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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) No. 3:16-cv-00961-JD
20 DISTRICT)
21 Plaintiffs,) **CONSENT DECREE**
22 v.)
23 BLUE LAKE POWER, LLC,)
24 Defendant.) Hon. James Donato
25)
26)
27)
28)

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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

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

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

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;

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

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. “Good Air Pollution Control Practices” shall mean operating practices that
12 comply with the standard set forth in 40 C.F.R. § 60.11(d) and manufacturer specifications and
13 recommendations;

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

16 w. “NH₃” shall mean ammonia, as determined in accordance with the
17 provisions of this Consent Decree;

18 x. “NO_x” means oxides of nitrogen, measured in accordance with the
19 provisions of this Consent Decree;

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

24 z. “Operating Hour” shall mean any hour during which any material has
25 been burned in the Boiler;

26 aa. “Operating Day” shall mean any day during which any material has been
27 burned in the Boiler;

28

- 1 bb. “Paragraph” shall mean a portion of this Decree identified by an Arabic
2 numeral;
- 3 cc. “Parties” shall mean the United States, the District, and Blue Lake;
- 4 dd. “PM₁₀” shall mean particulates of less than 10 microns in diameter, as
5 measured in accordance with the provisions of this Consent Decree;
- 6 ee. “Pollutant” shall mean NO_x, CO, NH₃, and PM₁₀;
- 7 ff. “Rolling Average” shall mean, for purposes of complying with an
8 Emission Rate in pounds per million per BTU (lb/MMBtu) set forth in this Consent Decree, the
9 rate of emission of NO_x, CO, or PM₁₀ from the Main Stack, respectively, expressed as
10 lb/MMBtu, and calculated in accordance with the following procedure: first, sum the total
11 pounds of the Pollutant in question emitted from the Main Stack during the last Operating Hour
12 or Day, depending upon the period of compliance set forth for the applicable Emission Rate, and
13 the previous hours or days of operation to make the full length of the rolling average period (for
14 instance, if it is an 8-hour rolling average, then add the pounds of Pollutant emitted for the last 7
15 Operating Hours to the pounds calculated for the most recent hour); second, sum the total
16 MMBtu burned in the Boiler during the same Operating Hour or Day, depending upon the period
17 of compliance set forth for the applicable Emission Rate, and the previous number of Operating
18 Hours or Operating Days to make the full length of the Rolling Average period; and third, divide
19 the total number of pounds emitted from the Main Stack during the period in question by the
20 total MMBtu burned during the same period. A new Rolling Average Emission Rate shall be
21 calculated for each new Operating Hour or Operating Day;
- 22 gg. “Section” shall mean a portion of this Decree identified by a roman
23 numeral;
- 24 hh. “Shutdown” shall mean the period beginning with curtailment of fuel feed
25 and concluding when the recorded Main Stack temperature reaches 150°F and remains so for at
26 least one hour;
- 27
28

1 EPA Cincinnati Finance Office
2 26 Martin Luther King Drive
3 Cincinnati, Ohio 45268.

4 10. Blue Lake shall pay the portion of the civil penalty due to the District by check
5 made out to North Coast Unified Air Quality Management District, with “Blue Lake Power,
6 Consent Decree” in the memorandum line. Payment shall be delivered to Air Pollution Control
7 Officer, North Coast Unified Air Quality Management District, 707 L. St., Eureka, CA 95501.

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

10 **V. COMPLIANCE REQUIREMENTS**

11 12. Boiler Engineering Study Protocol. Blue Lake has submitted to EPA and the
12 District for review and approval pursuant to Paragraph 34 a protocol for the performance of the
13 Boiler Engineering Study required by Paragraph 13.

14 13. Boiler Engineering Study. No later than ninety (90) Days following the later of
15 recommencing operation of the Boiler or EPA’s approval of the protocol described in Paragraph
16 12, Blue Lake shall complete the Boiler Engineering Study in accordance with the approved
17 Boiler Engineering Study Protocol and submit to EPA and the District for review and approval
18 pursuant to Paragraph 34 a report containing the Study’s findings (“Boiler Engineering Study
19 Report”). The Boiler Engineering Study and Report shall include the following information and
20 analysis:

