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Fish and Game*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

14 **LOS PADRES FORESTWATCH, a non**
15 **profit corporation, et al.,**

16 Petitioners,

17 v.

18 **CALIFORNIA DEPARTMENT OF FISH**
19 **AND GAME; and DOES 1-10,**

20 Respondents,

21 **NEAL DOW, and DOES 11-20,**

22 Real Parties in Interest.

Case No. CPF-10-510272

STIPULATED
SETTLEMENT AGREEMENT
AND RELEASE

1 This Settlement Agreement and Release (Settlement or Agreement) is made and entered
2 into by petitioners Los Padres ForestWatch and Sierra Club, respondent California Department of
3 Fish and Game, and real party in interest Neal Dow. The Effective Date of this Agreement is the
4 day it is signed by the last signatory.

5 RECITALS

6 1. Petitioners Los Padres ForestWatch and Sierra Club filed a Petition for Writ of
7 Mandate naming the Department of Fish and Game as the respondent, challenging the California
8 Department of Fish and Game's approval of "Grazing Lease Extension (Lease #CP2005-01-R3)
9 for the Chimineas Unit, Carrizo Plains Ecological Reserve" (Grazing Lease) issued to real party
10 in interest Neal Dow. Petitioners claim the Department of Fish and Game approved the Grazing
11 Lease without environmental review required under CEQA, Public Resources Code sections
12 21000 et seq. The Petitioners also sought declaratory relief that livestock grazing is not allowed
13 in the absence of required CEQA review and completion of a Land Management Plan for the
14 Carrizo Plains Ecological Reserve. The claims filed by Petitioners are referenced as "Petition for
15 Writ of Mandate."

16 2. Given the cost and uncertainty of litigation, all parties: Los Padres ForestWatch,
17 Sierra Club, the Department of Fish and Game, and Neal Dow wish to settle the Petition for Writ
18 of Mandate and litigation fees and costs incurred as of the Effective Date of this Agreement. The
19 Agreement is made to compromise the disputed claims described in these recitals, and there was
20 no adjudication of the merits of any claim.

21 3. Los Padres Forest Watch and Sierra Club, the Department of Fish and Game, and
22 Neal Dow agree that the Superior Court of San Francisco, State of California, has jurisdiction
23 over: (1) the parties; and (2) the subject matter of the Petition for Writ of Mandate.

24 TERMS

25 4. The Recitals in Paragraphs 1-3 are fully incorporated herein.

26 5. Payments and Dismissal.

27 A. The Department of Fish and Game agrees to give notice terminating Grazing Lease in
28 accordance with the terms of the Grazing Lease within five business days of the Effective Date of

1 this Agreement. The Department of Fish and Game shall terminate the lease on the effective date
2 of termination, which is 90 days after the notice is received by Mr. Dow. The Department of Fish
3 and Game agrees to provide Petitioners a copy of the notice within five business days of issuance
4 of the notice. The Department of Fish and Game agrees to provide Petitioners with any written
5 responses by or on behalf of Neal Dow within five business days of receipt.

6 B. Before any grazing lease is approved for the Carrizo Plains Ecological Reserve, the
7 Department of Fish and Game will first undertake development of an initial study in accordance
8 with CEQA, for the purpose of determining what CEQA review document will be developed for
9 the proposed grazing lease project. No additional cattle will be moved onto the Carrizo Plains
10 Ecological Reserve until the completion of CEQA review.

11 C. The Department of Fish and Game acknowledges that it is in the process of developing
12 a Land Management Plan for the Carrizo Plains Ecological Reserve, but that due to budget
13 limitations it has not been able to complete the development of the Land Management Plan for
14 the Carrizo Plains Ecological Reserve. The Department of Fish and Game agrees that it shall use
15 its good faith effort to issue a draft Land Management Plan for the Carrizo Plains Ecological
16 Reserve by August 2011, and use its good faith effort to issue a final Land Management Plan for
17 the Carrizo Plains Ecological Reserve by March 2012.

18 D. Petitioners will not seek injunctive relief to have the cattle removed from Carrizo
19 Plain Ecological Reserve before July 2011.

20 E. Settlement Amount. The Department of Fish and Game shall pay, via check, a total
21 of \$15,000.00, payable to Law Offices of Sharon E. Duggan IOLTA Client Trust Account within
22 sixty days of the Effective Date of this Agreement, for attorneys' fees and costs related to this
23 action.

24 F. All checks shall be mailed to:

25 Sharon E. Duggan

26 Law Offices of Sharon E. Duggan

27 370 Grand Avenue Suite 5

28 Oakland, CA 94610

1 G. Los Padres ForestWatch and Sierra Club shall file and serve on counsel for
2 Department of Fish and Game and Neal Dow an executed dismissal of the entire Petition for Writ
3 of Mandate with prejudice, within fifteen days of receipt of Department of Fish and Game's
4 check.

5 H. All parties agree to bear their own fees and costs, including attorneys' fees, unless
6 otherwise expressly provided in this Agreement.

7 6. Mutual Release. Department of Fish and Game and Neal Dow, in consideration of the
8 settlement of the Petition for Writ of Mandate and in consideration of the covenants, promises,
9 terms and conditions herein, releases, discharges and covenants not to sue Los Padres
10 ForestWatch or Sierra Club and their agents, employees, attorneys, contractors, predecessors,
11 successors in interest, and assignees, for any and all claims or causes of action, of every kind and
12 nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected,
13 foreseen or unforeseen, that were or could have been made or raised in: (1) affirmative defenses
14 to this Petition for Writ of Mandate; or (2) a cross-complaint in this Petition of Writ of Mandate,
15 including any claims for attorneys' fees or costs.

16 7. Los Padres ForestWatch and Sierra Club, in consideration of the settlement of the
17 Petition for Writ of Mandate and in consideration of the covenants, promises, terms and
18 conditions herein, releases, discharges and covenants not to sue Department of Fish and Game, its
19 insurers, agents, receivers, trustees, employees, contractors, attorneys, predecessors, successors in
20 interest, and assignees, for any and all claims or causes of action alleged in the complaint filed in
21 the Petition for Writ of Mandate.

22 8. Los Padres ForestWatch and Sierra Club, in consideration of the settlement of the
23 Petition for Writ of Mandate and in consideration of the covenants, promises, terms and
24 conditions herein, releases, discharges and covenants not to sue Neal Dow, his insurers, agents,
25 receivers, trustees, employees, contractors, attorneys, predecessors, successors in interest, and
26 assignees, for any and all claims or causes of action of every kind and nature whatsoever, in law
27 and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen
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1 alleged in the complaint filed in the Petition for Writ of Mandate, or otherwise arising out of the
2 facts alleged therein.

3 9. This release and covenant not to sue shall not act as a release from liability of any person
4 or entity other than those referred to herein.

5 10. Specific Release. The parties agree that Los Padres ForestWatch and Sierra Club's
6 release in Paragraph 7 above is a specific release of claims for this Petition for Writ of Mandate,
7 associated costs, attorneys' fees, and costs of prosecuting this Petition for Writ of Mandate,
8 whether such costs are known or unknown, suspected or unsuspected, foreseen or unforeseen.
9 Because the release is a specific release, Civil Code section 1542 which pertains to general
10 releases does not apply to this Agreement. The Parties retain any rights necessary to enforce this
11 Agreement.

12 11. Scope of Agreement. This Agreement shall apply to and be binding upon (1) Los
13 Padres ForestWatch and Sierra Club and their agents, receivers, trustees, employees, contractors,
14 consultants, successors in interest, and assignees, (2) upon Department of Fish and Game and its
15 agents, receivers, trustees, employees, contractors, consultants, successors in interest and any
16 successor agency, and assignees, and (3) upon Neal Dow and his agents, receivers, trustees,
17 employees, contractors, consultants, successors in interest, and assignees.

18 12. Notices: All notices, requests, consents, approvals and other communications required
19 or permitted under this Agreement shall be in writing. Notices shall be personally delivered or
20 sent by United State mail, postage prepaid, return receipt requested. Notices shall be addressed as
21 follows:

22 To Petitioners: Sharon E. Duggan
23 Law Offices of Sharon E. Duggan
24 370 Grand Avenue Suite 5
25 Oakland, CA 94610

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27 To Department: Office of General Counsel
28 Department of Fish and Game

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1416 9th Street, 12th Fl.
Sacramento, CA 95814

To Neal Dow: Dr. Neal Dow
48 Caminito Del Norte
Monterey, CA 93940

AND

Dr. Neal Dow
2800 SE Paulina Highway
Prineville, OR 97754

13. Interpretation. This Agreement shall be deemed to have been drafted equally by the parties, and shall not be interpreted for or against either party on the ground that any such party drafted it. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14. Integration. This Agreement contains all of the terms and conditions agreed upon by Los Padres ForestWatch, Sierra Club, the Department of Fish and Game, and Neal Dow relating to the matters covered by this Agreement, and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the parties, whether oral or written, respecting the matters covered by this Agreement. This Agreement may be amended or modified only by a writing signed by the parties to this Agreement or their authorized representatives, and then by order of the court.

15. Knowing, Voluntary Agreement. Each party to this Agreement acknowledges that it has been represented by legal counsel, and that each party has reviewed and has had the benefit of legal counsel's advice, concerning all of the terms and conditions of this Agreement.

16. Warranty of Capacity to Execute Agreement. Each party to this Agreement represents and warrants that the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and to bind that party to the terms and conditions of this Agreement.

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NEAL DOW

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APPROVED AS TO FORM:

Attorney General of the State of California

EDMUND G. BROWN JR.

Dated: _____

By: _____

Allison E. Goldsmith, Deputy Attorney General
Attorneys for Department of Fish and Game

Law Offices of Sharon E. Duggan

Dated: _____

By: _____

Sharon E. Duggan
Attorneys for Los Padres ForestWatch and
Sierra Club

Law Offices of Michael D. Cling

Dated: _____

By: _____

Michael D. Cling
Attorney Neal Dow

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