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11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13 FRESNO DIVISION

14
15 CONSOLIDATED SALMON CASES)
16 SAN LUIS & DELTA-MENDOTA WATER)
AUTHORITY, *et al.* v. LOCKE, *et al.*)
17 STOCKTON EAST WATER DISTRICT v.)
NOAA, *et al.*)
18 STATE WATER CONTRACTORS v.)
LOCKE, *et al.*)
19 KERN COUNTY WATER AGENCY, *et al.* v.)
U.S. DEPARTMENT OF COMMERCE, *et al.*)
20 OAKDALE IRRIGATION DISTRICT, *et al.* v.)
U.S. DEPARTMENT OF COMMERCE, *et al.*)
21 THE METROPOLITAN WATER DISTRICT)
OF SOUTHERN CALIFORNIA v.)
22 NATIONAL MARINE FISHERIES SERVICE,)
et al.)
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Lead Case No.
1:09-cv-01053-OWW-DLB
Consolidated Cases:
1:09-cv-01090-OWW-DLB
1:09-cv-01378-OWW-DLB
1:09-cv-01520-OWW-SMS
1:09-cv-01580-OWW-DLB
1:09-cv-01625-OWW-SMS

DECLARATION OF WILLIAM F. "ZEKE" GRADER IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR RECONSIDERATION AND IMMEDIATE STAY OF TEMPORARY RESTRAINING ORDER

1 I, WILLIAM F. "ZEKE" GRADER, hereby declare:

2 1. I have been the Executive Director of Pacific Coast Federation of Fishermen's
3 Associations ("PCFFA") for 34 years and have served as the Executive Director of PCFFA's sister
4 organization, the Institute for Fisheries Resources ("IFR"), since its founding in 1992.

5 2. My professional responsibilities include advocating on behalf of PCFFA and
6 administering and advancing the issues of the IFR, which includes, at times, representing the two
7 organizations in litigation efforts. Our two organizations have been advocates for sustainable
8 aquatic resource use and the protection and recovery of salmon throughout California and the Pacific
9 Northwest. Much of this advocacy work is in the area of protecting the Chinook salmon fisheries
10 that PCFFA members depend upon for their livelihoods.

11 3. Collectively, PCFFA's members include approximately 14 fishing associations
12 representing, among others, organized commercial salmon fishing men and women in California as
13 well as some in Oregon and Washington, most of whom are small and mid-sized commercial fishing
14 boat owners and operators. Most of PCFFA's members derive all or part of their income from the
15 harvesting of Pacific salmon, a valuable business enterprise for the West Coast and particularly for
16 California economies. In recent years the fishery has consisted primarily – upwards of 90 percent -
17 of Sacramento River fall-run Chinook salmon.

18 4. The decline of California's salmon species in recent years has severely impacted
19 PCFFA members in California by limiting commercial salmon harvest opportunities, both through
20 lost production of impaired stocks and because of additional restrictions imposed on the fishing fleet
21 to protect impaired salmon populations. Salmon spawning and rearing habitat losses to date already
22 have cost the west coast salmon fishing industry (including both commercial and recreational
23 components) an estimated 40,000 salmon-produced family wage jobs over the last 30 years.

24 5. In my 34 years with PCFFA, I have witnessed our salmon fishery decline from nearly
25 6,000 active vessels in California - employing at-sea and onshore thousands of people - to an active
26 fleet of fewer than 600 permitted salmon vessels in the state. California's salmon fishery has utterly
27 collapsed in just two decades, from record ocean landings of more than 14 million pounds of
28 Chinook salmon in the commercial fishery in 1988, along with a healthy recreational fishery and

1 good returns to the rivers that same year, to a total closure, for the first time in State history, in 2008
2 and 2009. These losses are directly related to widespread inland salmon habitat destruction,
3 including that resulting from the construction of dams and diversions of water as part of the Central
4 Valley Project (“CVP”) and State Water Project (“SWP”).

