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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

*BAY.ORG (DOING BUSINESS AS THE  
BAY INSTITUTE), NATURAL  
RESOURCES DEFENSE COUNCIL,  
INC., DEFENDERS OF WILDLIFE,*

Plaintiffs,

v.

*RYAN ZINKE (IN HIS OFFICIAL  
CAPACITY AS SECRETARY OF THE  
INTERIOR), GREG SHEEHAN (IN HIS  
OFFICIAL CAPACITY AS ACTING  
DIRECTOR, U.S. FISH AND WILDLIFE  
SERVICE), U.S. FISH AND WILDLIFE  
SERVICE,*

Defendants,

*STATE WATER CONTRACTORS,  
METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA,  
DEPARTMENT OF WATER  
RESOURCES,*

Intervenor Defendants.

CASE NO. 1:17-CV-01176 LJO EPG

**SCHEDULING CONFERENCE ORDER**

**Plaintiffs' Motion for  
Summary Judgment: October 10, 2018**

**Defendants' Oppositions  
/ Cross-Motions for  
Summary Judgment: November 9, 2018**

**Plaintiffs' Reply /  
Oppositions to  
Defendants' Motions for  
Summary Judgment: November 30, 2018**

**Defendants' Reply  
to Cross-Motions  
for Summary  
Judgment: December 21, 2018**

1 This Court conducted an Initial Scheduling Conference on October 3, 2017. Claire  
2 Woods appeared telephonically on behalf of Plaintiffs. Nicole Smith and Bradley Oliphant  
3 appeared telephonically on behalf of defendants. William Sloan, Rebecca Sheehan, and Melinda  
4 Pilling appeared telephonically on behalf of Intervenor Defendants. Pursuant to Fed. R. Civ. P.  
5 16(b), this Court sets a schedule for this action.

6 **I. Amendments to The Parties' Pleadings**

7  
8 If plaintiffs are granted leave to file an amended complaint, Defendants shall have 30 days  
9 in which to answer or otherwise respond to Plaintiffs' amended complaint. Further, if Plaintiffs  
10 are granted leave to file an amended complaint, the parties shall meet and confer within 30 days  
11 regarding whether amendments to the schedule shall be necessary.

12 **II. Consent To Magistrate Judge**

13 The parties have not consented to Magistrate Judge jurisdiction. Out of fairness, the Court  
14 believes it is necessary to forewarn litigants that the Fresno Division of the Eastern District of  
15 California now has the heaviest District Court Judge caseload in the entire nation. While the  
16 Court will use its best efforts to resolve this case and all other civil cases in a timely manner, the  
17 parties are advised that not all of the parties' needs and expectations may be met as expeditiously  
18 as desired. As multiple trials are now being set to begin upon the same date, parties may find their  
19 case trailing with little notice before the trial begins. The law requires that the Court give any  
20 criminal trial priority over civil trials or any other matter. The Court must proceed with a criminal  
21 trial even if a civil trial was filed earlier and set for trial first. Continuances of any civil trial under  
22 these circumstances will no longer be entertained, absent a specific and stated finding of good  
23 cause. All parties should be informed that any civil trial set to begin during the time a criminal  
24 trial is proceeding will trail the completion of the criminal trial.

25 The parties are reminded of the availability of United States Magistrate Judge Erica  
26 Grosjean to conduct all proceedings in this action. A United States Magistrate Judge is available  
27 to conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule  
28 of Civil Procedure 73, and Local Rule 305. The same jury pool is used by both United States

1 Magistrate Judges and United States District Court Judges. Any appeal from a judgment entered  
2 by a United States Magistrate Judge is taken directly to the United States Court of Appeal for the  
3 Ninth Circuit. However, the parties are hereby informed that no substantive rulings or decisions  
4 will be affected by whether a party chooses to consent.

5 Finally, the Fresno Division of the Eastern District of California, whenever possible, is  
6 utilizing United States Article III District Court Judges from throughout the nation as Visiting  
7 Judges. Pursuant to the Local Rules, Appendix A, reassignments will be random, and the parties  
8 will receive no advance notice before their case is reassigned to an Article III District Court Judge  
9 from outside of the Eastern District of California. Therefore, the parties are directed to consider  
10 consenting to Magistrate Judge jurisdiction to conduct all further proceedings, including trial.

11 **III. Preparation of the Administrative Record**

12 Defendants have agreed to prepare the administrative record in this case and lodge it with  
13 the Court. The deadlines relating to the preparation of the administrative record are:

- 14 **April 20, 2018** Defendants lodge the administrative record  
15  
16 **May 11, 2018** Motion to supplement the administrative record  
17  
18 **May 28, 2018** Response to motion to supplement the administrative record  
19  
20 **June 4, 2018** Reply to motion to supplement the administrative record

21 **IV. Dates for Filing Briefs**

22 The Court set a briefing schedule for the parties to file cross-motions for summary  
23 judgment. All motions will be heard before United States District Judge Lawrence J. O'Neill in  
24 Courtroom 4. The Court will advise the parties if a hearing on any motion is required after  
25 reviewing the briefing. Given the nature of this case, the parties are not required to submit a joint  
26 statement of undisputed facts when filing motions for summary judgment. However, prior to  
27 filing such motion, the parties are ordered to meet, in person or by telephone, and discuss the  
28 issues to be raised in the motion at least twenty-one days prior to filing the motion. The purpose  
of the meeting shall be to: 1) avoid filing motions for summary judgment where a question of fact

1 exists; 2) determine whether the respondent agrees that the motion has merit in whole or in part;  
2 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues  
3 for review by the court; and 5) explore the possibility of settlement before the parties incur the  
4 expense of briefing a summary judgment motion. Each party shall have a page limit of 75 pages  
5 in briefing their motions for all combined briefing. Dates for the filing of briefs are outlined  
6 below:

- 7 **October 10, 2018** Plaintiffs shall file their motion for summary judgment on all claims  
8 **November 9, 2018** Defendants' oppositions and any cross-motions for summary judgment  
9 **November 30, 2018** Plaintiffs' reply and oppositions to Defendants' motions for summary  
10 judgment  
11 **December 21, 2018** Defendants' reply to their cross-motions for summary judgment

12 **V. Settlement Conference**

13 A settlement conference has not been scheduled because the parties have indicated that  
14 settlement is unlikely. The parties may contact the Court if they determine that a settlement  
15 conference would be beneficial at any stage of the proceedings. Unless otherwise permitted in  
16 advance by the Court, the attorneys who will try the case shall appear at the Settlement  
17 Conference. Additionally, the parties and the person or persons having full authority to negotiate  
18 and settle the case on any terms must be present at the conference.<sup>1</sup> Consideration of settlement  
19 is a serious matter that requires preparation prior to the settlement conference. Set forth below are  
20 the procedures the Court will employ when conducting the conference.

21 ***Confidential Settlement Statements***

22 At least five (5) court days prior to the settlement conference, each party shall submit a  
23 Confidential Settlement Conference Statement in Word format directly to the judge's chambers  
24 who is conducting the settlement conference. The statement shall not be filed on the docket or  
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26 <sup>1</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are  
27 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by  
28 a person or persons who occupy high executive positions in the party organization and who will be directly involved  
in the process of approval of any settlement offers or agreements. To the extent possible, the representative shall  
have the authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's  
most recent demand.

1 served on any other party. Each statement shall be clearly marked "confidential" with the date and  
2 time of the settlement conference clearly noted on the first page. The Confidential Settlement  
3 Conference Statement shall include the following:

4 A. A brief statement of the facts of the case.

5 B. A brief statement of the claims and defenses, *i.e.*, statutory or other grounds  
6 upon which the claims are founded; a forthright evaluation of the parties'  
7 likelihood of prevailing on the claims and defenses; and a description of the major  
8 issues in dispute.

9 C. A summary of the proceedings to date.

10 D. An estimate of the cost and time to be expended for further discovery, pretrial  
11 and trial.

12 E. The relief sought.

13 F. The party's position on settlement, including present demands and offers and a  
14 history of past settlement discussions, offers and demands.

15 **VI. Related Matters Pending**

16 This matter is not related to any other case.

17 **VII. Effect Of This Order**

18 This order represents the Court and the parties' best estimated schedule to complete this  
19 case. Any party unable to comply with the dates outlined in this order shall immediately file an  
20 appropriate motion or stipulation identifying the requested modification(s).

21 *The dates set in this Order are considered to be firm and will not be modified absent a*  
22 *showing of good cause, even if a stipulation to modify is filed.* Stipulations extending the  
23 deadlines contained herein will not be considered unless they are accompanied by affidavits or  
24 declarations with attached exhibits, where appropriate, that establish good cause for granting the  
25 requested relief. Due to the impacted nature of the civil case docket, this Court disfavors requests  
26 to modify established dates.

27 All counsel are expected to familiarize themselves with the Federal Rules of Civil  
28 Procedure and the Local Rules of the Eastern District of California and to keep abreast of any

1 amendments thereto. The Court requires strict compliance with these rules. Sanctions will be  
2 imposed for failure to follow the rules as provided in both the Federal Rules of Civil Procedure  
3 and the Local Rules of the Eastern District of California.

4 Failure to comply with this order shall result in the imposition of sanctions.

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6 IT IS SO ORDERED.

7 Dated: October 20, 2017

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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