

**EXTENSION OF TOLLING AGREEMENT**  
FOLLOWING PREPARATION OF THE SALMONID ENHANCEMENT PLAN

This Extension of Tolling Agreement ("Extension") is entered into on Feb. 4, 2010, by and between the Salmon Protection and Watershed Network ("SPAWN") and the County of Marin ("County"). SPAWN and the County are referred to collectively as "the Parties."

**I. RECITALS**

- A. This Extension concerns potential litigation ("Litigation") to be filed by SPAWN challenging the actions taken by the County to approve the 2007 Countywide Plan ("CWP").
- B. On November 6, 2007, the County (1) certified the adequacy of the Final Environmental Impact Report ("EIR") (SCH # 2004022076) associated with the CWP; (2) adopted findings pursuant to the California Environmental Quality Act ("CEQA") regarding the EIR and the CWP; (3) approved a Mitigation Monitoring and Reporting Plan for the CWP; and (4) adopted the CWP.
- C. On November 6, 2007, the County filed a Notice of Determination ("NOD") with the Clerk of the County of Marin, commencing the 30-day statute of limitations period under Public Resources Code § 21167.
- D. SPAWN has indicated that it believes that the CWP and related approvals violate various laws. The County believes that it has complied with all applicable laws. The Parties entered into a tolling agreement which was then extended in order to provide additional time in which to potentially resolve their dispute through negotiation instead of litigation.
- E. On February 5, 2008, the Parties entered into an "Agreement between County of Marin and SPAWN" (hereinafter "Agreement") which specified a process and funding for preparation of a Salmonid Habitat Enhancement Plan ("SEP") for the San Geronimo Watershed. As part of the Agreement, the County enacted a moratorium on specified activities in Stream Conservation Areas within the San Geronimo Watershed. Previously, as required by Section 4a of the Agreement, the Parties extended the time for SPAWN to file litigation to February 11, 2010 in order to allow time for preparation of the SEP as required by the Agreement.
- F. On February 9, 2010 the Board will consider whether to accept the staff recommendation that the SEP has been completed in compliance with the Agreement and applicable requirements of law.
- G. The Parties desire to further extend the time in which SPAWN could file litigation to September 14, 2010 in order to allow time for consideration and possible adoption of (a) a riparian vegetation ordinance applicable within San Geronimo Valley as an amendment to the tree ordinance and (b) consideration of other measures to aid in implementation of the 2007 Countywide Plan. In the County's view, the SEP resulted in a planning study so a more extensive parallel CEQA process did not occur. It is the County's intention to comply with

CEQA in the future with regard to actions which may be taken to implement salmonid protection measures.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained in this Extension, the Parties agree as follows:

## II. AGREEMENT

A. The statute of limitations for any claim or cause of action SPAWN has, or may have is extended to September 14, 2010. Any such statute of limitations shall, as to SPAWN, expire on September 14, 2010 at 5:00 p.m. This Extension shall not affect any statute of limitations expiring before November 29, 2007 (the effective date of the initial Tolling Agreement) or after September 14, 2010.

B. The County waives any defenses it has, or may have, to any claim or cause of action commenced by SPAWN based on the expiration of the statute of limitations, laches, estoppel or waiver regarding the passage of time, action or inaction between the effective date and September 14, 2010. The County does not waive any defenses other than those regarding the passage of time, action or inaction between the effective date and September 14, 2010. The County does not waive any defenses other than as to SPAWN. SPAWN acknowledges and accepts the limitation on its right to litigate as specified in Section 4b of the Agreement.

C. SPAWN agrees not to challenge by way of litigation any aspect of the County's compliance with the terms of the Agreement or the County's compliance with applicable requirements of law. In so doing, SPAWN takes no position on the adequacy of the SEP for CEQA cumulative impact purposes. SPAWN further agrees that the Advisory Committee created by the Agreement may be disbanded since the Committee has served its purpose advising in connection with preparation of the SEP.

D. The Parties agree that except with respect to the extensions and waiver of the statute of limitations and related defenses between the effective date and September 14, 2010, nothing contained herein shall be construed to affect, and the Parties to this Extension expressly reserve, all factual, legal and equitable contentions with respect to the prosecution or defense of SPAWN's Litigation.

