 pay the sum of \$ 5,000 as a civil penalty, together with interest accruing from the date on which
 10 the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the
 11 date of lodging. Blue Lake shall pay 50 percent of the total civil penalty to the United States and
 12 50 percent of the total civil penalty to the District.

13 9. Blue Lake shall pay the portion of the civil penalty due to the United States by
 14 FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance
 15 with written instructions to be provided to Blue Lake, following entry of the Consent Decree, by
 16 the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of California,
 17 450 Golden Gate Ave., 11th Fl., San Francisco, California 94102. At the time of payment, Blue
 18 Lake shall send a copy of the EFT authorization form and the EFT transaction record, together
 19 with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant
 20 to the Consent Decree in *United States v. Blue Lake Power, LLC*, and shall reference the civil
 21 action number and DOJ case number 90-5-2-1-11038, to the United States in accordance with
 22 Section XVI of this Decree (Notices); by email to cinwd_acctsreceivable@epa.gov; or by mail
 23 to:

24 EPA Cincinnati Finance Office
 25 26 Martin Luther King Drive
 26 Cincinnati, Ohio 45268.

27 10. Blue Lake shall pay the portion of the civil penalty due to the District by check
 28 made out to North Coast Unified Air Quality Management District, with “Blue Lake Power,

1 Consent Decree” in the memorandum line. Payment shall be delivered to Air Pollution Control
2 Officer, North Coast Unified Air Quality Management District, 707 L. St., Eureka, CA 95501.

3 11. Blue Lake shall not deduct any penalties paid under this Decree pursuant to this
4 Section or Section IX (Stipulated Penalties) in calculating its federal, state and local income tax.

5 **V. COMPLIANCE REQUIREMENTS**

6 12. Boiler Engineering Study Protocol. Within fifteen (15) Days following the
7 Effective Date of this Consent Decree or in the event the Boiler is not operating following the
8 Effective Date, within fifteen (15) Days of recommencing operation of the Boiler, Blue Lake
9 shall prepare and submit to EPA and the District for review and approval pursuant to Paragraph
10 34 a protocol for the performance of the Boiler Engineering Study required by Paragraph 13.

11 13. Boiler Engineering Study. No later than ninety (90) Days following EPA’s
12 approval of the protocol described in Paragraph 12, Blue Lake shall complete the Boiler
13 Engineering Study and submit to EPA and the District for review and approval pursuant to
14 Paragraph 34 a report containing the Study’s findings (“Boiler Engineering Study Report”). The
15 Boiler Engineering Study and Report shall include the following information and analysis:

- 16 a. Completion of as-built drawings of the Boiler configuration;
17 b. Recommendations for improvements to the OFA system and the
18 configuration of the SNCR system designed to optimize the reduction of CO and NO_x emissions
19 to achieve the Emission Rates set forth in Paragraphs 18 and 19;
20 c. Assessment of the adequacy of the capacity of the Boiler’s induced draft
21 fan;
22 d. Testing of injection of air and urea at locations modeled and/or predicted
23 to best control CO and NO_x emissions and at rates up to the maximum achievable levels to
24 enable compliance with the levels identified in Paragraphs 18 and 19;
25 e. Recommendation as to the highest achievable urea injection level for the
26 SNCR, based upon the recommended location of injection ports and the urea injection testing,
27 while consistently maintaining Ammonia Slip at 20 parts per million (“ppm”) or less by volume,
28 corrected to 3% excess oxygen; and

Consent Decree

1 f. Prediction of best achievable Emission Rates for CO and NO_x from the
2 Main Stack after installation and Continuous Operation of the optimized and/or improved OFA
3 and SNCR systems.

4 ***Control Technologies and Emission Rates***

5 14. No later than ninety (90) Days following EPA's approval of the Boiler
6 Engineering Study Report, Blue Lake shall have entered into a contract for the purchase of the
7 new equipment necessary for the installation of the improved OFA and SNCR systems. Within
8 thirty (30) days of entry into such contract, Blue Lake shall submit to EPA and the District the
9 contract and/or documentation evidencing the purchase of such equipment.

10 15. No later than twelve (12) months following EPA's approval of the Boiler
11 Engineering Study Report, Blue Lake shall install and Continuously Operate the improved OFA
12 and SNCR systems consistent with the parameters set forth in the approved Boiler Engineering
13 Study Report and in a manner that optimizes combustion and minimizes NO_x and CO emissions
14 at all times when the Boiler is in operation.

15 16. ESP Optimization Plan. No later than ninety (90) Days following the Effective
16 Date of this Consent Decree, Blue Lake shall submit to EPA and the District for review and
17 approval pursuant to Paragraph 34 an ESP optimization plan, which analyzes and recommends
18 operating parameters for the ESP that ensures PM₁₀ emission reductions at all times, including
19 Start Up and Shut Down, when the Boiler is in operation sufficient to meet the Emission Rates
20 set forth in Paragraphs 18 and 19. The ESP optimization plan shall, at a minimum, meet
21 monitoring requirements contained at 40 C.F.R. § 64.3 (compliance assurance monitoring).

22 17. At all times, including periods of Startup and Shutdown, Defendant shall, to the
23 extent practicable, maintain and operate the Boiler, including associated air pollution control
24 equipment, in a manner consistent with good air pollution control practice for minimizing
25 emissions.

26 18. No later than twelve (12) months following EPA's approval of the Boiler
27 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack,
28 excluding periods of Startup or Shutdown at or below the following Emission Rates:

Consent Decree

- 1 a. NO_x emissions of 0.12 lb/MMBtu on a 24-hour Rolling Average basis and
2 0.10 lb/MMBtu on an annual Rolling Average Basis;
3 b. CO emissions of 0.40 lb/MMBtu on a 24-hour Rolling Average basis; and
4 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as required
5 to be measured in Paragraph 33.

6 19. No later than twelve (12) months following EPA's approval of the Boiler
7 Engineering Study Report, Blue Lake shall achieve and maintain emissions from the Main Stack
8 during periods of Startup or Shutdown at or below the following Emission Rates:

- 9 a. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Block Average basis;
10 b. CO emissions of 0.50 lb/MMBtu on a 24-hour Block Average basis; and
11 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as verified
12 by operation in compliance with the approved ESP optimization plan.

13 20. Petition for Alternative Emission Rate(s). The twelve (12) month period
14 beginning twelve (12) months after EPA's approval of the Boiler Engineering Study Report shall
15 comprise the Demonstration Period. During the Demonstration Period, and six (6) months
16 thereafter, Blue Lake's failure to achieve and maintain the Emission Rates set forth in
17 Paragraphs 18 and 19 shall not be deemed a violation of this Consent Decree, nor shall Blue
18 Lake be responsible for stipulated penalties pursuant to Section IX (Stipulated Penalties).
19 However, it shall be deemed a violation, and Blue Lake shall be responsible for stipulated
20 penalties, if Blue Lake fails to Continuously Operate the OFA and SNCR systems consistent
21 with the parameters set forth in the approved Boiler Engineering Study Report and in a manner
22 that optimizes combustion and minimizes NO_x, CO, and PM₁₀ emissions. Additionally, if Blue
23 Lake fails to achieve and maintain the PM₁₀ Emission Rates set forth in Paragraphs 18 and 19, it
24 shall also be deemed a violation, and Blue Lake shall be responsible for stipulated penalties, if
25 Blue Lake fails to operate the ESP consistent with the approved ESP optimization plan.

26 21. At any time within six (6) months after the Demonstration Period described in
27 Paragraph 20, Blue Lake may submit a petition to EPA and the District for review and approval
28 pursuant to Paragraph 34, for a proposed revision to the NO_x, CO, and/or PM₁₀ Emission Rates

Consent Decree

1 set forth in Paragraphs 18 and 19. In such a petition, Blue Lake must demonstrate that it is
2 technically infeasible to achieve one or more of the NO_x, CO, and/or PM₁₀ Emissions Rates in
3 Paragraphs 18 and/or 19, considering the results of the Boiler Engineering Study and all
4 information and data collected during the Demonstration Period. Blue Lake shall propose in such
5 a petition the lowest NO_x, CO and/or PM₁₀ Emission Rate that it can practicably achieve and
6 maintain while maintaining an Ammonia Slip of 20 parts per million (corrected to 3% O₂) or
7 less. With any such petition, Blue Lake shall include all pertinent information, documents, and
8 data that support, or were considered in preparing such alternative Emission Rate, including all
9 data collected during the Demonstration Period. In no event shall the proposed alternative
10 Emission Rate be higher than the following:

- 11 a. During periods that do not include Startup and Shutdown:
 - 12 i. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Rolling Average basis
13 and 0.125 lb/MMBtu on an annual Rolling Average basis;
 - 14 ii. CO emissions of 0.55 lb/MMBtu on a 24-hour Rolling Average Basis;
15 and
 - 16 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
17 required to be measured in Paragraph 33.
- 18 b. During periods that include Startup and Shutdown
 - 19 i. NO_x emissions of 0.175 lb/MMBtu on a 24-hour Block Average basis;
 - 20 ii. CO emissions of 0.69 lb/MMBtu on a 24-hour Block Average basis;
21 and
 - 22 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
23 verified by operation in compliance with the approved ESP
24 Optimization Plan.

