

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the “Agreement”) is entered into as of the date of the last signature affixed to this Agreement, by and between the PLAINTIFFS CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, AQUALLIANCE, and CALIFORNIA WATER IMPACT NETWORK, and DEFENDANTS CALIFORNIA STATE WATER RESOURCES CONTROL BOARD and THOMAS HOWARD, in his capacity as California Water Resources Control Board Executive Director, (Case Number RG15780498, *California Sportfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard*):

RECITALS

A. Whereas, Plaintiffs filed a Petition for Writ of Mandate on August 5, 2015 and their First Amended Complaint on September 16, 2015, against Defendants alleging pattern and practice violations of the Clean Water Act and Public Trust Doctrine;

B. Whereas, Plaintiffs and Defendants now desire fully and finally to settle, compromise, release, and dispose of the Matter;

NOW, THEREFORE, in consideration of the covenants and promises herein, the Parties expressly agree as follows:

(1) Sacramento River Temperature Management

In order to improve Sacramento River temperature management, the State Water Board shall coordinate with the U.S. Bureau of Reclamation (“Reclamation”) and other stakeholders in a public process to develop a protocol for temperature monitoring, modeling, planning, and reporting pursuant to State Water Board Order WR 90-5. Although the Board cannot prejudge the outcome of the process, and the Board’s position may change based on information presented during the process, the State Water Board shall request, within 30 days of execution of this Agreement, that Reclamation develop a protocol that includes the following elements:

- An initial report at the beginning of the water year to facilitate planning for possible dry year conditions, including an assessment of storage conditions in Shasta and Trinity reservoirs, an assessment of operational alternatives (including any prospective water transfers) to manage storage through the fall and early winter to provide for cold water pool protection during the following summer and fall, and measures to avoid significant flow fluctuations and other possible impacts to fall-run Chinook salmon;
- Development of a Sacramento River temperature management plan (TMP) each year to reasonably protect winter-run Chinook salmon, spring-run Chinook salmon, fall-run Chinook salmon, and other native species;

- Development of an initial TMP early in the season, before initial water supply allocations in February, subject to adaptive management as hydrology and other conditions change;
- Evaluation of a range of operational scenarios with different assumptions regarding water supply deliveries under Reclamation's water right permits to Central Valley Project (CVP) contractors, including but not limited to an operational scenario that assumes lower releases from Shasta Reservoir during the spring and summer, and, in addition, to the extent necessary and consistent with contractual priorities, a change in the timing or quantity of CVP deliveries to settlement or exchange contractors, in order to conserve cold water resources in Shasta Reservoir and control temperature in the Sacramento River throughout the temperature control season without redistributing water supply impacts to Folsom or Oroville reservoirs or causing water quality or flow violations in the Sacramento-San Joaquin Delta Estuary;
- Development of improved modeling tools that allow for evaluation of different operational scenarios as described above, including, at minimum, an evaluation of the feasibility of meeting temperature compliance under Order WR 90-5 at temperature control points Red Bluff Diversion Dam, Bend Bridge, Jelly's Ferry, Ball's Ferry, Clear Creek, and Keswick Dam;
- Improved transparency concerning the temperature management planning process, including disclosure of all modeling assumptions that inform the development of the TMP and analysis and disclosure of the relationship between temperature compliance points and different operational scenarios, including water deliveries; and
- Improved coordination and communication between Reclamation, the State Water Board, and the public, including provisions for convening at least one meeting each year to hear public input on Reclamation's draft TMP before it is formally submitted to the State Water Board, posting the draft TMP and any subsequent modifications, and posting any SRTTG meeting notes and materials. The State Water Board will ensure that the foregoing documents are either posted as soon as practicable or otherwise provide the information to interested parties.

(2) Modeling

The State Water Board will employ staff, with modeling and other relevant expertise, to evaluate the U.S. Bureau of Reclamation's compliance with Order WR 90-5 temperature management requirements, including whether different water supply delivery alternatives may achieve temperature compliance at temperature control points Red Bluff Diversion Dam, Bend Bridge, Jelly's Ferry, Ball's Ferry, Clear Creek, and Keswick Dam. During years when temperature management may be a concern, the State Water Board will work with Reclamation, the fisheries agencies, and others as appropriate to evaluate, with hydrologic and temperature modeling and other available tools, a range of possible operational assumptions for temperature management, including options for conserving cold water through reduced water supply

deliveries to Reclamation contractors (including exchange and settlement contractors contractors) under Reclamation’s water rights permits.

