

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Ecological Rights Foundation v. City of Eureka

Ecological Rights Foundation · No. 22-cv-01459-JST · Decided March 5, 2025

OPINION

Ecological Rights Foundation v. City of Eureka

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 ECOLOGICAL RIGHTS FOUNDATION, Case No. 22-cv-01459-JST 8 Plaintiff,

ORDER GRANTING DEFENDANT

9 v. CITY OF EUREKA'S MOTION TO

MODIFY CONSENT DECREE

10 CITY OF EUREKA,

Re: ECF No. 42 Defendant. 11 12 13 Before the Court is Defendant City of Eureka's ("City")
motion to modify consent decree. 14 ECF No. 42. The Court will grant the motion.

15 I. BACKGROUND

16 The underlying facts and procedural history are not in dispute, and the Court takes the 17
following summary from the parties' briefs. 18 The City operates the Elk River Wastewater
Treatment Plant ("WWTP") under a Clean 19 Water Act ("CWA") Permit issued by the California
Regional Water Quality Control Board, 20 North Coast Region ("Regional Board"). Plaintiff
Ecological Rights Foundation ("EcoRights") 21 filed this action in March 2022, alleging that the
City's operation of the WWTP violated the 22 CWA. ECF No. 1. The parties participated in
mediation on September 2, 2022 and reached an 23 agreement in principle to resolve the action.
ECF Nos. 34, 37. On November 17, 2022, the 24 parties filed a proposed consent decree, ECF No.
38, and on January 27, 2023, the Court entered 25 the Consent Decree as proposed. ECF No. 40.

26 Paragraph 39 of the Consent Decree provides:

27 If, during the term of this Consent Decree, the Regional Board, State Plant that becomes final
pursuant to applicable law and alters the 1 CWA requirements applicable to the City that are
reflected in the requirements of this Consent Decree, this Consent Decree will be 2 modified to
reflect those CWA requirements, including, but not limited to, CWA requirements related to
discharges to Humboldt 3 Bay. The City shall provide EcoRights with written notice of any new
or reissued NPDES Permit and identify any portions of the 4 Consent Decree that the City
believes need to be modified to reflect the new regulatory requirements. 5 6 ECF No. 40 ¶ 39.

7 Until 2023, the City operated the WWTP under an NPDES Permit issued in 2016.¹ In
8 March 2023, the Regional Board issued a new draft of the City’s NPDES Permit. ECF No. 42 at
9 8. After a notice and comment process (in which EcoRights participated), the Regional Board 10
issued the City a new NPDES Permit in October 2023. Id. at 9. On November 2, 2023, EcoRights
11 appealed the issuance of the 2023 NPDES Permit to the State Board. The State Board took no
12 action on the appeal for 90 days and thus constructively denied it. Id. The 2023 NPDES Permit
13 On March 1, 2024, EcoRights filed suit against the Regional Board in Sacramento County 14
Superior Court, *Humboldt Waterkeeper et al. v. North Coast Regional Water Quality Control*
Board et al, Case No. 24WM00044, alleging that the Board violated the CWA by “set[ting] an 16
arbitrary, inadequately considered and supported, and overlong compliance schedule,” 17
“weaken[ing] protections against the prohibition on discharge of partially/inadequately-treated 18
sewage; “remov[ing] the prohibition on sanitary sewer overflows; and otherwise failing to comply
19 with the law “in numerous respects.” ECF No. 42-4 ¶ 121. As of the filing of this motion, the
20 lawsuit remained pending. See ECF No. 42 at 7 (“The state court may not issue judgment and
21 rights to appeal may not be exhausted for another three years.”). 22 The Consent Decree,
paragraph 39, requires the City to “provide EcoRights with written 23 24 1 The City requests that
the Court take judicial notice of the 2016 NPDES Permit, the 2023 NPDES Permit, other orders
and reports from the Regional Board, and the Petition for Writ of 25 Mandate and Complaint for
Declaratory and Injunctive Relief (both the original and the first amended versions) filed by
EcoRights in its lawsuit against the Regional Board. ECF No. 42-1. 26 For its part, EcoRights
attaches to its opposition a copy of its comments to the Regional Board requesting changes to the
2023 NPDES Permit as well as a copy of a State Board policy 27 concerning enclosed bays and
estuaries. ECF No. 43-1. Neither party objected to the Court’s 1 notice” of the new permit and
“identify [the] portions of the Consent Decree that the City believes 2 need to be modified to
reflect the new regulatory requirements.” ECF No. 40 ¶ 39. The City 3 complied with these
requirements. ECF No. 42 at 12. The parties met and conferred, but they 4 were unable to reach
agreement because they disagreed on whether the 2023 NPDES Permit is 5 “final pursuant to
applicable law” for the purpose of the Consent Decree. 6 The City filed the instant motion on
October 4, 2024. ECF No. 42. EcoRights opposed the 7 motion, ECF No. 43, and the City replied.
ECF No. 44. The Court took the motion under 8 submission on December 11, 2024 without a
hearing. ECF No. 45.