25 22. Following receipt of a petition submitted to EPA and the District pursuant to
26 Paragraph 21, EPA, in consultation with the District, may (a) determine that Blue Lake failed to
27 successfully demonstrate that it could not achieve and maintain the applicable Emission Rate, (b)
28 approve the proposed alternative Emission Rate(s), or (c) establish a different Emission Rate

Consent Decree

1 than the one specified in this Decree or proposed by Blue Lake in its petition, based upon EPA's
2 review of the information submitted in the petition, as well as other available and relevant
3 information. In no event shall the approved alternative Emission Rate(s) be higher than the
4 applicable Emission Rate(s) listed in Paragraph 21. EPA reserves the right to require Blue Lake
5 to perform additional source testing, RATA testing, or other relevant testing before responding to
6 Blue Lake's petition. If EPA determines that Blue Lake has demonstrated that it could not
7 maintain compliance with the Emission Rate(s) specified in this Decree and approves one or
8 more alternative Emission Rates, such Emission Rate(s) shall be deemed to have replaced the
9 relevant NO_x, CO and/or PM₁₀ Emission Rate(s) in question during (a) the time during which
10 achievement of the Emission Rate(s) was infeasible (including any period of time that occurred
11 prior to submittal of the request) and (b) the pendency of EPA and the District's review of Blue
12 Lake's request.

13 23. No later than thirty (30) Days following Blue Lake's receipt of EPA's approval of
14 one or more alternative Emission Rates, Blue Lake shall achieve and maintain the new Emission
15 Rate(s).

16 24. In the event that, pursuant to Paragraph 22 above, EPA approves one or more
17 alternative Emission Rates to those set forth in Paragraphs 18 and 19, a Notice shall be lodged
18 with the Court informing it of the new applicable Emission Rate(s).

19 ***Fugitive Dust Controls and Good Combustion Control Practices***

20 25. Fuel Management Plan: No later than sixty (60) Days following the Effective
21 Date of this Consent Decree, Defendant shall submit to EPA and the District for review and
22 approval pursuant to Paragraph 34 a plan for proper management of Boiler fuel ("Fuel
23 Management Plan"). The Plan shall establish measures for adequate drying of the fuel while
24 minimizing fugitive dust from fuel handling sufficient to ensure that no visible dust leaves the
25 Facility. The Plan shall contain, at a minimum, the following measures: (i) standards and
26 procedures for ensuring that the fuel is adequately dry prior to burning in the Boiler, including,
27 as appropriate and warranted, off-site storage, covering of the fuel piles to shield them from
28 moisture, protecting fuels from moisture seepage from the ground, and limiting the amount of

Consent Decree

1 time that fuel is stored on-site; (ii) identification, purchase (if necessary) and proper operation of
2 equipment to ensure that fuel is chipped to an optimal size for burning; (iii) a procedure and
3 schedule for routine cleanup and application of water, tarps, or dust suppressants to storage piles,
4 processing areas, and other disturbed areas to control fugitive dust to the maximum extent
5 practicable; (iv) measures to ensure that truck loading and unloading of fuel materials is
6 conducted in a manner that minimizes spillage and fugitive dust; and (v) measures to minimize
7 fugitive dust from grinding, chipping, unloading and conveying of fuel, including consideration
8 of, as appropriate and warranted, shielding of the operations and/or limiting such operations to
9 avoid periods of high wind.

10 26. Fugitive Road Dust Plan. No later than sixty (60) Days following the Effective
11 Date of this Consent Decree, Defendant shall submit to EPA and the District for review and
12 approval pursuant to Paragraph 34 a plan to control fugitive dust from roads at the Facility
13 (“Fugitive Road Dust Plan”) sufficient to ensure that no visible dust leaves the Facility. The
14 Plan shall contain, at a minimum, the following measures: (i) procedures, application intensity,
15 and schedule for application of water and/or non-aqueous dust suppressant to all unpaved roads
16 at the Facility; and (ii) procedures and schedule of sweeping and maintenance of all paved roads
17 at the Facility.

18 27. Ash Handling and Disposal Procedures. As of the Effective Date of this Consent
19 Decree, all ash shall be transported in a wet condition in covered containers or stored in closed
20 containers at all times. Ash that will not be used at the Facility shall be disposed of in
21 accordance with all applicable rules and regulations.

22 ***Continuous Emission Monitoring Systems and Stack Testing***

23 28. As of the Effective Date of this Consent Decree, except during periods of
24 breakdowns, repairs, calibration checks, and zero span adjustments, Blue Lake shall maintain
25 and operate the CEMS to collect data on NO_x and CO emissions from the Main Stack at all times
26 the Boiler is in operation in accordance with installation, certification, calibration, and
27 maintenance requirements of 40 C.F.R. Part 60, Subpart A, and Appendices B and F.
28

Consent Decree

1 29. The CEMS shall be used to demonstrate compliance with the NO_x and CO
2 Emission Rates set forth in Paragraphs 18 and 19 of this Decree, or as otherwise established
3 pursuant to Paragraph 22, and shall monitor and record the applicable Emission Rates in units of
4 pounds of Pollutant per million BTU.

5 30. Baseline Ammonia Stack Tests. Blue Lake shall conduct the following ammonia
6 stack tests on the Main Stack consistent with Test Method BAAQMD ST-1B at conditions
7 representing normal operations:

8 a. Prior to the installation and operation of the SNCR, Blue Lake shall
9 conduct sampling pursuant to section 8 of Test Method BAAQMD ST-1B. If the results indicate
10 any detectable concentrations of ammonia in any of the three test runs, Blue Lake shall conduct
11 sampling on two additional days within 60 Days of the date of the initial test; and

12 b. After installation and during Continuous Operation of the SNCR during
13 months 6 through 9 of the Demonstration Period, when the system is achieving and maintaining
14 the NO_x limit set forth in Paragraph 18.a (alternatively, if the NO_x limit has not been achieved,
15 despite Blue Lake operating the SNCR consistent with the approved Boiler Engineering Study
16 report, then during a period when NO_x emissions reductions have been optimized to the
17 maximum extent possible consistent with the approved Boiler Engineering Study report):

18 i. Blue Lake shall conduct sampling pursuant to section 8 of Test
19 Method BAAQMD ST-1B.

20 ii. If the results of these tests indicate the average concentration of
21 ammonia for the three test runs to be greater than or equal to 15 ppm,
22 correct to 3% O₂, Blue Lake shall conduct sampling pursuant to
23 section 8 of Test Method BAAQMD ST-1B on two additional Days
24 within 60 Days of the date of the first test conducted in accordance
25 with Paragraph 30.b.i;

26 c. Ninety (90) Days prior to each set of stack tests, Blue Lake shall submit a
27 stack test plan to EPA and the District for review and approval pursuant to Paragraph 34. If EPA
28 has not taken action on the test plan within sixty (60) days of submittal, the plan shall be deemed

Consent Decree

1 approved pursuant to Paragraph 34. The results of each ammonia stack test shall be submitted to
2 EPA and the District within sixty (60) Days following completion of each test.

3 31. Ammonia Slip Calculation. Within thirty (30) Days of completion of the ammonia
4 stack tests required by Paragraph 30.b, Blue Lake shall calculate the Ammonia Slip. If the
5 Ammonia Slip is above 20 ppm corrected to 3% O₂, BLP shall:

6 a. Calculate the mass emission rate of ammonia in excess of 20 ppm
7 corrected to 3% O₂.

8 b. Within sixty (60) Days of completion of ammonia stack tests required by
9 Paragraph 30.b, Blue Lake shall perform stack tests consistent with the procedures set forth in
10 Paragraph 30.b, reducing urea injection by the excess mass emission rate of ammonia (corrected
11 to reflect the mass ratio of urea to ammonia) determined under Paragraph 31.a.

