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10 *Attorneys for Plaintiff*
11 CALIFORNIA TROUT, INC.

12 **UNITED STATES DISTRICT COURT FOR THE**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15
16 CALIFORNIA TROUT, INC.,

17 Plaintiff

18 v.

19 UNITED STATES BUREAU OF
20 RECLAMATION, *et al.*,

21 Federal Defendants

22 and

23
24 CACHUMA CONSERVATION
25 RELEASE BOARD, SANTA YNEZ
26 RIVER WATER CONSERVATION
27 DISTRICT, SANTA YNEZ RIVER
28 WATER CONSERVATION
DISTRICT, IMPROVEMENT

CASE NO. 2:14-cv-07744-FMO-PLA

**STIPULATED SETTLEMENT
AGREEMENT**

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DISTRICT NO. 1;

Defendant-Intervenors

1 Plaintiff California Trout, Inc. (“Plaintiff”), Federal Defendants, the U.S.
2 Bureau of Reclamation, Estevan López, Commissioner, Bureau of Reclamation,
3 United States Department of the Interior, and S.M.R. Jewell, Secretary, United
4 States Department of the Interior (“Reclamation” or “Federal Defendants”), and
5 Defendant-Intervenors, Cachuma Conservation Release Board (“CCRB”), Santa
6 Ynez River Water Conservation District, and Santa Ynez River Water
7 Conservation District, Improvement District No. 1 (together, the “Defendant-
8 Intervenors”), by and through their undersigned counsel, enter into the following
9 Stipulated Settlement Agreement (“Agreement”) for the purpose of resolving the
10 above-captioned litigation and state as follows:

11 WHEREAS, Plaintiff, Federal Defendants, and each of the Defendant-
12 Intervenors are parties to this action, and are individually referred to in this
13 Agreement as a “Party” and collectively referred to in this Agreement as the
14 “Parties.”

15 WHEREAS, Plaintiff’s case asserts challenges under Sections 7 and 9 of the
16 Endangered Species Act (“ESA”), 16 U.S.C. § 1536 *et seq.*, stemming from
17 Reclamation’s alleged non-compliance with a biological opinion (“BiOp”) and its
18 accompanying incidental take statement issued by the National Marine Fisheries
19 Service (“Service”) on September 8, 2000.

20 WHEREAS, as relevant to the case at hand, Reclamation’s operation and
21 maintenance of the Cachuma Project (“Project”) is subject to compliance with the
22 BiOp and its incidental take statement which, among other things, requires
23 Reclamation to supply a minimum water flow of two cubic feet per second from
24 Lake Cachuma to Hilton Creek for the benefit of the ESA-listed, endangered
25 Southern California steelhead (*Oncorhynchus mykiss*), except under certain
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1 circumstances as specified in the BiOp.¹

2 WHEREAS, Reclamation provides the required flow of water into Hilton
3 Creek, which is ESA designated critical habitat, through the Project’s Hilton Creek
4 Watering System (“watering system”).

5 WHEREAS, beginning in March 2013, the watering system, for various
6 known and unknown reasons, experienced a number of pump flow interruptions
7 causing a reduction or cessation of water flows into Hilton Creek. Reclamation
8 acknowledges that the mortality, rescue, and relocation resulting from these pump
9 incidents, may have resulted in ESA “take” of endangered steelhead as the species
10 is defined in 71 Fed. Reg. 834 (Jan. 5, 2006) (defining the Southern California
11 Steelhead Distinct Population Segment as including “all naturally spawned
12 anadromous *O. mykiss* (steelhead) populations below natural and manmade
13 impassable barriers in streams from the Santa Maria River, San Luis Obispo
14 County, California, (inclusive) to the U.S.-Mexico Border”).

15
16 WHEREAS, Plaintiff’s position is that ESA take of endangered steelhead, as
17 the species is defined in 71 Fed. Reg. 834 (Jan. 5, 2006), did in fact occur. This
18 alleged take is associated with at least 9 of the pump flow interruptions which
19 resulted in at least 393 fish mortalities and 634 fish rescued.

20 WHEREAS, on November 21, 2013, due in part to these incidents with the
21 watering system and the potential take, Reclamation sent a letter to the Service
22 requesting a reinitiation of Section 7 consultation to ensure that Project operations
23 were consistent with its ESA obligations. Reclamation’s letter did not specifically
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26 ¹ Reclamation’s operation and maintenance of the Project is also subject to
27 compliance with, among other matters, California State Water Resources Control
28 Board (“SWRCB”) Water Rights Orders, including WR 73-37 and WR 89-18, and
SWRCB Permits 11308 and 11310, as amended.