(3) Transparent Public Trust Analysis in Orders Taking Action on Temporary, Urgency, Change Petitions

The State Water Board must make specified findings before approving a temporary, urgency change petition pursuant to Water Code section 1435 et seq., including the finding that the proposed change will not have an unreasonable effect on fish, wildlife, and other instream beneficial uses, and that the change will be in the public interest. To better document and ensure consistency with the common law public trust doctrine, the State Water Board will include an analysis of the potential impacts to public trust resources when evaluating whether and under what conditions to approve temporary, urgency change petitions. The public trust analysis will include at least the following elements:

- An express assessment of whether the proposed changes will adversely affect public trust resources, including fishery resources; and,
- An express determination whether protecting public trust resources through conditions of approval would be feasible and in the public interest, taking into consideration all relevant factors, including, if applicable, consideration of any analysis of the need for temporary, urgency changes to water right requirements conducted in conjunction with any then-applicable basin plan. The State Water Board shall explain its findings and describe the specific factors it balanced in making its determination.

(4) Transparent Public Trust Evaluation for the Bay-Delta Plan Update

Water quality objectives established pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) must ensure the reasonable protection of beneficial uses, taking into consideration specified factors, including the environmental characteristics of the hydrographic unit under consideration, the water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area, and economic considerations. (Wat. Code, § 13241.) In developing water quality objectives to ensure reasonable protection of fish and wildlife beneficial uses in the San Francisco Bay/Sacramento San Joaquin Delta Estuary (Bay-Delta), the State Water Board has a “duty to consider and protect all of the other beneficial uses to be made of water in the Bay-Delta, including municipal, industrial, and agricultural uses.” (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 778.) The State Water Board’s duty to balance competing interests in formulating water quality objectives can be harmonized with its duty under the common law public trust doctrine to protect public trust resources to the extent feasible and consistent with the public interest. (*State Water Resources Control Board Cases, supra*, 136 Cal.App.4th at pp. 777-778.)

To better document and ensure consistency with the common law public trust doctrine, the State Water Board will evaluate whether the amendments proposed as part of the pending

Sacramento/Delta Update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary are consistent with the common law public trust doctrine. Specifically, the Staff Report prepared in connection with the pending update to the Bay-Delta Plan will include, in addition to the analysis required by the Porter-Cologne Water Quality Control Act, an express evaluation of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest, taking into consideration all relevant factors, including but not limited to the following:

- The extent to which fish and wildlife public trust uses will be protected under different hydrological conditions, including during droughts and periods of water supply shortage. This analysis will include consideration of the need for a carry over margin of safety and temporary, urgency changes to water right requirements implementing water quality objectives;
- The public interest in protecting public trust fish and wildlife uses;
- The water supply impacts of the proposed amendments, including impacts to groundwater resources;
- The economic impacts of the proposed amendments to trust and non-trust uses, including effects to non-consumptive uses;
- Evaluation of consistency with Fish and Game Code section 5937;
- Evaluation of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible; and
- The State Water Board shall explain its findings and describe the specific factors it balanced in making its determination of whether the proposed amendments will protect the subject fish and wildlife public trust uses to the extent feasible and consistent with the public interest.

(5) Disclaimers

This settlement agreement does not commit the State Water Board to any particular outcome relating to Sacramento River Temperature Management, temporary urgency change petitions, the Bay-Delta Plan Update, or any other related water rights or water quality planning proceedings. The State Water Board reserves full and complete discretion to decide such matters based on the evidence and information before it, and in accordance with the processes and standards of applicable law. Nothing in this agreement is intended to be or should be construed as a change in the statutory or common law legal requirements currently applicable to State Water Board plans, policies, guidelines, orders or decisions, including legal requirements under the Water Code and the common law public trust doctrine.

(6) Enforceability

Water Code section 1126 governs judicial review of State Water Board actions taken pursuant to Order WR 90-5 and temporary, urgency change orders issued pursuant to Water Code section 1435 et seq. Water Code section 13330 governs judicial review of State Water Board orders or decisions issued pursuant to Division 7 of the Water Code (commencing with section 13000). Nothing in this settlement agreement is intended to be or should be construed as creating a new right of action to challenge State Water Board orders or decisions. Therefore, any action to enforce the terms of Sections 3 or 4 of this settlement must be brought pursuant to the applicable judicial review provisions in the Water Code.

