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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

21 DRAKES BAY OYSTER COMPANY *et al.*

22 Plaintiffs,

23 v.

24 S.M.R. JEWELL, in her official capacity as
 Secretary of the Interior, *et al.*

25 Defendants.

Case No. 12-cv-06134 YGR/DMR

**STIPULATED REQUEST FOR
 APPROVAL OF SETTLEMENT
 AGREEMENT AND ENTRY OF
 CONSENT DECREE; [PROPOSED]
 FINDINGS OF FACT AND
 CONCLUSIONS OF LAW THEREON.**

Court: Hon. Yvonne Gonzalez Rogers,
 Courtroom 1 – 4th Floor

1 Plaintiffs Drakes Bay Oyster Company and Kevin Lunny (“Plaintiffs”) and Defendants
2 S.M.R. Jewell, in her official capacity as Secretary of the Interior, *et al.* (“Defendants”)
3 (collectively, “the Parties”), through undersigned counsel, state as follows:

4 **I. RECITALS**

5 A. Whereas Plaintiffs and Defendants have been engaged in settlement discussions
6 and have reached a final resolution of all of Plaintiffs’ claims in the above-captioned case as set
7 forth in the accompanying Settlement Agreement and [Proposed] Consent Decree (“Settlement”),
8 filed concurrently herewith and attached as Exhibit 1 to this Stipulation.

9 B. Whereas the Settlement has been approved by Plaintiffs and Defendants.

10 C. Whereas the Parties intend, and respectfully request, that the Court enter the
11 Settlement as a Consent Decree as set forth in the Settlement.

12 D. Whereas the Court may enter the Settlement as a Consent Decree if the Consent
13 Decree is fair, reasonable, and equitable, and does not violate the law or public policy.

14 Therefore, the Parties respectfully present this Stipulated Request for Approval of
15 Settlement and Entry of Consent Decree and [Proposed] Findings of Fact and Conclusions of Law
16 Thereon.

17 **II. STIPULATED [PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW RE: SETTLEMENT AGREEMENT AND
18 CONSENT DECREE**

19 The Parties hereby stipulate and respectfully request that the Court find as follows:

20 **A. BACKGROUND**

21 1. The Court has presided over this case since it was originally filed in December
22 2012 and is familiar with the facts and claims at issue. The Court previously summarized the
23 statutory and factual background of this case in its order denying Plaintiffs’ motion for
24 preliminary injunction. *Drakes Bay Oyster Co. v. Salazar*, 921 F. Supp. 2d 972, 976-83 (N.D.
25 Cal. 2013) (*Drakes Bay I*), *aff’d sub nom. Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th
26 Cir. 2014) (*Drakes Bay II*), *cert. den’d* 134 S. Ct. 2877 (2014).

27 2. Following the issuance of the mandate by the Ninth Circuit, the Parties entered
28 into settlement negotiations. Counsel for Plaintiffs and Defendants advised the Court that they
were engaged in settlement discussions at a July 7, 2014, case management conference. *See* ECF
Stipulated Request for Approval of Settlement Agreement and Consent Decree; [Proposed]
Findings of Fact and Conclusions of Law Thereon. Case No. 12-cv-06134-YGR/DMR

1 #136. The Court referred the case to the Hon. Donna M. Ryu, United States Magistrate-Judge, to
2 conduct a settlement conference. *Id.*; *see also* ECF #137 (Notice of Settlement Conference and
3 Settlement Conference Order). On August 6, 2014, the Court approved a stipulated
4 confidentiality order proposed by the Parties, to assist them in their discussions. ECF #148.
5 Judge Ryu held settlement conferences on August 8, August 11, and August 19, 2014, in which
6 counsel for the Plaintiffs and Defendants participated. *See* ECF ## 151, 152, 153.

7 3. On September 30, 2014, the Parties, through their counsel, executed the
8 Settlement. The Settlement recites that counsel for Plaintiffs was authorized to enter into the
9 Consent Decree on behalf of Plaintiffs DBOC and Kevin Lunny. The Settlement further recites
10 that counsel for Defendants has been authorized to enter into the Consent Decree on behalf of the
11 United States.

