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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18
19 CENTER FOR BIOLOGICAL DIVERSITY,

20 Plaintiff,

21 vs.

22 HAALAND, ET AL,

23 Defendants,

24 and

25 IONEER USA CORPORATION,

26 Defendant-Intervenor.
27
28

Case No.: 2:20-cv-1812-JCM-NJK

JOINT MOTION TO EXTEND TIME TO
FILE A MOTION FOR AWARD OF
ATTORNEYS' FEES AND LITIGATION
EXPENSES

1 Plaintiff and Federal Defendants hereby file this joint motion to extend the time for
2 Plaintiff to file a motion for attorneys' fees and litigation expenses to allow the Plaintiff and
3 Federal Defendants time to attempt to resolve the matter without Court involvement. As of the
4 time of this filing, counsel for Defendant-Intervenor has not responded with its position on this
5 joint motion.

6 As explained below, under the applicable rules and attorney-fee award provision of the
7 Endangered Species Act, 16 U.S.C. § 1540(g)(1)(C), Plaintiff the Center for Biological Diversity
8 must file such a motion and bill of costs, should one be necessary, within 14 days of the final
9 judgment, ECF No. 63, i.e., by June 3, 2021. Fed. R. Civ. P. 54(d)(2)(B); Local Practice Rule 54-
10 1(a). Pursuant to LR 7-2, LR 7-3, and LR IA 6-1 this is the first motion for extension of time for
11 Plaintiff to file a motion for award of attorneys' fees and litigation expenses.

12 Such a motion will further interest of judicial efficiency for the following reasons:

13 On April 21, 2021, the Court issued an Order granting summary judgment for Plaintiff on
14 Plaintiff's third claim, brought pursuant to the citizen-suit provision of the Endangered Species
15 Act, 16 U.S.C. § 1540(g)(1)(C), and ordered FWS to submit to the Federal Register proposed
16 rules to list and to designate critical habitat rule for Tiehm's buckwheat within 30 days. ECF
17 No. 42. The Court denied summary judgment for Plaintiff on the first and second claims of the
18 Amended Complaint, ECF No. 11. *Id.* The Court entered judgment that same day. ECF No. 43.

19 On April 28, 2021, Defendants filed an emergency motion to amend or alter the judgment
20 as to Plaintiff's third claim for relief, and moved to stay judgment pending its resolution. ECF
21 Nos. 44 ("59(e) Motion"), 45. On April 30, the Court granted Defendants' motion for stay of
22 judgment. ECF No. 47. All briefs relating to the 59(e) Motion were submitted by May 9, 2021.
23 ECF Nos. 48-50.

24 On May 9, 2021, Federal Defendants and Plaintiff filed their first joint motion to extend
25 the time for the Court's ruling on the 59(e) Motion by another week, until May 17, 2021, to
26 allow Federal Defendants and the Center to negotiate the terms of a stipulation that would
27 remove the need for the Court to rule on the Motion. ECF No. 51. On May 10, 2021, the Court
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1 granted their motion, withheld its ruling on the 59(e) Motion until May 17, 2021, and ordered
2 Federal Defendants and the Center to provide a status update by May 14, 2021 as to whether they
3 had reached agreement. ECF No. 56.

4 In a joint status report and a second joint motion to extend filed on May 14, 2021, the
5 Center and Federal Defendants informed the Court that the parties had reached an agreement in
6 principle but required additional time to finalize a stipulation. They requested that the Court
7 further withhold a ruling on the 59(e) Motion until May 19, 2021, and advised they would
8 provide another update by May 18, 2021. ECF Nos. 57, 58.

9 On May 17, 2021, the parties filed an updated status report, ECF No. 61, and a stipulation
10 with a proposed Remedy Order that resolved their dispute and requested that the Court enter
11 their Remedy Order for Plaintiff's Claim 3. ECF No. 60. The Court entered the Remedy Order
12 that same day and denied both the Defendants' 59(e) Motion and the parties' second joint motion
13 to extend as moot. ECF No. 62. On May 20, 2021, the Court issued an amended judgment on
14 Plaintiff's third claim for which it had granted summary judgment for Plaintiff on April 21,
15 2020. ECF No. 63; ECF No. 42.

