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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF GLENN
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14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA EX REL. THE REGIONAL**
16 **WATER QUALITY BOARD, CENTRAL**
17 **VALLEY REGION; DEPARTMENT OF**
18 **FISH AND WILDLIFE,**

19 Plaintiffs,

20 v.

21 **ORLAND SAND AND GRAVEL**
22 **CORPORATION, a California**
23 **Corporation; DALE ROY BOGART, an**
24 **individual; and DOES 1 through 50,**
25 **inclusive,**

26 Defendants.

Case No. 15CV01436

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' EX PARTE MOTION TO
VACATE DISMISSAL AND ENTER
JUDGMENT

27 The ex parte motion to vacate dismissal of this action and enter judgment (Motion) was
28 brought by plaintiffs People of the State of California ex rel. the Regional Water Quality Control
Board, Central Valley Region, and Department of Fish and Wildlife. The Motion came on
May 22, 2019
regularly for hearing on ~~APRIL 22, 2019~~. Andrea M. Kendrick and Evan Eickmeyer of the

1 California Attorney General's Office appeared for plaintiffs. Geoffrey Evers and Dale Roy
2 Bogart appeared for defendants.

3 The Court having fully considered the pleadings, any argument of counsel, and the briefs
4 and evidence presented by the parties, being fully advised, and good cause appearing therefor,
5 concludes that the Motion should be, and hereby is, **GRANTED**.

6 The Court finds as follows:

7 The Regional Water Quality Control Board, Central Valley Region (Regional Water
8 Board), and the Department of Fish and Wildlife (DFW), filed this action against Dale Roy
9 Bogart (Bogart) and Orland Sand and Gravel (OSG) to enforce provisions of the federal Clean
10 Water Act, the Water Code, and the Fish and Game Code.

11 The parties appeared on April 2, 2018, for the first day of trial before the Honorable James
12 Garbolino, assigned by the ~~Chairperson~~ ^{Chairperson} of the Judicial Council. (Exh. C.)¹ Instead of commencing
13 the trial, a Settlement Agreement was entered into before the Court that same day, by and
14 between plaintiffs Regional Water Board and DFW, and defendants OSG and Bogart. (Exh. A.)
15 The dismissal of this action was entered on May 10, 2018. (Exh. F.) The Court entered a
16 separate order retaining jurisdiction to enforce the Settlement Agreement pursuant to Code of
17 Civil Procedure section 664.6. (Exh. E.)

18 The Settlement Agreement provides, and the Court confirmed during a hearing on April 2,
19 2018, that any request to the Court by the plaintiffs to vacate the dismissal and enter the Judgment
20 Pursuant to Stipulation, shall be submitted to Judge James Garbolino, if he is available to hear the
21 matter. Otherwise, if Judge Garbolino is unavailable, then counsel for plaintiffs may submit a
22 request to vacate the dismissal and enter the Judgment Pursuant to Stipulation to any judge of the
23 Glenn County Superior Court for approval and signature. The dismissal in this action may be
24 vacated, and the Judgment Pursuant to Stipulation may be entered, by any judge of the Glenn
25 County Superior Court. (Exh. A, Terms, ¶ H.3., at p. 6:16-22; see also Transcript of Settlement
26 Agreement, Exh. D, at pp. 15:15-16:16.)

27 _____
28 ¹ References to exhibits are to Exhibits in Support of Plaintiffs' Ex Parte Motion to Vacate
Dismissal and Enter Judgment.

1 This Court retained jurisdiction, pursuant to Code of Civil Procedure section 664.6, to
2 enforce the terms and conditions of the Settlement Agreement. (Exh. E.) Section 664.6 provides
3 that “[i]f requested by the parties, the court may retain jurisdiction over the parties to enforce the
4 settlement until performance in full of the terms of the settlement.” The parties met all of the
5 requirements for retention of jurisdiction pursuant to Code of Civil Procedure section 664.6.

6 The parties stipulated in the Settlement Agreement that pursuant to Code of Civil Procedure
7 section 664.6, they requested that the Court retain jurisdiction to interpret, modify, and enforce
8 the terms and conditions of the Settlement Agreement and the Judgment Pursuant to Stipulation.
9 (Exh. A, Terms, ¶ I.1., at p. 7:5-8.) On April 2, 2018, the parties orally requested that the Court
10 retain jurisdiction, which the Court granted orally and through a written order. (Exh. E; see also
11 Exh. D, Transcript of Settlement Agreement, at p. 24:5-20.) During the pendency of the case, all
12 parties signed the Agreement in open court, which requested that the Court retain jurisdiction
13 pursuant to Code of Civil Procedure section 664.6.

