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COUNSEL IDENTIFICATION ON FINAL PAGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE
COUNCIL, *et al.*,

Plaintiffs,

v.

SALLY JEWELL, in her official capacity
as Secretary of the Interior, *et al.*,

Defendants.

SAN LUIS & DELTA MENDOTA
WATER AUTHORITY, *et al.*,

Defendants-Intervenors.

ANDERSON-COTTONWOOD
IRRIGATION DISTRICT, *et al.*,

Joined Parties.

Case No. 1:05-cv-01207 LJO-EPG

**STIPULATION AND ORDER TO FILE A
FIFTH SUPPLEMENTAL COMPLAINT**

1 **RECITALS**

2 WHEREAS, on October 20, 2016, the Court dismissed Plaintiffs’ Second Claim for Relief
3 “on the ground that this Court lacks subject matter jurisdiction over the Second Claim for relief
4 because certain allegations in the claim are moot and because Plaintiffs have failed to comply with
5 the ESA’s 60-day notice requirement as to any non-moot allegations,” Doc. 1045 (“10/20/16
6 Order”) at 25;

7 WHEREAS, the Court has not yet issued a final ruling on motions filed on June 20, 2016
8 by the Sacramento River Settlement Contractors and Federal Defendants to dismiss the Fifth and
9 Sixth Claims for Relief (Doc. 1031 & 1032);

10 WHEREAS, on November 14, 2016, Plaintiffs mailed to Defendants Secretary of Interior
11 and Commissioner of Bureau of Reclamation a 60-day notice (“2016 Notice Letter”) asserting
12 alleged violations of the Endangered Species Act, *see* Doc. 1055-11.

13 WHEREAS, on January 19, 2017, Plaintiffs filed a Motion for Reconsideration or, in the
14 Alternative, Leave to Supplement the Complaint, *see* Doc. 1055;

15 WHEREAS, Plaintiffs’ alternative motion for leave seeks to supplement the complaint for
16 the limited purpose of reviving the Second Claim as it pertains to Reclamation’s reliance on the
17 2015 reinitiated consultation, and adding an allegation pertaining to the 2016 Notice Letter, *see*
18 Docs. 1055-1 (proposed Fifth Supplemental Complaint), 1055-12 (redlined version of proposed
19 Fifth Supplemental Complaint);

20 WHEREAS, Plaintiffs acknowledge that the Court has ruled that the allegations in
21 paragraphs 173 and 174 of the Fourth Supplemental Complaint pertaining to the 2005 Smelt
22 OCAP Biological Opinion are moot, *see* 10/20/16 Order at 20, 25, and Plaintiffs confirm that their
23 motion does not seek reconsideration of that ruling and that Paragraphs 173 and 174 are included
24 in the proposed Fifth Supplemental Complaint for background informational purposes only;

25 WHEREAS, Defendants oppose Plaintiffs’ motion for reconsideration but do not oppose
26 Plaintiffs’ motion in the alternative for leave to file a Fifth Supplemental Complaint, subject to
27 Plaintiffs’ acknowledgement and confirmation of the Court’s mootness ruling regarding
28 paragraphs 173 and 174 of the Fourth Supplemental Complaint (now paragraphs 175 and 176 of

1 the proposed Fifth Supplemental Complaint), and subject to a reservation of Defendants' rights to
2 assert additional affirmative defenses and/or a motion to dismiss with respect to the Second Claim;

3 WHEREAS, the parties agree that it would be in the interests of judicial efficiency to avoid
4 further briefing on Plaintiffs' Motion for Reconsideration or, in the Alternative, Leave to
5 Supplement the Complaint; and

6 WHEREAS, the Plaintiffs agree to withdraw their Motion for Reconsideration or, in the
7 Alternative, Leave to Supplement the Complaint, *see* Doc. 1055, upon the Court's approval of the
8 accompanying Order;

9 **STIPULATION**

10 NOW THEREFORE, counsel for Plaintiffs and Defendants hereby stipulate to Plaintiffs
11 filing the proposed Fifth Supplemental Complaint and accompanying exhibits, currently found at
12 ECF Document Nos. 1055-1 through 1055-8, without prejudice to Defendants' rights to assert
13 additional affirmative defenses and/or a motion to dismiss with respect to the Second Claim for
14 Relief. The Fifth Supplemental Complaint, subject to the Court's approval, shall be filed following
15 the Court's ruling on the pending motions to dismiss, and that ruling shall be applicable to the Fifth
16 Supplemental Complaint.

17 DATED: February 15, 2017

18 Barbara J. Chisholm
Barbara J. Chisholm

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DATED: February 15, 2017

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Pleasant Grove-Verona Mutual Water Company,
Pelger Mutual Water Company, Meridian Farms
Water Company, Henry D. Richter, et al., Howald
Farms, Inc., Oji Brothers Farm, Inc., Oji Family
Partnership, Carter Mutual Water Company,
Windswept Land And Livestock Company, Maxwell
Irrigation District, and Tisdale Irrigation and
Drainage Company*

DATED: February 15, 2017

/s/ Andrew Hitchings (as authorized on Feb. 15, 2017)
Andrew Hitchings

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LLC, and David and Alice te Velde Family Trust*

DATED: February 15, 2017

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Water District, Mercy Springs Water District, Oro
Loma Water District, and Tranquillity Irrigation
District*

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ORDER

Pursuant to the Parties' Stipulation, the Court hereby GRANTS Plaintiffs leave to file the proposed Fifth Supplemental Complaint, currently found at ECF Document Nos. 1055-1 through 1055-8.

IT IS SO ORDERED.

Dated: February 17, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE