

## STAFF SUMMARY FOR OCTOBER 11-12, 2017

**16. EXECUTIVE SESSION**

<b>Today's Item</b>	<b>Information</b> <input type="checkbox"/>	<b>Action</b> <input checked="" type="checkbox"/>
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Announce results from Executive Session, which will include the following topics:

- (A) Pending litigation to which FGC is a party
- (B) Possible litigation involving FGC.
- (C) Staffing
- (D) Deliberation on license and permit items

**Summary of Previous/Future Actions (N/A)****Background**

Pursuant to the authority of Government Code Section 11126(a)(1), (c)(3), and (e)(1), and Section 309 of the Fish and Game Code, FGC meets in closed executive session at each meeting. The purpose of executive session is to consider topics A-D as reflected on the meeting agenda.

- (A) See agenda for a complete list of pending civil litigation to which FGC is a party.
- (B) None to report at the time the meeting binder was prepared.
- (C) Three positions are currently open (staff services manager, legal/regulatory clerk, and administrative assistant).
- (D) Deliberation and action on license and permit items.
  - I. Take action on the appeal by John M. Becker regarding Sea Urchin Diving Permit No. LO3032: Mr. Becker requested appeal of a DFW denial of a renewal request. DFW and Mr. Becker entered into a settlement agreement; in the agreement, DFW does not oppose the granting of his requested renewal on the condition that past-due fees are paid. FGC staff drafted an order consistent with the settlement agreement.
  - II. Take action on the appeal by the Estate of Kevin L. Clifton regarding Salmon Vessel Permit No. SA0633: The Estate of Kevin L. Clifton (the Estate) requested appeal of a DFW denial of a permit transfer. DFW and the Estate entered into a settlement agreement; in the agreement, DFW does not oppose the granting of the request. FGC staff drafted an order consistent with the settlement agreement.

**Recommendation**

- (D) **FGC staff:** Formally adopt a decision in the appeal by John M. Becker and formally adopt a decision in the appeal by the Estate of Kevin L. Clifton.

**Exhibits**

- D1. [Settlement agreement between DFW and John M. Becker](#)
- D2. [\[Unsigned\] Decision in the matter of the appeal by John M. Becker](#)

STAFF SUMMARY FOR OCTOBER 11-12, 2017

- D3. [Settlement agreement between DFW and the Estate of Kevin L. Clifton](#)
- D4. [\[Unsigned\] Decision in the matter of the appeal by the Estate of Kevin L. Clifton](#)

**Motion/Direction**


Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the draft decision in the matter of the appeal by John M. Becker and the draft decision in the matter of the appeal by the Estate of Kevin L. Clifton.

State of California  
California Department of Fish and Wildlife

**M e m o r a n d u m**

**Date:** September 27, 2017

**To:** Valerie Termini, Executive Director  
California Fish and Game Commission

**From:**   
Charlton Bonham, Director  
California Department of Fish and Wildlife

**Subject:** Commission Renewal of John Becker's Sea Urchin Diving Permit

The Department of Fish and Wildlife ("Department") is requesting that the Fish and Game Commission ("Commission"), at its October 11-12, 2017 meeting, consider the renewal of John Becker's Sea Urchin Diving Permit ("Permit"). The Department has agreed not to oppose Mr. Becker's renewal request.

Fish and Game Code Section 7852.2 ("Section 7852.2"), subdivision (c), states that the Department shall "deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery." Furthermore, Section 7852.2, subdivision (d), states, "The commission, upon consideration of the appeal, may grant renewal." The Permit expired on March 31, 2002. In a March 7, 2002 letter from the Department to Mr. Becker, the Department informed him that it would authorize the reinstatement of the Permit when he submits a letter to the Department from his physician stating the nature and duration of his injury and that he is sufficiently recovered to be able to return to commercial diving. Mr. Becker submitted a request to renew the Permit on January 30, 2017, after he had recovered from various injuries that had prevented him from commercial diving. The Department denied his renewal request on April 3, 2017. Mr. Becker submitted a timely appeal request to the Commission on April 19, 2017, along with letters from two physicians stating that he is able to return to commercial diving. In lieu of an appeal hearing, the Department settled with Mr. Becker. The Department has agreed to not challenge Mr. Becker's request to renew the Permit. Mr. Becker has agreed to pay \$12,413.02 in fees specified in Section 7852.2, subdivision (a), in addition to fees owed for the 2017-2018 permit year, and not seek any further appeals. Pursuant to Section 7852.2(d), the Commission may approve Mr. Becker's renewal request.

Thank you for your consideration. If you have any questions, please contact Mr. Stafford Lehr, Deputy Director, at (916) 653-4673.

Attachments (Confidential)

cc: Department of Fish and Wildlife

Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@wildlife.ca.gov](mailto:Stafford.Lehr@wildlife.ca.gov)

Joshua Morgan, Chief  
License and Revenue Branch  
Administrative Division  
[Joshua.Morgan@wildlife.ca.gov](mailto:Joshua.Morgan@wildlife.ca.gov)

David Kiene, Attorney  
Office of the General Counsel  
[David.Kiene@wildlife.ca.gov](mailto:David.Kiene@wildlife.ca.gov)

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Department of Fish and Wildlife ("CDFW") and John Becker (individually, a "Party," and collectively, "Parties").

### **I. Recitals**

The Parties execute this Agreement with reference to and in contemplation of the following facts:

- a. Mr. Becker possessed a Sea Urchin Diving Permit (Permit).
- b. CDFW license records indicate that the Permit was last valid during the 2001-2002 permit year, making it eligible for renewal in 2002-2003, but not 2017-2018.
- c. On February 13, 2002, Mr. Becker sent the Department a letter requesting a waiver of minimum landing requirements to renew the Permit because of an injury. On March 7, 2002, CDFW responded, granting the waiver request, and stating that CDFW would authorize the reinstatement of the Permit "when you submit a letter to the Department from your physician stating the nature and duration of your injury, and that you are sufficiently recovered to be able to return to commercial diving."
- d. On January 30, 2017, CDFW received a request from Mr. Becker to renew the Permit. ("Renewal Request;" Exhibit A.)
- e. On April 3, 2017, CDFW denied the Renewal Request pursuant to Fish and Game Code Section 7852.2 (Section 7852.2), subdivision (c). (Exhibit B.) Section 7852.2, subdivision (c) states "The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery." For CDFW to grant the Renewal Request, Mr. Becker would have had to submit the Renewal Request along with applicable fees by March 31, 2003.
- f. Section 7852.2, subdivision (d), states "An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a)." On April 19, 2017, Mr. Becker submitted to the California Fish and Game Commission ("Commission") a request for an appeal of CDFW's denial of his Renewal Request. Mr. Becker also provided the Commission with letters from two physicians stating that he has recovered from his injuries and is able to resume commercial sea urchin diving. (Exhibit C.)
- g. Section 7852.2, subdivisions (a) and (b) state:
  - (a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:
    - (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).

- (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).
  - (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).
- (b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.”

- h. Pursuant to Section 7852.2, subdivisions (a) and (b), Mr. Becker would owe \$12,413.02 in fees if the Commission reinstates the Permit. (Exhibit D.)
- i. The Parties understand that this Agreement is solely between CDFW and Mr. Becker and that the Commission is neither a signatory to it nor bound by it in any way. Furthermore, the Parties understand that pursuant to Section 7852.2, subdivision (d), the Commission, and not CDFW, has the sole discretion to approve or deny the Renewal Request.
- j. For the purpose of saving time and costs associated with an appeal hearing, the Parties agree to compromise and settle these issues. In light of recent discussions between CDFW and Mr. Becker, the Parties have come to an agreement on terms upon which they can resolve this matter.

## II. Terms

The Parties hereby agree to the following:

- a. CDFW agrees to not oppose the Renewal Request.
- b. If the Commission reinstates the Permit, Mr. Becker agrees to fully pay all fees owed pursuant Section 7852.2, subdivisions (a) and (b)—\$12,413.02—within 60 days of the Commission's decision. CDFW shall not issue the Permit until the \$12,413.02 in fees are paid.
- c. The Parties agree that this Agreement, all documents attached to this Agreement, and documents previously submitted to the Commission related to the Renewal Request constitute Mr. Becker's written appeal pursuant to Section 7852.2, subdivision (d), provided that the Commission considers the Renewal Request at an upcoming Commission meeting. Each Party may, at its discretion, address the Commission at a Commission meeting regarding the Renewal Request, so long as the address is consistent with the terms of this Agreement. In addition, CDFW or Mr. Becker may submit a memorandum or other documents to the Commission requesting that it take action on the Renewal Request, so long as these documents are consistent with the terms of this Agreement.
- d. This Agreement is intended to be a full and complete settlement of all disputes between the Parties pertaining to the Renewal Request. Provided that the Commission considers the Renewal Request at an upcoming Commission meeting, Mr. Becker agrees to waive any present and future administrative appeal related to

this renewal of the Permit, the April 3, 2017 denial of the Renewal Request, and all future claims and/or causes of action against CDFW related to renewing the Permit.

- e. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.
- f. This Agreement is only applicable to Mr. Becker's Renewal Request. This Agreement does not relate in any way to Mr. Becker's general Commercial Fishing License or any other CDFW-issued entitlement held by Mr. Becker.
- g. Each party shall bear its own costs and attorneys' fees, and any other expenses, related to the Renewal Request subject to resolution by this Agreement.
- h. The obligations of this Agreement apply to and are binding on CDFW and any successor agency or department and Mr. Becker and his respective heirs, executors, administrators, and permitted assigns.
- i. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- j. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- k. This Agreement constitutes the entire understanding between the Parties as to the Renewal Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Renewal Request.
- l. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- m. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date of the last signature below:

By:   
Gabriel Tiffany  
Deputy Director, Administration Division  
Department of Fish and Wildlife

  
John Becker

Date: 9/28/17

9/15/2017



BEFORE THE FISH AND GAME COMMISSION  
STATE OF CALIFORNIA

1  
2  
3 In the Matter of: ) Case No. 17ALJ10-FGC  
4 John M. Becker, )  
5 Appellant. )  
6 )  
7 )  
8 )

9 DECISION

10 Consistent with the terms of the attached Settlement Agreement between John M. Becker  
11 (“Appellant”) and the Department of Fish and Wildlife (“Department”), fully executed  
12 September 28, 2017, and the authority provided in Fish and Game Code Section 7852.2,  
13 subdivision (d), and Government Code section 11415.60, the Fish and Game Commission hereby  
14 orders that:

- 15 1. The Commission hereby grants reinstatement of the Sea Urchin Diving Permit  
16 (Permit) previously issued to Appellant by the Department.  
17 2. The Appellant must pay the Department all license, permit, and late fees owed  
18 pursuant to Section 7852.2, subdivision (a) and the fees owed for the 2017-2018  
19 permit year, within 60 days of this Decision, which total \$12,413.02.  
20 3. The Department shall issue Appellant the Permit if the fees are paid consistent with  
21 this Decision.  
22

23 IT IS SO ORDERED this \_\_\_\_\_ day of October 2017.  
24  
25


\_\_\_\_\_  
Eric Sklar, President

State of California  
California Department of Fish and Wildlife

Memorandum

**Date:** September 27, 2017

**To:** Valerie Termini, Executive Director  
California Fish and Game Commission

**From:**  for  
Charlton Bonham, Director  
California Department of Fish and Wildlife

**Subject:** Transfer of Kevin Clifton's Salmon Vessel Permit

The Department of Fish and Wildlife ("Department") is requesting that the Fish and Game Commission ("Commission"), at its October 11-12, 2017 meeting, consider a request made by the Estate of Kevin Clifton ("Estate") to transfer his Salmon Vessel Permit ("Permit"). The Department has agreed not to oppose the transfer request.

On June 7, 2017, the Department received a request from Patricia Gruver, the Administrator of the Estate, to transfer the Permit from the *FV Wild Turkey* to the *FV Penny S*. Mr. Clifton died on October 13, 2016. On June 27, 2017, the Department denied the transfer request because Mr. Clifton did not have a 50 percent or greater ownership interest in the *FV Penny S* as required by Fish and Game Code, Section 8239 ("Section 8239"), subdivision (g). Fish and Game Code Section 8246.6 states, "A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision." On July 3, 2017, Ms. Gruver submitted a timely request for an appeal of the Department's denial of the Estate's transfer request to the Commission. The Department and Estate agree that the Fish and Game Code establishes a different standard for the Commission to apply in the context of an appeal that was not available to the Department. Specifically, Fish and Game Code Section 8246.7, subdivision (a)(5) authorizes the Commission to approve the permit transfer if the "denial of the permit transfer was pursuant to subdivision (g) or (h) of Section 8239 and the applicant can show that the 18-month requirement cannot be met due to death....". In lieu of an appeal hearing, the Department settled with the Estate (see attached agreement), and agrees not to challenge the Estate's request to transfer the Permit. The Estate has agreed not to seek any further appeals. Because the Commission has the authority to transfer the Permit, the request must be submitted to the Commission.