12 **B. STANDARDS FOR APPROVING A CONSENT DECREE**

13 4. The Court may approve a consent decree when the decree is “fair, reasonable and
14 equitable and does not violate the law or public policy.” *Turtle Island Restoration Network v.*
15 *United States Dep’t of Commerce*, 672 F.3d 1160, 1165 (9th Cir. 2012) (*quoting* *Sierra Club, Inc.*
16 *v. Elec. Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990)). In determining whether a
17 consent decree is fair, the Court considers both procedural and substantive fairness, including
18 whether the decree is the product of good-faith, arms-length negotiations and is equitable. *Turtle*
19 *Island Restoration Network v. United States Dep’t of Commerce*, 834 F. Supp. 2d 1004, 1016-17
20 (D. Haw. 2011), *aff’d* 672 F.3d 1160 (9th Cir. 2012); *United States v. Chevron*, 380 F. Supp. 2d
21 1104, 1110-11 (N.D. Cal. 2005). A consent decree that is the product of good faith, arms-length
22 bargaining is “presumptively valid.” *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990).
23 With respect to substantive fairness, the Court’s task is not to determine whether the settlement is
24 “ideal” or one the court might have fashioned. *Chevron*, 380 F. Supp. 2d at 1111 (*citing* *United*
25 *States v. Cannons Eng’ing Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). Rather, “the court’s approval
26 is nothing more than an amalgam of delicate balancing, gross approximations and rough justice.”
27 *United States v. Oregon*, 913 F.2d at 581 (internal quotations omitted). “In addition, because it is
28 a form of judgment, a consent decree must conform to applicable laws.” *Id.* at 580. In making

1 these determinations, the Court's familiarity with the lawsuit "can be an important factor" in
2 determining whether a hearing is necessary before approving a consent decree. *Id.* at 582.

3 **C. THE CONSENT DECREE IS FAIR AND EQUITABLE.**

4 5. The Settlement is the product of good-faith negotiations, reflects the advice of
5 experienced counsel for Plaintiffs and Defendants, and takes into account the possible risks
6 involved in litigation if the Settlement were not approved. This litigation has been hard fought all
7 the way to the United States Supreme Court. Plaintiffs vigorously pursued the claims in their
8 amended complaint, and settlement negotiations did not begin until after the Supreme Court
9 denied Plaintiffs' petition for writ of *certiorari* on June 30, 2014. The Parties conducted arms-
10 length settlement negotiations, including intensive discussions between August 8 and August 19,
11 2014, which were presided over by Magistrate-Judge Ryu. The Settlement reached reflects a
12 reasonable compromise that considers both Plaintiffs' prospects for success on the merits and the
13 time it would take to reach a final judgment on the merits, including any claims that might have
14 been brought through further amendment of the pleadings. *See, e.g.*, ECF# 113 (Joint Case
15 Management Statement filed Sept. 16, 2013). Thus, the Settlement is procedurally fair.

16 6. The Settlement is also equitable and comports with substantive fairness for reasons
17 which include the following:

18 a. It provides DBOC and Mr. Lunny with a reasonable period of time to wind
19 down shellfish harvesting from Drakes Estero to recover DBOC's economic investment in
20 shellfish planted before the Secretary of the Interior's ("Secretary") November 29, 2012, decision,
21 consistent with Plaintiffs' contention that the permit issued to DBOC by Defendants in 2008
22 allows the company a reasonable time to remove valuable property after the expiration of the
23 permit. Thus, the Settlement allows DBOC to harvest shellfish and sell them away from Point
24 Reyes National Seashore ("Point Reyes") up to midnight on December 31, 2014. The Settlement
25 allows DBOC to continue to use specified onshore facilities to remove and process shellfish for
26 sale away from Point Reyes; Plaintiffs closed DBOC's retail and canning operations on July 31,
27 2014. During the period between the execution of the Settlement and December 31, 2014, the
28 Settlement requires Plaintiffs to remove and dispose of all other shellfish from areas of cultivation

1 in Drakes Estero according to an enforceable timetable. Plaintiffs are also required under the
2 Settlement to vacate oyster racks in Drakes Estero on an enforceable schedule. However, the
3 National Park Service (“Park Service”) agrees in the Settlement to undertake the removal of
4 oyster racks from Drakes Estero, as well as all onshore and offshore property related to shellfish
5 cultivation remaining after December 31, 2014, at the Park Service’s sole expense and cost. The
6 Settlement requires Plaintiffs’ shellfish removal operations in Point Reyes to cease by December
7 31, 2014, and requires DBOC to permanently close its operations in Drakes Estero at that time.

