

1 WHEREAS, on June 21, 2017, the Court extended the deadlines to file all motions
2 regarding completeness of the administrative record, any motions or stipulations to limit review of
3 the Sixth Claim as against Federal Defendants to the administrative record, and any notice to the
4 Court and parties of intent to seek discovery on the Sixth Claim as against Federal Defendants, to
5 and including July 5, 2017 (ECF 1094);

6 WHEREAS, Plaintiffs and Federal Defendants have reached an agreement that will avoid
7 discovery, with limited exceptions, against the Federal Defendants with respect to Plaintiffs' Sixth
8 Claim;

9 WHEREAS, in order to avoid discovery against Federal Defendants on Plaintiffs' Sixth
10 Claim, Federal Defendants have agreed to submit to the Court a list of authenticated documents
11 (Attachment 1) that may be relevant to Plaintiffs' Sixth Claim as against the SRS Contractors;

12 WHEREAS, it is Federal Defendants' position that the documents listed in Attachment 1
13 shall not be used by Plaintiffs in support of Plaintiffs' Sixth Claim as against Federal Defendants,
14 and Federal Defendants retain their right to object to any use of these documents, move for a
15 protective order to strike any of these documents in dispositive motion briefing, or otherwise
16 respond to the use of these documents as appropriate;

17 WHEREAS, in order to avoid discovery against Federal Defendants on Plaintiffs' Sixth
18 Claim, Federal Defendants have agreed to supplement the administrative record for the Sixth
19 Claim that was previously lodged by Reclamation (ECF 1084) with the documents identified in
20 Attachment 2;

21 WHEREAS, Federal Defendants have agreed that the documents identified in Attachment
22 2 as supplements to the administrative record (Attachment 2) can be used by Plaintiffs as
23 appropriate in support of Plaintiffs' Sixth Claim as against Federal Defendants;

24 WHEREAS, Federal Defendants reserve their right to oppose, move to strike, or otherwise
25 object to the use by Plaintiffs in support of Plaintiffs' Sixth Claim as against Federal Defendants of
26 any documents beyond those contained in the administrative record for the Sixth Claim that was
27 previously lodged by Reclamation (ECF 1084) and the documents identified in Attachment 2 as
28 supplements to the administrative record (*see, i.e.* ECF 1021 at 11-12; ECF 1025 at 2);

1 WHEREAS, Plaintiffs and Federal Defendants agree that Plaintiffs' Sixth Claim as against
2 the Federal Defendants is likely to be resolved on cross-motions for summary judgment;

3 WHEREAS, it is Plaintiffs' position that the documents listed in Attachment 1 and other
4 documents may be relevant and used by Plaintiffs in support of Plaintiffs' Sixth Claim as against
5 Federal Defendants (ECF 1018 at 29-30) and Plaintiffs retain their right to use these documents
6 and to oppose objections, motions to strike, or other efforts to limit the use of any of these
7 documents in dispositive motion briefing and/or at trial;

8 WHEREAS, nothing in this stipulation prohibits Plaintiffs from moving to supplement the
9 administrative record or requesting that the Court consider extra-record evidence with respect to
10 Plaintiffs' Second and Fourth Claims; nothing in this stipulation prohibits Plaintiffs from
11 requesting that the Court consider declarations and other evidence in support of Plaintiffs'
12 prosecution of the Sixth Claim against Federal Defendants; and nothing in this stipulation limits
13 the scope of discovery which may be propounded upon the SRS Contractor Defendants with
14 respect to Plaintiffs' Sixth Claim against the SRS Contractor Defendants;

15 WHEREAS, nothing in this stipulation prohibits Federal Defendants from opposing any
16 motions to supplement the administrative record and/or motions requesting that the Court consider
17 extra-record evidence, objecting to the use of extra-record evidence, including declarations,
18 moving for a protective order to strike any use of extra-record evidence in dispositive motion
19 briefing, or from otherwise responding to the use of these documents as appropriate.

