

## **SETTLEMENT AGREEMENT**

RESTORE, Inc. (“Plaintiff”) and Beauregard Water Works District No. 3 (“District” or “Defendant”) are presently engaged in litigation styled: *RESTORE v. Beauregard Water Works District No. 3*, Civ. Action No. 2:12CV2606, U.S. Federal District Court, Western Division, Lake Charles, Louisiana (“Litigation”) arising out of alleged Safe Drinking Water Act (“SDWA”) violations related to the District’s operations, monitoring and reporting of its drinking water distribution system. The parties to this Settlement Agreement (“Agreement”), Plaintiff and Defendant, are collectively referred to in this Agreement as “the Settling Parties.”

In order to amicably settle their differences and to avoid the costs and expenses of further litigation, Plaintiff and Defendant agree to settle and resolve the claims for alleged SDWA violations detailed in the Litigation, and because the Settling Parties have a common goal to ensure the District employs optimum practices and supplies good quality drinking water to its customers.

This Agreement is intended to create a process through which differences about the District’s operations, monitoring, and reporting will be resolved and communications will be improved. The parties contemplate an audit-based, cooperative process under which resolution of deficiencies, if any, and improvement of practices, if and as appropriate, will be accomplished. Except as specifically provided by this Agreement (for example, the requirement for a District response to Audit reports) this Agreement does not create enforceable obligations to agree with or implement the Auditor’s Final Action Plan. Further, the Settling Parties do not intend anything in this Agreement to prevent the District from consulting with any person or agency about the Auditor’s reports or about any other matter.

Appearing herein, through duly authorized representatives, the Settling Parties agree as follows:

1. **Settlement Payment:** There shall be no exchange of sums or funds for the mutual covenants herein and/or execution of this Agreement.

2. **Independent Audit:** The Settling Parties agree that a qualified, independent consultant shall conduct a one-time audit (“Audit”) of the District’s operations, monitoring, and reporting of the District’s drinking water system and water quality at the District’s cost. In the event current concerns about SDWA deficiencies are discovered, the Auditor shall develop an action plan at the District’s cost. If reasonably appropriate pursuant to the scope of the Audit stated below, the Auditor shall also provide other suggestions about the District’s operations, monitoring and reporting at the District’s cost. The Settling Parties shall exchange the names of suggested consultants that meet the criteria set forth below and mutually approve a qualified, independent consultant (“Auditor”) to perform the audit. Agreement for the selection of an auditor shall not be unreasonably withheld. The criteria that such Auditor must meet are (1) Must not be a member, employee, or officer of a Settling Party; (2) Must not have performed work for RESTORE or its attorneys in the past; (3) Must not have performed work for the District or its attorneys in the past; (4) Must be at least a Level 1 Certified Water Production Operator, Level 1 Certified Distribution Operator and Level 1 Certified Treatment Operator, whose current certifications have been issued by the State of Louisiana, Department of Health and Hospitals, or a professional engineer registered and licensed in the State of Louisiana in good standing, or a geologist with experience in hydrogeology and source water systems; (5) Must demonstrate substantial expertise with environmental laws and regulations, including the SDWA and its implementing regulations; (6) Must have sufficient experience with performing environmental audits and (7) Must have insurance and present an insurance certificate

demonstrating at least \$1,000,000 in combined General Liability and Professional Errors and Omissions Coverage.

3. **Scope of Independent Audit:** The Settling Parties agree that the selected Auditor shall perform the audit with the primary scope of identifying deviations from SDWA statutory and regulatory requirements. Second, as the Auditor reasonably deems appropriate, having considered the concerns of the Settling Parties, the Auditor shall review the District's monitoring, reporting, production, and distribution activities and the Audit's scope shall also include the Auditor making observations for suggested improvements in the District's monitoring, reporting, production, and distribution activities not specifically required by the SDWA's statutory and regulatory requirements that could enhance the District's ability to meet the goals of the SDWA and deliver high-quality drinking water to its customers, as further addressed in Paragraph 7 below. The Settling Parties shall have the opportunity to voice their concerns regarding the District's operations, monitoring and reporting in a meeting with the Auditor prior to the start of the Audit. The detailed scope of the Audit ("Audit Checklist") to be used by the Auditor will be proposed by the Auditor simultaneously to both Settling Parties (i.e., the Auditor will not provide either party an opportunity to make unilateral comments before showing the Checklist to both parties) and mutually agreed upon by the Settling Parties. Such agreement shall not be unreasonably withheld. Prior to commencement of the Audit, the Auditor shall provide the Settling Parties with a cost estimate to conduct the audit and prepare the Audit Report, Other Auditor Suggestions, Draft Action Plan and the Final Action Plan. The Audit will commence within sixty (60) days of the Settling Parties' mutual agreement on the identity of the Auditor and their mutual agreement on the Audit Checklist.

