

Case No. CV09-000655 – City of Portola v. California Fish and Game  
**Tentative Ruling for June 11, 2015**

June 4, 2015, 4:00p.m.

Department Two

**To request a hearing on this matter, you must call the Court at 530-283-6305 by 12:00 noon, June 5, 2015 notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.**

**If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.**

Case No. CV09-00065 – Adams vs. Dept. of Fish & Game

Tentative Ruling: **Granted, in part and denied, in part.** Plaintiff's Motion for Leave to File Fifth Amended Complaint is **denied**, with regard to adding the allegation that the defendant is liable pursuant to Government Code section 815.2, which removes governmental immunity for public entities for injury proximately caused by an act or omission of an employee within the scope of employment if the act or omission would have given rise to a cause of action against that employee. (Plaintiff also requests specific conduct, the negligent restocking of the lake, be added to the complaint, which is addressed below). There is no indication in plaintiff's proposed fifth amended complaint identifying those State employees that caused an act or omission giving rise to a cause of action. And, the one paragraph addressing section 815.2, doesn't even state the specific conduct that gives rise to a cause of action, although it appears that "restocking" might be the issue. Plaintiff's motion and proposed amended complaint states that the defendant itself does not even know which employees carried out the selection of new fish, or who restocked the lake. Although a complaint does not need to identify the individual employee whose negligence was alleged as the basis for vicarious liability, the defendant argues that there are well over a hundred employees that were involved in various aspects concerning the poisoning and restocking Lake Davis and related activities, such as advertising, sign construction and road blocks. If plaintiff is allowed to amend its complaint to add section 815.2, defendant will be required to analyze the acts of each employee involved, and additional, extensive discovery will be necessary, which would be extremely prejudicial to defendant. The Court agrees. Plaintiff filed its lawsuit six years ago, and the case is set for trial in less than five months. Therefore, such an amendment adding liability under section 815.2, is not proper at this time.

Plaintiff's Motion to add allegations regarding parasites on fish put into Lake Davis by defendant is **granted**. The additional allegation that the poisoning of the lake "continued

through the restocking of Lake Davis with parasite-infected fish” does not prejudice the defendant. There has been extensive discovery on the issue of sores on the restocked fish, and even the defendant warned anglers about noticing “sores and/or parasites” on some of the fish caught in the lake, and in a memo generated by a scientist from the defendant Department, she states restocking was a “mitigation for the chemical treatment”. Therefore, there is no prejudice to the defendant if this amendment is granted.