14 The Settlement Agreement provides: “The Regional Water Board, DFW, OSG, and Dale
15 Roy Bogart stipulate that if OSG and/or Dale Roy Bogart fail to comply with any or all of the
16 provisions in this Settlement Agreement, any dismissal which has been entered in this matter shall
17 be vacated and the Judgment Pursuant to Stipulation shall be entered in this matter, nunc pro tunc
18 as of April 2, 2018.” (Exh. A, § Terms ¶ H.3., at p. 6:1-5.) During the hearing to approve the
19 Settlement Agreement, the Court confirmed that all parties understood that the case would be
20 reactivated for purposes of entry of judgment if there are grounds to set aside the settlement.
21 (Exh. R, Transcript of Settlement Agreement, at p. 15:2-14.) The Court confirmed that OSG and
22 Bogart approved the Settlement Agreement. (Exh. D, Transcript of Settlement Agreement, at pp.
23 22:17:23-1.)

24 Pursuant to the terms of the Settlement Agreement, the Court determines, by the
25 preponderance of the evidence standard, sitting without a jury, whether OSG and/or Dale Roy
26 Bogart have failed to comply with any or all of the provisions in this Settlement Agreement.
27 (Exh. A, § Terms, ¶ H.3., at p. 6:13-16.) Plaintiffs are required to provide OSG and Bogart 15
28 days’ notice of any ex parte motion to the Court to vacate any dismissal and enter the Judgment



1 Pursuant to Stipulation, to allow OSG and Bogart time to submit counter-evidence to the Court.
2 The parties stipulated that this 15-day notice period is not intended to be a grace period or cure
3 period to excuse failure to comply with any or all of the provisions in this Agreement. (Exh. A,
4 Terms ¶ H.3, at p. 6:8-13.) The parties may submit their evidence to the Court on declarations.
5 (Exh. A, Terms ¶ H.3., at p. 6:13.) Plaintiffs provided more than 15 days' notice to defendants of
6 their motion to vacate the dismissal and enter the Judgment Pursuant to Stipulation.

7 The Court confirmed that the only action necessary to trigger the entry of judgment, is a
8 finding by the Court that defendants violated the Settlement Agreement. (Exh. D, Transcript of
9 Settlement Agreement, at pp. 16:17-17:8.)

10 Paragraphs A through G of the Terms section of the Agreement describe the actions OSG
11 and Bogart agreed to perform to bring the OSG Facility into compliance. (Exh. A, pp. 1:17-5:12.)
12 Four of those paragraphs require OSG and Bogart to provide notifications, work plans, reports,
13 and/or enrollments to the Regional Water Board or DFW by certain deadlines, and to respond to
14 requests for additional information. One of those paragraphs requires OSG and Bogart to pay the
15 first \$25,000 annual installment of \$175,000 in civil penalties. OSG and Bogart failed to comply
16 with three of the injunctive provisions of the Settlement Agreement, which will be described in
17 turn.

18 First, OSG and Bogart violated Paragraph A of the Settlement Agreement concerning
19 compliance with Fish and Game Code section 1602, by failing to comply with its terms.
20 Paragraph A sets a deadline for the first step in complying with Fish and Game Code section
21 1602. No later than August 30, 2018 (150 days after the Agreement was signed by the last
22 signatory on April 2, 2018), OSG and Bogart were required to submit to DFW a written
23 notification pursuant to Fish and Game Code section 1602 for the gravel ramp at the OSG
24 Facility, specifically, whether to retain, modify, or remove the ramp, and any other activity at the
25 OSG Facility subject to Fish and Game Code section 1602 (Notification). (Exh. A, Terms, ¶
26 A.2., at pp. 2:4-8.) DFW staff in the Fish and Game Code section 1602 streambed alteration
27 agreement program have no record of receiving a Notification or any communications from OSG,
28 Bogart, or their representatives, regarding compliance with paragraph A of the Agreement and

1 Fish and Game Code section 1602. OSG and Bogart have violated Paragraph A of the
2 Agreement. For this reason alone, the dismissal shall be vacated and the Stipulated Judgment
3 entered.

4 Second, Paragraph C of the Settlement Agreement requires OSG and Bogart to submit to
5 the Regional Water Board an amended report of waste discharge for all applicable discharges at
6 the OSG Facility in order to update the Waste Discharge Requirements, no later than July 1, 2018
7 (90 days after the Agreement was signed by the last signatory on April 2, 2018). (Exh. A, Terms,
8 ¶ C.1., at p. 3:15-21.) The Agreement also requires them to fully and timely comply with all
9 requirements, including fees and monitoring and reporting requirements, of any updated Waste
10 Discharge Requirements issued by the Regional Water Board upon OSG's and Bogart's
11 submission of the complete Amended Report of Waste Discharge, pursuant to Water Code
12 section 13260. (Exh. A, Terms, ¶ C.3., at pp. 3:25-4:2.) On August 3, 2018, the Regional Water
13 Board received a report regarding the OSG Facility prepared by C. Bryan Graves Consulting
14 (Report). (Smith Decl., ¶ 8.) Regional Water Board staff reviewed the Report and determined it
15 does not address a number of items that are required in a complete Report of Waste Discharge.
16 (Smith Decl., ¶¶ 7, 8.) Despite numerous offers by the Regional Water Board to work with
17 defendants regarding the deficiencies in the Report, defendants failed to submit any additional
18 information in order to provide a complete Report of Waste Discharge. OSG and Bogart have
19 violated Paragraph C of the Agreement. For this reason alone, the dismissal shall be vacated and
20 the Stipulated Judgment entered.