20 STIPULATION

21 NOW THEREFORE, counsel for Plaintiffs and Federal Defendants hereby stipulate to the
22 following:

23 1. In order to obviate the need for discovery by Plaintiffs against Federal Defendants
24 regarding Plaintiffs' Sixth Claim for Relief, with limited exceptions, Federal Defendants agree to
25 submit to the Court the appended list of documents (Attachment 1) along with a declaration
26 authenticating the documents as either (a) U.S. Bureau of Reclamation documents, (b) documents
27 maintained on government websites, or (c) other publicly available documents, and identifying,
28 wherever possible, the authoring agency or person of each document; should the authoring agency

1 be unknown, Federal Defendants will include a link to the website where the document was
2 maintained or available at the time the document list was submitted to the Court;

3 2. All parties retain their right to object to the use of any document identified in
4 Attachment 1 in dispositive motion briefing and/or at trial, including but not limited to: raising
5 evidentiary objections; filing protective orders or motions to strike; or otherwise objecting to the
6 use of the documents as appropriate; provided that Federal Defendants may not object on the
7 ground that a document identified in Attachment 1 has not been authenticated or is not a public
8 record. Plaintiffs retain their right to oppose any efforts to limit the use of the documents
9 identified in Attachment 1 in dispositive motion briefing and/or at trial;

10 3. The parties to this stipulation agree that the documents identified in Attachment 2
11 will supplement the administrative record for the Sixth Claim that was previously lodged by
12 Reclamation (ECF 1084);

13 4. Plaintiffs reserve their right to seek through discovery additional communications
14 between Federal Defendants and any or all SRS Contractors to the extent that Plaintiffs are unable
15 to obtain such communications from the SRS Contractors. To the extent Plaintiffs seek production
16 of specific documents from Federal Defendants, Plaintiffs will include in their request the
17 documents' sender, recipient, date, and/or title, to the best of Plaintiffs' ability. Plaintiffs reserve
18 their right to depose up to two witnesses from Federal Defendant agencies as subject matter
19 experts. Federal Defendants will not object to the deposition of up to two subject matter experts,
20 but reserve their right to raise other applicable objections to such depositions.

21 5. Federal Defendants will submit the documents identified on Attachment 1 and
22 Attachment 2 on July 14, 2017.

23 DATED: July 5, 2017

24 /s/ Nicole M. Smith
Nicole M. Smith

25 U.S. DEPARTMENT OF JUSTICE
26 ENVIRONMENT & NATURAL RESOURCES
DIVISION
27 601 D Street, NW Room 3712
Washington, D.C. 20044-7611
28 Telephone: (202) 305-0368
Facsimile: (202) 305-0275

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Bradley H. Oliphant, Trial Attorney
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
DIVISION
999 18th St., South Terrace, Ste. 370
Denver, CO 80202
Tel: (303) 844-1381
Facsimile: (303) 844-1350

*Attorneys for Respondents Ryan K. Zinke, in his
official capacity as Secretary of the Interior, et al.*

DATED: July 5, 2017

/s/ Katherine S. Poole (as authorized on July 5).
Katherine S. Poole

KATHERINE POOLE (SBN 195010)
DOUGLAS ANDREW OBEGI (SBN 246127)
NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter Street, 21st Floor
San Francisco, CA 94104
Telephone: (415) 875-6100
Facsimile: (415) 875-6161

Attorneys for Plaintiff NRDC

HAMILTON CANDEE (SBN 111376)
BARBARA JANE CHISHOLM (SBN 224656)
TONY LOPRESTI (SBN 289269)
CORINNE JOHNSON (SBN 287385)
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

Attorneys for Plaintiff NRDC

TRENT W. ORR (SBN 77656)
EARTHJUSTICE
50 California St. Suite 500
San Francisco, CA 94111
Telephone: (415) 217-2000
Facsimile: (415) 217-2040

Attorneys for Plaintiffs

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ORDER

Pursuant to the Parties' Stipulation, the Court hereby ORDERS that the parties shall comply with the terms of the stipulation.

IT IS SO ORDERED.

Dated: July 7, 2017

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