1 identify the potential take as a reason for reinitiation of consultation.

2 WHEREAS, in May 2014, Reclamation made repairs to the watering
3 system's pumps. Reclamation replaced one pump entirely and refurbished the
4 second pump.

5 WHEREAS, on September 3, 2014, Reclamation hired a third-party
6 contractor to install an emergency backup delivery system ("emergency backup
7 system"). The emergency backup system includes two diesel-powered pumps, has
8 stand-alone capabilities, and includes piping to deliver water from the Bradbury
9 Dam outlet works to the Hilton Creek release points.²

10 WHEREAS, Defendant-Intervenors' position is that the uncompleted and/or
11 completed emergency backup system has impaired and/or may impair their ability
12 to, among other things, accurately measure downstream water rights releases,
13 deliver State Water Project ("SWP") supplies into Lake Cachuma for delivery to,
14 among others, CCRB's member agencies and mix such SWP supplies with water
15 rights releases, and deliver Cachuma Project supply entitlement to Improvement
16 District No. 1 from the Bradbury Dam outlet works.

17 WHEREAS, the emergency backup system, once fully completed, will sense
18 when the watering system's electric-powered pumps are not functioning and will
19 automatically start a diesel-powered pump to deliver water to Hilton Creek.

20 WHEREAS, Reclamation also began exploring the possibility of redesigning
21 the watering system to enhance the watering system's gravity-fed capabilities
22 using the Bradbury Dam outlet works. Currently, when the water levels of Lake
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25 ² In June 2014, Reclamation reduced a portion of the Bradbury Dam outlet works
26 from a 10-inch pipe to a 4-inch pipe. As part of the contract for the emergency
27 backup system, as modified on September 4, 2015, Reclamation will revert the
28 portion of the outlet works that was reduced to a 4-inch pipe back to a 10-inch
pipe.

1 Cachuma are at or above an approximate elevation of 730 feet, the watering system
2 is capable of being operated by gravity without the need for pumping to provide
3 flows into Hilton Creek. However, at some point when the water levels drop
4 below about 730 feet in elevation, and due to the laws of physics, the gravity-fed
5 capability is no longer operable, making the watering system reliant on the existing
6 two electric-powered pumps to sustain the necessary flows to Hilton Creek for the
7 steelhead. The system redesign under consideration – *i.e.*, using the Bradbury
8 Dam outlet works – will look to enhance the system’s gravity-fed capabilities
9 down to an approximate water level of 700 feet (instead of the current 730 feet).
10 Reclamation does not yet know whether this type of system redesign is possible.

11 WHEREAS, on October 6, 2014, Plaintiff filed its Complaint against
12 Federal Defendants alleging the following violations: (1) violation of Section 7 for
13 Reclamation’s alleged failure to reinitiate Section 7 consultation with the Service
14 on the specific issue of steelhead take resulting from the watering system’s pump
15 failures; and (2) violation of Section 9 for Reclamation’s alleged failure to operate
16 the watering system in the manner described by the BiOp’s incidental take
17 statement and for Reclamation’s exceedance of steelhead take permitted by the
18 incidental take statement.

19 WHEREAS, in order to facilitate settlement, on August 26, 2015,
20 Reclamation sent the Service a letter specifically identifying the potential
21 exceedance of take as one reason for reinitiation of consultation.

22 WHEREAS, once the Service issues a new draft BiOp for the Project,
23 Reclamation will provide a copy of the draft BiOp to Plaintiff and Defendant-
24 Intervenors for review and written comment. Plaintiff and Defendant-Intervenors
25 will have 45 days from the date of receipt to provide written comments to
26 Reclamation. Reclamation will deliver the comments to the Service within five
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1 business days of receipt. Plaintiff and Defendant-Intervenors shall not further
2 distribute the draft BiOp to or discuss the nature of the draft BiOp's contents with
3 any non-party to this Agreement or this action. The Parties further understand and
4 agree that this process is not required by the ESA or its implementing regulations
5 and does not establish a precedent for any future ESA Section 7 consultation, nor
6 does it affect any other provision of the ESA and its implementing regulations.