9 II. JURISDICTION

10 The Court has jurisdiction under 33 U.S.C. § 1365(a)(1) and 28 U.S.C. § 1331.

11 III. LEGAL STANDARD

12 Federal Rule of Civil Procedure 60(b) authorizes a court to modify a consent decree for 13 any
of several enumerated reasons or “any other reason that justifies relief.” Under Rule 60(b), 14 the
party seeking modification of a consent decree bears the burden of establishing that “a 15
significant change in circumstances warrants revision of the decree.” *Rufo v. Inmates of Suffolk*

16 Cnty. Jail, 502 U.S. 367, 383 (1992). But a district court also has inherent authority to modify a
17 consent decree in appropriate circumstances “even in the absence of express authorization in
the 18 decree or request from the parties.” *Keith v. Volpe*, 784 F.2d 1457, 1461 (9th Cir. 1986)
(citing 19 *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932)). The language of the consent
decree itself 20 can also provide a basis for modification. See, e.g., *Earth Island Inst., Inc. v. So.
Cal. Edison*, 166 21 F. Supp. 2d 1304, 1309 (S.D. Cal. 2001) (“Moreover, the Decree’s own
dispute resolution 22 provisions . . . support the Court’s authority to modify the Consent Decree”).
23 “In construing consent decrees, courts use contract principles.” *Thompson v. Enomoto*, 24 915
F.2d 1383, 1388 (9th Cir. 1990); see also *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir. 1996) 25
(noting that “[a] consent decree is . . . in some respects contractual in nature” and that “[c]ourts 26
must find the meaning of a consent decree within its four corners”) (internal citations and 27
quotations omitted)). If the district court determines the consent decree should be modified, it 1
problems created by the changed factual or legal conditions.” *United States v. Asarco, Inc.*, 430 2
F.3d 972, 979–80 (9th Cir. 2005).

3 IV. DISCUSSION

4 A. Finality of the 2023 NPDES Permit 5 The question before the Court is whether the Humboldt
Waterkeeper lawsuit, filed by 6 EcoRights against the Regional Board over its issuance of the
2023 NPDES Permit, renders that 7 Permit not “final pursuant to applicable law” for the purpose
of paragraph 39 of the Consent 8 Decree. EcoRights argues that until its lawsuit is resolved, the
2023 NPDES Permit is not “final 9 pursuant to applicable law,” and the Consent Decree need not
be modified to match the Permit’s 10 requirements. ECF No. 43 at 8–12. The City responds that
the 2023 NPDES Permit is “final 11 pursuant to applicable law” despite EcoRights’s ongoing
lawsuit, and consequently paragraph 39 12 requires modification of the Consent Decree to bring it
into alignment with the requirements set 13 forth in the 2023 NPDES Permit. ECF No. 42 at 12–
16. 14 The City has the better argument. The Regional Board issued the 2023 NPDES Permit 15
after the completion of its administrative proceedings, including publication of a draft permit, 16
receipt of comments regarding the draft, issuance of the final permit, and constructive denial of 17
EcoRights’s appeal to the State Board. ECF No. 42 at 8–9. There were no further steps that 18
EcoRights—or any party—could have taken with respect to the administrative proceedings, as 19
EcoRights acknowledges in its petition in the Humboldt Waterkeeper lawsuit. See ECF No. 42-4
20 at 139, ¶ 14 (“Petitioners have exhausted any and all available administrative remedies to the
21 extent required by law.”). Indeed, without a final administrative decision, EcoRights would not
22 have been able to file its Humboldt Waterkeeper action, because the code sections that
authorize 23 judicial review of administrative actions require first that the administrative action be
“final.” See 24 Cal. Code Civ. Proc. § 1094.5 (authorizing judicial review of “the validity of any
final 25 administrative order or decision” (emphasis added); Cal. Code Regs. tit. 23, § 2050.5(e),
(g) 26 (discussing petitions filed by “[a] party aggrieved by a regional board final decision or
order”) 27 (emphasis added). 1 apply the dictionary definition of the word “final” in interpreting

