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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-
profit corporation,

Plaintiff,

v.

CHICO SCRAP METAL, INC., a
California corporation;
GEORGE W. SCOTT, SR.,
individually and as trustee
of GEORGE W. SCOTT, SR.
REVOCABLE INTER VIVOS TRUST
DATED SEPTEMBER 25, 1995,

Defendants.

No. 2:10-cv-01207-GEB-AC

**ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL
RECONSIDERATION**

Defendants Chico Scrap Metal, Inc., George W. Scott,
Sr., individually and as trustee of the George W. Scott, Sr.
Revocable Inter Vivos Trust, dated September 25, 1995, seek
partial reconsideration under Federal Rule of Civil Procedure
("Rule") 54(b), and Local Rule 230(j), of this Court's Order
Granting in Part and Denying in Part Each Party's Summary
Judgment Motion, (Defs.' Mot. for Recons. ("Mot.") 1:23-27, ECF
No. 226), filed August 17, 2015. (Order Granting in Part and Den.
in Part Each Party's Summ. J. Mot. ("Order"), ECF No. 221.)
Defendants argue the motion should be granted based on their
assertion that the Court committed clear error in calculating the

1 number of times Defendants violated Section C of California's
2 General Industrial Storm Water Permit (the "General Permit").

3 I. LEGAL STANDARD

4 "A district court's power to rescind, reconsider, or
5 modify an interlocutory order is derived from the common law, not
6 from the Federal Rules of Civil Procedure." City of Los Angeles,
7 Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 886 (9th
8 Cir. 2001). Further, Rule 54(b) authorizes the district court to
9 revise "any order or other decision, however designated, that
10 adjudicates fewer than all the claims or the rights and
11 liabilities of fewer than all the parties . . . at any time
12 before the entry of a judgment adjudicating all the claims and
13 all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).
14 "[A] motion for reconsideration should not be granted, absent
15 highly unusual circumstances, unless the district court is
16 presented with newly discovered evidence, committed clear error,
17 or if there is an intervening change in the controlling law."
18 Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890
19 (9th Cir. 2000) (quoting 389 Orange St. Partners v. Arnold, 179
20 F.3d 656, 665 (9th Cir. 1999)).

21 II. DISCUSSION

22 The Order of which reconsideration is sought holds in
23 pertinent part: "The uncontroverted facts establish Defendants
24 never submitted a report to the [California Regional] Water Board
25 in response to receiving a storm water discharge sampling result
26 that [exceeded] a water quality standard." (Order 17:21-24
27 (citation omitted).)

1 The Order further holds the California Toxics Rule
2 ("CTR") is the applicable water quality standard, (Order 17:24-
3 26), and explains: "The CTR 'promulgates criteria for priority
4 toxic pollutants for the State of California.' 40 C.F.R. 131.38.
5 For storm water discharges, the following pollutant
6 concentrations apply:

7 Copper: 0.013 mg/L

8 Lead: 0.065 mg/L

9 Zinc: 0.12 mg/L

10 Id." (Order 15:1-8.) These pollutant concentrations represent the
11 CTR's Criteria Maximum Concentration ("CMC"), which "equals the
12 highest concentration of a pollutant to which aquatic life can be
13 exposed for a short period of time without deleterious effects."
14 40 C.F.R. § 131.38(b)(1) n.d.¹

15 The Order further explains: "Therefore, each time
16 Defendants received sampling results in excess of the CTR
17 standards, they violated Section C of the General Permit[by not
18 submitting a report to the California Regional Water Board]."
19 (Order 17:24-26.)

20 Concerning the number of times Defendants received
21 sampling results in excess of the CTR standards that they were
22 required to report under Section C of the General Permit, the
23 Order states in pertinent part:

24 Plaintiff argues Defendants' own samples
25 reveal sixty-five instances where the level
26 of copper, lead, and/or zinc exceeded the CTR
standards Since the evidence

27 ¹ In contrast, the CTR's "Criteria Continuous Concentration (CCC) equals
28 the highest concentration of a pollutant to which aquatic life can be exposed
for an extended period of time (4 days) without deleterious effects." 40
C.F.R. § 131.38(b)(1) n.d.

1 concerning the sixty-five samples Defendants
2 collected and analyzed is uncontroverted,
3 Plaintiff's motion concerning these samples
4 is granted and Defendants' motion is denied.
5 Defendants also do not dispute the sample
6 results taken on December 11, 2014 from
7 SWSL2, at 9:10 AM and 2:50 PM, which evince
8 four additional violations. (Pl.'s SUF
9 ¶¶ 160-161.) Therefore, Plaintiff's motion as
10 to these samples is granted and Defendants'
11 motion is denied.

12 (Order 17:28, 18:1-11.)

13 Defendants argue the Court erred because "[t]he
14 evidence . . . demonstrates only [forty] . . . uncontroverted
15 exceedances of the limitations set forth in the CTR." (Mot. 3:5-
16 8.) Defendants' arguments concerning specific samples are
17 addressed below.

18 **A. Sample Collected on January 20, 2012, from SWSL2**

19 Defendants seek reconsideration of the sample collected
20 by Defendants on January 20, 2012, identified in Plaintiff's
21 Statement of Undisputed Facts number 140, arguing the evidence
22 evinces that the storm water contained .041 mg/L of lead, rather
23 than the .21 mg/L of lead listed in Plaintiff's Statement of
24 Undisputed Facts. The evidence cited by Plaintiff shows that the
25 storm water collected on January 20, 2012, from SWSL2 contained
26 .041 mg/L of lead. (Ex. S PLF001558, ECF No. 168-5.) Therefore,
27 Plaintiff only demonstrated an exceedance of copper.

28 **B. Four Samples Collected on March 20, 2013**

Defendants seek reconsideration of four samples
Defendants collected and analyzed on March 20, 2013, which are
identified in Plaintiff's Statement of Undisputed Facts numbers
151, 152, 153, and 154. (Ex. A 7-10, ECF No. 226-2.) Defendants
argue:

1 This Court granted summary judgment in favor
2 of Defendants as to all March 20, 2013
3 samples. See Order at 49:5-6 ("Plaintiff's
4 motion concerning this date is denied and
5 Defendants' motion is granted[.]"[] (emphasis
6 added) []).

7 As to Plaintiff's March 20, 2013 samples,
8 this Court held that "Plaintiff offers no
9 evidence from which a reasonable inference
10 could be drawn that the wet weather event on
11 March 20, 2013 began less than one hour
12 before the Facility opened." See Order at
13 49:2-4.

14 As to Defendants' March 20, 2013 samples,
15 Defendants stated in Response to Undisputed
16 Fact No. 151 that these samples were not
17 "from Facility discharges stemming from a
18 qualifying event and not representative of
19 the Facility." Therefore, this Court's
20 holding that these samples are
21 "uncontroverted" is incorrect. See Order at
22 18:9.

23 (Id.) Defendants make the same argument for the remaining samples
24 identified in numbers 152, 153, and 154. Plaintiff does not
25 address these arguments.

26 The record shows Defendants disputed the evidence
27 concerning the four samples collected on March 20, 2013, in their
28 Response to Plaintiff's Statement of Undisputed Facts. (Defs.'
29 Resp. to Pl.'s SUF ISO Pl.'s Mot. for Partial Summ. J. ("Defs.'
30 Resp. to Pl.'s SUF") Nos. 151-54, ECF No. 189.) Therefore, this
31 portion of the Order is withdrawn, since the disputed factual
32 issues have to be resolved at trial.

33 **C. Sample Collected on December 3, 2014**

34 Defendants seek reconsideration of the sample Plaintiff
35 collected on December 3, 2014. This sample is identified in
36 Plaintiff's Statement of Undisputed Facts number 157. Defendants
37 argue: "The[] sample[] w[as] not taken by Defendants and
38

1 Defendants dispute the origin of the water sample.” (Ex. A 11.)
2 Plaintiff does not address this argument.

3 The record shows Defendants disputed the sample’s
4 origin in their Response to Plaintiff’s Statement of Undisputed
5 Facts. (Defs.’ Resp. to Pl.’s SUF No. 157.)

6 Further, this sample’s inclusion in this section of the
7 Order appears to have been a typographical error, since the Court
8 also held, “Plaintiff fails to present evidence that sufficiently
9 identifies the origin of the . . . water sample[collected on
10 December 3, 2014 and identified in number 157].” (Mot. 18:25-28.)

