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2 **IN THE UNITED STATES DISTRICT COURT**  
3 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
4 **SACRAMENTO DIVISION**

5 CONSERVATION CONGRESS, ) Case No.: 2:13-cv-01977-JAM-DAD  
6 Plaintiff, )  
7 v. )  
8 UNITED STATES FOREST SERVICE, )  
9 and UNITED STATES FISH AND ) JOINT STIPULATION  
10 WILDLIFE SERVICE, ) FOR STAY OF PROCEEDINGS  
11 Defendants. )  
\_\_\_\_\_ )

12  
13 Plaintiff Conservation Congress, by its undersigned  
14 counsel, and Defendants United States Forest Service ("Forest  
15 Service") and United States Fish and Wildlife Service ("Fish and  
16 Wildlife Service"), by their undersigned counsel, hereby jointly  
17 stipulate to a stay of proceedings in this case and request the  
18 Court's approval of the stipulation.

19 Plaintiff challenges a Forest Service fuel reduction and  
20 timber sale project, the Smokey Project (the "Project"),  
21 proposed on the Mendocino National Forest. Plaintiff alleges  
22 that the Project will impact northern spotted owls, a threatened  
23 species under the Endangered Species Act ("ESA"), as well as the  
24 species' habitat. Plaintiff also raises claims that the Forest  
25 Service violated the National Environmental Policy Act and the  
26 National Forest Management Act by approving the Project.  
27 Plaintiff seeks to have the Court enjoin the Project from  
28 proceeding, among other relief.

1 The Forest Service has suspended operations on the Project  
2 and no work has yet taken place. Furthermore, the Forest  
3 Service intends in the near future to re-initiate ESA  
4 consultation with the Fish and Wildlife Service regarding the  
5 impact of the Project on northern spotted owls and their  
6 habitat. As part of that consultation, the Fish and Wildlife  
7 Service will reconsider the biological opinion at issue herein  
8 regarding such impacts and may issue a new biological opinion.  
9 If it does, Plaintiff will likely seek to reconsider its current  
10 claims and amend its complaint to revise those claims.

11 The parties wish to avoid having the Court or parties  
12 expend time and resources on claims that are reasonably likely  
13 to become moot when the re-initiation of ESA consultation is  
14 complete. Accordingly, Plaintiff and Defendants respectfully  
15 stipulate to and request a stay of these proceedings to preserve  
16 judicial resources and the parties' resources. The parties have  
17 included in this Stipulation a schedule for apprising the Court  
18 of the parties' respective positions and progress to efficiently  
19 manage the case.

20 It is well-established that "the power to stay proceedings  
21 is incidental to the power inherent in every court to control  
22 the disposition of the causes on its docket with economy of time  
23 and effort for itself, for counsel, and for litigants." *Landis*  
24 *v. North American Co.*, 299 U.S. 248, 254 (1936). A court may  
25 enter a stay "pending resolution of independent proceedings  
26 which bear upon the case . . . whether the separate  
27 proceedings are judicial, administrative, or arbitral in  
28 character," and granting the stay "does not require that the  
issues in such proceedings are necessarily controlling of the

1 action before the court." *Leyva v. Certified Grocers of*  
2 *California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)  
3 (citations omitted); see also *Lockyer v. Mirant Corp.*, 398 F.3d  
4 1098, 1110 (9th Cir. 2005) (stay may serve the interests of  
5 judicial economy by allowing development of factual and legal  
6 issues). In this case, a stay will conserve the Court's  
7 resources, and will allow the parties to avoid preparing  
8 pleadings and motions that may well become moot after ESA  
9 consultation is complete.