8 b. The Settlement allows the Park Service to immediately begin the removal
9 of specified onshore property not associated with shellfish removal, and to initiate oyster rack
10 removal and clean-up operations in Drakes Estero upon entry of the Settlement as a consent
11 decree, thereby advancing the Park Service’s goal of expeditiously transitioning Drakes Estero to
12 management as a marine wilderness. The Settlement allows the Park Service’s removal and
13 clean-up operations to occur concurrently with DBOC’s removal of shellfish from Drakes Estero.
14 The Parties agree to provide each other information and to communicate about each other’s
15 activities.

16 c. The Settlement terminates the litigation in this case and avoids future
17 litigation. Plaintiffs dismiss all claims in their amended complaint with prejudice; waive and
18 release all claims or causes of action for damages or equitable relief based on the alleged harms or
19 violations relating to the United States’ management, oversight, or administration of Point Reyes
20 and/or Drakes Estero; and further warrant and represent that they will not bring or cause to be
21 brought any other action or suit related to the claims asserted, or that could have been asserted, in
22 the above-captioned case. Defendants covenant not to sue or take administrative action against
23 Plaintiffs for actions occurring prior to the execution of the Settlement, including trespass,
24 ejectment, unpaid rent, claims predicated upon DBOC’s commercial shellfish operations, and
25 claims predicated on breaches or violations of the 2008 Special Use Permit issued to DBOC and
26 Mr. Lunny. The Settlement is the result of a compromise and involves no admission of liability
27 or wrongdoing on the part of any party.

1 d. The Park Service will extend federal relocation benefits to all qualified
2 employees of DBOC who live on-site. Regardless of whether employees who reside on-site
3 qualify for federal relocation benefits, they may continue to live on-site for not less than 90 days
4 following the closure of DBOC on December 31, 2014. The Park Service will continue to
5 provide those employees residing on-site with power, drinking water, and septic services meeting
6 health and safety requirements.

7 e. The entry of the Settlement as a consent decree will provide the Parties
8 with potential assistance from the Court in the event disputes arise over compliance with the
9 terms of the Settlement. Because DBOC will permanently close its Point Reyes operations on
10 December 31, 2014, the potential need for Court assistance will be of limited duration.

11 **D. THE CONSENT DECREE IS REASONABLE**

12 7. The reasonableness inquiry focuses on whether a consent decree is confined to the
13 dispute between the parties and accomplishes its purported goal. *Envtl. Def. v. Leavitt*, 329 F.
14 Supp. 2d 55, 71 (D.D.C. 2004); *Turtle Island*, 834 F. Supp. 2d at 1018. Here, the Settlement
15 resolves Plaintiffs' challenge to the Secretary's decision not to issue a new, ten-year special use
16 permit that would have allowed DBOC to continue commercial shellfish operations in Drakes
17 Estero. Plaintiffs' prior federal authorizations to conduct shellfish operations having expired at
18 the end of November 2012, the Settlement affords Plaintiffs a reasonable period of time to
19 complete the wind-down of removal of their personal property, including shellfish, from Drakes
20 Estero and adjacent onshore land. The Settlement does not affect Mr. Lunny's continued use of
21 G Ranch and does not prevent Mr. Lunny from conducting commercial shellfish operations
22 outside of Point Reyes. The Settlement facilitates the Park Service's objective of managing
23 Drakes Estero as a marine wilderness through (1) the permanent closure of DBOC facilities and
24 operations in Drakes Estero and adjacent onshore land on December 31, 2014; and (2) Plaintiffs'
25 relinquishment of all asserted rights to conduct commercial shellfish operations in Point Reyes
26 and their covenant not to operate or accept an authorization to operate a commercial shellfish
27 operation in Drakes Estero except according to the terms of the Settlement. Thus, the Settlement
28 is reasonable.

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Attorneys for Defendants
BRISCOE IVESTER & BAZEL LLP

By: /s/ Lawrence S. Bazel (per authorization 10/06/2014)
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PETER PROWS (CA Bar No. 257819)

Attorneys for Plaintiffs

[PROPOSED] ORDER

THE COURT APPROVES THE TERMS OF THE STIPULATION AND ADOPTS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH THEREIN.

The Court will enter the accompanying Settlement Agreement and [Proposed] Consent Decree as a final Judgment, Order, and Decree in this case.

IT IS SO ORDERED.

DATED: _____

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on October 6, 2014, I electronically filed the “Stipulated Request for Approval of Settlement Agreement and Entry of Consent Decree; [Proposed] Findings of Fact and Conclusions of Law Thereon” and “Settlement Agreement and [Proposed] Consent Decree” with the Clerk of the Court using the ECF system, which automatically will send email notification to the attorneys of record.

/s/ Stephen M. Macfarlane
STEPHEN M. MACFARLANE