12 c. Within thirty (30) Days of completion of the tests required by Paragraph
13 31.b, Blue Lake shall calculate the Ammonia Slip. If the Ammonia Slip is above 20ppm
14 corrected to 3% O₂ and the NO_x Emission Rate is below the NO_x limit set forth in Paragraph
15 19.a, Blue Lake shall repeat the procedure set forth in Paragraphs 31.a and 31.b.

16 d. Within thirty (30) Days of completion of additional tests required under
17 Paragraph 31.c, Blue Lake shall submit to EPA and the District all test results, the calculated
18 Ammonia Slip, and all calculations done pursuant to Paragraph 31.c.

19 32. Annual Ammonia Stack Tests.

20 a. No later than eighteen (18) months following EPA's approval of the
21 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
22 determine the Ammonia Slip consistent with Test Method BAAQMD ST-1B, during
23 representative operating conditions. The test shall consist of three separate runs performed under
24 representative operating conditions not including periods of startup, shutdown, or malfunction.
25 Within fifteen (15) months following EPA's approval of the Boiler Engineering Study Report,
26 Blue Lake shall submit a stack test plan consistent with this Paragraph to EPA and the District
27 for review and approval pursuant to Paragraph 34. If EPA has not taken action on the test plan
28 within sixty (60) Days of submittal, the plan shall be deemed approved pursuant to Paragraph 34.

Consent Decree

1 The results of the ammonia stack test shall be submitted to EPA and the District within ninety
2 (90) Days following completion of the test.

3 b. On an annual basis, Blue Lake shall conduct ammonia stack testing in
4 accordance with the procedures in Paragraph 32.a, including submission of a stack test plan
5 ninety (90) days prior to the test and submission of the test results within ninety (90) days
6 following completion of the test. Each test shall be performed no later than thirteen (13) months
7 after the previous one.

8 33. PM₁₀ Stack Tests.

9 a. No later than eighteen (18) months following EPA's approval of the
10 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
11 determine compliance with PM₁₀ Emission Rates established by this Consent Decree. Blue Lake
12 shall use EPA Method 5 or EPA Method 201a (filterable portion only), and each test shall
13 consist of three separate runs performed under representative operating conditions not including
14 periods of startup, shutdown, or malfunction. The sampling time for each run shall be at least 60
15 minutes and the volume of each run shall be at least 0.85 dry standard cubic meters (30 dry
16 standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack test results
17 in accordance with 40 C.F.R. § 60.8(f). Within fifteen (15) months following EPA's approval of
18 the Boiler Engineering Study Report, Blue Lake shall submit a stack test plan consistent with this
19 Paragraph to EPA and the District for review and approval pursuant to Paragraph 34. If EPA has
20 not taken action on the test plan within sixty (60) Days of submittal, the plan shall be deemed
21 approved pursuant to Paragraph 34. The results of the PM₁₀ stack test shall be submitted to EPA
22 and the District within sixty (60) Days following completion of the test.

23 b. On an annual basis, Blue Lake shall conduct PM₁₀ stack testing in
24 accordance with the procedures in Paragraph 33.a, including submission of a stack test plan
25 ninety (90) days prior to the test and submission of the test results within ninety (90) days
26 following completion of the test. Each test shall be performed no later than thirteen (13) months
27 after the previous one.
28

Consent Decree

Approval of Deliverables

1
2 34. After review of any plan, report, or other item that is required to be submitted
3 pursuant to this Consent Decree, EPA, after consultation with the District, shall in writing: a)
4 approve the submission; b) approve the submission upon specified conditions; c) approve part of
5 the submission and disapprove the remainder; or d) disapprove the submission.

6 35. If the submission is approved pursuant to Paragraph 34.a, Blue Lake shall take all
7 actions required by the plan, report, or other document, in accordance with the schedules and
8 requirements of the plan, report, or other document, as approved. If the submission is
9 conditionally approved or approved only in part, pursuant to Paragraph 34.b or 34.c, Blue Lake
10 shall, upon written direction from EPA, after consultation with the District, take all actions
11 required by the approved plan, report, or other item that EPA, after consultation with the District,
12 determines are technically severable from any disapproved portions, subject to Blue Lake's right
13 to dispute only the specified conditions or the disapproved portions, under Section XI of this
14 Decree (Dispute Resolution).

15 36. If the submission is disapproved in whole or in part pursuant to Paragraph 34.c
16 or 34.d, Blue Lake shall, within 45 Days or such other time as the Parties agree to in writing,
17 correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion
18 thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is
19 approved in whole or in part, Blue Lake shall proceed in accordance with the preceding
20 Paragraph.

21 37. Any stipulated penalties applicable to the original submission, as provided in
22 Section IX of this Decree, shall accrue during the 45-Day period or other specified period, but
23 shall not be payable unless the resubmission is untimely or is disapproved in whole or in part;
24 provided that, if the original submission was so deficient as to constitute a material breach of
25 Blue Lake's obligations under this Decree, the stipulated penalties applicable to the original
26 submission shall be due and payable notwithstanding any subsequent resubmission.

27 38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
28 whole or in part, EPA, after consultation with the District, may again require Blue Lake to

Consent Decree

1 correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct
2 any deficiencies, subject to Blue Lake’s right to invoke Dispute Resolution and the right of EPA
3 and the District to seek stipulated penalties as provided in the preceding Paragraphs.

4 **VI. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED**

5 **CONTROLS**

6 39. Emissions reductions that result from actions to be taken by Blue Lake after the
7 Effective Date of this Consent Decree to comply with the requirements of this Consent Decree
8 shall not be considered as a creditable contemporaneous emission decrease for the purpose of
9 obtaining a netting credit or offset under the Clean Air Act’s Nonattainment NSR and PSD
10 programs.

11 40. Nothing in this Section is intended to prohibit Blue Lake from seeking to use or
12 generate emissions reductions from emissions units that are covered by this Consent Decree to
13 the extent that the proposed emissions reductions represent the difference between CD Emissions
14 Reductions and more stringent control requirements that Blue Lake may elect to accept for those
15 emissions units in a permitting process.

16 **VII. ENVIRONMENTAL MITIGATION**

17 41. Within thirty (30) Days after the Effective Date, Blue Lake shall contribute
18 \$ 10,000 to the North Coast Air Quality Management District’s Wood Stove Incentive
19 Replacement Program, which assists in the replacement of older, non-certified wood stoves, with
20 cleaner, more fuel-efficient wood heating devices or other less polluting heating appliances. The
21 contribution shall be made by check made payable to North Coast Unified Air Quality
22 Management District, with “Blue Lake Power, Consent Decree” in the memorandum line.
23 Payment shall be delivered to the Air Pollution Control Officer, North Coast Unified Air Quality
24 Management District, 707 L Street, Eureka, CA 95501. The District shall use such funds for its
25 Wood Stove Incentive Replacement Program.

26 42. Within thirty (30) Days of such contribution, Blue Lake shall submit to EPA and
27 the District documentation of such contribution.
28

Consent Decree

VIII. REPORTING REQUIREMENTS

43. Blue Lake shall submit the following reports, in addition to those reports already required by permits issued to the Facility or this Consent Decree:

a. Within thirty (30) Days after the end of each half calendar-year (i.e., June 30, December 31) after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XX, Blue Lake shall submit a semi-annual report to EPA and the District for the immediately preceding half calendar year period that shall include the following:

- i. Identify the progress of installation, including any and all dates of completed installation, of each control technology required for the Facility by this Consent Decree and describe any problems encountered or anticipated during such installation, together with implemented or proposed solutions;
- ii. Completion of milestones;
- iii. Problems encountered or anticipated, together with proposed solutions;
- iv. Status of permit applications;
- v. All CEMS data collected for the Main Stack, reduced to 1-hour averages, in accordance with 40 C.F.R. § 60.13(h)(2) and in electronic format that can be manipulated with Microsoft Excel, including an explanation of any periods of CEMS downtime;
- vi. Identification of all periods, reduced to 1-hour periods, of Startup, Shutdown, and Malfunction of the Boiler;
- vii. Identification of each period when the Boiler was operating in excess of one or more Emission Rates;
- viii. Identification of the magnitude of excess emissions during each period of excess emissions as computed in accordance with 40 C.F.R. § 60.13(h), including any conversion factors used;

- 1 ix. If applicable and feasible, identification of the nature and cause of the
2 Boiler malfunction during periods of excess emissions, corrective
3 actions taken, or preventative measures adopted; and
4 x. The date and time of each period during which the CEMS was
5 inoperative except for zero and span checks and the nature of the
6 system repairs or adjustments or a statement that there was no such
7 period.

8 b. If Blue Lake violates, or is on notice that it may materially violate, any
9 requirement of this Consent Decree, Blue Lake shall notify the United States and the District of
10 such violation and its likely duration, in writing, within ten business Days of the Day Blue Lake
11 first becomes aware of the violation or prospective violation, with an explanation of the
12 violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize
13 such violation. If the cause of a violation cannot be fully explained at the time the notification is
14 due, Blue Lake shall so state in the notification. Blue Lake shall investigate the cause of the
15 violation and shall then provide a full explanation of the cause of the violation in the next report
16 due pursuant to subparagraph 43.a. Nothing in this Paragraph or the following Paragraph
17 relieves Blue Lake of its obligation to provide the notice required by Section X of this Consent
18 Decree (Force Majeure).

19 44. Whenever any violation of this Consent Decree or of any applicable permits or
20 any other event affecting Blue Lake's performance under this Decree, or the performance of the
21 Facility may pose an immediate threat to the public health or welfare or the environment, Blue
22 Lake shall notify EPA and the District orally or by electronic transmission as soon as possible,
23 but no later than 24 hours after Blue Lake first knew of the violation or event. This procedure is
24 in addition to the requirements set forth in the preceding Paragraph.

25 45. All reports shall be submitted to the persons designated in Section XVI of this
26 Consent Decree (Notices).

27 46. Each report submitted by Blue Lake under this Section shall be signed by an
28 official of Blue Lake and include the following certification:

Consent Decree

1 I certify under penalty of law that this document and all attachments were
2 prepared under my direction or supervision in accordance with a system designed
3 to assure that qualified personnel properly gather and evaluate the information
4 submitted. Based on my inquiry of the person or persons who manage the system,
5 or those persons directly responsible for gathering the information, the
6 information submitted is, to the best of my knowledge and belief, true, accurate,
and complete. I am aware that there are significant penalties for submitting false
information, including the possibility of fine and imprisonment for knowing
violations.

7 This certification requirement does not apply to emergency or similar notifications where
8 compliance would be impractical.

9 47. The reporting requirements of this Consent Decree do not relieve Blue Lake of
10 any reporting obligations required by the Clean Air Act or implementing regulations, or by any
11 other federal, state, or local law, regulation, permit, or other requirement.

12 48. Any information provided pursuant to this Consent Decree may be used by the
13 United States in any proceeding to enforce the provisions of this Consent Decree and as
14 otherwise permitted by law.

15 **IX. STIPULATED PENALTIES**

16 49. Blue Lake shall be liable for stipulated penalties to the United States and the
17 District for violations of this Consent Decree as specified below, unless excused under Section X
18 (Force Majeure). A violation includes failing to perform any obligation required by the terms of
19 this Decree, including any work plan or schedule approved under this Decree, according to all
20 applicable requirements of this Decree and within the specified time schedules established by or
21 approved under this Decree.

22 50. Late Payment of Civil Penalty. If Blue Lake fails to pay the entirety of the civil
23 penalty required to be paid under Section IV of this Decree (Civil Penalty) to both Plaintiffs
24 when due, Blue Lake shall pay a stipulated penalty of \$100 per Day for each Day that the
25 payment, to either or both Plaintiffs, is late.

26
27
28

1 51. Emissions Rates. The following stipulated penalties shall accrue per violation per
 2 Day for each violation of the Emission Rates set forth in Paragraphs 18 and 19 or an alternative
 3 Emission Rate approved by EPA pursuant to Paragraph 22:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 750	31st day and beyond

7 52. Compliance Milestones.

8 a. The following stipulated penalties shall accrue per violation per Day for
 9 each violation of the requirements identified in subparagraph 52.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th through 30th day
\$ 1500	31st day and beyond

13 b. Compliance Milestones:

- 14 i. Submission of the Boiler Engineering Study protocol in accordance
 15 with the timeframe and requirements set forth in Paragraphs 12 and
 16 13;
- 17 ii. Completion of the Boiler Engineering Study and submission of Report
 18 in accordance with the timeframe and requirements set forth in
 Paragraph 13;
- 19 iii. Contract to purchase equipment necessary to install the improved OFA
 20 and SNCR systems in accordance with the timeframe and
 requirements set forth in Paragraph 14;
- 21 iv. Installation and operation of SNCR and improved OFA system in
 22 accordance with the timeframes and requirements set forth in
 Paragraph 15;
- 23 v. Operation of the ESP in accordance with the timeframes and
 24 requirements set forth in Paragraph 16;
- 25 vi. Submission of fuel management plan in accordance with the
 26 timeframes and requirements set forth in Paragraph 25;
- 27 vii. Submission of fugitive dust from roads plan in accordance with the
 timeframes and requirements set forth in Paragraph 26;
- 28 viii. Operation of CEMS in accordance with the timeframes and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

requirements set forth in Paragraph 29.

53. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VIII (Reporting Requirements), and for each violation of the deadlines for submissions required by Section V (Compliance Requirements) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

54. For any other violation of this Consent Decree, the following stipulated penalties shall accrue per violation per Day for each violation:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

55. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

56. Blue Lake shall pay stipulated penalties to the United States and the District within 30 Days of a written demand by either Plaintiff. Blue Lake shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the District. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

57. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

58. Stipulated penalties shall continue to accrue as provided in Paragraph 55, during any Dispute Resolution, but need not be paid until the following:

Consent Decree

1 a. If the dispute is resolved by agreement or by a decision of EPA or the
2 District that is not appealed to the Court, Blue Lake shall pay accrued penalties determined to be
3 owing, together with interest, to the United States or the District, or to both, within 30 Days of
4 the effective date of the agreement or the receipt of EPA's or the District's decision or order.

5 b. If the dispute is appealed to the Court and the United States or the District
6 prevails in whole or in part, Blue Lake shall pay all accrued penalties determined by the Court to
7 be owing, together with interest, within 60 Days of receiving the Court's decision or order,
8 except as provided in subparagraph c, below.

9 c. If any Party appeals the District Court's decision, Blue Lake shall pay all
10 accrued penalties determined to be owing, together with interest, within 15 Days of receiving the
11 final appellate court decision.

12 59. Blue Lake shall pay stipulated penalties owing to the United States in the manner
13 set forth and with the confirmation notice required by Paragraph 9, except that the transmittal
14 letter shall state that the payment is for stipulated penalties and shall state for which violation(s)
15 the penalties are being paid. Blue Lake shall pay stipulated penalties owing to the District in the
16 manner set forth in Paragraph 9.

17 60. If Blue Lake fails to pay stipulated penalties according to the terms of this
18 Consent Decree, Blue Lake shall be liable for interest on such penalties, as provided for in
19 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall
20 be construed to limit the United States or the District from seeking any remedy otherwise
21 provided by law for Blue Lake's failure to pay any stipulated penalties.

22 61. Subject to the provisions of Section XIV of this Consent Decree (Effect of
23 Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree
24 shall be in addition to any other rights, remedies, or sanctions available to the United States for
25 Blue Lake's violation of this Consent Decree or applicable law. Where a violation of this
26 Consent Decree is also a violation of the Clean Air Act or District regulations, Blue Lake shall
27 be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for
28 such violation.

Consent Decree

X. FORCE MAJEURE

1
2 62. “Force majeure,” for purposes of this Consent Decree, is defined as any event
3 arising from causes beyond the control of Blue Lake, of any entity controlled by Blue Lake, or of
4 Blue Lake’s contractors that delays or prevents the performance of any obligation under this
5 Consent Decree despite Blue Lake’s best efforts to fulfill the obligation. The requirement that
6 Blue Lake exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate
7 any potential force majeure event and best efforts to address the effects of any such event (a) as it
8 is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the
9 greatest extent possible. “Force majeure” does not include Blue Lake’s financial inability to
10 perform any obligation under this Consent Decree. “Force majeure” does include, but is not
11 limited to, failure to obtain or delays in obtaining any required governmental approvals despite
12 Blue Lake’s best efforts to fulfill the obligation to obtain such approvals, including submitting
13 complete and timely applications for required approvals and providing full and timely responses
14 to requests for additional information and/or data from the entity providing a required approval.

