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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE FALLON PAIUTE-SHOSHONE TRIBE
and the CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, JAKE
VIALPANDO in his official capacity as Field
Manager of the Bureau of Land Management
Stillwater Field Office, and ORMAT
NEVADA INC.,

Defendants.

Case No. 3:21-cv-00512-RCJ-CSD

**JOINT STIPULATION AMENDING
SCHEDULING ORDER**

1 Plaintiffs Fallon Paiute-Shoshone Tribe (“FPST”) and the Center for Biological Diversity
2 (“CBD”), Federal Defendants U.S. Department of the Interior, et al. (“Federal Defendants”), and
3 Defendant Ormat Nevada, Inc. (“Ormat”) (together, the “Parties”) have conferred and hereby
4 jointly submit the following stipulation and second amendment to the scheduling order, ECF 67,
5 for the Court’s consideration.

6 Due to unforeseen scheduling conflicts affecting the availability of Defendants’ attorneys
7 and unanticipated absences of federal agency staff, the Parties have agreed to extend the briefing
8 schedule as set out below. Ormat also commits as part of this stipulation that it will temporarily
9 pause construction of the Phase I power plant either until the U.S. Fish and Wildlife Service
10 issues a Biological Opinion for the Project thereby concluding the Section 7 consultation
11 process, or until February 28, 2023, whichever is sooner.

- 12 1. Federal Defendants and Ormat shall each file a brief in support of their cross-
13 motions for summary judgment and responding to Plaintiffs’ motion for
14 summary judgment by October 28, 2022. Federal Defendants’ brief and Ormat’s
15 brief shall each be limited to 45 pages. Federal Defendants and/or Ormat may
16 also file a motion to strike concerning the admission of extra-record evidence
17 concurrently with their combined responses/motions for summary judgment. If
18 filed, the motion(s) to strike shall be limited to 15 pages.
- 19 2. Plaintiffs shall file a combined reply in support of their summary judgment
20 motion and in response to Federal Defendants’ and Ormat’s cross-motions for
21 summary judgment, which will be due on December 9, 2022. Plaintiffs’ brief
22 shall be limited to 60 pages. If a motion to strike is filed, Plaintiffs may respond
23 concurrently with their reply/response. Plaintiffs’ response opposing the
24 motion(s) to strike shall be limited to 15 pages.
- 25 3. Federal Defendants’ and Ormat’s replies in support of their cross-motions for
26 summary judgment will each be due on January 20, 2023, and each will be
27 limited to 45 pages. If a motion to strike is filed, Federal Defendants and/or
28 Ormat may reply concurrently with their reply in support of their cross-motions

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for summary judgment. Replies in support of a motion to strike shall be limited to 10 pages.

4. Plaintiffs do not waive any claims under the ESA or Religious Freedom Restoration Act (“RFRA”) which may not be resolved on summary judgment due to unresolved issues of material fact. Plaintiffs take the position that because the ESA and RFRA each provide their own cause of action, claims under these statutes are not limited in scope by the APA and thus may not be limited to the administrative record compiled by the agency. Federal Defendants take the position that ESA Claims against them are record-review claims governed by both the scope and standard of the APA that do not present any unresolved issues of material fact. Further, Federal Defendants and Ormat take the position that summary judgment and the briefing schedule set forth above can resolve all claims in Plaintiffs’ First Amended Complaint.¹

In light of the Parties’ commitment to the briefing schedule outlined herein, and Ormat’s intention to suspend construction until either completion of the Section 7 consultation process or until February 28, 2023, the Parties respectfully request expedited review by the Court, with a decision on the merits before the end of February 2023.

¹ Federal Defendants also take the position that because Plaintiffs’ APA claims challenge a final agency action, those claims in this case should be decided based on the Administrative Record compiled by Federal Defendants. However, should the Court find that the introduction of extra-record evidence is appropriate, the Parties do not waive their right to seek discovery regarding the RFRA and ESA claims.

1 RESPECTFULLY SUBMITTED this 7th day of October, 2022.

2
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Attorneys for Defendants/Appellants - U.S. Department of the Interior, Bureau of Land Management, and Jake Vialpando in his official capacity as Field Manager of the Bureau of Land Management Stillwater Field Office

ORDER

IT IS SO ORDERED.

DATED: October 11, 2022.



UNITED STATES MAGISTRATE JUDGE