U.S. Department of Justice

Environment and Natural Resources Division

90-1-24-04088

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January 15, 2016

Susan Y. Soong, Clerk of Court
Office of the Clerk
United States District Court
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102-3489

Re: California Sportfishing Protection Alliance v. Pacific States Industries, Inc. et al, United States District Court for the Northern District of California, No. 3:15-cv-1482 (San Francisco)

Dear Clerk of Court:

I am writing to notify you that the United States has reviewed the proposed settlement agreement in this action and has no objection to the Court's dismissal of this case in accordance with the terms of the proposed settlement agreement.

On December 11, 2015, the Citizen Suit Coordinator for the Department of Justice received a copy of the proposed settlement agreement in the above-referenced case for review pursuant to the Clean Water Act, 33 U.S.C. § 1365(c)(3). This provision provides, in relevant part:

> No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

See also 40 C.F.R. § 135.5 (service on Citizen Suit Coordinator in the U.S. Department of Justice). A settlement that does not undergo this federal review process is at risk of being void.

In its review, the United States seeks to ensure that the proposed settlement agreement complies with the requirements of the relevant statute and is consistent with its purposes. For example, if the violating party has been out of compliance with statutory or permit requirements, the consent decree should require that party to come into prompt compliance and should include a civil penalty, enforceable remedies, injunctive relief, and/or a supplemental environmental project (SEP) payment sufficient to deter future violations, or combinations of the above.

In its complaint, Plaintiff California Sportfishing Protection Alliance ("CSPA") alleged violations of Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, for the unlawful discharge of pollutants and violations of storm water permit requirements at a lumber yard in Cloverdale, California (the "Facility"). In terms of injunctive relief, the proposed settlement agreement provides that Defendants will comply with the applicable requirements of the General Permit and Clean Water Act; implement a range of Best Management Practices ("BMPs") including the construction of a three-stage storm water treatment system, the painting of PCC plumbing to avoid UV damage, roofing over certain areas, increased training and the installation of rain gauges. The proposed consent agreement also provides that Defendant will pay $20,000 to Plaintiff to a fund that will support compliance monitoring. Additionally, the Defendant agrees to reimburse CSPA in the amount of $150,000 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating the activities at the Facility.

The proposed settlement further provides that the Defendant shall make a payment to the Rose Foundation in the amount of $50,000 for a SEP to fund environmental project activities that will improve water quality in Oat Valley Creek or the Russian River. We do note that both Oat Valley Creek and the Russian River are adjacent to Cloverdale, CA. The United States encourages the parties to select projects that are in the immediate geographic area of the alleged violations when possible. Similarly, to better enable the United States and courts to evaluate the appropriateness of a proposed settlement agreement, parties are generally encouraged to specify a particular project or type of project that SEP funds will be used for, particularly where, as here, a significant monetary contribution is involved. The project should have a sufficient nexus to the alleged violation. See, e.g., EPA Final Supplemental Environmental Projects Policy at 7 n. 5 (April 10, 1998). Where the parties are unable to identify a particular project or type of project at the time they lodge a proposed settlement agreement, the United States requests to be informed when a project is ultimately selected as to the nature of such a project.

Where a proposed settlement agreement provides for the possible payment of sums to a third party that is to undertake a SEP, the United States ordinarily requests that the third party provide a letter to the Court and to the United States representing that it is a 501(c)(3) tax-exempt entity and that it (1) has read the proposed settlement agreement; (2) will spend any monies it receives under the proposed settlement agreement for the purposes specified in the agreement; (3) will not use any money received under the proposed settlement agreement for political lobbying activities; and (4) will submit to the Court, the United States, and the parties a letter describing how the SEP funds were spent. On December 14, 2015, the United States received from the Rose Foundation a letter confirming that all funds received by the organization as a result of the proposed settlement agreement would be used solely for the purpose outlined in the decree and that The Rose Foundation agrees not to use any of the funds it receives to conduct a SEP to fund political lobbying activities; a copy of that letter is attached. The United States believes that this letter will help to ensure that any monies expended under the proposed settlement agreement will be used in a manner that furthers the purposes of the Act, and that is consistent with the law and the public interest.

The United States affirms for the record that it is not bound by this settlement. See, e.g., Hathorn v. Lovorn, 457 U.S. 255, 268 n.23 (1982) (Attorney General is not bound by cases to

which he was not a party); Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found. Inc., 484 U.S. 49, 60 (1987) (explaining that citizen suits are intended to "supplement rather than supplant governmental action"); Sierra Club v. Elec. Controls Design, 909 F.2d 1350, 1356 n.8 (9th Cir. 1990) (explaining that the United States is not bound by citizen suit settlements, and may "bring its own enforcement action at any time"); 131 Cong. Rec. 15,633 (June 13, 1985) (statement of Senator Chafee, on Clean Water Act section 505(c)(3), confirming that the United States is not bound by settlements when it is not a party). The United States also notes that, if the parties subsequently propose to modify any final consent judgment entered in this case, the parties should so notify the United States, and provide a copy of the proposed modifications, forty-five days before the Court enters any such modifications. See 33 U.S.C. §1365(c)(3).

We appreciate the attention of the Court. Please contact the undersigned at 202-514-2868 if you have any questions.

Sincerely,

/s/ Matthew Oakes

Matthew Oakes, Attorney
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cc: Counsel of Record through ECF

Attachment