15 63. If any event occurs or has occurred that may delay the performance of any
16 obligation under this Consent Decree, whether or not caused by a force majeure event, Blue Lake
17 shall provide notice orally or by electronic or facsimile transmission to Chief, Air and TRI
18 Section, Enforcement Division, U.S. Environmental Protection Agency, Region IX, within 72
19 hours of when Blue Lake first knew that the event might cause a delay. Within seven days
20 thereafter, Blue Lake shall provide in writing to EPA and the District an explanation and
21 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or
22 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to
23 be taken to prevent or mitigate the delay or the effect of the delay; Blue Lake’s rationale for
24 attributing such delay to a force majeure event if it intends to assert such a claim; and a statement
25 as to whether, in the opinion of Blue Lake, such event may cause or contribute to an
26 endangerment to public health, welfare or the environment. Blue Lake shall include with any
27 notice all available documentation supporting the claim that the delay was attributable to a force
28 majeure. Failure to comply with the above requirements shall preclude Blue Lake from asserting

Consent Decree

1 any claim of force majeure for that event for the period of time of such failure to comply, and for
2 any additional delay caused by such failure. Blue Lake shall be deemed to know of any
3 circumstance of which Blue Lake, any entity controlled by Blue Lake, or Blue Lake's contractors
4 knew or should have known.

5 64. If EPA, after a reasonable opportunity for review and comment by the District,
6 agrees that the delay or anticipated delay is attributable to a force majeure event, the time for
7 performance of the obligations under this Consent Decree that are affected by the force majeure
8 event will be extended by EPA, after a reasonable opportunity for review and comment by the
9 District, for such time as is necessary to complete those obligations. An extension of the time for
10 performance of the obligations affected by the force majeure event shall not, of itself, extend the
11 time for performance of any other obligation. EPA will notify Blue Lake in writing of the length
12 of the extension, if any, for performance of the obligations affected by the force majeure event.

13 65. If EPA, after a reasonable opportunity for review and comment by the District,
14 does not agree that the delay or anticipated delay has been or will be caused by a force majeure
15 event, EPA will notify Blue Lake in writing of its decision.

16 66. If Blue Lake elects to invoke the dispute resolution procedures set forth in Section
17 XI (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any
18 such proceeding, Blue Lake shall have the burden of demonstrating by a preponderance of the
19 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,
20 that the duration of the delay or the extension sought was or will be warranted under the
21 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
22 that Blue Lake complied with the requirements of Paragraphs 62 and 63, above. If Blue Lake
23 carries this burden, the delay at issue shall be deemed not to be a violation by Blue Lake of the
24 affected obligation of this Consent Decree identified to EPA and the Court.

25 **XI. DISPUTE RESOLUTION**

26 67. Unless otherwise expressly provided for in this Consent Decree, the dispute
27 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
28 under or with respect to this Consent Decree. Blue Lake's failure to seek resolution of a dispute

Consent Decree

1 under this Section shall preclude Blue Lake from raising any such issue as a defense to an action
2 by the United States or the District to enforce any obligation of Blue Lake arising under this
3 Decree.

4 68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
5 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
6 considered to have arisen when Blue Lake sends the United States a written Notice of Dispute.
7 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
8 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
9 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
10 then the position advanced by the United States shall be considered binding unless, within 10
11 Days after the conclusion of the informal negotiation period, Blue Lake invokes formal dispute
12 resolution procedures as set forth below.

13 69. Formal Dispute Resolution. Blue Lake shall invoke formal dispute resolution
14 procedures, within the time period provided in the preceding Paragraph, by serving on the United
15 States a written Statement of Position regarding the matter in dispute. The Statement of Position
16 shall include, but need not be limited to, any factual data, analysis, or opinion supporting Blue
17 Lake's position and any supporting documentation relied upon by Blue Lake.

18 70. The United States shall serve its Statement of Position within 45 Days of receipt
19 of Blue Lake's Statement of Position. The United States' Statement of Position shall include,
20 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
21 supporting documentation relied upon by it. The United States' Statement of Position shall be
22 binding on Blue Lake, unless Blue Lake files a motion for judicial review of the dispute in
23 accordance with Paragraph 72.

24 71. The United States shall maintain the administrative record for any dispute
25 following these procedures. The administrative record shall consist of the Parties' Statements of
26 Position and supporting documentation submitted with the Statements of Position.

27 72. Blue Lake may seek judicial review of the dispute by filing with the Court and
28 serving on the United States and the District, in accordance with Section XVI of this Consent

Consent Decree

1 Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be
2 filed within 10 Days of receipt of the United States' Statement of Position pursuant to the
3 preceding Paragraph. The motion shall contain a written statement of Blue Lake's position on
4 the matter in dispute, including any supporting factual data, analysis, opinion, or documentation,
5 and shall set forth the relief requested and any schedule within which the dispute must be
6 resolved for orderly implementation of the Consent Decree.

7 73. The United States and District shall respond to Blue Lake's motion within the
8 time period allowed by the Local Rules of this Court. Blue Lake may file a reply memorandum,
9 to the extent permitted by the Local Rules.

10 74. Standard of Review

11 a. Disputes Concerning Matters Accorded Record Review. Except as
12 otherwise provided in this Consent Decree, in any dispute brought under Paragraph 69 pertaining
13 to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any
14 other items requiring approval by EPA and the District under this Consent Decree, and all other
15 disputes that are accorded review on the administrative record under applicable principles of
16 administrative law, Blue Lake shall have the burden of demonstrating, based on the
17 administrative record, that the position of the United States and District is arbitrary and
18 capricious or otherwise not in accordance with law.

19 b. Other Disputes. Except as otherwise provided in this Consent Decree, in
20 any other dispute brought under Paragraph 69, Blue Lake shall bear the burden of demonstrating
21 that its position complies with this Consent Decree.

22 75. The invocation of dispute resolution procedures under this Section shall not, by
23 itself, extend, postpone, or affect in any way any obligation of Blue Lake under this Consent
24 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with
25 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but
26 payment shall be stayed pending resolution of the dispute as provided in Paragraph 58. If Blue
27 Lake does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as
28 provided in Section IX (Stipulated Penalties).

Consent Decree

XII. PERMITS

1
2 76. Where any compliance obligation under Section V (Compliance Requirements)
3 requires Blue Lake to obtain a federal, state, or local permit or approval, Blue Lake shall submit
4 a timely and complete application for such permit or approval and take all other actions
5 necessary to obtain all such permits or approvals. Blue Lake may seek relief under the
6 provisions of Section X of this Consent Decree (Force Majeure) for any delay in the performance
7 of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or
8 approval required to fulfill such obligation, if Blue Lake has submitted timely and complete
9 applications and has taken all other actions necessary to obtain all such permits or approvals.

10 77. Notwithstanding the reference to Blue Lake’s Title V Permit in this Consent
11 Decree, the enforcement of such permit shall be in accordance with its own terms and the Act.
12 Blue Lake’s Title V Permit for the Facility shall not be enforceable under this Consent Decree
13 regardless of whether such term has or will become part of a Title V Permit, subject to the terms
14 of Section XX (Termination) of this Consent Decree.

15 78. Within thirty (30) months of EPA’s approval of the Boiler Engineering Study
16 Report, Blue Lake shall submit an application to the District to permanently include the
17 requirements and limitations enumerated in this Consent Decree into a federally-enforceable
18 permit (other than a Title V operating permit), such that the requirements and limitations
19 enumerated in this Paragraph become and remain ‘applicable requirements’ as that term is
20 defined in 40 C.F.R. Part 70.2 and these requirements shall survive the termination of this
21 Consent Decree in accordance with Section XX (Termination) in the form of a federally-
22 enforceable permit (other than a Title V operating permit). The permit shall require compliance
23 with the following: (a) any applicable Emission Rate; (b) all Continuous Operation requirements;
24 (c) any requirements of a plan approved pursuant to this Consent Decree, including the Fuel
25 Management, ESP Optimization, and Fugitive Road Dust Plans; (d) the Ash Handling and
26 Disposal Procedures in Paragraph 27; (e) all monitoring requirements of this Consent Decree; (f)
27 all limitations set forth in Section VI (Prohibition on Netting Credits or Offsets from Required
28 Controls; and (g) all compliance methods imposed by this Consent Decree.

Consent Decree

1 79. Within ninety (90) Days of obtaining the permit required under Paragraph 78,
2 Blue Lake shall apply for amendment of its Title V Permit to incorporate the requirements and
3 limitations of such permit into the Title V Permit for the Facility.

4 80. Blue Lake shall provide the United States with a copy of each application for a
5 federally enforceable permit required by this Section, as well as a copy of any permit proposed
6 as a result of such application, to allow for timely EPA participation in any public comment
7 opportunity.

8 81. This Consent Decree shall not terminate before all the requirements and
9 limitations enumerated in this Consent Decree, including, but not limited to, those listed in
10 Paragraph 78, are incorporated into Blue Lake's federally enforceable construction permits and
11 Title V Permit for the Facility.