11 Therefore, this portion of the Order is withdrawn,
12 since the disputed factual issues have to be resolved at trial.

13 **D. Remaining Samples**

14 Lastly, the Court also erred in calculating the number
15 of violations under Section C of the General Permit, and
16 therefore revised rulings are set forth in the following chart:

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Pl.’s SUF No.	Pl.’s SUF	Court’s Exceedance of CTR Findings
118	On November 1, 2008, storm water containing 0.041mg/L of copper, 0.014mg/L of lead, and 0.166mg/L of zinc was discharged from the Facility at the northern discharge location, SWSL1.	Copper and zinc exceeded.
119	On November 1, 2008, storm water containing 0.135mg/L of copper, 0.0193mg/L of lead, and 0.165mg/L of zinc was discharged from the Facility at the southern discharge location, SWSL2.	Copper and zinc exceeded.
120	On February 17, 2009, storm water containing 0.021mg/L of copper, 0.0284mg/L of lead,	Copper and zinc exceeded.

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	and 0.178mg/L of zinc was discharged from the Facility at the northern discharge location, SWSL1.	
121	On February 17, 2009, storm water containing 0.0216mg/L of copper, 0.0278mg/L of lead, and 0.185mg/L of zinc was discharged from the Facility at the southern discharge location, SWSL2.	Copper and zinc exceeded.
125	On April 12, 2010, storm water containing 0.036mg/L of copper, 0.026mg/L of lead and 0.092mg/L of zinc was discharged from the Facility's Southwest Corner.	Copper exceeded.
126	On December 29, 2010, storm water containing 0.024mg/L of dissolved copper, 0.016mg/L of dissolved lead and 0.15mg/L of dissolved zinc was discharged from the Facility's Southwest Corner.	Copper and zinc exceeded.
127	On December 29, 2010, storm water containing 0.028mg/L of copper, 0.016mg/L of lead and 0.15mg/L of zinc was discharged from the Facility at "SP #1."	Copper and zinc exceeded.
133	On March 18, 2011 storm water containing 0.0051mg/L of lead was discharged from the Facility's southern discharge location, SWSL2.	No exceedance.
136	On October 10, 2011, storm water containing 0.15mg/L of copper, 0.02mg/L of lead, and 0.16mg/L of zinc was discharged from the Facility's southern discharge location, SWSL2 (per the chain of custody, although location is in conflict with AR assertion that only SWSL1 discharged on that date).	Copper and zinc exceeded.
139	On January 20, 2012, storm water containing 0.037mg/L of	Copper and zinc exceeded.

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	copper, 0.044mg/L of lead and 0.27mg/L of zinc was discharged from the Facility's northern discharge location, SWSL1.	
155	On December 3, 2014, storm water containing 0.032mg/L of copper and 0.032mg/L of lead was discharged from the Facility at the southern discharge location, SWSL 2 Inside.	Copper exceeded.
156	On December 3, 2014, storm water containing 0.03mg/L of copper and 0.03mg/L of lead was discharged from the Facility's southern discharge location, SWSL2 Outside.	Copper exceeded.
158	On December 11, 2014, storm water containing 0.035mg/L of copper, 0.050mg/L of lead and 0.16mg/L of zinc was discharge from the Facility's southern discharge location, SWSL2 Inside.	Copper and zinc exceeded.
159	On December 11, 2014, storm water containing 0.038mg/L of copper, 0.057mg/L of lead and 0.18mg/L of zinc was discharged from the Facility's southern discharge location, SWSL2 Outside.	Copper and zinc exceeded.
160	On December 11, 2014, storm water containing 0.036mg/L of copper, 0.049mg/L of lead and 0.14mg/L of zinc was discharged from the Facility's southern discharge location, SWSL2.	Copper and zinc exceeded.
161	On December 11, 2014, storm water containing 0.029mg/L of copper, 0.038mg/L of lead and 0.12mg/L of zinc was discharged from the Facility's southern discharge location, SWSL2.	Copper exceeded.
163	On February 6, 2015 storm water containing 0.041mg/L of	Copper exceeded.

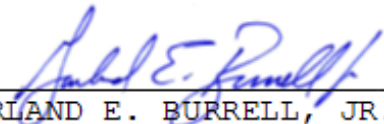
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	copper, 0.044mg/L of lead, and 0.12mg/L of zinc was discharged from the Facility's southern discharge location, SWSL #2.	
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III. CONCLUSION

For the stated reasons, Defendants' motion for reconsideration has been granted.

Dated: January 4, 2016



GARIAND E. BURRELL, JR.
Senior United States District Judge