- 21 a. Completion of as-built drawings of the Boiler configuration;
22 b. Recommendations for improvements to the OFA system and the
23 configuration of the SNCR system designed to optimize the reduction of CO and NO_x emissions
24 to achieve the Emission Rates set forth in Paragraphs 18 and 19;
25 c. Assessment of the adequacy of the capacity of the Boiler’s induced draft
26 fan;
27 d. Testing of injection of air and urea at locations modeled and/or predicted
28 to best control CO and NO_x emissions and at rates up to the maximum achievable levels to
enable compliance with the levels identified in Paragraphs 18 and 19;

1 e. Recommendation as to the highest achievable urea injection level for the
2 SNCR, based upon the recommended location of injection ports and the urea injection testing,
3 while consistently maintaining Ammonia Slip at 20 parts per million (“ppm”) or less by volume,
4 corrected to 3% excess oxygen; and

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

8 ***Control Technologies and Emission Rates***

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

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

19 16. ESP Optimization.

20 a. Blue Lake may only recommence operation of the Boiler after it has
21 submitted to EPA and the District the following:

- 22 i. Certification by a Member that all damaged discharge electrodes and
23 collecting plates in the ESP have been replaced and that the ESP can
24 operate in conformity with Good Air Pollution Control Practices when
25 the Facility is operating at 95% of its permitted operational capacity;
26 ii. Recommended operating parameters for the ESP that ensure PM₁₀
27 emission reductions at all times the Boiler is in operation, including
28 both Start Up and Shut Down and steady state operations. These

1 recommended operating parameters must include the monitoring
2 parameters that are recorded from the transformer/rectifier controller
3 and the rapper control panel; and

4 iii. Confirmation that Blue Lake's employees have been trained in proper
5 operation of the ESP in accordance with the recommended operating
6 parameters.

7 b. Blue Lake shall operate the ESP in accordance with the recommended
8 operating parameters submitted to EPA and the District pursuant to Paragraph 16.a.ii at all times
9 until final approval of the ESP optimization plan referred to in Paragraph 16.d.

10 c. Within fourteen (14) Days of recommencing operation of the Boiler, a
11 consultant qualified in ESP operation shall conduct a full technical evaluation of the Facility's
12 ESP, including testing of rappers, to confirm that the ESP is operating in accordance with Good
13 Air Pollution Control Practices when the Facility is operating at 95% of its permitted operational
14 capacity. The engineer shall provide a full report of the evaluation, including any identified
15 deficiencies and recommended repairs or actions, to Blue Lake, EPA, and the District within
16 thirty (30) Days of the evaluation. Blue Lake shall take all steps recommended by the report
17 within 30 Days of receiving the report, unless otherwise approved by EPA in consultation with
18 the District.

19 d. Within sixty (60) Days of recommencing operation of the Boiler, Blue
20 Lake shall submit to EPA and the District for review and approval pursuant to Paragraph 34 an
21 ESP optimization plan, which analyzes and recommends operating parameters for the ESP that
22 ensure PM₁₀ emission reductions at all times, including Start Up and Shut Down, that the Boiler
23 is in operation sufficient to meet the Emission Rates set forth in Paragraphs 18 and 19. The ESP
24 optimization plan shall comply with the monitoring requirements contained at 40 C.F.R. § 64.3
25 (compliance assurance monitoring).

26 17. At all times, including periods of Startup and Shutdown, Defendant shall, to the
27 extent practicable, maintain and operate the Boiler, including associated air pollution control
28

1 equipment, in a manner consistent with Good Air Pollution Control Practices for minimizing
2 emissions.

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

6 a. NO_x emissions of 0.12 lb/MMBtu on a 24-hour Rolling Average basis and
7 0.10 lb/MMBtu on an annual Rolling Average Basis;

8 b. CO emissions of 0.40 lb/MMBtu on a 24-hour Rolling Average basis; and

9 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as required
10 to be measured in Paragraph 33.

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

14 a. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Block Average basis;

15 b. CO emissions of 0.50 lb/MMBtu on a 24-hour Block Average basis; and

16 c. PM₁₀ emissions of 0.02 lb/MMBtu on a 3-hour average basis as verified
17 by operation in compliance with the approved ESP optimization plan.

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

1 shall also be deemed a violation, and Blue Lake shall be responsible for stipulated penalties, if
2 Blue Lake fails to operate the ESP consistent with the approved ESP optimization plan.