E. This Extension is intended solely for the benefit of the Parties and shall not be construed to create any rights in any other person or entity.

F. The Parties recognize and understand that this Extension is being made in part to permit the Parties, by and through their representatives, to discuss a possible amicable resolution of their dispute and that the execution of this Extension is not and shall not be deemed to constitute evidence of, or an admission of liability for any claim, cause of action, or defense. This Extension shall not be evidence in respect of any claim other than the defense of the statute of limitations or other defense based upon the passage of time.

G. Each of the persons or entities executing this Extension represents that he/she has the authority to execute this Extension on behalf of his/her respective organization.

H. The Parties acknowledge that each Party and its counsel have reviewed this Extension and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Extension.

I. This Extension may not be modified, amended, altered or supplemented except by a writing executed by both Parties to the Extension.

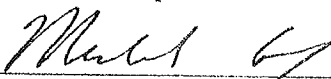
J. This Extension shall be governed by and construed in accordance with the laws of the State of California. Venue for any dispute pursuant to this Extension shall be in the County of Marin.

K. Neither SPAWN nor the County shall challenge the legitimacy of this Extension or raise as a jurisdictional issue the validity of this Extension in any future legal action arising as a result of the filing of any Petition.

L. This Extension may be executed in two counterparts and by original or facsimile signature, each of which shall be deemed to be an original and all of which together shall be deemed to physically form one document.

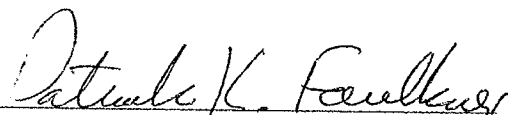
Dated: February 4, 2010

SALMON PROTECTION AND WATERSHED  
NETWORK

By:   
Michael Graf  
Attorney, on Behalf of SPAWN

Dated: Feb 4 2010

COUNTY OF MARIN

By:   
Patrick K. Faulkner  
County Counsel, on Behalf of the County of Marin



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
777 Sonoma Ave., Room 325  
Santa Rosa, CA 95404-4731

February 3, 2010

In response refer to:  
SWR/F/SWR3:CAA

Supervisor Steve Kinsey  
Marin County Board of Supervisors  
3501 Civic Center Drive, Suite 329  
San Rafael, California 94903

Dear Supervisor Kinsey:

The purpose of this letter is to express NOAA's National Marine Fisheries Service's (NMFS) support for the fundamental framework and priorities outlined by the San Geronimo Valley Salmon Enhancement Plan (SEP). The SEP is a Marin County Department of Public Works document, and identifies relevant actions and strategies to promote natural watershed processes that in turn may improve salmon and steelhead (salmonid) survival in the San Geronimo Creek watershed. The SEP is proposing a process to evaluate watershed functions using habitat targets to identify factors most limiting to salmonids in San Geronimo Creek. These targets can be evaluated and tracked to measure improvements in watershed conditions, salmonid survival, and status of salmonid populations through time.

We are planning for NMFS to release the draft federal recovery plan for the Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit for public review in March 2010. The SEP population goals, habitat targets, and recommended actions are closely aligned with recommendations forthcoming in this draft recovery plan. We initially had concerns about the 35-foot stream enhancement zone described in the SEP, but now have the understanding this is intended to describe the zone of first priority for voluntary riparian restoration measures, and is not a riparian buffer. The 100-foot setback as described by the Marin County Wide Plan as a buffer is consistent with NMFS' recommendations for buffering streams from adjacent land use practices.

The situation for CCC coho salmon is dire; extinction of salmon on the central coast is possible unless significant protections are implemented in the immediate future. The draft coho recovery plan identifies critical watersheds where increasing survival of CCC coho salmon is paramount. San Geronimo Creek is one of the highest priority areas for increasing survival identified by the draft recovery plan and the SEP supports this goal.



The County and its partners have worked hard to develop a comprehensive approach and an implementation plan to rehabilitate critical coho habitat and support recovery of the population. We look forward to working in partnership with Marin County to provide support in implementing this critically important plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Butler", with a long horizontal flourish extending to the right.

Dick Butler  
Santa Rosa Area Office Supervisor  
Protected Resources Division