5 6. The California Department of Fish and Game has assessed the damage from the 2009
6 and 2008 closures of the salmon season. It estimated directly related losses for the State of
7 California of \$279 million and 2,690 jobs in 2009. *See* Statement of Governor Arnold
8 Schwarzenegger dated April 21, 2009, attached hereto as Attachment 1. The 2008 closure was
9 projected to cost California \$255 million and 2,263 jobs. *See* Statement of Governor Arnold
10 Schwarzenegger dated April 10, 2009, attached hereto as Attachment 2.

11 7. The fishery closure in 2008 and 2009 resulted from record low numbers of salmon
12 returning to spawn in Central Valley rivers. There is widespread fear in the fishing community that
13 the State and federal government will close the recreational and commercial salmon fishery again in
14 2010, because too few salmon returned to support the fishery. A fishery closure in 2010 would have
15 devastating effects on the commercial fishermen of PCFFA, and likely would lead to additional job
16 and income losses. Continued fishery closures threaten the long term viability of the salmon fishery,
17 as the infrastructure and expertise that sustains the fishery is lost.

18 8. Because a substantial portion of the salmon caught by commercial salmon fishermen
19 in Oregon originate from California’s Central Valley, the salmon fishery closures in 2008 and 2009,
20 and the potential closure in 2010, have harmed fishermen in Oregon as well as in California.

21 9. Salmon fishermen have sacrificed their livelihoods over the past two years (2008 and
22 2009) in order to help salmon populations rebound and to restore and sustain the salmon fishery for
23 the future. Any actions that increase mortality of fall-run Chinook salmon, whether in the Delta or
24 upriver, harm salmon fishermen and render the sacrifice they have made to be in vain.

25 10. The Sacramento-San Joaquin Delta estuary (“Delta”) plays a critical biological
26 nursery role in the development of juvenile salmon prior to going to sea. The Delta is key to Central
27 Valley Chinook salmon production, including fall-run Chinook. If the fish cannot safely pass
28 through the Delta on their downstream migration to the sea, then it does not matter much what is

1 done upstream in the way of fish passage, maintaining flows and temperatures, or habitat restoration.
2 Likewise, ocean conditions and climate change become irrelevant if the juvenile salmon cannot
3 make it to the ocean.

4 11. Rebuilding salmon requires fixing the Delta. This means there must be adequate
5 freshwater inflow through the Delta and to the Bay at critical times of the year, including winter and
6 spring, to get the juvenile fish past the pumps and on a westward migration to the Bay and Delta
7 (rather than a southward migration to the pumps). This in turn means pumping will have to be
8 curtailed, as compared to the record levels of exports seen in recent years. Allowing the pumping to
9 be increased during the next 14 days or later in February and March is exactly the wrong thing to do
10 and will jeopardize the survival and recovery of the salmon.

11 12. Water that is used to move salmon past the pumps and which flows naturally out of
12 the Delta is not being “wasted to the sea.” By safely transporting juvenile salmon to the sea, these
13 flows create economic benefits for salmon fishermen and the businesses that depend on them, in
14 addition to other beneficial and Public Trust uses. The Bay-Delta estuary – the largest on the west
15 coast of North and South America – evolved around fresh water inflow to mix with seawater
16 creating the rich brackish water critical to the life and health of an estuary and all the fish and
17 wildlife these ecosystems support.

18 13. My understanding is that juvenile fall-run Chinook salmon are currently migrating
19 through the Delta, and are likely being entrained in the SWP and CVP pumps now. I base this on
20 the 2009 Salmon BiOp, according to which thirteen percent of fall-run Chinook from the
21 Sacramento River enter the Delta in the month of February. *See* 2009 Salmon BiOp at 402.
22 Therefore, any increase in the level of pumping during the next 14 days or later in February and
23 March will increase the number of juvenile fall-run Chinook salmon directly and indirectly impacted
24 by the pumps. As the BiOp explains, many more salmon are harmed and killed by the effects of the
25 pumping projects than are actually salvaged, because of the indirect effects on salmon migratory
26 survival that result from changed flow patterns in the Delta. *See, e.g., id.* at 374-386, 773-774.

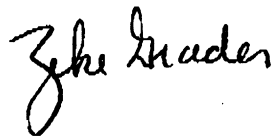
27 14. It is true that not every juvenile fall-run salmon that survives to the ocean will
28 become an adult to be available to be caught in the salmon fishery, but it is equally true that every

1 salmon that is killed by the water projects cannot grow up to be caught in the fishery. Increased
2 levels of pumping at this time therefore will harm the commercial fishery.

3 15. PCFFA and other salmon fishermen strongly support implementation of the 2009
4 Salmon BiOp. Although the minimum flows, export restrictions, and habitat restoration measures
5 are designed to benefit winter-run Chinook salmon, spring-run Chinook salmon, and Central Valley
6 steelhead, many of these measures will also benefit fall-run Chinook salmon, which form the
7 backbone of the State's salmon fishery. Any further harm to the already struggling salmon fishery
8 that results from enjoining the 2009 Salmon BiOp's protective measures, including RPA Action
9 IV.2.3, significantly threatens the livelihoods and personal interests of PCFFA members, myself
10 included.

11 I declare under penalty of perjury that the foregoing is true and within my personal
12 knowledge.

13 DATED: February 8, 2010

14 

15
16
17 WILLIAM F. "ZEKE" GRADER, Jr.

ATTACHMENT 1



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PRESS RELEASE

04/21/2009 GAAS:185:09 FOR IMMEDIATE RELEASE

Gov. Schwarzenegger Addresses Impacts of Vote to Close Salmon Season for Second Consecutive Year

Governor Arnold Schwarzenegger today took action to avoid harmful impacts to the state's economy following the California Fish and Game Commission's vote to close the 2009 recreational salmon season. The Pacific Fishery Management Council (PFMC) voted to close the commercial salmon season on April 8. This is the second consecutive year that the state's salmon fishery has been closed.

The Governor issued a proclamation declaring a state of emergency in California and sent a letter to U.S. Secretary of Commerce Gary Locke asking for his support in obtaining federal disaster assistance.

"California's salmon are a vital resource that contributes greatly to our economy, our environment and our way of life," said Governor Schwarzenegger. "Today I am asking the federal government to make the necessary resources available to help the fishing industry cope with a second year of economic and recreational impacts.

Today, the Commission voted to conform to standards recommended by the PFMC to close the ocean recreational salmon fisheries south of Horse Point in California for the 2009 season. The PFMC voted to close both commercial and recreational salmon fishing (except for 10 days in the Klamath Management zone) in federal waters. The state commercial regulations are auto-conforming; the commission adopts recreational regulations for state waters.

At the Governor's request, the California Department of Fish and Game assessed the potential damage from the closure of the salmon season and determined the loss to be \$279 million and 2,690 California jobs.

Also today, the Governor joined with Oregon Governor Kulongoski in sending a letter to Commerce Secretary Locke requesting a fishery resource disaster under the Interjurisdictional Fisheries Act of 1986, and a commercial fishery failure under the Magnuson-Stevens Fishery Conservation and Management Act of 1976.

Last year, the Governor also declared a state of emergency in California and directed numerous state agencies and departments to take various actions to help those affected by the first-ever salmon season closure. He also helped secure \$120 million in federal disaster assistance for California salmon fishermen and the salmon fishing industry.

Below is the full text of the Governor's proclamation:

WHEREAS California's salmon runs are a vital component of our great State's resources and contribute significant environmental, recreational, commercial, and economic benefits to the people; and

WHEREAS the Sacramento River Fall Run Chinook Salmon have been significantly impacted by poor ocean conditions, and other environmental factors; and

WHEREAS the Sacramento River Fall Run Chinook Salmon, traditionally a mainstay salmon population for the West Coast, have declined in population to a level where California's and Oregon's recreational and commercial fisheries are being provisionally closed; and

WHEREAS Sacramento River Fall Run Chinook Salmon are predicted to have low ocean abundance again

in 2009 in waters from Cape Falcon in northern Oregon to the U.S./Mexico Border in San Diego County, California; and

WHEREAS appropriate management of the Sacramento River Fall Run Chinook Salmon is critical to California's businesses, and local communities that provide goods and services in support of California's salmon fisheries; and

WHEREAS on April 21, 2009, I requested U.S. Secretary of Commerce Gary Locke to use his authority under the Magnuson-Stevens Fishery Conservation and Management Act to determine that there has been a commercial fishery failure due to a fishery resource disaster; and

WHEREAS on April 8, 2009, the Pacific Fishery Management Council adopted final regulatory recommendations to close commercial salmon fishing and impose severe restrictions on recreational salmon fishing, and it is anticipated that the National Marine Fisheries Service will adopt an emergency rule followed by a declaration by the U.S. Secretary of Commerce, that is consistent with the Council's action; and

WHEREAS these restrictions will have significant impacts to California's commercial and recreational ocean salmon and Central Valley in-river recreation salmon fisheries and will result in severe economic losses throughout the State, including an estimated \$279 million economic impact and the loss of an estimated 2,690 jobs; and

WHEREAS the serious circumstances of the Sacramento River Fall Run Chinook Salmon put at risk the livelihoods of families and businesses dependent upon them.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, find that conditions of disaster or of extreme peril to the safety of persons and property exist within California due to the poor ocean conditions and resulting from the significant restrictions that have been imposed again on the State's salmon fisheries, and the magnitude of this disaster will likely exceed the capabilities of the services, personnel, and facilities of any single county, city and county, or city in California, and require or will likely require the combined forces of a mutual aid region or regions to combat. Therefore, I find California to be in a state of emergency, and under the authority of the California Emergency Services Act, **I HEREBY PROCLAIM A STATE OF EMERGENCY** exists in California.

In addition, pursuant to this Proclamation:

I DIRECT the Director of the California Department of Fish and Game and the Secretary of the Natural Resources Agency to: (1) report to me immediately upon final action of the Department of Commerce and the California Fish and Game Commission on any further actions necessary to ensure the protection of the resource and of the economic livelihood of the fishery participants and local communities; and (2) address the long-term restoration and management of the Sacramento River Fall Run Chinook Salmon in ongoing discussions with federal agencies and representatives from conservation and fishing organizations and fishing communities.

I FURTHER DIRECT the Secretary of the Business, Transportation and Housing Agency, with the cooperation of the Department of Finance, to activate the Small Business Disaster Assistance Loan Guarantee Program to guarantee loans to prevent business insolvencies and loss of employment in California as a result of this State of Emergency.

I FURTHER DIRECT that to ensure that adequate assistance is available to individuals who have lost their jobs as a result of this emergency, the Secretary of the Labor and Workforce Development Agency and the Director of the Employment Development Department shall make available additional assistance grants in those circumstances where the local Dislocated Worker formula allocation is not adequate to cover the demand for services to individuals who have lost their jobs as a result of this State of Emergency.

I FURTHER DIRECT the Director of the Department of Fish and Game to request from the U.S. Department of the Interior, Fish and Wildlife Service, that California continue to receive the maximum apportionment for federal funds under the federal Sport Fish Restoration Act allowable for the years 2009 and 2010 through an exemption from the apportionment calculation of other suitable means since a predicted decrease in fishing license sales may negatively affect the State's apportionment.

I FURTHER DIRECT the Director of the Department of Fish and Game to take all necessary actions to

issue refunds for commercial fishing salmon stamps issued under Fish and Game Code section 7860, and for Commercial Salmon Vessel Permits issued under Fish and Game Code sections 8235 and 8245, paid for the current 2009 commercial fishing salmon season because retention of such fees would hinder mitigation of the effects of this emergency.