4. **Audit Report:** Within sixty (60) days after completion of the Audit, the Auditor will prepare a report of the audit findings ("Audit Report") based upon the results obtained

using the Audit Checklist. The Auditor shall deliver the Audit Report to the Settling Parties at the same time. The Auditor shall not provide either party with advance notice of the Audit Report's contents or with a unilateral opportunity to comment on the results of the Audit Report before another Settling Party's opportunity to do so. Depending on the observations made during the Audit, the Audit Report may be accompanied by a Draft Action Plan and Other Auditor Suggestions, if any, as provided below.

5. **Draft Action Plan and District Response:** In the event that current concerns about deficiencies related to the SDWA Primary Drinking Water Regulations are discovered, the Auditor shall include with the Audit Report a plan that identifies all reasonable corrective measures and a proposed implementation schedule for corrective action ("Draft Action Plan") based on each of the identified corrective measures. The Auditor shall deliver the Draft Action Plan to the Settling Parties at the same time. The Auditor shall not provide either party with advance notice of the Draft Action Plan's contents or with a unilateral opportunity to comment on the results of the Draft Action Plan before another Settling Party's opportunity to do so. After receiving the Draft Action Plan, the District agrees to respond in writing to the Draft Action Plan and provide its written response to the Auditor and all Settling Parties within 30 days. Such written response may include, among other things, the District's agreement or disagreement with whether an identified deficiency is actually inconsistent with the SDWA requirements, additional options for addressing a deficiency, or suggested changes to the description of deficiencies identified in the Draft Action Plan.

6. **Final Action Plan and District Response:** After the District responds in writing to the Draft Action Plan, the Auditor shall confer with the Settling Parties about their disagreements, concerns or suggestions with respect to the Draft Action Plan and the District's response, including without limitation the Settling Parties' views, if any, on a reasonable time

period for correcting each deficiency identified in the Draft Action Plan. Following such conferences with the Settling Parties and within 45 days after receiving the District's response to the Action plan, the Auditor shall provide the Settling Parties with a Final Action Plan that is limited to deficiencies related to SDWA compliance. If there are multiple options for correcting a deficiency, the Final Action Plan will identify all reasonable options. If the Auditor believes that a particular option is preferable or not recommended, the Auditor shall so note. The District will, after consultation with RESTORE, may select the option it prefers to effectively correct the deficiency. The Final Action Plan will also contain a reasonable implementation schedule for corrective action that is mutually agreed to by the Settling Parties and such agreement shall not be unreasonably withheld. In the event that the Action Plan identifies corrective measure items involving capital expenditures that require outside funding, e.g., loans or grants, the implementation schedule for such corrective measure items in the Action Plan shall be contingent upon the receipt of such funding and shall provide for a reasonable time to allow for the preparation and development of the project design, project scope, cost estimates, procurement and construction. Should additional funding be necessary to complete a corrective measure, such information, including the schedule for an estimated completion of the project, will be provided to the public in the District's informational meetings or board meetings.

**7. Other Auditor Suggestions and District Response:** With respect to the Auditor's suggestions, if any, for potential improvements in the District's monitoring, reporting, production, and distribution activities not specifically required by the SDWA's primary standards that could enhance the District's ability to meet the goals of the SDWA and provide high-quality water to its customers, including additional suggested information for the Consumer Confidence Reports, as noted in Paragraph 10 below, the District agrees to respond

in writing with its agreement or disagreement with or preferred changes to those suggestions and agrees to include a statement in its response as to what corrective action, if any, the District intends to take in response to these Auditor suggestions and the anticipated schedule for such actions, if any.