21 Third, Paragraph F of the Settlement Agreement requires OSG and Bogart to submit to the
22 Regional Water Board, no later than July 31, 2018 (120 days after the Agreement was signed by
23 the last signatory on April 2, 2018), a Work Plan detailing proposed actions to rectify the
24 violations noted in the July 11, 2014, Notice of Violation issued by the Regional Water Board.
25 (Exh. A, Terms, ¶ F, at pp. 4:24-5:6; Exh. A [Exh. B], Notice of Violation.) The Agreement
26 requires that the work plan shall be prepared by a qualified consultant and include a description of
27 any special studies and/or applicable permits required to complete the proposed work. (Exh. A,
28 Terms, ¶ F, at pp. 4:24-5:2.) Further, the work plan shall be implemented within 30 days

1 following approval by the Regional Water Board's Executive Officer or his/her designee. (Exh.
2 A, Terms, ¶ F, at p. 5:2-3.) OSG and Bogart did not submit a Work Plan and did not comply with
3 Paragraph F of the Agreement. OSG and Bogart have violated Paragraph F of the Agreement.
4 For this reason alone, the dismissal shall be vacated and the Stipulated Judgment entered.

5 Paragraphs A, C, and F of the Judgment Pursuant to Stipulation provide the exact same
6 requirements as paragraphs A, C, and F of the Agreement with the exception of the deadlines by
7 which OSG and Bogart are required to provide the specified information to the Regional Water
8 Board and DFW. The Stipulated Judgment, Paragraph A, requires OSG and Bogart to submit to
9 DFW a written Notification pursuant to Fish and Game Code section 1602 for the gravel ramp,
10 specifically, whether to retain, modify, or remove the ramp, and any other activity at the OSG
11 facility subject to Fish and Game Code section 1602, no later than 30 days after the Stipulated
12 Judgment is entered by the Court. (Exh. A [Exh. 1], Stipulated Judgment, ¶ A.2., at pp. 1:23-2:2.)
13 The Stipulated Judgment, Paragraph C, requires OSG and Bogart to submit a complete Amended
14 Report of Waste Discharge no later than 30 days after the Stipulated Judgment is entered by the
15 Court. (Exh. A [Exh. 1], Stipulated Judgment, ¶¶ C.1. & C.2., at p. 3:4-13.) The Stipulated
16 Judgment, Paragraph F, requires OSG and Bogart to submit a Work Plan to the Regional Water
17 Board detailing proposed actions to rectify the violations noted in the July 11, 2014, Notice of
18 Violation issued by the Regional Water Board, no later than 30 days after notice of entry of
19 judgment. (Exh. A [Exh. 1] Stipulated Judgment, Terms, ¶ F, at pp. 4:24-5:6; Exh. A [Exh. B],
20 Notice of Violation.)

21 Paragraphs D and E of the Stipulated Judgment provide the exact same requirements as
22 paragraphs D and E of the Agreement. They require defendants to comply with any and all
23 requirements arising under federal law applicable to activities at the OSG Facility covered by the
24 Stipulated Judgment and, if required, to provide a Clean Water Act 401 Water Quality
25 Certification Application to the Regional Water Board. (Exh. A [Exh. 1], ¶¶ D, E, at pp. 3:19-
26 4:11.)

27 The parties stipulated in the Settlement Agreement that the Stipulated Judgment includes
28 suspended civil penalties for violations of the federal Clean Water Act, Water Code, and Fish and

1 Game Code, in the amount of \$500,000, in addition to the \$175,000 in civil penalties provided in
2 paragraph H.1. of the Agreement, for a total of \$675,000, which is due upon entry of the
3 Judgment Pursuant to Stipulation. (Exh. A, Terms, ¶ H.3., p. 6:5-8.) The Stipulated Judgment
4 provides that OSG and Bogart are jointly and severally liable for violations of the federal Clean
5 Water Act, Water Code, and Fish and Game Code in the amount of \$675,000. (Exh. A [Exh. 1], ¶
6 H.1., at p. 5:1-6.) OSG and Bogart timely paid the first annual installment of \$25,000 in civil
7 penalties. (Kendrick Decl., ¶ 5; Exh. O.) Therefore, \$650,000 remains payable upon entry of
8 judgment plus interest at the rate of 10%, beginning April 2, 2018.

9 **IT IS THEREFORE ORDERED AND DECLARED:**

10 1. Plaintiffs' motion to vacate dismissal and enter judgment is **GRANTED** on the
11 ground that defendants Orland Sand and Gravel and Dale Roy Bogart have failed to comply with
12 the terms of the Settlement Agreement lodged in this Court on April 2, 2018.

13 2. The dismissal of this action entered on May 10, 2018, is **VACATED**.

14 3. The Judgment Pursuant to Stipulation is **ENTERED** in this matter and deemed
15 **FILED** nunc pro tunc as of April 2, 2018.

16 It is so **ORDERED**.

17 Dated: May 22, 2019

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19 _____
20 The Honorable James Garbolino
21 Judge of the Superior Court

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