

1 ERIC A. LONG (SB# 244147)  
 NATHAN T. MOORE (SB# 268391)  
 2 PAUL, HASTINGS, JANOFSKY & WALKER LLP  
 55 Second Street  
 3 Twenty-Fourth Floor  
 San Francisco, CA 94105-3441  
 4 Telephone: (415) 856-7000  
 Facsimile: (415) 856-7100

5 RENÉ VOSS (SB# 255758)  
 6 15 Alderney Road  
 San Anselmo, CA 94960-1601  
 7 Telephone: (415) 446-9027  
 Facsimile: (267) 316-3414

8 Attorneys for Plaintiff  
 9 SEQUOIA FORESTKEEPER

10  
 11 UNITED STATES DISTRICT COURT  
 12 EASTERN DISTRICT OF CALIFORNIA  
 13 FRESNO DIVISION

15 SEQUOIA FORESTKEEPER, a non-profit  
 organization,

16 Plaintiff,

17 vs.

18 UNITED STATES FOREST SERVICE,  
 19 TOM TIDWELL, in his official capacity as  
 Chief of the United States Forest Service, and  
 20 TINA TERRELL, in her official capacity as  
 Forest Supervisor for Sequoia National Forest,

21 Defendants.  
 22

CASE NO. 1:09-CV-00392-LJO-JLT

**UNOPPOSED MOTION AND ORDER TO  
 CONTINUE HEARING ON PLAINTIFF  
 SEQUOIA FORESTKEEPER'S MOTION  
 FOR RECONSIDERATION**

Date: March 9, 2011  
 Time: 8:30 a.m.  
 Dept.: Courtroom 4, 7th Floor

Judge: Honorable Lawrence J. O'Neill

Complaint Filed: March 2, 2009

1 Plaintiff Sequoia ForestKeeper moves the Court for an Order pursuant to Local Rule  
2 230(f), continuing the hearing on Plaintiff's Motion for Reconsideration [Document 86] currently  
3 set for March 9, 2011, for one week, to and until March 16, 2011, to give Plaintiff additional time  
4 to consider an issue raised in the response of Defendants United States Forest Service, Tom  
5 Tidwell, and Tina Terrell (hereafter the "Federal Defendants") [Doc. No. 89 at 1-2.] to Plaintiff's  
6 motion, all as set forth more fully below. Federal Defendants do not oppose the requested  
7 continuance. This motion is made more than seven (7) days before the scheduled hearing date, as  
8 required by Local Rule 230(f).

9 The Federal Defendants filed a "Response" to Plaintiff's Motion for Reconsideration on  
10 February 23, 2011. In that document, Federal Defendants do not oppose Plaintiff's motion on the  
11 "navigable water" issue. [Doc. No. 89 at 1-2.] Instead, Federal Defendants present a legal  
12 argument regarding the Clean Water Act that is materially different from the legal positions taken  
13 by the government and presented to this Court when it ruled upon the parties' Cross-motions for  
14 Summary Judgment. In fact, Federal Defendants now acknowledge several legal errors in their  
15 briefing to this Court that all parties believe have led to legal errors in the Court's Order granting  
16 Federal Defendants summary judgment. Specifically, Federal Defendants acknowledge (1) that  
17 "[their] prior briefs misinterpreted the case law concerning the CWA," (2) that they "incorrectly  
18 asserted that *Rapanos* held that the term 'navigable water,' for purposes of the CWA, includes  
19 only relatively permanent, standing or flowing bodies of water," and (3) that they "regret that  
20 these errors may have led the Court astray." Doc. No. 89 at 4-5.

21 Upon review of the Federal Defendants' Response and the Court's Order on Summary  
22 Judgment [Document 80], Plaintiff requires additional time to consider the government's material  
23 change in position and the significantly contrary legal argument presented by Federal Defendants  
24 in their Response.

25 Plaintiff's reply is currently due to be filed on March 2, 2011. This motion is not made  
26 for the purpose of vexation or delay, but to facilitate efficiency by ensuring that the parties have  
27 an opportunity to fully explore a major issue raised by the pending motion.  
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