12 **XIII. INFORMATION COLLECTION AND RETENTION**

13 82. The United States, the District, and their representatives, including attorneys,
14 contractors, and consultants, shall have the right of entry into any facility covered by this
15 Consent Decree, at all reasonable times, upon presentation of credentials, to:

- 16 a. monitor the progress of activities required under this Consent Decree;
- 17 b. verify any data or information submitted to the United States or the
18 District in accordance with the terms of this Consent Decree;
- 19 c. obtain samples and, upon request, splits of any samples taken by Blue
20 Lake or its representatives, contractors, or consultants;
- 21 d. obtain documentary evidence, including photographs and similar data; and
- 22 e. assess Blue Lake's compliance with this Consent Decree.

23 83. Until five (5) years after the termination of this Consent Decree, Blue Lake shall
24 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
25 documents, records, or other information (including documents, records, or other information in
26 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
27 its contractors' or agents' possession or control, and that relate in any manner to Blue Lake's
28 performance of its obligations under this Consent Decree. This information-retention

Consent Decree

1 requirement shall apply regardless of any contrary corporate or institutional policies or
2 procedures. At any time during this information-retention period, upon request by the United
3 States or the District, Blue Lake shall provide copies of any documents, records, or other
4 information required to be maintained under this Paragraph.

5 84. At the conclusion of the information retention period provided in the preceding
6 Paragraph, Blue Lake shall notify the United States and the District at least ninety (90) Days
7 prior to the destruction of any documents, records, or other information subject to the
8 requirements of the preceding Paragraph and, upon request by the United States or the District,
9 Blue Lake shall deliver any such documents, records, or other information to EPA or the District.
10 Blue Lake may assert that certain documents, records, or other information is privileged under
11 the attorney-client privilege or any other privilege recognized by federal law. If Blue Lake
12 asserts such a privilege, it shall provide the following: (1) the title of the document, record, or
13 information; (2) the date of the document, record, or information; (3) the name and title of each
14 author of the document, record, or information; (4) the name and title of each addressee and
15 recipient; (5) a description of the subject of the document, record, or information; and (6) the
16 privilege asserted by Blue Lake. However, no documents, records, or other information created
17 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
18 privilege.

19 85. Blue Lake may also assert that information required to be provided under this
20 Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to
21 any information that Blue Lake seeks to protect as CBI, Blue Lake shall follow the procedures
22 set forth in 40 C.F.R. Part 2.

23 86. This Consent Decree in no way limits or affects any right of entry and inspection,
24 or any right to obtain information, held by the United States or the District pursuant to applicable
25 federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of
26 Blue Lake to maintain documents, records, or other information imposed by applicable federal or
27 state laws, regulations, or permits.
28

Consent Decree

1 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

2 87. This Consent Decree resolves the civil claims of the United States and the District
3 against Blue Lake for the violations alleged in the Complaint filed in this action through the date
4 of lodging.

5 88. The United States and the District reserve all legal and equitable remedies
6 available to enforce the provisions of this Consent Decree, except as expressly stated in
7 Paragraph 87. This Consent Decree shall not be construed to limit the rights of the United States
8 or the District to obtain penalties or injunctive relief under the Act or implementing regulations,
9 or under other federal or state laws, regulations, or permit conditions, except as expressly
10 specified in Paragraph 87. The United States and the District further reserve all legal and
11 equitable remedies to address any imminent and substantial endangerment to the public health or
12 welfare or the environment arising at, or posed by, Blue Lake's Facility, whether related to the
13 violations addressed in this Consent Decree or otherwise.

14 89. In any subsequent administrative or judicial proceeding initiated by the United
15 States or the District for injunctive relief, civil penalties, or other appropriate relief relating to the
16 Facility, Blue Lake shall not assert, and may not maintain, any defense or claim based upon the
17 principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-
18 splitting, or other defenses based upon any contention that the claims raised by the United States
19 or the District in the subsequent proceeding were or should have been brought in the instant case,
20 except with respect to claims that have been specifically resolved pursuant to Paragraph 87 of
21 this Section.

22 90. This Consent Decree is not a permit, or a modification of any permit, under any
23 federal, State, or local laws or regulations. Blue Lake is responsible for achieving and
24 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
25 and permits; and Blue Lake's compliance with this Consent Decree shall be no defense to any
26 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.
27 The United States and the District do not, by their consent to the entry of this Consent Decree,
28 warrant or aver in any manner that Blue Lake's compliance with any aspect of this Consent

Consent Decree

1 Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any
2 other provisions of federal, State, or local laws, regulations, or permits. This Consent Decree
3 does not limit or affect the rights of the District to incorporate additional and/or more stringent
4 conditions than those established in this Consent Decree in its permits or approvals for the
5 Facility as may be authorized or warranted under federal, state, or local laws or regulations.

6 91. This Consent Decree does not limit or affect the rights of Blue Lake or of the
7 United States or the District against any third parties, not party to this Consent Decree, nor does
8 it limit the rights of third parties, not party to this Consent Decree, against Blue Lake, except as
9 otherwise provided by law.

10 92. This Consent Decree shall not be construed to create rights in, or grant any cause
11 of action to, any third party not a Party to this Consent Decree.

12 **XV. COSTS**

13 93. The Parties shall bear their own costs of this action, including attorneys' fees,
14 except that the United States and the District shall be entitled to collect the costs (including
15 attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any
16 stipulated penalties due by not paid by Blue Lake.

17 **XVI. NOTICES AND SUBMISSIONS**

18 94. Unless otherwise specified herein, all approvals, consents, deliverables,
19 modifications, notices, notifications, objections, proposals, reports, requests, submissions, or
20 communications required by this Consent Decree must be in writing. Whenever, under this CD,
21 notice is required to be given, or a report or other document is required to be sent, by one Party
22 to another, it must be directed to the person(s) specified below at the address(es) specified below.
23 Any Party may change the person and/or address applicable to it by providing notice of such
24 change to all Parties. All notices under this Section are effective upon receipt, unless otherwise
25 specified. Except as otherwise provided, notice to a Party by email (if that option is provided
26 below) or by regular mail in accordance with this Section satisfies any notice requirement of the
27 CD regarding such Party.

28 To the United States:

Consent Decree

1 EES Case Management Unit
2 U.S. Department of Justice
3 Environment and Natural Resources Division
4 P.O. Box 7611
5 Washington, D.C. 20044-7611
6 Eescdcopy.enrd@usdoj.gov
7 Re: DJ # 90-5-2-1-11038

8 and

9 Brian Riedel
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne Street
13 San Francisco, California 94105
14 riedel.brian@epa.gov

15 To EPA:

16 Director, Enforcement Division (ENF-1)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105
20 Attn: Mark Sims, ENF-2-1
21 sims.mark@epa.gov

22 To the District:

23 Air Pollution Control Officer
24 North Coast Unified Air Quality Management District
25 707 L. St.
26 Eureka, CA 95501

27 and

28 Nancy Diamond
District Counsel
Law Offices of Nancy Diamond
822 G Street, Suite 3
Arcata, CA 95521

To Blue Lake:

Blue Lake Power, LLC
Attn: Glenn Zane
1615 Continental Street, Suite 100

Consent Decree

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Redding, CA 96001
and

David O’Neill
President
LandGas Technology LLC
5487 N. Milwaukee Avenue
Chicago, IL 60630

and

Jane E. Luckhardt
Day Carter & Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864

XVII. EFFECTIVE DATE

95. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

XVIII. RETENTION OF JURISDICTION

96. 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, pursuant to Sections XI and XIX, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

97. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

98. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 74, the Party seeking the modification bears the burden of

Consent Decree

1 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of
2 Civil Procedure 60(b).

3 **XX. TERMINATION**

4 99. After Blue Lake has completed the requirements of Section V (Compliance
5 Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with
6 this Consent Decree for a period of four (4) years, has obtained federally-enforceable permits
7 that comply with the requirements of Section XII (Permits), and has paid the civil penalty and
8 any accrued interest and stipulated penalties as required by this Consent Decree, Blue Lake may
9 serve upon the United States and the District a Request for Termination, stating that Blue Lake
10 has satisfied those requirements, together with all necessary supporting documentation.

11 100. In the event that Blue Lake permanently shuts down the Facility prior to
12 satisfying all the requirements in Paragraph 99, it may serve upon the United States and the
13 District a Request for Termination after paying the civil penalty, environmental mitigation, and
14 any outstanding stipulated penalties as required by this Consent Decree, and relinquishing its
15 operating permits and Title V Permits to the District.