16 The Remedy Order requires Federal Defendants to submit to the Federal Register no later
17 than May 31, 2021, a 12-month finding pursuant to 16 U.S.C § 1533(b)(3)(B) as to whether
18 listing the Tiehm's buckwheat is either "warranted" or "not warranted." ECF No. 62, para. A, l.
19 5. The Remedy Order further requires that if FWS makes a "warranted" 12-month finding, then
20 no later than September 30, 2021, Federal Defendants shall submit a proposed listing rule to the
21 Federal Register pursuant to 16 U.S.C. § 1533(b)(5)(A)(i). *Id.* para. B. If FWS makes a
22 "warranted" 12-month finding and finds that designating critical habitat is prudent and
23 determinable, then unless the Office of Management and Budget determines that a critical habitat
24 designation would qualify as a "significant regulatory action" under Executive Order 12,866,
25 Defendants shall submit to the Federal Register a proposed critical habitat designation pursuant
26 to 16 U.S.C. § 1533(a)(3)(A)(i) by January 31, 2022. If the Office of Management and Budget
27 determines the proposed critical habitat designation is a "significant regulatory action" under
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1 Executive Order 12,866, Federal Defendants will have until May 2, 2022 to submit the proposed
2 critical habitat designation to the Federal Register. *See id.* para. C.

3 Under Fed. R. Civ. P. 54(d)(2)(B), Plaintiff has 14 days from the entry of judgment to file
4 any motion for attorneys' fees and litigation costs. *See* Local Practice Rule 54-1(a); 16 U.S.C. §
5 1540(g)(4) ("The court, in issuing any final order in any suit brought pursuant to paragraph (1) of
6 this subsection, may award costs of litigation (including reasonable attorney and expert witness
7 fees) to any party, whenever the court determines such award is appropriate."). Accordingly, the
8 current deadline for Plaintiff to file its motion for attorneys' fees and litigation costs, should one
9 be necessary, is June 3, 2021.

10 To provide additional time for attempting to resolve the matter of attorneys' fees and
11 litigation costs absent any further involvement from this Court, the parties respectfully request an
12 extension of time in Fed. R. Civ. P. 54(d)(2)(B) of 60 days. By agreeing to this request for
13 additional time, Federal Defendants are not conceding that Plaintiff is entitled to fees. Federal
14 Defendants reserve all rights and defense to entitlement and reasonableness of any fee
15 request. The parties request that this Court set a date of July 19, 2021 for the parties to provide a
16 status update on the resolution of Plaintiff's attorneys' fees and litigation costs or for Plaintiff to
17 file their motion for such fees and costs, if such a motion is necessary.

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19 DATED: May 28, 2021

Respectfully submitted,

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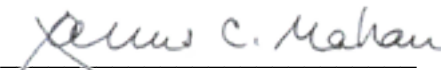
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**ORDER GRANTING FIRST
MOTION TO EXTEND TIME TO FILE A
MOTION FOR AWARD OF ATTORNEYS'
FEES AND LITIGATION EXPENSES**

1 Having come before the Court on Plaintiff's and Federal Defendants' First Joint Motion
2 to Extend Time to File a Motion for Award of Attorneys' Fees and Litigation Expenses (ECF
3 No. 64), IT IS HEREBY ORDERED, an extension of time for Plaintiff to file a motion for
4 attorneys' fees and litigation costs is extended by 60 days to July 19, 2021. The parties shall
5 provide a status update as to the resolution of Plaintiff's attorneys' fees and litigation costs or
6 Plaintiff will file their motion for such fees and costs, if such a motion is necessary, by July 19,
7 2021.

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9 IT IS SO ORDERED.

10 Dated: June 1, 2021


UNITED STATES DISTRICT JUDGE

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14 DATED: May 28, 2021

15
16 Submitted by:

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