8. **Publishing Audit Report:** The District agrees to publish the Audit Report, Other Auditor Suggestions, and the Final Action Plan, and the District's responses to those documents on its website for a period of six (6) months or until all corrective measure items are completed, whichever is greater, starting within thirty (30) days after the issuance of the Audit Report and within thirty (30) days after issuance of the Final Action Plan. The District agrees to keep a paper copy of the Audit Report, Other Auditor Suggestions, Draft Action Plan, and the Final Action Plan available for public review at the District office for at least three years.

9. **Deadlines for Reports:** Deadlines for the Audit Report, Other Auditor Suggestions, Draft Action Plan, and the Final Action Plan and written responses provided for in this Agreement may be extended by mutual, written agreement of the Settling Parties and such agreement shall not to be unreasonably withheld. Extensions that total more than 60 days are presumed to be unreasonable, although that presumption is rebuttable.

10. **Revision to Consumer Confidence Reports:** If the Auditor suggests that additional information should be included in the District's annual Consumer Confidence Reports ("CCRs") as a means to improve communication between the District and its customers, the Other Auditor Suggestions shall include reasonable suggestions for such additional information to be included in the CCRs. Such reasonable suggestions for including additional information in the CCRs shall be implemented at the District's option pursuant to Paragraph 7 herein and shall be subject to the prior approval of the LDHH. If the LDHH neither approves nor disapproves prior to the date by which the CCR has to be sent to the

printer, the requirement for prior approval of the LDHH shall be waived. The District agrees to revise future CCRs to include the dates of the upcoming regularly scheduled board meetings and informational meetings noted in Paragraph 12 below. The District agrees to post the schedule of board meetings and informational meetings on its website and on the water bills provided to District customers. The District shall publish the times and dates of all board meetings and informational meetings (*e.g.*, via CCRs, website postings, or on water bills) at least 30 days before those meetings occur.

11. **Publishing Status Updates on Changes and Upgrades to the District's Water System:** The District agrees to make available, at least quarterly, updates to its customers regarding the status of changes and planned upgrades to the District's water system. Such updates will either be in the form of newsletters or information that is included on the Website, or a combination of both. Within sixty (60) days after execution of this Agreement, the District agrees to add a list of Frequently Asked Questions ("FAQs") to the website related to the District's water system and planned changes and/or upgrades.

12. **Informational Meetings for One Year:** The District agrees to convene informational meetings at least once per quarter during at least the four quarters following execution of this Agreement, that are separate from the routinely scheduled board meetings, although such quarterly meetings could be scheduled immediately before or after such board meetings. The District agrees to provide notice of each informational meeting at least twenty-four (24) hours prior to the meeting, as required under L.R.S. § 42:19, posting the meeting Agenda on the District's website and including notice of the meeting in the CCRs, as noted in Paragraph 10 above. The District agrees to provide notice of each board meeting at least twenty-four (24) hours prior to the meeting, as required under L.R.S. § 42:19, and post the Agenda for each board meeting on the District's website, as recommended by L.R.S. § 42:19.

The scope and purpose of the informational meeting is to provide the District's customers with an opportunity to ask questions about and get a better understanding of current District operations and the status of changes and planned upgrades to the District's water system. Such questions may include without limitation questions about the status of the cross-connection control program. Within 30 days of each informational meeting, the District agrees to post a written response on its website to each question that was not fully answered in the informational meetings. The Settling Parties shall agree on an individual, other than the District's manager or the Board President, to preside over such informational meetings. Such agreement shall not be unreasonably withheld. The District also agrees to have one of the District's Certified Operators attend each informational meeting.

13. **Drinking Water Protection Ordinance Recommendation to Police Jury:** The District agrees to submit a letter to the Beauregard Parish Policy Jury recommending that the Policy Jury pass a Groundwater Protection Ordinance, similar to that passed by the City of DeRidder under the Drinking Water Source Protection Program of the Louisiana Department of Environmental Quality, which limits activities that can occur within a 1000-foot radius of the District's supply wells.

