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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SOUTH YUBA RIVER CITIZENS  
LEAGUE and FRIENDS OF THE  
RIVER,

NO. CIV. S-06-2845 LKK/JFM

Plaintiffs,

v.

O R D E R

NATIONAL MARINE FISHERIES  
SERVICE, et al.,

Defendants.

\_\_\_\_\_ /

Pending before the court is a Motion for Reconsideration of this court's March 27, 2012 Order awarding fees to plaintiffs under the Endangered Species Act. ECF No. 469. The court does not find oral argument to be necessary on this matter, and the matter shall stand submitted on the papers. For the reasons stated below, the Motion for Reconsideration is DENIED.

Defendants' motion for reconsideration is premised on a footnote in the court's March 27, 2012 order, which noted

1 "Plaintiffs do not seek recovery of attorneys fees for their FOIA  
2 claims, since the parties reached a settlement on those claims,  
3 including attorneys fees. Additionally, plaintiffs do not seek fees  
4 for time spent litigating Claim 6, which was bifurcated from the  
5 case at bar." March 27, 2012 Order, FN 5. Defendants argue that the  
6 court should then have excluded fees totaling \$222,018, which  
7 defendants assert were connected to FOIA "requests" and litigation  
8 against intervenors or amicus.

9 The court has reviewed the billing statements cited in  
10 defendants' motion for reconsideration. All of those statements and  
11 defendants' present arguments were taken into consideration at the  
12 time of the court's ruling which reduced the lodestar amount by  
13 20%. Accordingly, the Motion for Reconsideration is DENIED.

14 **i. Plaintiffs' Supplemental Fee Request**

15 In their opposition to the Motion for Reconsideration,  
16 plaintiffs ask the court to award fees pursuant to a pending  
17 Supplemental Motion for Fees, ECF No. 458, which was stayed pending  
18 resolution of the primary fee motion. That supplemental motion  
19 originally sought \$17,052.34 in fees purportedly incurred in  
20 opposing a motion for an extension on the deadline for a Biological  
21 Opinion and preparing the supplemental fee request. In their reply  
22 to defendant's opposition to the supplemental motion for fees,  
23 plaintiffs increased the amount to \$36,512.65. ECF No. 464.  
24 Plaintiffs also seek an additional \$9110.70 in fees, which they  
25 claim to have incurred in opposing the Motion for Reconsideration.  
26 The order staying the Supplemental Motion for Fees held that "all

1 deadlines for filing supplemental motions for attorneys' fees are  
2 hereby stayed. Supplemental motions' for attorneys' fees, if any,  
3 will be due no later than 28 days after an order on Plaintiffs'  
4 motion for attorneys' fees." ECF No. 465. As noted, this court  
5 issued an order on plaintiffs' motion for attorneys' fees on March  
6 27, 2012. The deadline for filing for supplemental attorneys' fees  
7 was April 24, 2012. Plaintiffs concede that this deadline applies  
8 to fees for opposing the instant Motion for Reconsideration. Pls.'  
9 Opp'n. to Mot. for Reconsideration at 6, ECF No. 471.

10 Fed. R. Civ. P. 54 provides "A claim for attorneys fees. . .  
11 must be made by motion. . . Unless a statute or a court order  
12 provides otherwise, the motion must be filed no later than 14 days  
13 after the entry of judgment." As noted, that deadline was extended  
14 by this court to April 24, 2012. Plaintiffs did not file a motion  
15 for the requested \$9110.70 in fees for opposing the Motion for  
16 Reconsideration by that deadline. Instead, they made a fee request  
17 in in an opposition to a motion filed by defendants. Accordingly,  
18 the request is DENIED.

19 With respect to the already-pending Supplemental Motion for  
20 Fees for opposing the motion for an extension of time to file the  
21 BiOp, ECF No. 458, the court finds that fees are appropriate.  
22 However, the court will consider only the initial \$17,052.34 that  
23 was properly sought by motion. The court finds even that amount to  
24 be unreasonable. Plaintiffs did achieve some degree of success, as  
25 the court granted defendants' motion to extend the deadline, but  
26 by a substantially shorter period of time than defendants had

1 sought. The opposition to the motion for an extension of time was  
2 a six-page brief. The matter was submitted on the papers and no  
3 hearing was held.

4 The court finds that a 90% reduction is warranted, given the  
5 relative simplicity of the matter. Accordingly, plaintiffs'  
6 supplemental motion is GRANTED in part and DENIED in part.  
7 Plaintiffs are awarded \$1705 in supplemental fees.

8 For the foregoing reasons, the court ORDERS as follows:

9 [1] The hearing on defendants' Motion for  
10 Reconsideration, ECF No. 470, is VACATED.

11 [2] Plaintiffs' Motion to file a Sur-reply, ECF No. 474  
12 is DENIED.

13 [3] The Motion for Reconsideration, ECF No. 470, is  
14 DENIED.

15 [4] Plaintiffs' Request for Supplemental Fees in the  
16 amount of \$9110.70, made in their opposition to the  
17 Motion for Reconsideration is DENIED.

18 [5] Plaintiffs' Supplemental Motion for Fees, ECF No.  
19 458 is GRANTED in part and DENIED in part. Plaintiffs  
20 are awarded \$1705 in supplemental fees, reflecting a 90%  
21 reduction in the amount requested.

22 [6] Defendants SHALL pay all fees due no later than  
23 ninety (90) days from the issuance of this order, and  
24 shall thereupon file a declaration with the court  
25 stating that they have done so.

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IT IS SO ORDERED.

DATED: May 31, 2012.



LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT