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16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **BESS BAIR; TRISHA LEE LOTUS; BRUCE**  
 19 **EDWARDS; JEFFREY HEDIN; DAVID SPREEN;**  
 20 **ENVIRONMENTAL PROTECTION**  
 21 **INFORMATION CENTER, a non-profit**  
 22 **corporation; CENTER FOR BIOLOGICAL**  
 23 **DIVERSITY, a non-profit corporation, and**  
 24 **CALIFORNIANS FOR ALTERNATIVES TO**  
 25 **TOXICS, a non-profit corporation,**

23 **Plaintiffs,**

24 **v.**

25 **CALIFORNIA DEPARTMENT OF**  
 26 **TRANSPORTATION and MALCOLM**  
 27 **DOUGHERTY in his official capacity as Director of**  
 28 **the California Department of Transportation,**

**Defendants.**

**Case No. 14-3422-WHA**

**STIPULATION AND ~~PROPOSED~~**  
**ORDER FOR DISMISSAL**  
**WITHOUT PREJUDICE**

1 This Stipulation is entered into by and among Plaintiffs Bess Bair, Trisha Lee Lotus,  
2 Bruce Edwards, Jeffrey Hedin, David Spreen, Californians for Alternatives to Toxics, Center for  
3 Biological Diversity, and Environmental Protection Information Center (collectively  
4 “Plaintiffs”), on the one hand, and Defendants California Department of Transportation and  
5 Malcolm Dougherty (“Caltrans”), on the other hand (collectively, the “Parties”), by and through  
6 their respective attorneys of record.

7 **IT IS STIPULATED BY ALL PARTIES HERETO, THROUGH**  
8 **THEIR RESPECTIVE COUNSEL, AS FOLLOWS:**

9 1. On May 18, 2010, Caltrans issued a Final Environmental Assessment (“Final  
10 EA”) and adopted a Finding of No Significant Impact (“FONSI”) for and approved the  
11 Richardson Grove Operational Improvement Project (the “Project”). Effective July 1, 2007, the  
12 Federal Highway Administration (“FHWA”) assigned, and Caltrans assumed, environmental  
13 responsibility for the Project pursuant to 23 U.S.C. 327.

14 2. On September 27, 2010, some of the Plaintiffs filed an action against Caltrans in  
15 *Bair v. California State Department of Transportation*, Case No. 3:10-CV-04360-WHA (“*Bair*  
16 *I*”), challenging Caltrans’ May 18, 2010 Final EA, FONSI, and Project approvals.

17 3. On December 19, 2011, the FHWA, on behalf of Caltrans, published a “Notice of  
18 Final Federal Agency Actions on Proposed Highway in California,” *Federal Register*/Vol. 76,  
19 No. 243, stating that there was a time period of 180 days in which claims relating to the Final  
20 EA, the FONSI, and other approvals could be brought.

21 4. On April 4, 2012, the Court in *Bair I* granted Plaintiffs’ Motion for Summary  
22 Judgment in part and remanded the action to Caltrans to “prepare a revised EA and record in  
23 accordance with the instructions [in the Court’s Order].” *Bair v. California State Dept. of*  
24 *Transp.*, 867 F.Supp.2d 1058 (N.D.Cal. 2012).

25 5. On September 18, 2013, Caltrans issued a Supplement to the Final EA  
26 (“Supplement”). Caltrans took public comment on the Supplement from September 21, 2013 to  
27

1 October 21, 2013. On January 23, 2014, Caltrans published responses to public comments  
2 concerning the Supplement.

3           6.       On January 24, 2014, Caltrans issued a NEPA/CEQA Re-validation/Re-  
4 Evaluation (the “Re-Validation”), finding that, upon consideration of the Supplement, the  
5 original May 18, 2010 FONSI remained valid.

6           7.       On January 30, 2014, the California Court of Appeal reversed the Superior  
7 Court’s decision in the related State Court case, *Lotus v. State of California Department of*  
8 *Transportation*, granting Plaintiffs’ petition for writ of mandate.

