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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

Coordination Proceeding Special Title
(Rule 1550b)

PUTAH CREEK WATER CASES

PUTAH CREEK COUNCIL,
Plaintiff,

v.

SOLANO IRRIGATION DISTRICT, and
SOLANO COUNTY WATER AGENCY,

Defendants.

CITY OF DAVIS,

Cross-Complainant,

v.

SOLANO IRRIGATION DISTRICT,
SOLANO COUNTY WATER AGENCY,
CITY OF VALLEJO, CITY OF SUISUN and
MAINE PRAIRIE WATER DISTRICT,

Cross-Defendants.

SOLANO IRRIGATION DISTRICT,
SOLANO COUNTY WATER AGENCY et al.
Plaintiffs,

v.

THE NAMES OF ALL APPROPRIATIVE
WATER RIGHTS HOLDERS IN UPPER
BASIN, et al.

Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NUMBER 2565

SACRAMENTO COUNTY SUPERIOR
COURT CASE NUMBER 515766

SOLANO COUNTY SUPERIOR COURT
CASE NUMBER 108552

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO AMEND JUDGMENTS
PURSUANT TO STIPULATION AMONG
ALL PARTIES PURSUANT TO SECTION
VI OF AMENDED JUDGMENTS
(NO OPPOSITION)**

DATE: November 1, 2002
TIME: 9:30 a.m.
DEPT: 47

I.

BACKGROUND

On August 23, 1996 this court entered judgments in the actions filed by the Putah Creek Council, the City of Davis, and the University of California. While an appeal of that matter was pending, the parties reached a comprehensive settlement agreement on Putah Creek. Upon motion and hearing on September 8, 2000, this court modified the original judgments and entered amended judgments in each action in accordance with the Settlement Agreement (“Amended Judgments”), after determining that such action was consistent with the requirements of California law.

Over the past twelve months the parties have implemented the provisions of the Amended Judgments. During the course of implementation, the parties discovered that a clarification of the provisions of Section II of each of the Amended Judgments is warranted. This memorandum explains the need for the change to the Amended Judgments, and the justification for such changes.

II.

CONTINUING JURISDICTION

Section VI of the Amended Judgments provides:

“This Court reserves continuing jurisdiction over the parties to provide for the administration and enforcement of this Amended Judgment, including jurisdiction to modify this Amended Judgment in accordance with applicable law.”

Reservation of jurisdiction over a cause or parties after a final judgment is exceptional but may be exercised in special situations (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 912; *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 599; *Lord v. Superior Court* (1946) 27 Cal.2d 855, 858). The retention of jurisdiction to meet future problems and changing

1 conditions is recognized as an appropriate method of carrying out the policy of the state to utilize
2 all water available. *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 937; *Allen v.*
3 *California Water & Tel. Co.* (1946) 29 Cal.2d 466, 488; *City of Los Angeles v. City of Glendale*
4 (1943) 23 Cal.2d 68, 81.

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6 **III.**
REQUESTED CHANGES

7 Each Amended Judgment consists of six sections, I through VI. Attached to each
8 Amended Judgment is an identical Exhibit A, which includes Exhibits A-1 and A-2. The
9 Stipulation among the parties requests changes to only Section II of each Amended Judgment as
10 shown in Exhibits "1", "2" and "3" attached to this Memorandum. The modifications clarify that
11 the Solano Project is always required to be operated to comply with the release and instream
12 flow requirements specified in Exhibit "A" to the Amended Judgments, and that if certain
13 enumerated circumstances exist, then the City of Davis, Putah Creek Council and the Regents of
14 the University of California (the "Yolo Parties") will not pursue an action or proceeding for
15 contempt of the Amended Judgments based on a violation or violations of one or more of the
16 minimum daily flow requirements or minimum instantaneous flow requirements specified in
17 Exhibit "A".
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21 The modifications would not affect the two circumstances already described in the
22 Amended Judgments, and would add a third requirements designated as II.A., which reads as
23 follows:

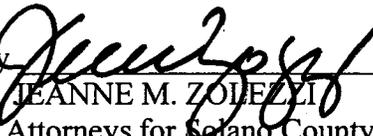
24 "the failure to comply was solely the result of an unanticipated and
25 unforeseeable increase in a diversion or diversions from, or reduction
26 in an inflow or inflows into, Putah Creek downstream of the Putah
27 Diversion Dam, by some person or entity besides SID or SCWA, and
28 the increase or reduction occurred so rapidly that the Solano Project
could not reasonably maintain compliance by increasing the releases
from the Putah Diversion Dam into lower Putah Creek;"

1 As amended, the Judgments would continue to be consistent with the public trust doctrine.
2

3 Dated: September 6, 2002

HERUM CRABTREE BROWN
A Professional Corporation

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5
6 By



JEANNE M. ZOLEZZI
Attorneys for Solano County Water Agency

Exhibit 1

EXHIBIT "1"
Amendment to Judicial Council Coordination Proceeding No. 2565
Solano County Superior Court No. 108522
City of Davis v. Solano Irrigation District, et al.