16 101. Following receipt by the United States and the District of Blue Lake's Request for
17 Termination, the Parties shall confer informally concerning the Request and any disagreement
18 that the Parties may have as to whether Blue Lake has satisfactorily complied with the
19 requirements for termination of this Consent Decree. If the United States, after consultation with
20 the District, agrees that the Decree may be terminated, the Parties shall submit, for the Court's
21 approval, a joint stipulation terminating the Decree.

22 102. If the United States, after consultation with the District, does not agree that the
23 Decree may be terminated, Blue Lake may invoke Dispute Resolution under Section XI of this
24 Decree. However, Blue Lake shall not seek Dispute Resolution of any dispute regarding
25 termination, under Paragraph 69 of Section XI, until 60 Days after service of its Request for
26 Termination.

27
28
Consent Decree

1 **XXI. PUBLIC PARTICIPATION**

2 103. This Consent Decree shall be lodged with the Court for a period of not less than
3 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
4 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
5 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
6 improper, or inadequate. Blue Lake consents to entry of this Consent Decree without further
7 notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to
8 challenge any provision of the Decree, unless the United States has notified Blue Lake in writing
9 that it no longer supports entry of the Decree.

10 **XXII. SIGNATORIES/SERVICE**

11 104. Each undersigned representative of Blue Lake, the District, and the Assistant
12 Attorney General for the Environment and Natural Resources Division of the Department of
13 Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this
14 Consent Decree and to execute and legally bind the Party he or she represents to this document.

15 105. This Consent Decree may be signed in counterparts, and its validity shall not be
16 challenged on that basis. Blue Lake agrees to accept service of process by mail with respect to
17 all matters arising under or relating to this Consent Decree and to waive the formal service
18 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
19 applicable Local Rules of this Court including, but not limited to, service of a summons.

20 106. The Parties agree that Defendant need not file an answer to the Complaint in this
21 action unless or until the Court expressly declines to enter this Consent Decree.

22 **XXIII. INTEGRATION**

23 107. This Consent Decree constitutes the final, complete, and exclusive agreement and
24 understanding among the Parties with respect to the settlement embodied in the Decree and
25 supersedes all prior agreements and understandings, whether oral or written, concerning the
26 settlement embodied herein. Other than deliverables that are subsequently submitted and
27 approved pursuant to this Decree, no other document, nor any representation, inducement,
28

Consent Decree

1 agreement, understanding, or promise, constitutes any part of this Decree or the settlement it
2 represents, nor shall it be used in construing the terms of this Decree.

3 **XXIV. HEADINGS**

4 108. Headings to the sections and subsections of this Consent Decree are provided for
5 convenience and do not affect the meaning or interpretation of the provisions of this Consent
6 Decree.

7 **XXV. FINAL JUDGMENT**

8 109. Upon approval and entry of this Consent Decree by the Court, this Consent
9 Decree shall constitute a final judgment of the Court as to the United States, the District, and
10 Blue Lake.

11 SO ORDERED.

12
13 Dated and entered this ___ day of _____, _____.

14
15 _____
16 [_____]
17 UNITED STATES DISTRICT JUDGE
18 Northern District of California
19
20
21
22
23
24
25
26
27
28

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2

FOR PLAINTIFF UNITED STATES OF AMERICA:

3

4

5 _____
DATE:



ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice

6

7

8

2/26/16

9

DATE:



SHEILA McANANEY
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 616-6535
Facsimile: (202) 616-2427
sheila.mcananey@usdoj.gov

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

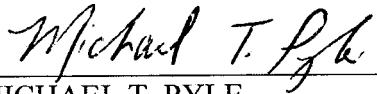
Consent Decree

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2
3 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

4 BRIAN J. STRETCH
5 Acting United States Attorney
6 Northern District of California

7 2/25/16
8 DATE:

9 
10 MICHAEL T. PYLE
11 Assistant United States Attorney
12 Northern District of California
13 150 Almaden Boulevard, Suite 900
14 San Jose, California 95113
15 Telephone: (408) 535-5087
16 michael.t.pyle@usdoj.gov

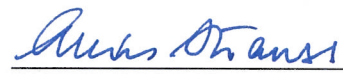
17
18
19
20
21
22
23
24
25
26
27
28
Consent Decree

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

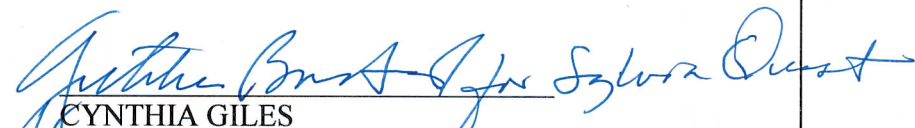
2 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12 February 2016
DATE:


for JARED BLUMENFELD
Regional Administrator
United States Environmental Protection Agency, Region IX

2/16/16
DATE:


for CYNTHIA GILES
Assistant Administrator for Enforcement
and Compliance Assurance
United States Environmental Protection Agency


OF COUNSEL:
BRIAN RIEDEL
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Consent Decree

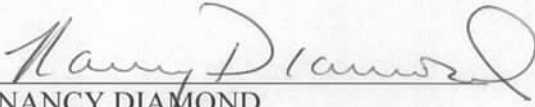
1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR PLAINTIFF NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT:

3
4 2/9/2016
5 DATE:


6 BRIAN WILSON
7 Air Pollution Control Officer
8 North Coast Unified Air Quality Management District

9
10 Feb 9, 2016
11 DATE:


12 NANCY DIAMOND
13 District Counsel
14 North Coast Unified Air Quality Management District
15 Law Offices of Nancy Diamond
16 822 G Street, Suite 3
17 Arcata, CA 95521
18 Telephone: (707) 826-8540
19 Email: ndiamond@ndiamondlaw.com
20
21
22
23
24
25
26
27
28

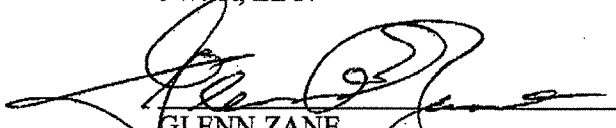
Consent Decree

1 Signature Page for *United States v. Blue Lake Power, LLC* Consent Decree

2 FOR DEFENDANT BLUE LAKE POWER, LLC:

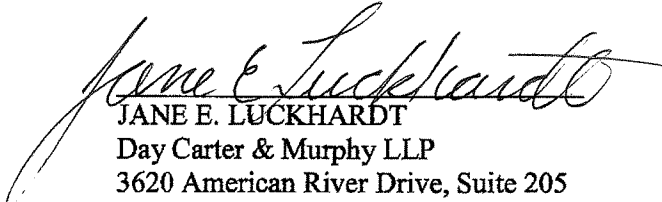
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jan 22, 2016
DATE:



GLENN ZANE
President *of the General Manager for*
Blue Lake Power, LLC
1615 Continental Street, Suite 100
Redding, CA 96001
Telephone: (530) 246-2455
Email: gzane@crsinet.com

Jan 22, 2015
DATE:



JANE E. LUCKHARDT
Day Carter & Murphy LLP
3620 American River Drive, Suite 205
Sacramento, CA 95864
Telephone: (916) 246-7316
Email: jluckhardt@daycartermurphy.com

Consent Decree

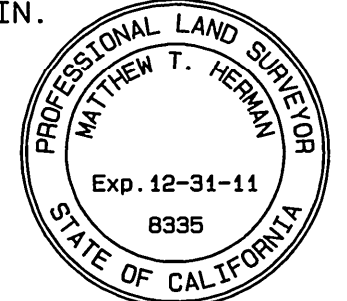
EXHIBIT 1

ALTA/ACSM Land Title Survey

TO BLUE LAKE POWER, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, BLUE LAKE SPV, LTD., A CAYMAN ISLANDS EXEMPTED COMPANY AND FIDELITY NATIONAL TITLE COMPANY OF CALIFORNIA:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS IN 2005, AND INCLUDES ITEMS 3, 10, 11 (A) OF TABLE A THEREOF. PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA AND NSPS AND IN EFFECT ON THE DATE OF THIS CERTIFICATION, UNDERSIGNED FURTHER CERTIFIES THAT IN MY PROFESSIONAL OPINION, AS A LAND SURVEYOR REGISTERED IN THE STATE OF CALIFORNIA, THE RELATIVE POSITIONAL ACCURACY OF THIS SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN.