I FURTHER DIRECT that no administrative charges, by any State department, agency, board, commission or office, will be claimed or charged to the Department of Fish and Game for the processing of these refunds.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 21st day of April 2009.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State



ATTACHMENT 2



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PRESS RELEASE

04/10/2008 GAAS:174:08 FOR IMMEDIATE RELEASE

Gov. Schwarzenegger Takes Action to Address Impacts of Vote to Close Commercial and Recreational Salmon Fisheries

Governor Arnold Schwarzenegger took a number of steps to aid an industry severely impacted by poor ocean conditions and other environmental factors following today's recommendation by the Pacific Fishery Management Council (PFMC) that the U.S. Secretary of Commerce close the commercial and recreational salmon fisheries in California for the 2008 season.

The Governor issued a proclamation declaring a state of emergency in California and sent a letter to President Bush asking for his help in obtaining federal disaster assistance. He will also sign SB 562, currently on his desk, by Senator Pat Wiggins (D-Santa Rosa), which appropriates approximately \$5.3 million of the \$45 million in Proposition 84 funds to begin coastal salmon and steelhead fishery restoration projects.

"California's salmon runs are a treasured state resource and provide significant contributions to our economy and our environment," said Governor Schwarzenegger. "Today's decision by the Pacific Fishery Management Council underscores our responsibility to quickly free up state and federal resources to help the fishing industry cope with the devastating economic impacts closing the season will have.

"In addition to our commitment to immediately assist the salmon fishing industry, the legislation will fund critical coastal salmon and steelhead fishery restoration projects to address the long-term environmental challenges resulting from poor ocean conditions and other factors."

Today, the PFMC, one of eight regional fishery management councils established by the Magnuson Fishery Conservation and Management Act of 1976, now known as Magnuson-Stevens, responsible for managing fisheries off the coasts of California, Oregon and Washington, voted to recommend that the Secretary of Commerce close the commercial and recreational salmon fisheries in California for the 2008 season.

The recommendations will now go to the California Fish and Game Commission for a final decision via a process beginning this Tuesday, April 15. The Commission will work to provide further fishing opportunities to Californians while ensuring the future of salmon fishing in the state.

At the Governor's request, the California Department of Fish and Game (DFG) assessed the potential damage from the closure of the salmon season and determined the loss to be \$255 million and 2,263 California jobs.

The Governor's proclamation directs numerous state agencies and departments to take various actions, including:

- Directing DFG and Resources Agency to address the long-term restoration and management of salmon in California;
- Directing the Business, Transportation and Housing Agency, Department of Finance, and Labor and Workforce Development Agency to make grants and loans available to prevent and/or mitigate business insolvencies and employment losses;
- Directing DFG to request continued funding from the federal government under the federal Sport Fish Restoration Act that might be decreased based on the decrease in fishing license sales, and to refund or waive commercial salmon fishing permit fees for the 2008 and 2009 seasons; and

- Directing Department of Finance to make up to \$2.7 million in special fund money available to DFG to refund commercial fishing salmon stamps and permits for the 2008 season.

In March, the Governor joined with Oregon Governor Kulongoski and Washington Governor Gregoire in sending a letter to U.S. Secretary of Commerce Carlos Gutierrez requesting a fishery resource disaster declaration if fisheries are closed.

Below is the full text of the Governor's proclamation:

A PROCLAMATION

BY THE GOVERNOR OF THE STATE OF CALIFORNIA

WHEREAS California's salmon runs are a vital component of our great State's resources and contribute significant environmental, recreational, commercial, and economic benefits to the people; and

WHEREAS the Sacramento River Fall Run Chinook Salmon have been significantly impacted by poor ocean conditions, and other environmental factors; and

WHEREAS the Sacramento River Fall Run Chinook Salmon, traditionally a mainstay salmon population for the West Coast, have declined in abundance to a level where California's and Oregon's recreational and commercial fisheries are being provisionally closed; and

WHEREAS Sacramento River Fall Run Chinook Salmon are predicted to have extremely low ocean abundance for 2008 in waters from Cape Falcon in northern Oregon to the U.S./Mexico Border in San Diego County, California; and

