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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF FISH  
AND GAME,

Plaintiff,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, and LT. GEN.  
THOMAS BOSTWICK, in his  
official capacity,

Defendants.

No. 2:12-cv-01396-JAM-JFM

**ORDER STAYING CASE**

Plaintiff California Department of Fish and Game ("Plaintiff") previously moved to consolidate this action with Friends of the River, Defenders of Wildlife, and Center for Biological Diversity v. United States Corps of Engineers, et al., Case No. 2:11-cv-01650 JAM-JFM (the "Friends of the River case") (Doc. # 16). That motion was denied, and the Court ordered the parties to brief whether or not staying the present action pending further resolution in the Friends of the River case will serve judicial efficiency because the cases contain nearly identical questions of law and fact (Doc. # 20). Plaintiff

1 opposes a stay (Doc. # 21) and Defendants United States Army  
2 Corps of Engineers and Lt. Gen. Thomas Bostwick ("Defendants")  
3 support a stay (Doc. # 22).

#### 4 5 Legal Standard

6 "[I]t is the prerogative of the district court to manage its  
7 workload, [but] case management standing alone is not necessarily  
8 a sufficient ground to stay proceedings." *Dependable Highway*  
9 *Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
10 2007). Before imposing a stay, a court must examine "[1] the  
11 possible damage which may result from the granting of a stay, [2]  
12 the hardship or inequity which a party may suffer in being  
13 required to go forward, and [3] the orderly course of justice  
14 measured in terms of the simplifying or complicating of issues,  
15 proof, and questions of law which could be expected to result  
16 from a stay." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th  
17 Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th  
18 Cir. 1962)).

#### 19 20 Discussion

21 Plaintiff opposes a stay in this matter on the ground that  
22 it may be precluded from raising certain claims or legal theories  
23 by operation of a judgment or finding in the Friends of the River  
24 case. Plaintiff acknowledges that preclusion generally requires  
25 identical parties or at least privity between parties in the  
26 preceding action in order for preclusion to apply. Plaintiff is  
27 concerned that the Court may find such privity because it  
28 previously indicated that the plaintiffs in the Friends of the

1 River case can adequately represent Plaintiff's interests. Case  
2 No. 2:11-cv-01650 JAM-JFM (Doc. # 44).

3 Claim preclusion and issue preclusion are collectively  
4 referred to as res judicata and operate to prevent the  
5 relitigation of claims and issues fully decided in prior actions.  
6 Taylor v. Sturgell, 553 U.S. 880, 892 (2008). Res judicata  
7 generally does not apply to entities that were not parties to the  
8 prior suit. Id. An exception to res judicata applies to parties  
9 who were adequately represented in the prior litigation including  
10 members of a class in "properly conducted class actions and suits  
11 brought by trustees, guardians, and other fiduciaries." Id. at  
12 894.

13 The Court finds that res judicata does not apply to  
14 Plaintiff in the present circumstances. While the term  
15 "adequately represented" appears in both the standard for res  
16 judicata and that for intervention, the analyses are quite  
17 different. It is clear from the Taylor case that res judicata  
18 requires either a class action conducted in accordance with the  
19 particularized process associated with such lawsuits or some sort  
20 of privity between the parties. In the present case, Plaintiff  
21 is not adequately represented by the plaintiffs in the Friends of  
22 the River case with regard to res judicata, and any holding in  
23 that case will merely instruct the Court as to the applicable  
24 law, thereby preserving judicial resources. Plaintiff will not  
25 be precluded from vigorously litigating the present matter if it  
26 is temporarily stayed.

27 Turning to the Lockyer factors, it is clear that a stay in  
28 this case is appropriate. First, for the reasons just discussed,

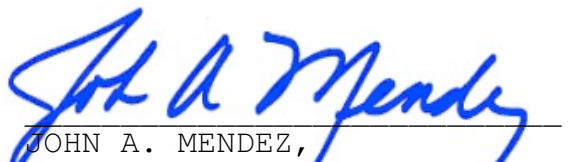
1 Plaintiff will not suffer hardship or prejudice if this case is  
2 stayed because res judicata will not preclude issues or claims in  
3 this suit. Second, Defendants will suffer hardship if forced to  
4 go forward at this stage because they will need to simultaneously  
5 defend two lawsuits that raise nearly identical claims and  
6 issues. Defendants have an interest in avoiding such  
7 duplication. Finally, the Court finds that judicial economy will  
8 be served by a stay because a resolution in the Friends of the  
9 River case will simplify the factual and legal issues pending in  
10 this case and avoid duplicative expenditures of judicial  
11 resources. Accordingly, this case is hereby stayed.

12  
13 Order

14 This matter is hereby stayed pending further resolution in  
15 the Friends of the River case. Defendants are still required to  
16 lodge the administrative record with the court by the January 25,  
17 2013 deadline set by the parties' stipulation (Doc. # 24).  
18 Either party may move the Court to lift the stay with proper  
19 notice after resolution of summary judgment motions in the  
20 Friends of the River case, and such a motion will be considered  
21 at that time.

22 IT IS SO ORDERED.

23 Dated: November 26, 2012

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26 JOHN A. MENDEZ,  
27 UNITED STATES DISTRICT JUDGE  
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