

1 On September 10, 2012, this Court entered an order adopting a stipulation by the parties
2 setting November 9, 2012, as the deadline for Defendants to file the administrative record in this
3 case. ECF No. 63. On November 13, 2012, the Court entered an order adopting a second
4 stipulation by the parties extending the time for the filing of the administrative record to January
5 25, 2013. ECF No. 65.

6 Defendants have made significant progress in preparing the administrative record for
7 filing. However, due to unexpected delays and difficulties Defendants request an additional
8 extension until March 15, 2013, to file the administrative record in this case. As explained in the
9 attached declaration, Defendants have encountered technical difficulties in imaging records in
10 certain electronic formats and had to repeat some processing tasks, thereby delaying overall
11 progress in preparation of the record. See Exhibit 1. Defendants also require additional time to
12 manually index more documents than anticipated. Id. Notwithstanding these delays, on January
13 25, 2013, Defendants will make a partial production to Plaintiffs of the approximately one-third
14 of the administrative record that is now complete.

15 Based on analysis of the time required to complete the remaining tasks to produce the
16 complete administrative record, Defendants expect to produce the administrative record to
17 Plaintiff on March 15, 2013, and request an extension of time until that date. Additionally, the
18 parties propose that sixty days after the administrative record is filed, the parties will file a
19 supplemental joint status report with this Court proposing a new briefing schedule.

20 Respectfully submitted this 17th day of January, 2013,

21
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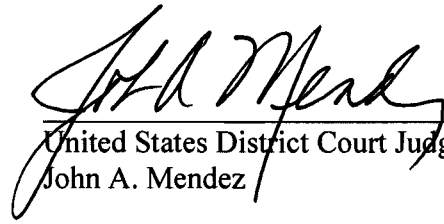
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Attorneys for Plaintiffs

1 IT IS SO ORDERED.

2 January 18, 2013
3 Date


United States District Court Judge
John A. Mendez

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FRIENDS OF THE RIVER, DEFENDERS OF
WILDLIFE, and CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,
v.

UNITED STATES ARMY CORPS OF
ENGINEERS, *et al.*,

Defendants.

Case No. 2:11-cv-01650-JAM-JFM

DECLARATION OF Max Wilson

I, Max Wilson, hereby declare:

1. I have been employed by the U.S. Army Corps of Engineers (Corps) for more than six years. For the past six years I have served in the Office of Counsel as the Assistant Counsel, Environmental Law and Regulatory Programs. In this position, my duties include providing legal and policy advice to the Corps Civil Works Directorate, which manages the Corps Levee Safety Program.

2. On April 27, 2012, this court issued its order denying the United States' motion to dismiss. Thereafter I caused to be sent instructions to all Corps employees who might have documents concerning the levee safety program "Draft Final White Paper", Engineer Technical Letter (ETL) 1110-2-571, the draft Policy Guidance Letter (PGL) on the Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls, and the Memorandum on the Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs) issued on November 29, 2011. These employees were directed to conduct a search for such documents and to transmit the results of their search to a central repository.

3. Concurrent with this effort to collate documents, the Corps, by June 13, 2012, initiated the process of contracting with an existing Department of Justice contractor to assist in processing

the data into an administrative record. It was determined that using a pre-existing DOJ contractor would be substantially quicker than either doing the work “in-house” or creating and procuring a completely new contract for these services. The Corps delivered the complete set of data to the DOJ contractor on or about September 25, 2012.

4. Due to the massive size of the record being assembled, the Corps was forced to rely on that contractor’s expertise and estimates to forecast when the record would be complete. The volume of data collected was initially calculated to be 450 GB, but once initial processing was completed by the contractor, the full, uncompressed volume was revealed to be 980 GB. To put that into perspective, that is the amount of information that would fill approximately 1,400 compact discs (CD’s). These records represent the ongoing decision-making process that has thus far spanned six years, involving multiple different Corps offices, and including significant public input.

5. Unfortunately, the Corps’ contractor has encountered numerous technical problems in manipulating and processing this huge and diverse data collection, which has resulted in repeated reassessments of the time required for completion of the administrative record. In addition to having to re-export and re-process a significant portion of the data due to problems imaging the files, there have been persistent problems with data provided in the Adobe Portfolio format that have delayed each step in the production process. These problems have lengthened each step in the production process and have occasionally required steps to be re-run. The practical effect has been that steps that were estimated to take only a few days have taken the contractor several weeks to complete and delayed the initiation of subsequent steps.

6. Another significant source of delay is the unanticipated volume of records that require manual coding of information necessary for the index. Due to the processes used to collect the electronic data, the contractor has recently determined that nearly half of the records, approximately 65,000 of the approximately 138,000 records, have to be individually reviewed and manually coded for the record index. . While the Corps understood that the quantity of records that would require manual coding was significant, neither we nor our contractor understood the true magnitude of this requirement until the processing of the data was complete and the data gaps could be

analyzed. After determining the scale of the manual coding work that had to be accomplished, the contractor assessed what resources could be mustered to process the very significant additional unanticipated volume. On December 19th the contractor informed the Corps that they estimated that the manual coding could be completed in three weeks time.

7. Most recently, on January 10th, the contractor informed the Corps of certain unanticipated, technical problems with how it had processed documents in an "optical character recognition" format and other data in the Adobe Portfolio files (approximately 37,000 documents) that had further delayed the manual coding of documents.

8. The contractor has assured us that it has developed a solution to the problem with processing Adobe Portfolio files, however the solution is more time and resource intensive than the alternatives that were unsuccessful. The only work that remains to be done is to: (1) process the Adobe Portfolio files, (2) manually code approximately 65,000 files with incomplete index entries (primarily Microsoft Office documents), (3) conduct a brief privilege review on the Adobe Portfolio files, and (4) prepare a privilege log. However, until that work is finished, the contractor and Corps will not be able to produce a full, completely indexed, record.

9. In summary, the Corps believes it has compiled the full Administrative Record relevant to the activities challenged by Plaintiffs. These documents are being processed by our contractor in order to create a fully indexed, complete copy of that record. In order to comply with the Court's order to the fullest extent possible, the Corps intends to deliver the portions of the Administrative Record not needing further processing to Plaintiff's counsel by January 25th. This initial production will be primarily comprised of emails and their associated attachments and is estimated to be approximately 46,000 documents. The Corps will subsequently provide a copy of the complete indexed record as soon as that is made available to us by the contractor. The date for completion of the index and privilege review and log is now estimated to be March 4th. Based on the foregoing, the Corps proposes to file the complete, indexed administrative record with the Court by March 15th.

This Declaration is made under the provision of 28 U.S.C. § 1746. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of January, 2013, in Washington, D.C.



Max Wilson