Thank you for your consideration. If you have any questions, please contact Mr. Stafford Lehr, Deputy Director, at (916) 653-4673.

Attachments (Confidential)

Valerie Termini, Executive Director  
Fish and Game Commission  
September 27, 2017  
Page 2

cc: Department of Fish and Wildlife

Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@wildlife.ca.gov](mailto:Stafford.Lehr@wildlife.ca.gov)

Joshua Morgan, Chief  
License and Revenue Branch  
Administrative Division  
[Joshua.Morgan@wildlife.ca.gov](mailto:Joshua.Morgan@wildlife.ca.gov)

David Kiene, Attorney  
Office of the General Counsel  
[David.Kiene@wildlife.ca.gov](mailto:David.Kiene@wildlife.ca.gov)

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made between the Department of Fish and Wildlife ("CDFW") and the Estate of Kevin Clifton ("Estate"). Hereinafter, CDFW or the Estate may be individually called a "Party," or collectively, "Parties."

### **I. Recitals**

The Parties execute this Agreement with reference to and in contemplation of the following facts:

- a. Kevin Clifton possessed a Salmon Vessel Permit, Permit Number (SA0633). CDFW license records indicate that the Permit is currently valid. On October 13, 2016, Kevin Clifton died. (Exhibit A.)
- b. On June 17, 2017, CDFW received a request from Patricia Gruver, the Administrator of the Estate, to transfer the Permit from the *FV Wild Turkey* (FG24159) to the *FV Penny S* (FG72163; "Transfer Request"). (Exhibit B.)
- c. Fish and Game Code Section 8239 states, in part, "A transfer may be approved and a permit issued for use of a replacement vessel pursuant to Section 8241 under all of the following conditions... (g) The permittee has 50 percent or greater ownership interest in the permitted vessel and in the replacement vessel. For purposes of this subdivision and subdivision (h), 'permittee' means an individual designated as the owner of the permitted vessel."
- d. On June 27, 2017, CDFW denied the Transfer Request because Mr. Clifton did not have a 50 percent or greater ownership interest in the replacement vessel, the *FV Penny S*. (Exhibit C.)
- e. Fish and Game Code section 8246.6 ("Section 8246.6") states, "A person whose commercial salmon fishing vessel permit is revoked by the commission or who has been denied a permit transfer may appeal the revocation or denial to the commission by submitting the appeal in writing to the commission within 60 days of the decision."
- f. On July 3, 2017, Ms. Gruver submitted a timely request for an appeal of CDFW's denial of the Estate's Transfer Request to the California Fish and Game Commission ("Commission"). (Exhibit D.)
- g. Fish and Game Code section 8246.7 ("Section 8246.7") states, in part, "(a) The commission shall... order the approval of a permit transfer only if it finds one of the following grounds... (5) The denial of the permit transfer was pursuant to subdivision (g) or (h) of Section 8239 and the applicant can show that the 18-month requirement cannot be met due to death, physical illness, mental incapacity, or being called to active military duty."
- h. The Parties agree that pursuant to Section 8246.7, subdivision (a)(5), because of Mr. Clifton's death, the Estate is not subject to the requirement in Section 8239(g) that a permittee must have at least a 50 percent ownership in a replacement vessel.

- i. The Parties understand that this Agreement is solely between CDFW and the Estate, and that the Commission is neither a signatory to this Agreement nor bound by it in any way. Furthermore, the Parties understand that pursuant to Section 8246.7, subdivision (a)(5), the Commission, and not CDFW, has the authority to approve or deny the Transfer Request.
- j. For the purpose of saving time and costs associated with an appeal hearing, the Parties agree to compromise and settle these issues. In light of recent discussions between CDFW and the Estate, the Parties have come to an agreement on terms upon which they can resolve this matter.


