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VENTURA SUPERIOR COURT

07/21/23

VENTURA SUPERIOR COURT

FILED

07/28/2023

Brenda L. McCormick
Executive Officer and Clerk

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10 Attorneys for Petitioner

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF VENTURA

13 CHRISTOPHER M. WILLIAMS,

14 Petitioner,

15 v.

16 CALIFORNIA DEPARTMENT OF FISH AND
17 WILDLIFE,

18 Respondent.

No. 56-2022-00565405-CU-WM-VTA

**~~PROPOSED~~ ORDER GRANTING
PETITIONER'S PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND ISSUING WRIT OF MANDATE
TO RESPONDENT**

Courtroom 42
Judge: Hon. Henry Walsh

Action Filed May 6, 2022

21
22 This matter came on regularly for hearing on March 20, 2023, in Courtroom 42 of this
23 Court, located at 800 South Victoria Avenue, Ventura, California 93009, the Honorable Henry
24 Walsh presiding. Damien M. Schiff of Pacific Legal Foundation appeared on behalf of Petitioner
25 Christopher M. Williams ("Petitioner"). Gary Tavetian, of the Department of Justice, Office of the
26 Attorney General appeared on behalf of Respondent California Department of Fish and Wildlife
27 ("Respondent").

28 ///

Ventura Superior Court Accepted through eDelivery submitted 07-21-2023 at 02:36:50 PM

1 The Court, having conducted a detailed review of the briefs and arguments submitted by
2 counsel, having granted Petitioner's Petition for a Peremptory Writ of Mandate on April 19, 2023,
3 and having directed that Petitioner prepare and submit a proposed order,

4 IT IS ORDERED THAT:

5 1. The Court's minute order granting the petition, a copy of which is attached as
6 Exhibit A, is hereby adopted as the Court's Final Ruling in this matter;

7 2. For the reasons described in Exhibit A, the Petition for a Writ of Peremptory
8 Mandate is granted in its entirety;


9 3. Final judgment shall be, and hereby is, entered consistent with the Court's order
10 granting the Petition, attached hereto as Exhibit A, in favor of Petitioner on all claims set forth in
11 the Petition filed herein;

12 4. Respondent is ordered to grant Petitioner Christopher M. Williams' general
13 gill/trammel net permit transfer application and transfer permit number GGN083 from Mr. Michael
14 McCorkle to Petitioner Christopher M. Williams;

15 5. Petitioner and Respondent have entered into an agreement, attached as Exhibit B, to
16 resolve the remaining issues in this matter. The Court shall retain jurisdiction over the proceedings
17 by way of the return of the Writ of Mandate, which Respondents shall file no later than 30 days
18 after the date of the issuance of the Writ confirming that Respondents have taken the steps set forth
19 in Exhibit B.

20 IT IS SO ORDERED AND ADJUDGED.

21 DATED: 07/24/2023



22
23 Honorable Henry Walsh, Judge
24 Superior Court of California

1 **DECLARATION OF SERVICE**

2 I, Tawnda Dyer, declare as follows:

3 I am a resident of the State of California, residing or employed in Sacramento, California.

4 I am over the age of 18 years and am not a party to the above-entitled action.

5 My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

6 On July 21, 2023, I serve the attached [PROPOSED] ORDER GRANTING
7 PETITIONER’S PETITION FOR PEREMPTORY WRIT OF MANDATE AND ISSUING WRIT
8 OF MANDATE TO RESPONDENT by transmitting a true copy via electronic mail addressed as
9 follows::

10 Gary Tavetian Gary.Tavetian@doj.ca.gov
11 Office of the California Attorney General
12 300 South Spring Street, Suite 1702
13 Los Angeles, CA 90013
14 *Counsel for Respondent California Department of Fish and Wildlife*

15 I declare under penalty of perjury that the foregoing is true and correct and that this
16 declaration was executed this 21st day of July, 2023, at Roseville, California.

17 

18 TAWNDA DYER

Exhibit A
Minute Order

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 42

202200565405CUWM

Williams vs. CA Dept of Fish and Wildlife

April 19, 2023

2:32 PM

Judge: Honorable Henry J. Walsh

Judicial Secretary: H. McIntyre

CSR: None

APPEARANCES:

NATURE OF PROCEEDINGS: Ruling on Submitted Matter - Petition for Writ of Mandate

The Court, having taken the Petition for Writ of Mandate of Christopher Williams under submission on 03/20/2023, now rules as follows:

Petitioner Christopher Williams moves for a writ of mandate pursuant to CCP sections 1085 and 1087 to compel the California Department of Fish and Game to issue him a general gill/trammel net transfer from Mr. Michael McCorkle. Petitioner alleges that he is a third generation fisherman who has worked as a crew member on vessels that use these nets, including one owned by his family's commercial fishing business. Petitioner purchased and equipped a fishing vessel before applying for a general gill/trammel net permit through the permit transfer process authorized in the Fish and Game Code. He sought a transfer permit in July of 2021, but his application was denied in September of 2021. This writ petition seeks to overturn that denial.