II. ENFORCEMENT ACTIONS

If the Solano Project is operated to comply with the release and instream flow requirements specified in Exhibit "A" hereto, then the City of Davis shall not pursue an action or proceeding for contempt of this Second Amended Judgment based on a violation or violations of one or more of the minimum mean daily flow requirements established in Exhibit "A" section A.(2), B.(2), C.(1), C.(2), C.(3), C.(4) and D.(3), or one or more of the minimum instantaneous flow requirements established in Exhibit "A" sections A.(2), B.(2), C.(1), C.(2), C.(3), and C.(4), so long as:

A. The failure to comply was solely the result of an unanticipated and unforeseeable increase in a diversion or diversions from, or reduction in an inflow or inflows into, Putah Creek downstream of the Putah Diversion Dam, by some person or entity besides SID or SCWA, and the increase or reduction occurred so rapidly that the Solano Project could not reasonably maintain compliance by increasing the releases from the Putah Diversion Dam into lower Putah Creek; and

B. The four-day running mean flow at the relevant compliance point equaled or exceeded the applicable minimum mean daily flow; and

C. The instantaneous flow at the relevant compliance point was not more than 5 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from January through July, and was not more than 3 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from August through December.

Exhibit 2

EXHIBIT "2"
Amendment to Judicial Council Coordination Proceeding No. 2565
Sacramento County Superior Court No. 515766
Putah Creek Council v. Solano Irrigation District, et al.

II. ENFORCEMENT ACTIONS

If the Solano Project is operated to comply with the release and instream flow requirements specified in Exhibit "A" hereto, then the Putah Creek Council shall not pursue an action or proceeding for contempt of this Second Amended Judgment based on a violation or violations of one or more of the minimum mean daily flow requirements established in Exhibit "A" section A.(2), B.(2), C.(1), C.(2), C.(3), C.(4) and D.(3), or one or more of the minimum instantaneous flow requirements established in Exhibit "A" section A.(2), B.(2), C.(1), C.(2), C.(3), and C.(4), so long as:

A. The failure to comply was solely the result of an unanticipated and unforeseeable increase in a diversion or diversions from, or reduction in an inflow or inflows into, Putah Creek downstream of the Putah Diversion Dam, by some person or entity besides SID or SCWA, and the increase or reduction occurred so rapidly that the Solano Project could not reasonably maintain compliance by increasing the releases from the Putah Diversion Dam into lower Putah Creek; and

B. The four-day running mean flow at the relevant compliance point equaled or exceeded the applicable minimum mean daily flow; and

C. The instantaneous flow at the relevant compliance point was not more than 5 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from January through July, and was not more than 3 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from August through December.

Exhibit 3

EXHIBIT "3"
Amendment to Judicial Council Coordination Proceeding No. 2565
Solano County Superior Court No. 108522
Regents of the University of California v. Solano Irrigation District, et al.

II. ENFORCEMENT ACTIONS

If the Solano Project is operated to comply with the release and instream flow requirements specified in Exhibit "A" hereto, the Regents of the University of California shall not pursue an action or proceeding for contempt of this Second Amended Judgment based on a violation or violations of one or more of the minimum mean daily flow requirements established in Exhibit "A" section A.(2), B.(2), C.(1), C.(2), C.(3), C.(4) and D.(3), or one or more of the minimum instantaneous flow requirements established in Exhibit "A" sections A.(2), B.(2), C.(1), C.(2), C.(3) and C.(4), so long as:

A. The failure to comply was solely the result of an unanticipated and unforeseeable increase in a diversion or diversions from, or reduction in an inflow or inflows into, Putah Creek downstream of the Putah Diversion Dam, by some person or entity besides SID or SCWA, and the increase or reduction occurred so rapidly that the Solano project could not reasonably maintain compliance by increasing the releases from the Putah Diversion Dam into lower Putah Creek; and

B. The four-day running mean flow at the relevant compliance point equaled or exceeded the applicable minimum mean daily flow; and

C. The instantaneous flow at the relevant compliance point was not more than 5 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from January through July, and was not more than 3 cfs less than the applicable minimum mean daily flow if the violation occurred during the period from August through December.