3 21. At any time within six (6) months after the Demonstration Period described in
4 Paragraph 20, Blue Lake may submit a petition to EPA and the District for review and approval
5 pursuant to Paragraph 34, for a proposed revision to the NO_x, CO, and/or PM₁₀ Emission Rates
6 set forth in Paragraphs 18 and 19. In such a petition, Blue Lake must demonstrate that it is
7 technically infeasible to achieve one or more of the NO_x, CO, and/or PM₁₀ Emissions Rates in
8 Paragraphs 18 and/or 19, considering the results of the Boiler Engineering Study and all
9 information and data collected during the Demonstration Period. Blue Lake shall propose in such
10 a petition the lowest NO_x, CO and/or PM₁₀ Emission Rate that it can practicably achieve and
11 maintain while maintaining an Ammonia Slip of 20 parts per million (corrected to 3% O₂) or
12 less. With any such petition, Blue Lake shall include all pertinent information, documents, and
13 data that support, or were considered in preparing such alternative Emission Rate, including all
14 data collected during the Demonstration Period. In no event shall the proposed alternative
15 Emission Rate be higher than the following:

- 16 a. During periods that do not include Startup and Shutdown:
- 17 i. NO_x emissions of 0.15 lb/MMBtu on a 24-hour Rolling Average basis
 - 18 and 0.125 lb/MMBtu on an annual Rolling Average basis;
 - 19 ii. CO emissions of 0.55 lb/MMBtu on a 24-hour Rolling Average Basis;
 - 20 and
 - 21 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
 - 22 required to be measured in Paragraph 33.
- 23 b. During periods that include Startup and Shutdown
- 24 i. NO_x emissions of 0.175 lb/MMBtu on a 24-hour Block Average basis;
 - 25 ii. CO emissions of 0.69 lb/MMBtu on a 24-hour Block Average basis;
 - 26 and
 - 27
 - 28

- 1 iii. PM₁₀ emissions of 0.03 lb/MMBtu on a 3-hour Average Basis, as
2 verified by operation in compliance with the approved ESP
3 Optimization Plan.

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

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

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

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

27 25. Fuel Management Plan: Blue Lake has submitted to EPA and the District for
28 review and approval pursuant to Paragraph 34 a plan for proper management of Boiler fuel

1 (“Fuel Management Plan”). The Plan shall establish measures for adequate drying of the fuel
2 while minimizing fugitive dust from fuel handling sufficient to ensure that no visible dust leaves
3 the Facility. The Plan shall contain, at a minimum, the following measures: (i) standards and
4 procedures for ensuring that the fuel is adequately dry prior to burning in the Boiler, including,
5 as appropriate and warranted, off-site storage, covering of the fuel piles to shield them from
6 moisture, protecting fuels from moisture seepage from the ground, and limiting the amount of
7 time that fuel is stored on-site; (ii) identification, purchase (if necessary) and proper operation of
8 equipment to ensure that fuel is chipped to an optimal size for burning; (iii) a procedure and
9 schedule for routine cleanup and application of water, tarps, or dust suppressants to storage piles,
10 processing areas, and other disturbed areas to control fugitive dust to the maximum extent
11 practicable; (iv) measures to ensure that truck loading and unloading of fuel materials is
12 conducted in a manner that minimizes spillage and fugitive dust; and (v) measures to minimize
13 fugitive dust from grinding, chipping, unloading and conveying of fuel, including consideration
14 of, as appropriate and warranted, shielding of the operations and/or limiting such operations to
15 avoid periods of high wind.

16 26. Fugitive Road Dust Plan. Blue Lake has submitted to EPA and the District for
17 review and approval pursuant to Paragraph 34 a plan to control fugitive dust from roads at the
18 Facility (“Fugitive Road Dust Plan”) sufficient to ensure that no visible dust leaves the Facility.
19 The Plan shall contain, at a minimum, the following measures: (i) procedures, application
20 intensity, and schedule for application of water and/or non-aqueous dust suppressant to all
21 unpaved roads at the Facility; and (ii) procedures and schedule of sweeping and maintenance of
22 all paved roads at the Facility.

23 27. Ash Handling and Disposal Procedures. As of the Effective Date of this Consent
24 Decree or upon recommencing operation of the Boiler, whichever is earlier, all ash shall be
25 transported in a wet condition in covered containers or stored in closed containers at all times.
26 Ash that will not be used at the Facility shall be disposed of in accordance with all applicable
27 rules and regulations.

