

1 **RECITALS**

2 WHEREAS, as part of discovery on Plaintiffs’ Sixth Claim, Plaintiff Natural Resources
3 Defense Council (“NRDC”) has subpoenaed two National Oceanic and Atmospheric
4 Administration (“NOAA”) National Marine Fisheries Service (“NMFS”) employees, Maria Rea
5 and Dr. Eric Danner, for deposition testimony;

6 WHEREAS, the non-party Department of Commerce (“Department”), NOAA’s and
7 NMFS’s parent agency, has moved to quash the subpoenas, Dkt. 1153, and NRDC has moved to
8 compel compliance with the subpoenas, Dkt. 1154;

9 WHEREAS, at the hearing on the motion to quash the subpoenas and the motion to compel
10 compliance, Magistrate Judge Erica P. Grosjean stated that she would prefer to adjudicate the
11 dispute in the context of a supplemental claim by Plaintiffs to enforce compliance with the
12 subpoenas and the Department agreed to submit a written statement regarding “how soon it would
13 be able to answer a Third-Party complaint against it and appear before the Court for a hearing,”
14 and was ordered to also state whether it would object to amendment of the complaint, Dkt. 1166;

15 WHEREAS, the Department has filed a statement with the Court stating that it “would not
16 object to amendment of the complaint in this case for the sole purpose of adding a claim which
17 challenges the Department’s denial of Plaintiffs’ request to depose Ms. Rea and Dr. Danner,” and
18 “could file an answer in response to such a limited complaint within two weeks of service,” Dkt.
19 1172;

20 WHEREAS, in light of those representations, Magistrate Judge Grosjean has stated that she
21 will reserve ruling on the pending motion to quash and motion to compel until at least March 9,
22 2018, Dkt. 1174;

23 WHEREAS, Plaintiffs seek to supplement the currently operative complaint for the sole
24 and limited purpose of adding a claim against the Department and the NOAA Acting General
25 Counsel, in her official capacity, to enforce compliance with the subpoenas issued to Ms. Rea and
26 Dr. Danner, *see* Ex. 1 (proposed Sixth Supplemental Complaint), Ex. 2 (redlined version of
27 proposed Sixth Supplemental Complaint);

28 WHEREAS, Defendants (which for purposes of this stipulation refers to the defendants

1 and intervenor-defendants identified in the Fifth Supplemental Complaint, and does not include
2 the newly named Department and the NOAA Acting General Counsel), in entering into this
3 stipulation, do not waive any rights to object to the use of any deposition testimony by the NMFS
4 employees who are the subject of the subpoenas;

5 WHEREAS, the parties agree that supplementation of the currently operative complaint to
6 add Plaintiffs' Seventh Claim, a claim solely against the Department and the NOAA Acting
7 General Counsel, does not affect the existing schedule for summary judgment relating to
8 Plaintiffs' Second, Fourth and Sixth Claims, *see* Dkt. 1151;

9 WHEREAS, the parties, in entering into this stipulation, do not waive any rights they may
10 have to seek an extension of the summary judgment briefing schedule for good cause;

11 WHEREAS, Defendants, in entering into this stipulation, do not waive any rights they may
12 have to respond to the pending motion to quash and motion to compel, Dkt. 1153, 1154, and any
13 orders entered thereon in any manner afforded by law; and

14 WHEREAS, Defendants, in entering into this stipulation, do not waive any rights they may
15 have to file amended or supplemental answers, or any other response afforded by law, to the Sixth
16 Supplemental Complaint, but shall not be required to do so pursuant to the parties' agreement that
17 upon the filing of the Sixth Supplemental Complaint, any allegations therein not included in the
18 Fifth Supplemental Complaint are automatically denied by Defendants, and such denial is
19 incorporated in full in Defendants' answers to the Fifth Supplemental Complaint, and Defendants'
20 answers (Dkt. 1075, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1112) shall be deemed responsive
21 to the Sixth Supplemental Complaint;

22 **STIPULATION**

23 NOW THEREFORE, counsel for Plaintiffs and Defendants hereby stipulate to the
24 Plaintiffs filing the proposed Sixth Supplemental Complaint and accompanying exhibits.

25 Counsel for Plaintiffs and Defendants further stipulate that, upon the filing of the Sixth
26 Supplemental Complaint, any allegations therein not included in the Fifth Supplemental Complaint
27 are automatically denied by Defendants, and such denial is incorporated in full in Defendants'
28 answers to the Fifth Supplemental Complaint, and Defendants' answers (Dkt. 1075, 1077, 1078,

1 1079, 1080, 1081, 1082, 1083, 1112) shall be deemed responsive to the Sixth Supplemental
2 Complaint.

3 DATED: March 8, 2018

/s/ Barbara J. Chisholm

Barbara J. Chisholm

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21 DATED: March 8, 2018

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capacity as Secretary of the Interior, et al.*

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DATED: March 8, 2018

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Pelger Mutual Water Company, Meridian Farms
Water Company, Henry D. Richter, et al., Howald
Farms, Inc., Oji Brothers Farm, Inc., Oji Family
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DATED: March 8, 2018

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Andrew Hitchings

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DATED: March 8, 2018

/s/ Daniel J. O'Hanlon (as authorized on March 8,
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Daniel J. O'Hanlon

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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 Sixth Supplemental Complaint.

IT IS SO ORDERED.

Dated: March 9, 2018

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