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Water Agency

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COALITION FOR A SUSTAINABLE DELTA
and KERN COUNTY WATER AGENCY

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, RAY LaHOOD, in his
official capacity as Secretary of Transportation,
MARITIME ADMINISTRATION, and JAMES
E. CAPONITI, in his official capacity as Acting
Deputy Maritime Administrator,

Defendants.

Case No: 1:09-CV-02023-LJO-BAM

STIPULATION OF PARTIAL DISMISSAL

WHEREAS, the Coalition For A Sustainable Delta and the Kern County Water Agency
("Plaintiffs") filed a Complaint for Declaratory and Injunctive Relief in Case No. 1:09-CV-00480 on
March 12, 2009;

1 WHEREAS, Plaintiffs filed a First Amended Complaint for Declaratory and Injunctive Relief
2 (Dkt. #23) as a matter of right pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure on May
3 28, 2009;

4 WHEREAS, Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief
5 (Second Amended Complaint) (Dkt. #75) on July 23, 2009;

6 WHEREAS, the Eighth, Ninth, and Tenth Claims for Relief contained in Plaintiffs' Second
7 Amended Complaint allege that the Department of Transportation Maritime Administration (MARAD)
8 violated section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., by, among other things,
9 failing to consult with the U.S. Fish and Wildlife Service (Service) regarding the effects of the Removal
10 of Non-Retention Vessels from National Defense Reserve Fleet Sites for Disposal Project located at the
11 Suisun Bay Reserve Fleet Facility on the threatened delta smelt and its designated critical habitat;

12 WHEREAS, MARAD entered into consultation with the National Marine Fisheries Service
13 (NMFS) in August of 2007;

14 WHEREAS, it was agreed between the NMFS and MARAD that the consultation would be
15 stayed and continued following MARAD's completion of its environmental analysis of fleet operations
16 and vessel disposal activities under the National Environmental Policy Act;

17 WHEREAS, MARAD issued the Final Programmatic Environmental Assessment and Finding of
18 No Significant Impact for Removal and Disposal of Non-Retention Vessels from the National Defense
19 Reserve Fleet on August 31, 2009;

20 WHEREAS, on January 19, 2010 and May 13, 2010, MARAD submitted a request to NMFS to
21 concur with MARAD's determination that the Removal of Non-Retention Vessels from National
22 Defense Reserve Fleet Sites for Disposal Project located at the Suisun Bay Reserve Fleet Facility may
23 affect but is not likely to adversely affect the threatened delta smelt and its critical habitat; pursuant to
24 Section 7(a)(2) of the ESA;

25 WHEREAS, on June 1, 2011, NMFS concurred with MARAD's determination that listed species
26 and designated critical habitat are not likely to be adversely affected by MARAD's proposed removal of
27 non-retention vessels from the Suisun Bay Reserve Fleet Facility;

1 WHEREAS, on January 19, 2010, and June 2010, MARAD submitted a request to the Service to
2 concur with MARAD's determination that the Removal of Non-Retention Vessels from National
3 Defense Reserve Fleet Sites for Disposal Project located at the Suisun Bay Reserve Fleet Facility may
4 affect but is not likely to adversely affect the threatened delta smelt and its critical habitat;

5 WHEREAS, on June 20, 2011, pursuant to section 7(a)(2) of the ESA, the Service concurred that
6 the proposed action is not likely to adversely affect the delta smelt or adversely modify its critical
7 habitat;

8 NOW, THEREFORE, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the parties hereby stipulate to
9 the dismissal of the Eighth, Ninth, and Tenth Claims for Relief contained in Plaintiffs' Second Amended
10 Complaint (Dkt. #75). Dismissal is without prejudice, with each party to bear its own costs, expenses,
11 and attorneys' fees as to the dismissed claims. All other claims in the Second Amended Complaint are
12 unaffected by this stipulation.

13 Respectfully submitted this 25th day of October, 2011

14 NOSSAMAN LLP

KERN COUNTY WATER AGENCY
AMELIA T. MINABERRIGARAI

15 /S/ Paul S. Weiland (with permission by
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19
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ATTORNEY GENERAL

21
22 By: /S/ Kevin W. McArdle
KEVIN W. MCARDLE, Trial Attorney
23 United State Department of Justice,
Environmental & Natural Resources Division
24 Attorneys for FEDERAL DEFENDANTS

25 IT IS SO ORDERED.

26 Dated: October 27, 2011

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