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

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

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

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

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

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

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

25 ii. If the results of these tests indicate the average concentration of
26 ammonia for the three test runs to be greater than or equal to 15 ppm,
27 correct to 3% O₂, Blue Lake shall conduct sampling pursuant to
28 section 8 of Test Method BAAQMD ST-1B on two additional Days

1 within 60 Days of the date of the first test conducted in accordance
2 with Paragraph 30.b.i;

3 c. Ninety (90) Days prior to each set of stack tests, Blue Lake shall submit a
4 stack test plan to EPA and the District for review and approval pursuant to Paragraph 34. If EPA
5 has not taken action on the test plan within sixty (60) days of submittal, the plan shall be deemed
6 approved pursuant to Paragraph 34. The results of each ammonia stack test shall be submitted to
7 EPA and the District within sixty (60) Days following completion of each test.

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

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

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

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

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

24 32. Annual Ammonia Stack Tests.

25 a. No later than eighteen (18) months following EPA's approval of the
26 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
27 determine the Ammonia Slip consistent with Test Method BAAQMD ST-1B, during
28 representative operating conditions. The test shall consist of three separate runs performed under

1 representative operating conditions not including periods of startup, shutdown, or malfunction.
2 Within fifteen (15) months following EPA's approval of the Boiler Engineering Study Report,
3 Blue Lake shall submit a stack test plan consistent with this Paragraph to EPA and the District
4 for review and approval pursuant to Paragraph 34. If EPA has not taken action on the test plan
5 within sixty (60) Days of submittal, the plan shall be deemed approved pursuant to Paragraph 34.
6 The results of the ammonia stack test shall be submitted to EPA and the District within ninety
7 (90) Days following completion of the test.

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

13 33. PM₁₀ Stack Tests.

14 a. No later than forty-five (45) Days following Blue Lake's restart of
15 operation of the Boiler, Blue Lake shall conduct a stack test on the Main Stack to determine
16 compliance with PM₁₀ Emission Rates in its current Title V Permit. Blue Lake shall use EPA
17 Method 5 or EPA Method 201a (filterable portion only), and each test shall consist of three
18 separate runs performed under representative operating conditions not including periods of
19 startup, shutdown, or malfunction. The sampling time for each run shall be at least 60 minutes
20 and the volume of the sample in each run shall be at least 0.85 dry standard cubic meters (30 dry
21 standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack test results
22 in accordance with 40 C.F.R. § 60.8(f). No later than fifteen (15) Days prior to recommencing
23 operation of the Boiler, Blue Lake shall submit a stack test plan consistent with this Paragraph to
24 EPA and the District for review and approval pursuant to Paragraph 34. If EPA has not taken
25 action on the test plan within fifteen (15) Days of submittal, the plan shall be deemed approved
26 pursuant to Paragraph 34. The results of the PM₁₀ stack test shall be submitted to EPA and the
27 District within sixty (60) Days following completion of the test.
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1 b. No later than eighteen (18) months following EPA's approval of the
2 Boiler Engineering Study Report, Blue Lake shall conduct a stack test on the Main Stack to
3 determine compliance with PM₁₀ Emission Rates established by this Consent Decree. Blue Lake
4 shall use EPA Method 5 or EPA Method 201a (filterable portion only), and each test shall
5 consist of three separate runs performed under representative operating conditions not including
6 periods of startup, shutdown, or malfunction. The sampling time for each run shall be at least 60
7 minutes and the volume of the sample in each run shall be at least 0.85 dry standard cubic meters
8 (30 dry standard cubic feet). Blue Lake shall calculate the PM₁₀ Emission Rate from the stack
9 test results in accordance with 40 C.F.R. § 60.8(f). Within fifteen (15) months following EPA's
10 approval of the Boiler Engineering Study Report, Blue Lake shall submit a stack test plan
11 consistent with this Paragraph to EPA and the District for review and approval pursuant to
12 Paragraph 34. If EPA has not taken action on the test plan within sixty (60) Days of submittal,
13 the plan shall be deemed approved pursuant to Paragraph 34. The results of the PM₁₀ stack test
14 shall be submitted to EPA and the District within sixty (60) Days following completion of the
15 test.

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

Approval of Deliverables

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

27 35. If the submission is approved pursuant to Paragraph 34.a, Blue Lake shall take all
28 actions required by the plan, report, or other document, in accordance with the schedules and

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

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

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

20 38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
21 whole or in part, EPA, after consultation with the District, may again require Blue Lake to
22 correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct
23 any deficiencies, subject to Blue Lake's right to invoke Dispute Resolution and the right of EPA
24 and the District to seek stipulated penalties as provided in the preceding Paragraphs.