14. **Dismissal of Claims:** Within thirty (30) days after the Settling Parties have executed this Agreement, Plaintiff agrees to direct its attorneys of record to file a dismissal with prejudice of its claims and demands asserted against the Defendant in the Litigation. The filing shall consist of (1) a Joint Motion and (2) a Proposed Order with the Federal Court in the form of Exhibits A and B attached to this Agreement. The Joint Motion shall include a copy of this Agreement as an attachment.

15. **Miscellaneous:** It is understood and agreed that the agreements and covenants provided for herein are made in full settlement of disputed claims and by way of a compromise



agreement to avoid the uncertainty, expense and delay of further litigation and is not to be construed as an admission of liability of any nature whatsoever on the part of the parties hereto.

16. **Entire Agreement, Modifications:** This Agreement contains the entire agreement between and among the Settling Parties with regard to the matters set forth in it and may only be modified by a writing signed by both of the Settling Parties.

17. **Further Assurances:** The Parties hereto agree to take all such further acts and execute all such further documents, as may reasonably be required to give effect to the terms of this Agreement.

18. **Enforcement of Agreement:** In the event that one of the Settling Parties breaches the terms of this Agreement, the Settling Parties agree that if they cannot come to an agreement to resolve the dispute, they will consider alternative dispute resolution.

19. **Conditional Settlement:** The parties to this Agreement expressly agree that the terms of this Agreement are conditioned upon the Plaintiff filing a dismissal with prejudice of its claims and demands asserted against the Defendant in the Litigation via the Court's CM/ECF filing system.

20. **Authority to Enter Into Agreement:** Each signatory warrants that he or she has the authority and the power to enter into this Agreement on behalf of the Settling Party that he or she signs on behalf of.

21. **Multiple Counterparts:** This Agreement may be executed in multiple original counterparts, each of which shall constitute an original document, and all of which in the aggregate shall constitute one and the same agreement.

22. **Governing Law:** Further, this Agreement shall be construed and interpreted in accordance with the laws of the State of Louisiana.

THIS SETTLEMENT AGREEMENT SIGNED AND EXECUTED IN MULTIPLE ORIGINALS ON THIS 12<sup>th</sup> DAY OF May 2014, IN THE CITY OF Ragley, LOUISIANA, IN THE PRESENCE OF THE UNDERSIGNED COMPETENT WITNESSES AND ME, THE UNDERSIGNED NOTARY PUBLIC, AFTER A FULL READING OF THE FOREGOING BY APPEARER IN ITS ENTIRETY.

WITNESSES:

RESTORE.

Linda Burnett

Michael S. Tritico  
BY: Michael S. Tritico, President

Alfred Regnaud

To Ann Burnett  
Jo Ann Burnett  
NOTARY PUBLIC - Beaugard parish  
ID 22356  
MY commission is for life

THIS SETTLEMENT AGREEMENT SIGNED AND EXECUTED IN MULTIPLE ORIGINALS ON THIS 22<sup>nd</sup> DAY OF May 2014, IN THE CITY OF Ragley, LOUISIANA, IN THE PRESENCE OF THE UNDERSIGNED COMPETENT WITNESSES AND ME, THE UNDERSIGNED NOTARY PUBLIC, AFTER A FULL READING OF THE FOREGOING BY APPEARER IN ITS ENTIRETY.

WITNESSES:

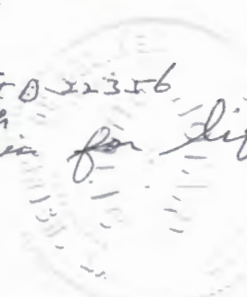
Beaugard Parish Water Works District No. 3

Chalk M. Reed

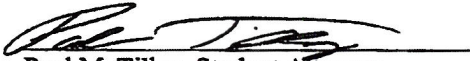
Ray a Hauser  
BY: Ray Hauser, Manager

Bruce Butts

To Ann Burnett  
Jo Ann Burnett  
NOTARY PUBLIC - ID 22356  
Beaugard parish  
MY commission is for life

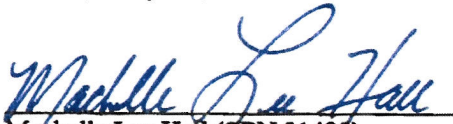


As to Form:



