

1 REMY, THOMAS, MOOSE and MANLEY, LLP  
 2 WHITMAN F. MANLEY, 130972  
 3 HOWARD F. WILKINS III, 203083  
 4 455 Capitol Mall, Suite 210  
 5 Sacramento, California 95814  
 6 Telephone: (916) 443-2745  
 7 Facsimile: (916) 443-9017  
 8 [wmanley@rtmmlaw.com](mailto:wmanley@rtmmlaw.com)  
 9 [cwilkins@rtmmlaw.com](mailto:cwilkins@rtmmlaw.com)

10 Attorneys for Defendant-Intervenor  
 11 YUBA COUNTY WATER AGENCY

12 UNITED STATES DISTRICT COURT  
 13  
 14 EASTERN DISTRICT OF CALIFORNIA

15 SOUTH YUBA RIVER CITIZENS LEAGUE,  
 16 a non-profit corporation, and FRIENDS OF THE  
 17 RIVER, a non-profit corporation,

18 Plaintiffs,

19 vs.

20 NATIONAL MARINE FISHERIES SERVICE,  
 21 CARLOS M. GUTIERREZ, as Secretary of  
 22 Commerce, et al.,

23 Defendants.

24  
 25 CORDUA IRRIGATION DISTRICT, DRY  
 26 CREEK MUTUAL WATER COMPANY,  
 27 BROPHY WATER DISTRICT, HALLWOOD  
 28 IRRIGATION COMPANY, RAMIREZ  
 WATER DISTRICT, and YUBA COUNTY  
 WATER AGENCY,

Defendant-Intervenors.

Civil Case No.: 2:06-CV-02845-LKK-JFM

STIPULATION AND ORDER ON FINAL  
 REMEDIES PHASE

1           WHEREAS, Plaintiffs South Yuba River Citizens League’s and Friends of the  
2 River’s (“Plaintiffs’) Sixth Amended Complaint seeks injunctive relief against Defendants  
3 United States Army Corps of Engineers et al., (“Federal Defendants”) as well as a remand  
4 of the biological opinion at issue in this matter;

5           WHEREAS, Defendant-Intervenors Yuba County Water Agency, Cordua Irrigation  
6 District, Dry Creek Mutual Water Company, Brophy Water District, Hallwood Irrigation  
7 Company, and Ramirez Water District (collectively “Defendant-Intervenors”) have  
8 intervened in this case pursuant to the parties’ stipulations and this Court’s orders on  
9 intervention;

10           WHEREAS, On September 2, 2008, the Court granted a stipulation to bifurcate the  
11 instant action into a liability phase and a remedy phase. (ECF No. 165). In this stipulation,  
12 the parties agreed “to withdraw pending discovery and refrain from serving further  
13 discovery and designating experts relating solely to remedies until such time as the Court  
14 may issue an order addressing any remedies phase of this case.” (*Id.* at 2);

15           WHEREAS, on July 8, 2010, the Court granted in part and denied in part Plaintiffs’  
16 and defendants’ motions for summary judgment as to liability. (ECF No. 316). The Court  
17 further ordered supplemental briefing on whether preliminary relief was necessary prior to  
18 litigation of a final remedy. (*Id.* at 74);

19           WHEREAS, Plaintiffs filed supplemental briefing in this matter on July 23, 2010.  
20 (ECF No. 317). Plaintiffs also submitted a proposed order along with their supplemental  
21 briefing. (ECF No. 317-3). While not part of the proposed order, Plaintiffs’ supplemental  
22 briefing indicated that vacatur of the Biological Opinion was a possible remedy;

23           WHEREAS, Federal Defendants and Defendant-Intervenors filed oppositions to  
24 Plaintiffs’ Supplemental Briefing (ECF Nos. 321, 322, and 323) and Plaintiffs filed reply  
25 briefs (ECF Nos. 325 and 326);  
26  
27  
28

1           WHEREAS, on November 16, 2010, following supplemental briefing by all parties,  
2 the Court denied Plaintiffs’ motion for a preliminary injunction without prejudice. (ECF  
3 No. 343). The Court also ordered Claim 4B dismissed without prejudice as prudentially  
4 moot. The Court further set a status conference in the case for November 22, 2010 at 3:00  
5 p.m. and directed the parties to “be prepared to set a schedule for discovery necessary, if  
6 any, for remedy and for briefing final remedy.” Id. at 5. The Court also directed all  
7 interested parties to submit status reports of no more than five pages by November 18,  
8 2010, id.;

9           WHEREAS, in the Joint Status Report filed on November 18, 2010, the parties  
10 notified the Court that they had reached a tentative stipulation regarding discovery and the  
11 scope of relief in the remedial phase of this litigation. The parties further represented they  
12 would work to finalize the language of this stipulation and would make best efforts to  
13 submit a stipulation and proposed order prior to the November 22, 2010 Status Conference  
14 (ECF No. 344);

15           WHEREAS, all parties agree conducting remedial discovery and disclosure of  
16 experts relating to injunctive relief is not necessary if the injunctive relief measures sought  
17 in the final remedies phase of this case are limited to the injunctive relief measures sought  
18 in Plaintiffs’ proposed order filed with their supplemental briefing (ECF No. 317-3) and  
19 vacatur of the Biological Opinion and Incidental Take Statement is eliminated as an option  
20 during remand;

21           NOW THEREFORE, Plaintiffs South Yuba River Citizens League, et al.,  
22 defendants National Marine Fisheries Service, et al. and the Intervenor- Defendants Yuba  
23 County Water Agency, et al., by and through their respective attorneys of record, hereby  
24 stipulate and agree as follows:  
25  
26  
27  
28

1           1.       Upon the Court's approval of this stipulation, all parties agree to refrain from  
2 serving further discovery and designating experts pursuant to Fed. R. Civ. P. 26(a)(2)  
3 addressing the injunctive relief measures sought in the final remedies phase of this case.  
4 This provision does not affect the ability of the parties to submit expert declarations with  
5 their briefing on final injunctive remedies.

6           2.       Upon the Court's approval of this stipulation, Plaintiffs agree they will not  
7 argue or suggest that any relief beyond the particular injunctive relief measures requested  
8 in their proposed order filed with their supplemental briefing (ECF No. 317-3) should be  
9 granted in this case. However, Plaintiffs reserve the right to revise the dates for  
10 implementation of the injunctive relief measures sought and to provide additional specific  
11 details on the injunctive relief measures sought. These specific details shall not enlarge the  
12 scope of relief sought.

13           3.       Upon the Court's approval of this stipulation, all parties further agree not to  
14 argue or suggest that the Biological Opinion or Incidental Take Statement at issue in this  
15 case should be vacated during remand.

16           4.       Plaintiffs reserve the right to seek reasonable attorneys' fees and costs  
17 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable  
18 authority at a later point after the Court rules on Plaintiffs' request for injunctive relief.  
19 Defendants reserve all defenses to any request for attorneys' fees, including as to  
20 entitlement and hourly rate. The schedule for proceedings, if any, regarding attorneys fees,  
21 will be addressed at a later date.  
22  
23  
24  
25

26 Dated: November 22, 2010

By:           /s/ Howard F. Wilkins III            
HOWARD F. WILKINS III  
Remy, Thomas, Moose and Manley, LLP  
455 Capitol Mall, Suite 210

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Sacramento, CA 95814  
Telephone: (916) 443-2745  
Facsimile: (916) 443-9017  
Email: [cwilkins@rtmmlaw.com](mailto:cwilkins@rtmmlaw.com)  
Attorneys for Defendant-Intervenor YCWA

Dated: November 22, 2010

By: / s/ Lawson E. Fite (by HFW, as authorized  
11/22/10)

LAWSON E. FITE, Trial Attorney (Ore. Bar No.  
055573)  
Wildlife & Marine Resources Section  
Ben Franklin Station P.O. Box 7369  
Washington, D.C. 20044  
Phone: (202) 305-0217  
Fax: (202) 305-0275  
Email: [lawson.fite@usdoj.gov](mailto:lawson.fite@usdoj.gov)  
Attorneys for Federal Defendants

Dated: November 22, 2010

By: / s/ Brian Orion (by HFW, as authorized  
11/22/10)

BRIAN ORION  
Environmental Advocates  
5135 Anza Street  
San Francisco, CA 94121  
Tel: (415) 277-5758  
Fax: (415) 358-5695  
[borion@enviroadvocates.com](mailto:borion@enviroadvocates.com)  
Attorneys for Plaintiffs South Yuba River  
Citizens League and Friends of the River

Dated: November 22, 2010

By: / s/ Dustin C. Cooper (by HFW, as authorized  
11/22/10)

DUSTIN C. COOPER  
Minasian, Spruance, Meith, Soares & Sexton, LLP  
P.O. Box 1679  
Oroville, CA 95965  
Tel: (530) 533-2885  
Fax: (530) 533-0197  
Email: [dcooper@minasianlaw.com](mailto:dcooper@minasianlaw.com)  
Attorneys for Intervenor-Defendant Cordua Irrigation  
District

Dated: November 22, 2010

By: / s/ Andrew M. Hitchings (by HFW, as authorized  
11/22/10)

ANDREW M. HITCHINGS  
Somach Simmons & Dunn  
A Professional Corporation  
500 Capitol Mall, Suite 1000

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Sacramento, CA 95814  
Telephone: (916) 446-7979  
Facsimile: (916) 446-8199  
Email: [ahitchings@somachlaw.com](mailto:ahitchings@somachlaw.com)  
Attorneys for Defendant-Intervenors Dry Creek Mutual  
Water Company, Brophy Water District, and Hallwood  
Irrigation Company

Dated: November 22, 2010


By: /s/ Hanspeter Walter (by HFW, as authorized 11/22/10)  
HANSPETER WALTER  
Kronick, Moskovitz, Tiedemann & Girard  
A Law Corporation  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-4416  
Telephone: (916) 321-4500  
Facsimile: (916) 321-4555  
Email: [hwalter@kmtg.com](mailto:hwalter@kmtg.com)  
Attorneys for Intervenor-Defendant Ramirez Water  
District

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

It is APPROVED and SO ORDERED. All parties shall refrain from propounding discovery during the final injunctive relief phase of this case. The parties shall not be required to designate experts or provide reports to use expert testimony relating to the injunctive relief sought during the final remedies phase of this case, as generally required by Rule 26 of the Federal Rules of Civil Procedure. Injunctive relief in this matter, if warranted, shall be limited to the injunctive relief measures requested in Plaintiffs' proposed order filed with their supplemental briefing. (ECF No. 317-3). The Biological Opinion and Incidental Take Statement at issue in the case will not be vacated and shall remain in place during any remand period. Nothing in this order precludes Plaintiffs from seeking to recover attorneys' fees and costs at a later date.

DATED: November 23, 2010

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing will be e-filed on November 22, 2010, and will be automatically served upon counsel of record, all of whom appear to be subscribed to receive notice from the ECF system.

/s/ Howard F. Wilkins III

HOWARD F. WILKINS III  
Remy, Thomas, Moose and Manley, LLP  
455 Capitol Mall, Suite 210  
Sacramento, CA 95814  
Telephone: (916) 443-2745  
Facsimile: (916) 443-9017  
[cwilkins@rtmmlaw.com](mailto:cwilkins@rtmmlaw.com)  
Attorneys for Defendant-Intervenor YCWA