25 **VI. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED**
26 **CONTROLS**

27 39. Emissions reductions that result from actions to be taken by Blue Lake after the
28 Effective Date of this Consent Decree to comply with the requirements of this Consent Decree

1 shall not be considered as a creditable contemporaneous emission decrease for the purpose of
2 obtaining a netting credit or offset under the Clean Air Act’s Nonattainment NSR and PSD
3 programs.

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

9 **VII. ENVIRONMENTAL MITIGATION**

10 41. Within thirty (30) Days after the Effective Date, Blue Lake shall contribute
11 \$ 10,000 to the North Coast Air Quality Management District’s Wood Stove Incentive
12 Replacement Program, which assists in the replacement of older, non-certified wood stoves, with
13 cleaner, more fuel-efficient wood heating devices or other less polluting heating appliances. The
14 contribution shall be made by check made payable to North Coast Unified Air Quality
15 Management District, with “Blue Lake Power, Consent Decree” in the memorandum line.
16 Payment shall be delivered to the Air Pollution Control Officer, North Coast Unified Air Quality
17 Management District, 707 L Street, Eureka, CA 95501. The District shall use such funds for its
18 Wood Stove Incentive Replacement Program and shall make good faith efforts to prioritize the
19 availability of such funds for wood stove replacement within an approximate two-mile radius of
20 the Facility, as deemed appropriate by the District.

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

23 **VIII. REPORTING REQUIREMENTS**

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

26 a. Within thirty (30) Days after the end of each half calendar-year (i.e., June
27 30, December 31) after the Effective Date of this Consent Decree, until termination of this
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1 Decree pursuant to Section XX, Blue Lake shall submit a semi-annual report to EPA and the
2 District for the immediately preceding half calendar year period that shall include the following:

- 3 i. Identify the progress of installation, including any and all dates of
4 completed installation, of each control technology required for the
5 Facility by this Consent Decree and describe any problems
6 encountered or anticipated during such installation, together with
7 implemented or proposed solutions;
- 8 ii. Completion of milestones;
- 9 iii. Problems encountered or anticipated, together with proposed solutions;
- 10 iv. Status of permit applications;
- 11 v. All CEMS data collected for the Main Stack, reduced to 1-hour
12 averages, in accordance with 40 C.F.R. § 60.13(h)(2) and in electronic
13 format that can be manipulated with Microsoft Excel, including an
14 explanation of any periods of CEMS downtime;
- 15 vi. Identification of all periods, reduced to 1-hour periods, of Startup,
16 Shutdown, and Malfunction of the Boiler;
- 17 vii. Identification of each period when the Boiler was operating in excess
18 of one or more Emission Rates;
- 19 viii. Identification of the magnitude of excess emissions during each period
20 of excess emissions as computed in accordance with 40 C.F.R. §
21 60.13(h), including any conversion factors used;
- 22 ix. If applicable and feasible, identification of the nature and cause of the
23 Boiler malfunction during periods of excess emissions, corrective
24 actions taken, or preventative measures adopted; and
- 25 x. The date and time of each period during which the CEMS was
26 inoperative except for zero and span checks and the nature of the
27 system repairs or adjustments or a statement that there was no such
28 period.

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

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

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

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

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

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

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

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

9 **IX. STIPULATED PENALTIES**

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

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

20 51. Emissions Rates. The following stipulated penalties shall accrue per violation per
 21 Day for each violation of the Emission Rates set forth in Paragraphs 18 and 19 or an alternative
 22 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

26 52. Compliance Milestones.

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

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<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

- b. Compliance Milestones:
- i. Completion of the Boiler Engineering Study and submission of Report in accordance with the timeframe and requirements set forth in Paragraph 13;
 - ii. Contract to purchase equipment necessary to install the improved OFA and SNCR systems in accordance with the timeframe and requirements set forth in Paragraph 14;
 - iii. Installation and operation of SNCR and improved OFA system in accordance with the timeframes and requirements set forth in Paragraph 15;
 - iv. Completion of the requirements in Paragraph 16.a prior to recommencing operation of the Boiler;
 - v. Completion of the ESP evaluation and compliance with the ESP evaluation report required by Paragraph 16.c;
 - vi. Submission of the ESP Optimization Plan in accordance with the timeframes and requirements set forth in Paragraph 16.d;
 - vii. Operation of the ESP in accordance with the timeframes and requirements set forth in Paragraph 16;
 - viii. Operation of CEMS in accordance with the timeframes and 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:

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<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:

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

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

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

1 Blue Lake's best efforts to fulfill the obligation to obtain such approvals, including submitting
2 complete and timely applications for required approvals and providing full and timely responses
3 to requests for additional information and/or data from the entity providing a required approval.

