

RESOLUTION NO. 2011-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA
APPROVING KIMBALL RESERVOIR INTERIM BYPASS PLAN**

1
2 **WHEREAS**, in order to discharge its responsibilities as a trustee agency, the City has been
3 engaged in a comprehensive evaluation of the public trust implications of its use of water under its
4 Amended Licenses 9615 and 9616 for the last fifteen months; and
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6 **WHEREAS**, the public trust requires that responsible public agencies work together to
7 develop a plan that balances the legislative goal to allow sufficient water to pass over, around or
8 through the dam to keep in good condition any fish that may exist below the dam with the needs of
9 its municipal water users; and
10

11 **WHEREAS**, the City retained its own consultants to conduct an analysis of the hydrology
12 and biology of Kimball Creek and developed a Draft Interim Bypass Plan; and
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14 **WHEREAS**, on May 27 , 2011, this Draft Interim Bypass Plan was distributed to all
15 interested parties so the City could get feedback on its provisions; and
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17 **WHEREAS**, the City conducted a Public Hearing on June 29th so that it could receive
18 additional feedback on the Draft Interim Bypass Plan wherein it received both written and oral
19 comments on the Draft Interim Bypass Plan; and
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21 **WHEREAS**, City staff and their technical consultants have extensively worked to address
22 those comments and, where it deemed appropriate, the City has revised the Draft Interim Bypass
23 Plan in accordance with those comments; and
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25 **WHEREAS**, since June 29, 2011, City representatives and technical consultants have
26 discussed aspects of the Draft Interim Bypass Plan with Department of Fish and Game (“DFG”)
27 representatives, which discussions have included: assisting DFG technical personnel in evaluating
28 the hydrologic modeling tools used by the City, as well as water supply impacts of DFG’s written
29 recommendations; inquiry and discussion of the basis for the specific recommendations; providing
30 evaluation of the frequency and duration of DFG’s recommended migration flow under various
31 scenarios; bypass plan alternatives; bypass plan implementation alternatives; and other relevant
32 matters; and
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34 **WHEREAS**, City staff and their technical consultants have extensively worked to evaluate
35 and address DFG’s views and input and, where appropriate, the Draft Interim Bypass Plan has been
36 modified based on DFG’s feedback; and
37

38 **WHEREAS**, the City has ensured that the final Kimball Reservoir Interim Bypass Plan
39 (“Proposed Bypass Plan”) which has been revised to address comments of all interested parties,
40 including DFG, provides comprehensive information on the City’s current operation of Kimball
41 Reservoir, the hydrology of the Kimball Creek watershed, the biological needs of fish in Kimball
42 Creek, possible operational changes to Kimball Reservoir, biological and water supply assessments
43 of myriad Bypass Schedules for Kimball Reservoir; and
44

45 **WHEREAS**, the Proposed Bypass Plan contains commitments to adopt a Bypass Schedule
46 and other infrastructure, flow measurement, instream flow study, and adaptive management
47 approach; and

48
49 **WHEREAS**, the adoption and implementation of the Proposed Bypass Plan are categorically
50 exempt from CEQA pursuant to several sections contained in the CEQA Guidelines sections 15061,
51 15261, 15262, and 15301, 15303 and 15311 (14 California Code of Regulations 15000 et seq.); and

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53 **WHEREAS**, Guideline Section 15061 exempts projects “[w]here it can be seen with
54 certainty that there is no possibility that the activity in question may have a significant effect on the
55 environment”; and

56
57 **WHEREAS**, Guideline Section 15261 exempts certain “ongoing projects” such as decisions
58 by reservoir operators to increase or decrease releases of water from reservoirs constructed prior to
59 1970; and

60
61 **WHEREAS**, the Proposed Bypass Plan fits within these exemptions as it entails four main
62 components: (1) an interim increase in bypass flows pending completion of an instream flow study
63 to address public trust issues; (2) the instream flow study itself; (3) installation of minor, facilities to
64 assist the City in implementing the interim bypass; and (4) improvement of the City’s flow
65 measurement protocols. All such steps are informed by the City’s retained experts in hydrology and
66 fish biology, who conclude that the City’s actions will only improve the condition of fish
67 downstream of the reservoir, and also will be undertaken only after the City has solicited and
68 considered input from government regulators, such as the DFG and the public. It is clear that these
69 measures will have no significant adverse effect on the environment, and will, if anything improve
70 the condition of fish downstream of the reservoir; and

71
72 **WHEREAS**, Guideline Section 15262 exempts feasibility or planning studies from CEQA
73 review and Guidelines Section 15306 exempts basic data collection, research, experimental
74 management and resource evaluation that do not result in a major disturbance to an environmental
75 resource; and

76
77 **WHEREAS**, the Proposed Bypass Plan fits within these exemptions because a core
78 component of the Proposed Bypass Plan is to undertake an instream flow study to allow the City,
79 working in cooperation with DFG and other stakeholders, to study appropriate bypass flows and the
80 characteristics of the downstream reach, and gather sufficient information and data to appropriately
81 determine what permanent levels of bypass flows will be necessary to address public trust interests;
82 and

83
84 **WHEREAS**, Guideline Section 15301 exempts the operation, repair, maintenance,
85 permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities,
86 mechanical equipment, or topographical features, involving negligible or no expansion of use, as
87 well as maintenance of reservoirs and streamflows, Guideline Section 15303 exempts construction
88 and location of limited new, small facilities or structures, as well as accessory and appurtenant
89 structures, and Guideline Section 15311 exempts construction or placement of minor structures
90 accessory to (appurtenant to) existing commercial, industrial or institutional facilities; and

91
92 **WHEREAS**, the Proposed Bypass Plan fits within these exemptions as it envisions the
93 possible installation of very small, insignificant facilities (e.g. pipe connecting to an existing pipe
94 that will provide the same function as two existing PVC pipes) to assist in bypassing water pursuant

95 to the plan, and pending completion of the instream flow study which fall within Sections 15301,
96 15303 and 15311.

97
98 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Calistoga
99 does hereby find as follows:

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101 1. The City Council hereby incorporates the foregoing recitals as findings.

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103 2. The Kimball Reservoir Interim Bypass Plan attached hereto as Exhibit "A", is hereby
104 approved and staff is hereby authorized to take any and all actions necessary to implement the
105 Proposed Bypass Plan.

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107 3. In adopting this Kimball Reservoir Interim Bypass Plan, the City has exercised its
108 lawful authority as a trustee agency to protect the public trust.

109
110 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a
111 regular meeting held this **23rd day of August, 2011**, by the following vote:

112
113 **AYES:**

114 **NOES:**

115 **ABSENT/ABSTAIN:**

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117
118 _____
JACK GINGLES, Mayor

119 **ATTEST:**

120
121
122 _____
123 **SUSAN SNEDDON, City Clerk**
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