WHEREAS appropriate management of the Sacramento River Fall Run Chinook Salmon is critical to California's businesses and local communities that provide goods and services in support of California's salmon fisheries; and

WHEREAS on March 14, 2008, I requested U.S. Secretary of Commerce Carlos Gutierrez to use his authority under the Magnuson-Stevens Fishery Conservation and Management Act to determine that there has been a commercial fishery failure due to a fishery resource disaster; and

WHEREAS on April 10, 2008, the Pacific Fishery Management Council adopted final regulatory recommendations to close commercial and recreational salmon fishing, and it is anticipated that the National Marine Fisheries Service will adopt an emergency rule followed by a declaration by the U.S. Secretary of Commerce, that is consistent with the Council's action; and

WHEREAS these restrictions will have significant impacts to California's commercial and recreational ocean salmon and Central Valley in-river recreation salmon fisheries and will result in severe economic losses throughout the State, including an estimated \$255 million economic impact and the loss of an estimated 2,263 jobs; and

WHEREAS the serious circumstances of the Sacramento River Fall Run Chinook Salmon put at risk the livelihoods of families and businesses dependent upon them.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, find that conditions of disaster or of extreme peril to the safety of persons and property exist within California due to the poor ocean conditions and resulting from the significant restrictions that have been imposed on the State's salmon fisheries, and the magnitude of this disaster will likely exceed the capabilities of the services, personnel, and facilities of the counties in California. Therefore, I find California to be in a state of emergency, and under the authority of the California Emergency Services Act, I hereby proclaim that a State of Emergency exists in California.

In addition, pursuant to this Proclamation:

I DIRECT the Director of the California Department of Fish and Game and the Secretary of the Resources Agency

to: (1) report to me immediately upon final action of the Department of Commerce and the California Fish and Game Commission on any further actions necessary to ensure the protection of the resource and of the economic livelihood of the fishery participants and local communities; and (2) address the long-term restoration and management of the Sacramento River Fall Run Chinook Salmon in ongoing discussions with federal agencies and representatives from conservation and fishing organizations and fishing communities.

I FURTHER DIRECT the Secretary of the Business, Transportation and Housing Agency, with the cooperation of the Department of Finance, to activate the Small Business Disaster Assistance Loan Guarantee Program to guarantee loans to prevent business insolvencies and loss of employment in California as a result of this State of Emergency.

I FURTHER DIRECT that to ensure that adequate assistance is available to individuals who have lost their jobs as a result of this emergency, the Secretary of the Labor and Workforce Development Agency and the Director of the Employment Development Department shall make available additional assistance grants in those circumstances where the local Dislocated Worker formula allocation is not adequate to cover the demand for services to individuals who have lost their jobs as a result of this State of Emergency.

I FURTHER DIRECT the Director of the Department of Fish and Game to request from the U.S. Department of the Interior, Fish and Wildlife Service, that California continue to receive the maximum apportionment for federal funds under the federal Sport Fish Restoration Act allowable for the years 2008 and 2009 through an exemption from the apportionment calculation of other suitable means since a predicted decrease in fishing license sales may negatively affect the State's apportionment.

I FURTHER DIRECT the Director of the Department of Fish and Game to take all necessary actions to issue refunds for commercial fishing salmon stamps issued under Fish and Game Code section 7860, and for Commercial Salmon Vessel Permits issued under Fish and Game Code sections 8235 and 8245, paid for the current 2008 commercial fishing salmon season because retention of such fees would hinder mitigation of the effects of this emergency.

I FURTHER DIRECT that no administrative charges, by any State department, agency, board, commission or office, will be claimed or charged to the Department of Fish and Game for the processing of these refunds.

I FURTHER DIRECT that the Director of Finance make up to \$2.7 million in special fund money available to the Department of Fish and Game for the purposes of refunding commercial fishing salmon stamps and Commercial Salmon Vessel Permits for the 2008 season; for increased enforcement activities; and to increase public awareness of the federal policy and the State's actions.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this the 10th day of April 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State

Letter to President Bush