the Consent Decree and that, 2 because the Humboldt Waterkeeper lawsuit might someday alter the requirements in the 2023 3 NPDES Permit, the permit cannot be “final” according to the dictionary definition. ECF No. 43 at 4 8–10 (“[T]he Regional Board’s permit issuance decision at this point has not come ‘at the end’ of 5 the permit matter and is not ‘the last in a series or process’ or the ‘ultimate . . . result of a process’ 6 that has set Eureka’s CWA obligations beyond any further likelihood of alteration” (quoting Final, 7 Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/final>)). But the facts 8 show that the 2023 NPDES Permit is, in fact, the “ultimate result of a process”—namely, the 9 Regional Board’s administrative process—as evidenced by EcoRights’s averment in its Humboldt 10 Waterkeeper complaint that it had exhausted all remedies in that process. Thus, the dictionary 11 definition confirms, rather than disproves, that the 2023 NPDES Permit is “final” for the purpose 12 of paragraph 23 of the Consent Decree. 13 EcoRights’s other arguments fare no better. Its contention that the Humboldt Waterkeeper 14 lawsuit “has substantial merit and a reasonable likelihood of causing the 2023 permit to be set 15 aside,” ECF No. 43 at 12, is irrelevant because, as already explained, that lawsuit seeks to set aside 16 the Regional Board’s “final” agency action; it does not render that action non-final and indeed 17 could not even have been brought unless the action was final. 18 EcoRights also argues that principles of comity and abstention counsel against modifying 19 the Consent Decree until the state court has an opportunity to decide the Humboldt Waterkeeper 20 lawsuit. *Id.* at 19–20 (“Abstention doctrine provides for respect for state court decisions, state 21 policies, and federalism concerns more generally by avoiding federal court decisions that, *inter 22 alia*, will or may conflict with state court decisions.” (citations omitted)). If anything, comity 23 principles counsel in favor of modification of the Consent Decree entered in this federal lawsuit to 24 bring it into alignment with the requirements set by a state entity, rather than allowing the 25 continued existence of two competing (and possibly incompatible) sets of requirements. 26 Finally, EcoRights argues that because “a deal is a deal,” the City should be held to the 27 agreements it made in the Consent Decree. ECF No. 43 at 16–17. But by the same token, 1 Decree would be modified should a new and final NPDES Permit issue. See ECF No. 40 ¶ 39. 2 Accordingly, the Court finds that the 2023 NPDES Permit is “final pursuant to applicable 3 law” for the purpose of paragraph 23 of the Consent Decree. 4 B. Proposed Modifications 5 The City requests 17 changes to the Consent Decree to bring it into alignment with the 6 2023 NPDES Permit, as contemplated by Consent Decree paragraph 39. ECF No. 42 at 16–20. 7 The City urges the Court to make the requested modifications now, arguing that EcoRights has 8 waived the right to object to the modifications on a revision-by-revision basis because it declined 9 to meet and confer with the City about individual revisions before the City filed its motion. ECF 10 No. 42 at 20; ECF No. 44 at 12–15. EcoRights responds that its choice not to engage in revision- 11 by-revision discussions was justified and requests a chance to meet and confer about the 12 modifications now, which “would give the parties both incentive and opportunity to consider 13

whether a compromise outcome regarding dates short of the unduly lenient dates in the 2023 NPDES Permit could be reached.” ECF No. 43 at 21. 15 The language of the Consent Decree is unambiguous and does not leave room for 16 “compromise outcome[s]” with dates different from those imposed in the 2023 NPDES Permit. 17 See ECF No. 40 ¶ 39 (“If . . . the Regional Board . . . issues a new or reissued NPDES Permit to 18 the City for the Treatment Plant that becomes final pursuant to applicable law and alters the CWA 19 requirements applicable to the City that are reflected in the requirements of this Consent Decree, 20 this Consent Decree will be modified to reflect those CWA requirements”) (emphasis added). 21 Thus, the Court sees no point in ordering the parties to meet and confer in the hopes of reaching a 22 “compromise outcome” that is not sanctioned or contemplated by the Consent Decree. Instead, 23 the Court will order the parties to meet and confer regarding only whether the modifications the 24 City proposes, ECF No. 42 at 16–20, “reflect the terms of the [2023] NPDES Permit,” as provided 25 in the Consent Decree. ECF No. 40 ¶ 40.

26 CONCLUSION

27 The City’s motion to modify the consent decree is granted. The Court orders the parties to 1 with the requirements of the 2023 NPDES Permit. Within 28 days of entry of this order, the 2 || parties shall file either a joint proposed amended consent decree or a joint letter brief of no more 3 || than 10 pages detailing the disputed modifications and the parties’ respective positions on them. 4 IT IS SO ORDERED. 5 Dated: March 5, 2025 6

JON S. TIGAR

7 nited States District Judge 8 9 10 11 a 12 15 16 it Z 18 19 20 21 22 23 24 25 26 27 28