Paul M. Tilley, Student Attorney  
Tulane Environmental Law Clinic  
*As Counsel for RESTORE*

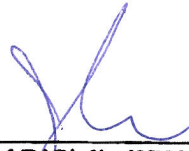
Date: 5/13/14



Machel Lee Hall (SBN 31498)  
Adam Babich (SBN 27177)  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118  
Phone: (504) 862-8814; Fax: (504) 862-8721  
[mhall9@tulane.edu](mailto:mhall9@tulane.edu)

*Counsel for RESTORE, and also as  
Supervising Attorney with respect to Paul M.  
Tilley's representation of RESTORE.*

Date: May 14, 2014



J. Michael DiGiglia (SBN 24378)  
GIEGER, LABORDE & LAPEROUSE, LLC  
Suite 4800, One Shell Square  
701 Poydras Street  
New Orleans, LA 70139  
Phone: (504) 561-0400; Fax: (504) 561-1011  
[mdigiglia@gllaw.com](mailto:mdigiglia@gllaw.com)  
*Counsel for Beauregard Water Works District  
No. 3*

Date: 5/22/2014

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

RESTORE,	)	
	)	CIVIL ACTION NO. 2:12-CV-2602
<i>Plaintiff,</i>	)	
	)	JUDGE MINALDI
v.	)	
	)	MAGISTRATE JUDGE KAY
BEAUREGARD WATER WORKS	)	
DISTRICT NO. 3,	)	
	)	
<i>Defendant.</i>	)	

---

**JOINT MOTION FOR DISMISSAL PURSUANT TO SETTLEMENT**

---

Pursuant to a Settlement Agreement by and between RESTORE (“RESTORE”), and Beauregard Water Works District No. 3 (“District”), RESTORE and the District move jointly for dismissal of this action with prejudice provided that this Court retains jurisdiction over this matter to enforce the terms of the Settlement Agreement.

1. The parties have agreed to and executed a Settlement Agreement embodying a cooperative resolution of this matter. The Settlement Agreement is attached to this motion.
2. The Parties agree that the possibility of further disputes will be minimized if this Court retains jurisdiction to enforce the terms of the Settlement Agreement.

Wherefore: This Court should dismiss this action with prejudice and retain jurisdiction for the limited purpose of enforcing the Parties’ Settlement Agreement.

Respectfully submitted on May \_\_, 2014.

---

Paul M. Tilley, Student Attorney  
*As Counsel for RESTORE*

---

Machelle Lee Hall (SBN 31498)  
Adam Babich (SBN 27177)  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118  
Phone: (504) 862-8814; Fax: (504) 862-8721  
mhall9@tulane.edu  
*Counsel for RESTORE, and also as Supervising Attorney  
with respect to Paul M. Tilley's representation of  
RESTORE.*

---

J. Michael DiGiglia (SBN 24378)  
GIEGER, LABORDE & LAPEROUSE, LLC  
Suite 4800, One Shell Square  
701 Poydras Street  
New Orleans, LA 70139  
Phone: (504) 561-0400; Fax: (504) 561-1011  
[mdigiglia@gllaw.com](mailto:mdigiglia@gllaw.com)  
*Counsel for Beauregard Water Works District No. 3*

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

RESTORE,	)	
	)	CIVIL ACTION NO. 2:12-CV-2602
<i>Plaintiff,</i>	)	
	)	JUDGE MINALDI
v.	)	
	)	MAGISTRATE JUDGE KAY
BEAUREGARD WATER WORKS	)	
DISTRICT NO. 3,	)	
	)	
<i>Defendant.</i>	)	

---

**[PROPOSED] ORDER OF DISMISSAL PURSUANT TO SETTLEMENT**

---

Having considered the joint motion of the Parties, the Court hereby grants the Parties' joint motion. Accordingly:

This matter is hereby dismissed with prejudice except this Court retains jurisdiction over this matter to enforce the terms of the Settlement Agreement.

Judgment shall enter on this matter consistent with the terms of this Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
PATRICIA MINALDI  
UNITED STATES DISTRICT JUDGE