The parties have stipulated as to the language of Fish and Game section 8681.5(b) which authorizes the transfer of a permit from an existing holder to a person otherwise qualified under the regulations pursuant to section 8682 (and payment of the fee required by section 8683). The parties have also stipulated that persons who are "otherwise qualified" for a transfer permit are determined by California Code of Regulations, Title 14, section 174, subdivision (b). That regulation (section 174, subdivisions (b)(2) and (3)) presently states a number of requirements, and was last amended in 1982. Before this amendment, it read in part "Pass a proficiency examination...which shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets; or [emphasis added] (3) prove to the Director's satisfaction that as the owner or operator of a legally registered fishing vessel..." The 1982 amendment omitted the conjunction "or" between subdivisions (2) and (3). and the semi-colon separating subdivisions (2) and (3) was replaced by a period. This had the effect of requiring an applicant for a transfer permit to comply with both subdivisions (2) and (3) as opposed to just one of these subdivisions. There is nothing in the Administrative Record to suggest that such a change was deliberately contemplated.

The parties have further stipulated that from approximately 1986 to approximately March of 2020, the California Department of Fish and Game had been evaluating applications for transfer permits as if section 174, subdivision (b)(2) terminated with a semicolon, and that this was

followed by the word "or." In March of 2020, the Department began evaluating transfer permits as though subdivision (b)(2) terminated with a period, and not with a semicolon, and the word "or".

Petitioner contends that the 1982 amendment as it impacted Regulation 174 is a mistake, and that he needs to comply with only one of the five subsections to subsection (b) of section 174. Respondent argues that by its plain language, the Regulation requires applicants for a transfer permit to satisfy at least two requirements: The applicant must either satisfy 14 CCR 174 (b)(1) or (2) and must also satisfy one of the following three subsection is: (b)(3)(4) or (5).

The first rule of statutory construction, or construction of a statute based regulation is the plain language of the statute in regulation. That rule applies unless it leads to an absurd result, or a result which is contrary to the legislative or statutory intent. *California Charter Schools v. Los Angeles Unified School District*, (2015) 60 Cal.4th 1221; *Manriquez v. Gurley*, (2003) 105Cal.App.4th 1227. Interpretation of a Regulation is a question of law, and while the administrative agency's interpretation is entitled to great weight, the ultimate resolution of the legal question rests with the courts. *Rick's Electric v. OSHA Appeals Board*, (2000) 80 Cal.App.4th 1023.

In response to the amendment of Fish & Game section 868 in 1981, section 174 was amended to add the words "trammel net" or "trammel nets." It also added a period after (b)(2) and removed the word "or." There is nothing in the Administrative Record, or the legislative history that suggests that the latter amendment was deliberately contemplated. Exhibit 8. Administrative Record, page 31 listed subsection (b)(2) to be amended to read: "(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrated knowledge of the proper use of gill nets or trammel nets."

There is no strikeout of the word "or," or of the ";" from the original subsection

(2) with an added "." underlined to show a change. There is no explanation for such a change. However, given that the main point of the amendment was to add "trammel nets" to subsections (a)(b) and (f), so that it would track Fish and Game section 8682, along with the interpretation by the Department in 1985 that someone renewing a gill net permit, or a transferee could qualify by satisfying any one of the 5 criteria until March of 2020, strongly suggests that there was a typographical error on the part of someone, and that there was never an intent to change the criteria for qualifying for transfer of a gill/trammel net permit.

The Petition for a writ is granted. Counsel for Petitioner is directed to submit an appropriate order.

Certificate of Mailing is attached.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

FOR COURT USE ONLY

COURTHOUSE ADDRESS:
Hall of Justice
800 South Victoria Ave
Ventura, CA 93009

PLAINTIFF/PETITIONER:
Christopher Williams

DEFENDANT/RESPONDENT:
California Department of Fish and Wildlife

CASE TITLE:
Williams vs. CA Dept of Fish and Wildlife

CERTIFICATE OF MAILING

CASE NUMBER:
202200565405CUWM

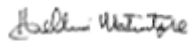
I certify that I am not a party to this cause. I certify that a true copy of the Minute Order (Ruling on Submitted Matter - Petition for Writ of Mandate) of 04/19/2023 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 04/20/2023.

Paige E Gilliard
3100 Clarendon Blvd, Suite 1000
Arlington, VA 22201

GARY TAVETIAN
300 S SPRING ST., SUITE 1702
LOS ANGELES, CA 90013-1204

Brenda L. McCormick, Executive Officer/Clerk

Dated: 04/19/2023

By: 
H McIntyre, Deputy Clerk

CERTIFICATE OF MAILING

Exhibit B

Agreement to Resolve Remaining Issues Raised in Petitioner's Petition for Peremptory Writ of Mandate

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18 Respondent.

No. 56-2022-00565405-CU-WM-VTA

**AGREEMENT TO RESOLVE
REMAINING ISSUES RAISED IN
PETITIONER'S PETITION FOR
PEREMPTORY WRIT OF MANDATE**

Courtroom 42
Judge: Hon. Henry Walsh

Action Filed May 6, 2022

21 Petitioner Christopher M. Williams and Respondent California Department of Fish and
22 Wildlife submit this Agreement, attached as Exhibit B to the Court's Order granting Petitioner's
23 Writ of Mandate, to resolve the remaining issues raised by Petitioner's Writ of Mandate. The Court
24 having granted Petitioner's Petition for a Peremptory Writ of Mandate on April 19, 2023, and
25 having directed that Petitioner prepare and submit a proposed order, Petitioner and Respondent
26 agree:

27 ///

28 ///