10 For these reasons, and for good cause shown, the parties  
11 stipulate as follows and request that the Court approve this  
12 stipulation:

- 13 1. The case is stayed and all current deadlines and due  
14 dates are vacated.
- 15 2. Until the ESA consultation is complete, the Defendants  
16 shall submit a status report apprising the Court of the  
17 status of the ESA consultation no later than 60 days  
18 after the date the case is stayed, and every 60 days  
19 thereafter until consultation is complete.
- 20 3. The Forest Service will promptly transmit to Plaintiff a  
21 copy of any new Biological Assessment that it prepares  
22 for purposes of the re-initiated ESA consultation, as  
23 soon as reasonably possible after the document has been  
24 transmitted to the Fish and Wildlife Service. Likewise,  
25 as soon as the Fish and Wildlife Service transmits a  
26 Biological Opinion or document to the Forest Service to  
27 complete the re-initiated consultation, a copy of that  
28 Biological Opinion or other document shall be promptly

1 provided to Plaintiff, and in any event no later than the  
2 Notice contemplated in Paragraph 4 below.

3 4. Defendants will file a Notice with the Court and counsel  
4 as soon as reasonably possible after Defendants have  
5 completed the re-initiated ESA consultation ("Defendants'  
6 Notice"). The stay will expire when Defendants' Notice is  
7 filed.

8 5. Plaintiff will file a Notice with the Court and counsel  
9 no later than 14 days after Defendants' Notice is filed  
10 informing the Court and Defendants whether Plaintiff  
11 intends to file an amended complaint regarding the  
12 Project ("Plaintiff's Notice").

13 6. If no amended complaint is to be filed, Defendants will  
14 file an answer or response to Plaintiff's original  
15 complaint no later than 14 days after receiving  
16 Plaintiff's Notice. In addition, no later than 28 days  
17 after Plaintiff's Notice is filed, the Parties will file  
18 a Joint Status Report addressing the issues contemplated  
19 in the Court's September 23, 2013 Order Requiring Joint  
20 Status Report.

21 7. If Plaintiff's Notice states that Plaintiff intends to  
22 file an amended complaint, its amended complaint will be  
23 filed no later than 77 days after the date that  
24 Defendants' Notice is filed. Defendants will file an  
25 answer or response no later than 28 days after the date  
26 the amended complaint is filed. No later than 42 days  
27 after the filing of the amended complaint, the Parties  
28 will file a Joint Status Report addressing the issues

1 contemplated in the Court's September 23, 2013 Order  
2 Requiring Joint Status Report.<sup>1</sup>

3 8. The Forest Service will give Plaintiff 15 days notice  
4 before lifting the suspension of operations on the  
5 Project and will not lift the suspension of operations on  
6 the Project before 15 days following the filing of  
7 Defendants' Notice that the re-initiated ESA consultation  
8 is complete.

9 For all the foregoing reasons, the Plaintiff and Defendants  
10 request that the Court approve this Joint Stipulation for Stay  
11 of Proceedings.

12  
13 It is so ordered this 6<sup>th</sup> day of December, 2013.

14  
15 /s/ John A. Mendez \_\_\_\_\_

16 The Honorable John A. Mendez  
17 United States District Court Judge  
18  
19  
20

21 \_\_\_\_\_  
22 <sup>1</sup> The parties contemplate that Plaintiff might actually need to  
23 file two amended complaints in this action, since new citizen's  
24 suit claims against the Forest Service cannot be pled until  
25 sixty days have elapsed from the time that Plaintiff provides  
26 the Forest Service notice of its intent to sue under the  
27 citizen's suit provision of the ESA. 16 U.S.C. § 1540(g)(2).  
28 If there were a need for Plaintiff to seek interim injunctive  
relief within that sixty day period, then Plaintiff would likely  
file a First Amended Complaint pleading those new claims which  
are **not** ESA citizen's suit claims as the basis for its motion  
for interim injunctive relief. If Plaintiff indicates an intent  
to amend its complaint two times, as set out above, then the  
parties contemplate that Federal Defendants will answer only  
**after** the complaint has been amended a second time.

1 Respectfully submitted this 6th day of December, 2013,

2  
3 \_/s/Stuart Nicholas Wilcox  
4 (signed by filer with written  
5 authorization provided on  
6 December 6, 2013)

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