## II. Terms

The Parties hereby agree to the following:

- a. CDFW agrees to not oppose the Transfer Request.
- b. The Parties agree that this Agreement, all documents attached to this Agreement, and documents previously submitted to the Commission related to the Transfer Request constitute the Estate's written appeal pursuant to Section 8246.6, provided that the Commission considers the Transfer Request at an upcoming Commission meeting. Each Party may, at its discretion, address the Commission at a Commission meeting regarding the Transfer Request, so long as the address is consistent with the terms of this Agreement. In addition, CDFW or the Estate or their representatives may submit a memorandum or other documents to the Commission requesting that it take action on the Transfer Request, so long as these documents are consistent with the terms of this Agreement.
- c. This Agreement is intended to be a full and complete settlement of all disputes between the Parties pertaining to the Transfer Request. Provided that the Commission considers the Transfer Request at an upcoming Commission meeting, the Estate agrees to waive any present and future administrative appeal related to this transfer of the Permit, the June 27, 2017 denial of the Transfer Request, and all future claims and/or causes of action against CDFW related to renewing the Permit.
- d. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by any Party in breach thereof.
- e. This Agreement is only applicable to the Estate's Transfer Request. This Agreement does not relate in any way to any other license, permit or other Department-issued entitlement held by Mr. Clifton or the Estate
- f. Each party shall bear its own costs and attorneys' fees, and any other expenses, related to the Transfer Request subject to resolution by this Agreement.

- g. The obligations of this Agreement apply to and are binding on CDFW or any successor agency or department and the Estate and its respective heirs, executors, administrators, and permitted assigns.
- h. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- i. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- j. This Agreement constitutes the entire understanding between the Parties as to the Transfer Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Transfer Request.
- k. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- l. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

**IN WITNESS THEREOF**, the Parties have executed this Agreement as of the date of the last signature below:

By:   
 Gabriel Tiffany  
 Deputy Director, Administration Division  
 Department of Fish and Wildlife

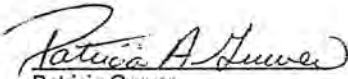
\_\_\_\_\_  
 Patricia Gruver  
 Administrator for the Estate of Kevin  
 Clifton

Date: 9/28/17

\_\_\_\_\_

- g. The obligations of this Agreement apply to and are binding on CDFW or any successor agency or department and the Estate and its respective heirs, executors, administrators, and permitted assigns.
- h. The Parties represent and warrant to each other that the execution of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on each Party and is enforceable in accordance with its terms.
- i. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions hereof shall remain in full force and effect.
- j. This Agreement constitutes the entire understanding between the Parties as to the Transfer Request and can only be amended or modified in writing, signed by duly authorized representatives of the Parties. This Agreement supersedes all prior representations and agreements, if any, between the Parties regarding the Transfer Request.
- k. This Agreement, when signed by all of the signatories, shall become effective as of the last signature date.
- l. This Agreement may be signed in counterparts, which together shall constitute one and the same Agreement. A facsimile or scanned signature shall be the same as an original.

**IN WITNESS THEREOF**, the Parties have executed this Agreement as of the date of the last signature below:

By: _____ Gabriel Tiffany Deputy Director, Administration Division Department of Fish and Wildlife	 Patricia Gruver Administrator for the Estate of Kevin Clifton
Date: _____	9/13/17

BEFORE THE FISH AND GAME COMMISSION  
STATE OF CALIFORNIA

1  
2  
3 In the Matter of: ) Case No. 17ALJ13-FGC  
4 Estate of Kevin L. Clifton, )  
5 Appellant. )  
6 )  
7 )  
8 )

9 DECISION

10 Consistent with the terms of the attached Settlement Agreement between the Estate of  
11 Kevin L. Clifton (“Appellant”) and the Department of Fish and Wildlife (“Department”), fully  
12 executed September 28, 2017, and the authority provided in Fish and Game Code Section  
13 8246.7, subdivision (a)(5), and Government Code section 11415.60, the Fish and Game  
14 Commission hereby orders that:

- 15 1. The Appellant requested a permit transfer of the Salmon Vessel Permit, Permit  
16 Number (SA0633), (Permit) previously issued to Kevin Clifton.  
17 2. The Department denied the requested permit transfer made by Appellant; that denial  
18 was pursuant to subdivision (g), Section 8239 of the Fish and Game Code.  
19 3. The Appellant demonstrated that the basis of the denial could not be met due to death.  
20 4. The Commission hereby grants the request and authorizes the transfer of the Permit  
21 from the F/V Wild Turkey (FG24159) to the F/V Penny S (FG72163).  
22

23 IT IS SO ORDERED this \_\_\_\_\_ day of October 2017.  
24  
25

\_\_\_\_\_  
Eric Sklar, President