9           8.       On February 26, 2014, following Caltrans’ decision that the FONSI remained  
10 valid, the FHWA, on behalf of Caltrans, published a “Notice of Statute of Limitations on Claims;  
11 Notice of Final Federal Agency Actions on Proposed Highway in California,” *Federal*  
12 *Register*/Vol. 79, No. 38, providing a time period of 150 days in which claims relating to actions  
13 described in the Final EA, FONSI, Re-Validation, and other FHWA project records could be  
14 brought.

15           9.       On June 26, 2014, Caltrans rescinded its approval of the Project and posted public  
16 notice of the rescission with the California State Clearinghouse. Caltrans rescinded its FONSI  
17 and submitted formal notice of rescission for publication in the Federal Register later in  
18 November 2014.

19           10.      On July 28, 2014, Plaintiffs filed the subject action against Caltrans in *Bair v.*  
20 *California Department of Transportation*, Case No. 3:14-cv-03422-WHA (“*Bair II*”) (Dkt. #1).

21           11.      On October 8, 2014, Plaintiffs filed their First Amended Complaint (Dkt. #21).

22           12.      On October 21, 2014, in the state *Lotus v. California State Dept. of*  
23 *Transportation* action, Humboldt County Superior Court Case No. CV 110002, the California  
24 Superior Court entered a Judgment and a Writ ordering Caltrans to set aside Project approval and  
25 certification of the state Environmental Impact Report, and enjoining all Project-related activities  
26 that could result in change or alteration of the physical environment until Caltrans performs  
27 additional environmental analysis.  
28

1           13.     On November 17, 2014, Caltrans formally withdrew the existing FONSI and  
2 published notice of the withdrawal with the State Clearinghouse.

3           14.     On November 19, 2014, Caltrans also submitted its formal rescission of the  
4 FONSI to FHWA for posting in the Federal Register.

5           15.     On November 26, 2014, the FHWA, on behalf of Caltrans, published a “Notice of  
6 Rescission of Finding of No Significant Impact,” *Federal Register*/Vol. 79, No. 228, stating: “it  
7 has rescinded the Finding of No Significant Impact (FONSI), which was issued on May 18,  
8 2010, and published on December 19, 2011 in the **Federal Register** (**Federal Register**/Vol. 76,  
9 No. 243/Monday, December 19, 2011/Notices, [48940]) for a proposed highway project on U.S.  
10 Route 101 in Humboldt County. The FONSI was also revalidated on January 24, 2014 in the  
11 **Federal Register** (**Federal Register**/Vol.79, No. 38/Wednesday, February 26, 2014/Notices  
12 [108701].” It further stated that “additional environmental analysis on the project” was required  
13 and “[a] new NEPA finding and any other necessary Federal environmental determinations will  
14 be issued consistent with this additional analysis.”

15           16.     As the Project now stands, there is no Project approval, no certified CEQA  
16 document, and no federal NEPA finding, determination, or action. Additional environmental  
17 analysis, which may affect the federal document or other environmental determinations or  
18 actions, is being undertaken. Caltrans has furthermore represented that it has not taken any  
19 “action” that “may affect” an Endangered Species Act listed species or habitat. A California  
20 Superior Court injunction prohibits all Project activity that could change or alter the physical  
21 environment until the legally-required environmental review is completed. *See Lotus v. Dept. of*  
22 *Transportation*, 223 Cal.App.4th 645 (2014).

23           17.     Without further environmental review, including, without limitation, a final  
24 NEPA determination, and Project approval, the Project cannot proceed.

25           18.     On November 19, 2014, Caltrans filed a Motion to Dismiss Plaintiffs’ First  
26 Amended Complaint.  
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**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

DATED: December 3, 2014

By: /s/ Stacy Lau  
LUCILLE BACA  
JANET WONG  
STACY LAU

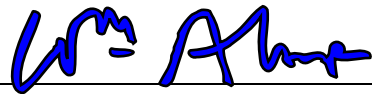
*Attorneys for Defendants CALIFORNIA  
DEPARTMENT OF TRANSPORTATION, et al.*

**ORDER**

Based on the foregoing Stipulation and good cause appearing therefor, this case is hereby dismissed without prejudice.

IT IS SO ORDERED.

DATED: December 4, 2014

  
HONORABLE WILLIAM ALSUP