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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE EASTERN DISTRICT OF CALIFORNIA

19 PACIFIC COAST FEDERATION OF) Case No. 1:06-CV-0245 OWW GSA
20 FISHERMEN'S ASSOCIATIONS/INSTITUTE)
21 FOR FISHERIES RESOURCES, *et al.*,)
22 Plaintiffs,) PARTIES' FOURTH STIPULATION AND
23 v.) ORDER RE: MOTION FOR ATTORNEYS'
24 CARLOS M. GUTIERREZ, in his official) FEES
25 capacity as Secretary of Commerce *et al.*,)
26 Defendants.)
27 SAN LUIS & DELTA-MENDOTA WATER)
28 AUTHORITY, *et al.*,)
Defendant-Intervenors.)

1 To facilitate settlement discussions regarding Plaintiffs' claim for attorneys' fees and costs in
2 this case, Plaintiffs Pacific Coast Federation of Fishermen's Associations/Institute for Fisheries
3 Resources, *et al.* ("Plaintiffs") and Defendants Carlos M. Gutierrez, Secretary of Commerce, *et al.*
4 ("Federal Defendants") stipulate and agree, and request that the Court enter an order, to stay briefing
5 on Plaintiffs' motion for an award of attorneys' fees and costs for an additional 90 days. In support
6 of this request, Plaintiffs and Federal Defendants stipulate as follows:

7 1. Judgment was entered in this case on September 9, 2009 (Doc. No. 458), and no party
8 has appealed. On September 18, 2009, pursuant to a stipulation by the parties, the Court entered an
9 Order extending the deadline for Plaintiffs to file a motion for attorneys' fees and costs under Civil
10 Local Rules 292 and 293 and Federal Rule of Civil Procedure 54(d)(2)(B) to be the same deadline as
11 that for filing a motion under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, which
12 was December 9, 2009. Doc. No. 461.

13 2. On December 8, 2009, Plaintiffs filed a motion for an award of attorneys' fees and
14 costs for their work on this litigation. Doc. No. 465. No hearing date was set; instead, concurrently
15 with the filing of the motion, Plaintiffs and Federal Defendants filed their Second Stipulation and
16 Proposed Order Re: Motion for Attorneys' Fees (Doc. No. 464) which explained that before filing
17 their motion for attorneys' fees Plaintiffs had presented Federal Defendants with a confidential letter
18 request to settle their claim including specifics about the amount sought to date, and that settlement
19 negotiations regarding Plaintiffs' claim were ongoing. Plaintiffs and Federal Defendants sought an
20 additional 120 days (to April 13, 2010) before having to brief Plaintiffs' motion within which to
21 pursue possible settlement. On December 14, 2009, the Court approved the parties' second
22 stipulation. Doc. No. 466.

23 3. On March 26, 2010, Plaintiffs and Federal Defendants filed the Parties' Third
24 Stipulation and [Proposed] Order Re: Motion For Attorneys' Fees. Doc. No. 467. The parties
25 explained that Counsel for Plaintiffs in this matter is also lead counsel for Defendant-Intervenors
26 Pacific Coast Federal of Fishermen's Associations, *et al.*, in the *Consolidated Salmon Cases*, Lead
27 Case No. 09-cv-1053-OWW-DLB, that counsel for Federal Defendants is also lead counsel for
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1 Federal Defendants in the *Consolidated Salmon Cases*, and that the press of motions, briefing and
2 hearings in those cases prevented counsel for Plaintiffs and Federal Defendants in this case from
3 engaging in substantive settlement negotiations on Plaintiffs' fee claim. On March 31, 2010, this
4 Court approved the parties' third stipulation and ordered that further proceedings on Plaintiffs'
5 motion for an award of fees and costs be stayed for 90 days, to July 12, 2010. Doc. No. 468.

6 4. Since then, motions, briefing, and hearings on temporary and preliminary injunctive
7 relief, the Administrative Record, the Court's use of experts appointed pursuant to Federal Rule of
8 Evidence 706, and experts proposed to be used by Plaintiffs in up-coming summary judgment
9 proceedings have continued apace in the *Consolidated Salmon Cases*.

10 5. As a result, counsel for Federal Defendants was not able to respond to Plaintiffs' fee
11 letter until June 23, 2010. This was the first substantive response to their fee claim that Plaintiffs
12 have received from Federal Defendants.

13 6. Plaintiffs and Federal Defendants still hope to settle Plaintiffs' claim without
14 unnecessarily burdening the Court, and agree that briefing and argument on Plaintiffs' motion for
15 fees and costs may be unnecessary in light of the parties' intent to attempt to settle Plaintiffs' claim.
16 However, additional time past July 12, 2010 is needed for the parties to pursue further negotiations
17 and obtain final approvals, should a settlement be reached.

18 7. Accordingly, Plaintiffs and Federal Defendants agree that further proceedings on
19 Plaintiffs' motion for an award of fees and costs, including the filing of memoranda and evidentiary
20 and other materials supporting that motion, should be stayed for an additional 90 days. At that time,
21 Plaintiffs and Federal Defendants will either jointly propose a briefing schedule to address Plaintiffs'
22 motion for fees and costs, or the parties shall otherwise apprise this Court of the status of Plaintiffs'
23 motion and any request for action by this Court. If the parties are unable to reach a settlement of
24 Plaintiffs' claim, Plaintiffs will supplement their motion for award of attorneys' fees and costs with
25 documentation of all time and expenses sought, including the fees and costs for additional time spent
26 in seeking fees.

1 Based on the joint stipulation set forth above, the parties respectfully request that this Court
2 stay briefing and argument on Plaintiffs' motion for an award of attorneys' fees and costs for an
3 additional 90 days from the end of the current stay, to September 10, 2010.

4 Respectfully submitted this 28th day of June, 2010.

5
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27 IT IS SO ORDERED.

1 Dated: June 28, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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