4 63. If any event occurs or has occurred that may delay the performance of any
5 obligation under this Consent Decree, whether or not caused by a force majeure event, Blue Lake
6 shall provide notice orally or by electronic or facsimile transmission to Chief, Air and TRI
7 Section, Enforcement Division, U.S. Environmental Protection Agency, Region IX, within 72
8 hours of when Blue Lake first knew that the event might cause a delay. Within seven days
9 thereafter, Blue Lake shall provide in writing to EPA and the District an explanation and
10 description of the reasons for the delay; the anticipated duration of the delay; all actions taken or
11 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to
12 be taken to prevent or mitigate the delay or the effect of the delay; Blue Lake's rationale for
13 attributing such delay to a force majeure event if it intends to assert such a claim; and a statement
14 as to whether, in the opinion of Blue Lake, such event may cause or contribute to an
15 endangerment to public health, welfare or the environment. Blue Lake shall include with any
16 notice all available documentation supporting the claim that the delay was attributable to a force
17 majeure. Failure to comply with the above requirements shall preclude Blue Lake from asserting
18 any claim of force majeure for that event for the period of time of such failure to comply, and for
19 any additional delay caused by such failure. Blue Lake shall be deemed to know of any
20 circumstance of which Blue Lake, any entity controlled by Blue Lake, or Blue Lake's contractors
21 knew or should have known.

22 64. If EPA, after a reasonable opportunity for review and comment by the District,
23 agrees that the delay or anticipated delay is attributable to a force majeure event, the time for
24 performance of the obligations under this Consent Decree that are affected by the force majeure
25 event will be extended by EPA, after a reasonable opportunity for review and comment by the
26 District, for such time as is necessary to complete those obligations. An extension of the time for
27 performance of the obligations affected by the force majeure event shall not, of itself, extend the
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1 time for performance of any other obligation. EPA will notify Blue Lake in writing of the length
2 of the extension, if any, for performance of the obligations affected by the force majeure event.

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

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

15 **XI. DISPUTE RESOLUTION**

16 67. Unless otherwise expressly provided for in this Consent Decree, the dispute
17 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
18 under or with respect to this Consent Decree. Blue Lake's failure to seek resolution of a dispute
19 under this Section shall preclude Blue Lake from raising any such issue as a defense to an action
20 by the United States or the District to enforce any obligation of Blue Lake arising under this
21 Decree.

22 68. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
23 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
24 considered to have arisen when Blue Lake sends the United States a written Notice of Dispute.
25 Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
26 negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is
27 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,
28 then the position advanced by the United States shall be considered binding unless, within 10

1 Days after the conclusion of the informal negotiation period, Blue Lake invokes formal dispute
2 resolution procedures as set forth below.

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

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

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

17 72. Blue Lake may seek judicial review of the dispute by filing with the Court and
18 serving on the United States and the District, in accordance with Section XVI of this Consent
19 Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be
20 filed within 10 Days of receipt of the United States' Statement of Position pursuant to the
21 preceding Paragraph. The motion shall contain a written statement of Blue Lake's position on
22 the matter in dispute, including any supporting factual data, analysis, opinion, or documentation,
23 and shall set forth the relief requested and any schedule within which the dispute must be
24 resolved for orderly implementation of the Consent Decree.

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

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

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

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

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

27 81. This Consent Decree shall not terminate before all the requirements and
28 limitations enumerated in this Consent Decree, including, but not limited to, those listed in

1 Paragraph 78, are incorporated into Blue Lake's federally enforceable construction permits and
2 Title V Permit for the Facility.

3 **XIII. INFORMATION COLLECTION AND RETENTION**

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

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

14 83. Until five (5) years after the termination of this Consent Decree, Blue Lake shall
15 retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all
16 documents, records, or other information (including documents, records, or other information in
17 electronic form) in its or its contractors' or agents' possession or control, or that come into its or
18 its contractors' or agents' possession or control, and that relate in any manner to Blue Lake's
19 performance of its obligations under this Consent Decree. This information-retention
20 requirement shall apply regardless of any contrary corporate or institutional policies or
21 procedures. At any time during this information-retention period, upon request by the United
22 States or the District, Blue Lake shall provide copies of any documents, records, or other
23 information required to be maintained under this Paragraph.

24 84. At the conclusion of the information retention period provided in the preceding
25 Paragraph, Blue Lake shall notify the United States and the District at least ninety (90) Days
26 prior to the destruction of any documents, records, or other information subject to the
27 requirements of the preceding Paragraph and, upon request by the United States or the District,
28 Blue Lake shall deliver any such documents, records, or other information to EPA or the District.

1 Blue Lake may assert that certain documents, records, or other information is privileged under
2 the attorney-client privilege or any other privilege recognized by federal law. If Blue Lake
3 asserts such a privilege, it shall provide the following: (1) the title of the document, record, or
4 information; (2) the date of the document, record, or information; (3) the name and title of each
5 author of the document, record, or information; (4) the name and title of each addressee and
6 recipient; (5) a description of the subject of the document, record, or information; and (6) the
7 privilege asserted by Blue Lake. However, no documents, records, or other information created
8 or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of
9 privilege.

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

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

19
20 **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

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

24 88. The United States and the District reserve all legal and equitable remedies
25 available to enforce the provisions of this Consent Decree, except as expressly stated in
26 Paragraph 87. This Consent Decree shall not be construed to limit the rights of the United States
27 or the District to obtain penalties or injunctive relief under the Act or implementing regulations,
28 or under other federal or state laws, regulations, or permit conditions, except as expressly

1 specified in Paragraph 87. The United States and the District further reserve all legal and
2 equitable remedies to address any imminent and substantial endangerment to the public health or
3 welfare or the environment arising at, or posed by, Blue Lake's Facility, whether related to the
4 violations addressed in this Consent Decree or otherwise.

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

13 90. This Consent Decree is not a permit, or a modification of any permit, under any
14 federal, State, or local laws or regulations. Blue Lake is responsible for achieving and
15 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
16 and permits; and Blue Lake's compliance with this Consent Decree shall be no defense to any
17 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.
18 The United States and the District do not, by their consent to the entry of this Consent Decree,
19 warrant or aver in any manner that Blue Lake's compliance with any aspect of this Consent
20 Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any
21 other provisions of federal, State, or local laws, regulations, or permits. This Consent Decree
22 does not limit or affect the rights of the District to incorporate additional and/or more stringent
23 conditions than those established in this Consent Decree in its permits or approvals for the
24 Facility as may be authorized or warranted under federal, state, or local laws or regulations.

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

1 riedel.brian@epa.gov

2 To EPA:

3 Director, Enforcement Division (ENF-1)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105
7 Attn: Mark Sims, ENF-2-1
8 sims.mark@epa.gov

9 To the District:

10 Air Pollution Control Officer
11 North Coast Unified Air Quality Management District
12 707 L. St.
13 Eureka, CA 95501

14 and

15 Nancy Diamond
16 District Counsel
17 Law Offices of Nancy Diamond
18 822 G Street, Suite 3
19 Arcata, CA 95521

20 To Blue Lake:

21 Blue Lake Power, LLC
22 Attn: Glenn Zane
23 1615 Continental Street, Suite 100
24 Redding, CA 96001
25 and

26 David O'Neill
27 LandGas Technology LLC
28 5487 N. Milwaukee Avenue
Chicago, IL 60630

and

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

1 **XVII. EFFECTIVE DATE**

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

5 **XVIII. RETENTION OF JURISDICTION**

6 96. The Court shall retain jurisdiction over this case until termination of this Consent
7 Decree, for the purpose of resolving disputes arising under this Decree or entering orders
8 modifying this Decree, pursuant to Sections XI and XIX, or effectuating or enforcing compliance
9 with the terms of this Decree.

10 **XIX. MODIFICATION**

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

15 98. Any disputes concerning modification of this Decree shall be resolved pursuant to
16 Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of
17 proof provided by Paragraph 74, the Party seeking the modification bears the burden of
18 demonstrating that it is entitled to the requested modification in accordance with Federal Rule of
19 Civil Procedure 60(b).