(7) Fees and Costs

Defendants agree to pay counsel for plaintiffs the amount of \$175,000.00 to settle the attorney fees and costs in this matter, within 120 days of full execution of this Agreement. Plaintiffs agree that the amount of \$175,000.00 constitutes a full and final settlement of any and all claims for attorneys' fees and costs arising out of this matter.

(8) Dismissal with Prejudice

Plaintiffs agree to dismiss Case No. RG15780498 with prejudice within three (3) court days of final signature of this Agreement.

(9) No Third-Party Beneficiaries

This agreement is solely for the benefit of the parties to the Agreement and may not be enforced or relied upon by any non-settling party.

(10) Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements or understandings, either oral or written, between the Parties with respect to the subject matter hereof, including but not limited to all prior tolling agreements and any amendments thereto. Each Party to this Agreement acknowledges that no representations, inducements, promises, or other agreements have been made by or on behalf of any Party except those covenants, agreements and promises embodied in this Agreement. The Recitals to this Agreement are incorporated herein and, by this reference, made a part hereof as if fully set forth herein. This Agreement shall not be altered, amended, modified, or otherwise changed except by a writing duly signed by the Parties. The provisions of this Agreement shall be constructed as a whole according to their common meaning, not strictly for or against any Party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of this Agreement.

(11) Authority to Sign

Each person signing this Agreement on behalf of a Party represents and warrants that he/she has been duly authorized to sign for the Party for whom he/she is signing, and that he/she has been authorized to bind that Party by signing this Agreement. Each Party represents and warrants that it has the full power, capacity and authority to enter into this Agreement on behalf of each Party and all of each Party's members, employees and officials, that no portion of any charge, claim, right, demand, action or cause of action that any Party has or might have arising out of the transactions, omissions or acts referred to herein has been assigned, transferred or conveyed to any third party, by way of subrogation, operation of law or otherwise, and that no other agreement, release, or settlement is necessary from any other person or entity to release and discharge completely the other Party from the claims specified above which may be held by such Party.

(12) Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, unless the purposes of the Agreement cannot be reasonably obtained.

(13) Applicable Law

This Agreement shall be deemed to have been executed and delivered within the State of California, and the contractual rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California and applicable laws of the United States.

(14) Counterparts

This Agreement may be executed in counterparts and facsimile. All counterparts when executed shall constitute one agreement binding upon all Parties notwithstanding that all of the Parties are not a signatory to the original or the same counterpart.

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

DATED: 16 July 2020

By: 

Name: Bill Jennings

Its: Authorized Representative

AQUALLIANCE

DATED: _____

By: _____

Name:

Its: Authorized Representative

CALIFORNIA WATER IMPACT NETWORK

DATED: _____

By: _____

Name:

Its: Authorized Representative

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

DATED: _____

By: _____

Name:

Its: Authorized Representative

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

DATED: _____

By: _____

Name: _____

Its: Authorized Representative

AQUALLIANCE

DATED: _____

By: _____

Name: _____

Its: Authorized Representative

CALIFORNIA WATER IMPACT NETWORK

DATED: _____

By: _____

Name: _____

Its: Authorized Representative

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

DATED: 7/16/2020

By: 

Name: Eileen Sobeck

Its: Authorized Representative

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

DATED: _____

By: _____

Name: _____

Its: Authorized Representative

AQUALLIANCE

DATED: July 16, 2020

By: B. Vlaminis

Name: Barbara Vlaminis

Its: Authorized Representative

DATED: 7/16/2020

CALIFORNIA WATER IMPACT NETWORK

By: Carolee K. Krieger

Name: Carolee K. Krieger

Its: Authorized Representative

DATED: _____

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD


By: _____

Name:

Its: Authorized Representative

Approved as to form:

DATED: July 17, 2020

By:  _____

Name: Jason R. Flanders

Its: Attorney for Plaintiffs
California Sportfishing Protection Alliance,
Aqualliance, and California Water Impact Network

Approved as to form:

DATED: _____

By: _____

Name: Mark W. Poole

Its: Attorney for Defendants
State Water Resources Control Board and Thomas
Howard

Approved as to form:

By: _____

Name: Jason R. Flanders

Its: Attorney for Plaintiffs
California Sportfishing Protection Alliance,
Aqualliance, and California Water Impact Network

DATED: _____

Approved as to form:

By:  _____

Name: Mark W. Poole

Its: Attorney for Defendants
State Water Resources Control Board and Thomas
Howard

DATED: 7/16/20