Matthew T. Herman 9/22/10
 MATTHEW T. HERMAN, P.L.S. 8335 DATE:
 LICENSE EXPIRES 12-31-11



PROPERTY DESCRIPTION AS DISCLOSED BY FIDELITY NATIONAL TITLE COMPANY OF CALIFORNIA PRELIMINARY TITLE REPORT NO. 10-503037-B-PG DATED AUGUST 26, 2010, 07:30 A.M.

PARCEL ONE
 PARCEL 1 AS SHOWN ON PARCEL MAP NO. 2228 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF HUMBOLDT COUNTY IN BOOK 19 OF PARCEL MAPS, PAGE 122 AND 123. APN 025-161-003 AND 025-161-004

PARCEL TWO
 PARCEL 2 AS SHOWN ON PARCEL MAP NO. 2227 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF HUMBOLDT COUNTY IN BOOK 19 OF PARCEL MAPS, PAGE 120 AND 121. APN 312-161-016 AND 312-161-019

PARCEL THREE
 A 60 FOOT EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES, AND ALL PURPOSES INCIDENTAL THERETO DESCRIBED AS FOLLOWS:
 THAT CERTAIN STRIP SHOWN AS TAYLOR WAY ON SAID PARCEL MAP NO. 2227.

FOUND 2 1/2" BRASS DISC MARKED LS 5469 IN MONUMENT WELL AS SHOWN ON RECORD OF SURVEY BOOK 59, PAGE 114 AND BOOK 47, PAGE 56.

FOUND 2 1/2" BRASS DISC MARKED LS 5469 IN MONUMENT WELL AS SHOWN ON RECORD OF SURVEY BOOK 59, PAGE 114 AND BOOK 47, PAGE 56.

THE CITY OF BLUE LAKE BK 1660 O.R PG 1235

CENTERLINE OF 40' WIDE PACIFIC GAS AND ELECTRIC COMPANY EASEMENT AS IDENTIFIED IN THE PRELIMINARY TITLE REPORT 10-503037-B-PG RECORDED IN 1760 O.R. PAGE 334. THE PG&E FACILITIES AS SURVEYED ARE NOT COMPLETELY CONTAINED WITHIN THIS EASEMENT.

LINE	BEARING	DISTANCE
L1	S85°12'48"E	100.00'
L2	S04°47'12"W	365.60'
L3	S36°40'36"E	54.30'

*PER THE ABOVE REFERENCED DEED THE POINT OF COMMENCEMENT IS THE 1" IP MARKING THE SOUTHWEST CORNER OF PARCEL 1. THE TIE FROM THE POINT OF COMMENCEMENT TO THE POINT OF BEGINNING IS N35°36'48"E AND 463.10'.

CENTERLINE OF 40' WIDE PACIFIC GAS AND ELECTRIC COMPANY EASEMENT AND ACCESSORY EASEMENTS.

FOUND 1" IP AND PLASTIC PLUG MARKED RCE 21533 BADLY BENT. POSITION TAKEN AT BASE. AS SHOWN ON PARCEL MAP BOOK 19, PAGE 120 AND RECORD OF SURVEY BOOK 47, PAGE 56.

JOB NO. 009126-100 ONE SHEET ONLY

RECORD BOUNDARY INFORMATION

THE BEARINGS AND DISTANCES OF THIS SURVEY AGREE WITH REFERENCED RECORD DATA UNLESS SHOWN OTHERWISE.

RECORD DATA FROM:

- () R1 PARCEL MAP BOOK 19, PAGE 120
- () R2 PARCEL MAP BOOK 19, PAGE 122
- () R3 RECORD OF SURVEY BOOK 59, PAGE 114
- () R4 RECORD OF SURVEY BOOK 47, PAGE 56

BASIS OF BEARINGS

S85°12'00"E - BETWEEN FOUND MONUMENTS AT THE RIGHT OF WAY CENTERLINE INTERSECTION OF TAYLOR WAY AND HATCHERY ROAD AND TAYLOR WAY AND MONDA WAY AS SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 47 OF SURVEYS, PAGE 56.

LEGEND

- PROPERTY LINE FOR ALTA/ACSM PARCELS
- - - EASEMENT LINE
- EDGE OF PAVEMENT
- - - EDGE OF UNPAVED ROAD
- - - DRAINAGE FLOWLINE
- - - EXISTING FENCE LINE
- - - UTILITY POLE, GUY AND OVERHEAD LINE
- - - OVERHEAD STRUCTURE
- - - DRAINAGE STRUCTURE AND UNDERGROUND DRAIN PIPE
- ⊙ FIRE HYDRANT AND VALVE
- ⊙ FIRE DEPARTMENT CONNECTION
- ⊙ WATER VALVE
- ⊙ LIGHT POLE
- ⊙ STRUCTURE
- △ FOUND MONUMENT AS SHOWN RECORD OF SURVEY BOOK 59, PAGE 114
- FOUND MONUMENT AS NOTED
- ⊗ NOTHING FOUND, NOTHING SET
- TS THIS SURVEY
- SSMH SANITARY SEWER MANHOLE
- SDMH STORM DRAIN MANHOLE
- DI DRAINAGE INLET

PARCEL 2
 PARCEL MAP 2227
 19 P M 120
 59 R S 114

PARCEL 1
 PARCEL MAP 2228
 19 P M 122

NOTES:

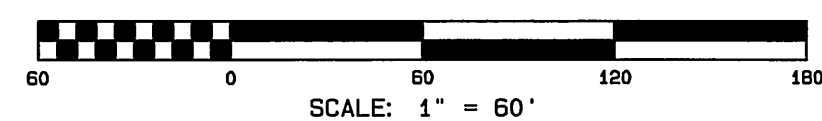
1. PROPERTY ADDRESS IS 200 TAYLOR WAY, BLUE LAKE, CALIFORNIA 95525 AS DISCLOSED BY FIDELITY NATIONAL TITLE COMPANY OF CALIFORNIA PRELIMINARY REPORT TITLE NO. 10-503037-B-PG DATED AUGUST 26, 2010, 07:30 A.M.
2. FIELD SURVEY COMPLETED MAY 26, 2010 AND FIELD VERIFICATION SEPTEMBER 17, 2010.
3. AS DISCLOSED IN THE FLOOD INSURANCE RATE MAP FOR THE CITY OF BLUE LAKE, CA, COMMUNITY-PANEL NUMBER 060438 0001 B, DATED MAY 5, 1997, THE PROPERTY IS NOT LOCATED WITHIN AN IDENTIFIED FLOOD PLAIN OR FLOODWAY.
4. THE PRELIMINARY TITLE REPORT NO. 10-503037-B-PG REFERS TO RIGHTS AND EASEMENTS FOR NAVIGATION AND FISHERY WHICH MAY EXIST OVER THAT PORTION OF SAID LAND LYING BENEATH THE WATERS OF DAVIS CREEK. THIS POTENTIAL ENCUMBRANCE IS INDEFINITE OF LOCATION.
5. THERE IS A POTENTIAL ENCUMBRANCE FOR THE CONSTRUCTION AND MAINTENANCE OF A LEVEE AND REVETMENT GRANTED TO THE COUNTY OF HUMBOLDT PER 738 O.R. 67. THE PRECISE LOCATION IS INDETERMINATE AND WAS NOT REFERENCED IN PRELIMINARY TITLE REPORT NO. 10-503037-B-PG.
6. A PACIFIC GAS AND ELECTRIC COMPANY EASEMENT AS RECORDED IN BOOK 1989-20572, OF OFFICIAL RECORDS AND AS SHOWN IN PRELIMINARY TITLE REPORT NO. 10-503037-B-PG DOES NOT IMPACT PARCELS 1 OR 2.

ALTA/ACSM LAND TITLE SURVEY

BEING PARCEL 1 AS SHOWN ON BOOK 19, PAGE 122, H.C.R. AND PARCEL 2 AS SHOWN ON BOOK 19, PAGE 120, H.C.R. AND BEING A PORTION OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 2 EAST, H.B.& M.

HUMBOLDT COUNTY, CALIFORNIA
 SCALE 1" = 60'

SEPTEMBER, 2010



SH CONSULTING ENGINEERS & GEOLOGISTS
 812 W. WABASH AVE. (707)441-8855
 EUREKA, CA 95501 FAX (707)441-8877

FOUND 1" IP AND PLASTIC PLUG MARKED RCE 21533 BADLY BENT. POSITION TAKEN AT BASE. AS SHOWN ON PARCEL MAP BOOK 19, PAGE 120 AND RECORD OF SURVEY BOOK 59, PAGE 114.