7 WHEREAS, the Parties, through their authorized representatives and
8 without any admission or final adjudication of the issues of fact or law with respect
9 to Plaintiff's claims, have reached a settlement that they consider to be a just, fair,
10 adequate, and equitable resolution of the disputes set forth in Plaintiff's Complaint.

11 WHEREAS, the Parties agree that settlement of this action in this manner is
12 in the public interest and is an appropriate way to resolve the dispute between them
13 at this time.

14 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE
15 SETTLING PARTIES AS FOLLOWS:
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17 1. Reclamation agrees to complete the final work on the emergency
18 backup system by January 31, 2016. Reclamation agrees to update Plaintiff and
19 Defendant-Intervenors on the progress of the emergency backup system by
20 November 30, 2015. The nature of the work being done on the emergency backup
21 system is often subject to unforeseen delays and is being carried out by a third-
22 party contractor. In the event of any unforeseen delays or any other delays outside
23 Reclamation's control, the Parties will seek a good-cause modification of this
24 deadline pursuant to paragraph 5 below.

25 2. Reclamation agrees to make a determination as to whether a redesign
26 of the current watering system using the Bradbury Dam outlet works is possible by
27 November 30, 2015 ("possibility decision"). The Parties agree that Reclamation
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1 retains complete discretion in the decision-making process and that the ultimate
2 possibility decision is not a final agency action subject to judicial review. After
3 Reclamation's November 30, 2015 decision, the Parties agree to the following
4 steps:

- 5 a. Reclamation shall provide its possibility decision to the Parties in
6 writing and the Parties will have 45 days to submit written
7 comments to Reclamation regarding the possibility decision.
- 8 b. Between 45 and 60 days after the possibility decision, or sooner if
9 the Parties agree, Reclamation will facilitate an opportunity for the
10 Parties to have an in-person meeting to discuss the decision and
11 any submitted comments.
- 12 c. If the watering system redesign using the current outlet works is
13 determined to be possible, Reclamation agrees to make a
14 subsequent decision on whether or not to pursue a redesign by
15 March 25, 2016. The Parties agree that Reclamation retains
16 complete discretion in making this decision and will consider any
17 timely provided relevant information and data including, but not
18 limited to, the following: overall benefit to the steelhead, costs,
19 practicality, delivery of SWP supplies to Lake Cachuma for
20 delivery to, among others, CCRB's member agencies, downstream
21 water rights releases, mixing of SWP supplies with downstream
22 water rights releases, Cachuma Project water deliveries to
23 Improvement District No. 1 from the Bradbury Dam outlet works,
24 and existing legal and contractual rights and obligations of
25 Defendant-Intervenors and downstream water right holders and
26 water users. Furthermore, the Parties agree that Reclamation's
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1 decision on whether or not to pursue a watering system redesign is
2 not a final agency action subject to judicial review.

3 3. Reclamation's obligations with respect to paragraphs 1-2 above shall
4 terminate when Reclamation completes the action or actions required by each
5 paragraph. The Parties understand and agree that the termination of Reclamation's
6 obligations under paragraphs 1-2 above shall not preclude or otherwise affect or
7 interfere with Reclamation's ability to consider any future redesign of the watering
8 system or the emergency backup system.

9 4. Reclamation agrees that Plaintiff is entitled to reasonable attorneys'
10 fees and costs from the United States (not Defendant-Intervenors). Reclamation
11 and Plaintiff will attempt to resolve the appropriate amount of fees and costs within
12 60 days of entry of this Agreement. The Parties further agree that this Court will
13 retain jurisdiction to decide any dispute regarding attorneys' fees and costs. *See*
14 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994).

15 5. The Parties may seek to modify the terms of this Agreement for good
16 cause shown, consistent with the Federal Rules of Civil Procedure. In that event,
17 or in the event that any Party believes that any other Party has failed to comply
18 with any term or condition of this Agreement, the Parties shall use the dispute
19 resolution procedures specified in paragraph 6 below.

20 6. In the event of a dispute arising out of or relating to this Agreement,
21 the Party raising the dispute shall provide the other Parties with written notice of
22 the dispute and a request for negotiations. The Parties shall meet and confer (either
23 telephonically or in-person) to attempt to resolve the dispute within 21 days of the
24 written notice, or such time as is mutually agreed by the Parties. If the Parties are
25 unable to resolve the dispute within 30 days of such a meeting, or such time as is
26 mutually agreed by the Parties, then the Party raising the dispute may file a motion
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1 to enforce the Agreement. Each Party agrees that it will not seek contempt of court
2 as a remedy for any violation of this Agreement, and the Parties therefore
3 knowingly waive any right that they might have to seek an order of contempt for
4 any such violation.

5 7. It is expressly understood and agreed that this Agreement has been
6 freely and voluntarily entered into by the Parties. Each of the Parties represents and
7 acknowledges that, in executing this Agreement, it is not relying on, nor has it
8 relied on, any representation or statement made by any of the other Parties, their
9 agents, or attorneys with regard to the subject matter, basis, or effect of this
10 Agreement.

11 8. Nothing in this Agreement shall be interpreted as, or shall constitute, a
12 requirement that Reclamation is obligated to pay any funds exceeding those
13 available, or take any action in contravention of the Anti-Deficiency Act, 31
14 U.S.C. § 1341, or any other appropriations law.

15 9. The Parties agree that this Agreement was negotiated in good faith
16 and that this Agreement constitutes a settlement of Plaintiff's claims that were
17 denied and disputed by Reclamation and Defendant-Intervenors. By entering into
18 this Agreement, the Parties do not waive any claim or defense. Plaintiff and
19 Reclamation acknowledge and agree that Defendant-Intervenors did not assert, and
20 were not required to assert, claims in this action against Plaintiff or Reclamation
21 regarding legal interests held by Defendant-Intervenors that are or may be affected
22 by the watering system and the emergency backup system, and Plaintiff and
23 Reclamation agree that neither this action, including its dismissal, nor anything in
24 this Agreement precludes or limits any Defendant-Intervenor's ability to assert a
25 claim or lawsuit in the event it alleges the watering system and/or emergency
26 backup system damages or impairs the interest(s) of any Defendant-Intervenor.
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10. The terms of this Agreement shall become effective upon entry of an Order by the Court ratifying the Agreement.

11. Upon approval of this Agreement by the Court, Plaintiff's First Amended Complaint shall be dismissed with prejudice.

12. Notwithstanding the dismissal of this action, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement, including any disputes regarding fees and costs as described in paragraph 4 above, and to resolve any motions to modify the terms of this Agreement, subject to the dispute resolution procedures specified in paragraph 6 above. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 378 (1994).

Dated: October 20, 2015

Respectfully Submitted,

/S/ Nicole G. Di Camillo
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All other signatories listed, and on whose behalf this filing is submitted, concur in this filing's content and have authorized this filing.

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DISTRICT NO. 1

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

CALIFORNIA TROUT, INC.,

Plaintiff

v.

UNITED STATES BUREAU OF
RECLAMATION, *et al.*,

Federal Defendants

and

CACHUMA CONSERVATION
RELEASE BOARD, SANTA YNEZ
RIVER WATER CONSERVATION
DISTRICT, SANTA YNEZ RIVER
WATER CONSERVATION
DISTRICT, IMPROVEMENT
DISTRICT NO. 1,

Defendant-Intervenors

CASE NO. 2:14-cv-07744-FMO-PLA
CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the attorneys of record.

/s/ Nicole G. Di Camillo
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Attorneys for Plaintiff
CALIFORNIA TROUT, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CALIFORNIA TROUT, INC.,

Plaintiff,

vs.

UNITED STATES BUREAU OF
RECLAMATION; LOWELL PIMLEY,
Acting Commissioner, United States Bureau
of Reclamation; UNITED STATES
DEPARTMENT OF THE INTERIOR;
SALLY JEWELL, Secretary, United States
Department of the Interior;

Defendants,

Civil Case No.
2:14-CV-7744 FMO-PLA

**ORDER APPROVING AND
ADOPTING STIPULATED
SETTLEMENT AGREEMENT**

Honorable Fernando M. Olguin

CACHUMA CONSERVATION RELEASE
BOARD; SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO. 1;
SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT;

Defendant-Intervenors.

Plaintiff California Trout, Inc., Defendants United States Bureau of Reclamation, *et al.* and Defendant-Intervenors Cachuma Conservation Release Board, *et al.* (collectively the “Parties”) filed a Stipulated Settlement Agreement (“Agreement”) on October 20, 2015. IT IS HEREBY ORDERED, that the Agreement, attached and incorporated herein by reference, is approved and adopted as the judgment, that this Court retains jurisdiction over the Agreement as specified in the Agreement, and that this case is hereby dismissed with prejudice, as further specified in the Agreement.

Date: October 21, 2015

_____/s/_____

Honorable Fernando M. Olguin