20 **XX. TERMINATION**

21 99. After Blue Lake has completed the requirements of Section V (Compliance
22 Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with
23 this Consent Decree for a period of four (4) years, has obtained federally-enforceable permits
24 that comply with the requirements of Section XII (Permits), and has paid the civil penalty and
25 any accrued interest and stipulated penalties as required by this Consent Decree, Blue Lake may
26 serve upon the United States and the District a Request for Termination, stating that Blue Lake
27 has satisfied those requirements, together with all necessary supporting documentation.
28

1 Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this
2 Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

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

10 **XXIII. INTEGRATION**

11 107. This Consent Decree constitutes the final, complete, and exclusive agreement and
12 understanding among the Parties with respect to the settlement embodied in the Decree and
13 supersedes all prior agreements and understandings, whether oral or written, concerning the
14 settlement embodied herein. Other than deliverables that are subsequently submitted and
15 approved pursuant to this Decree, no other document, nor any representation, inducement,
16 agreement, understanding, or promise, constitutes any part of this Decree or the settlement it
17 represents, nor shall it be used in construing the terms of this Decree.

18 **XXIV. HEADINGS**

19 108. Headings to the sections and subsections of this Consent Decree are provided for
20 convenience and do not affect the meaning or interpretation of the provisions of this Consent
21 Decree.

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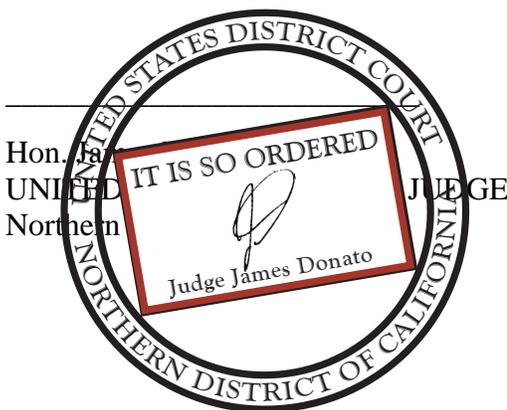
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XXV. FINAL JUDGMENT

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

SO ORDERED.

Dated and entered this 23rd day of February, 2017.



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

FOR PLAINTIFF UNITED STATES OF AMERICA:



DATE: _____

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

9/6/2016
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

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

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

BRIAN J. STRETCH
United States Attorney
Northern District of California

9/6/16
DATE:


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

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

2 FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

3
4 7 Sept 2016
5 DATE:



ALEXIS STRAUSS
Acting Regional Administrator
United States Environmental Protection Agency, Region IX

6
7
8
9 7 Sept 2016
10 DATE:


11 *for* CYNTHIA GILES

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

12
13
14 OF COUNSEL:
15 BRIAN RIEDEL
Assistant Regional Counsel
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, California 94105

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

FOR PLAINTIFF NORTH COAST UNIFIED AIR QUALITY MANAGEMENT DISTRICT:

9/6/16
DATE:


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

9/2/16
DATE:


NANCY DIAMOND
District Counsel
North Coast Unified Air Quality Management District
Law Offices of Nancy Diamond
822 G Street, Suite 3
Arcata, CA 95521
Telephone: (707) 826-8540
Email: ndiamond@ndiamondlaw.com

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

2 FOR DEFENDANT BLUE LAKE POWER, LLC:

3

4 9/2/2016

5 DATE:

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10 9/2/2016

11 DATE:

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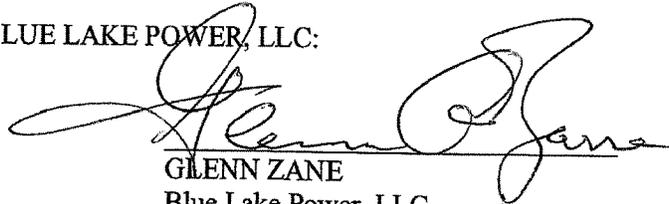
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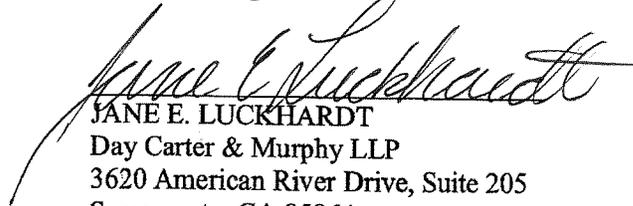
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GLENN ZANE
Blue Lake Power, LLC
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Redding, CA 96001
Telephone: (530) 246-2455
Email: gzane@crsinet.com



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