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6 *Attorneys for Plaintiff*

7
8 **UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 CONSERVATION CONGRESS,)
11)
12 Plaintiff,)

13 v.)

CASE NO. 2:13-cv-1977-JAM-DAD

14 UNITED STATES FOREST)
15 SERVICE, and the UNITED)
16 STATES FISH AND WILDLIFE)
17 SERVICE,)

JOINT STIPULATION
FOR STAY OF PROCEEDINGS

18 Defendants,)
19)
20 TRINITY LUMBER CO.,)
21)
22 Proposed)
23 Defendant -)
24 Intervenor.)

25
26 Plaintiff Conservation Congress, by its undersigned
27 counsel, and Defendants, the United States Forest Service
28 ("Forest Service") and United States Fish and Wildlife Service
("Fish and Wildlife Service"), by their undersigned counsel,
hereby jointly stipulate to a stay of proceedings in this case
and request the Court's approval of the stipulation.

Plaintiff challenges a Forest Service fuel reduction and

1 timber sale project, the Smokey Project (the "Project"),
2 proposed on the Mendocino National Forest. Plaintiff alleges
3 that the Project will impact Northern spotted owls, a threatened
4 species under the Endangered Species Act ("ESA"). Dkt. No. 27.
5 Plaintiff also raised claims that the Forest Service violated
6 the National Environmental Policy Act and the National Forest
7 Management Act by approving the Project. *Id.* Plaintiff seeks to
8 have the Court enjoin the Project from proceeding, among other
9 relief.
10

11 On December 6, 2013, the parties jointly requested that the
12 Court enter a stay of these proceedings to allow the Forest
13 Service to reinitiate consultation with the Fish and Wildlife
14 Service under the ESA on the Project. Dkt. No. 14. On December
15 19, 2013, the Court stayed this case to allow the Defendants to
16 complete their reinitiated consultation. Dkt. No. 15. On April
17 9, 2014, the Forest Service submitted its Supplemental
18 Biological Assessment to the Fish and Wildlife Service to
19 request re-initiation of ESA consultation. Dkt. No. 23. On
20 November 3, 2014, the Fish and Wildlife Service issued the
21 Biological Opinion for the Project and transmitted it to the
22 Forest Service on November 4, 2014. *Id.*

23 Plaintiff filed a first amended complaint on February 4,
24 2015. Dkt. No. 27. Defendants' answer to the first amended
25

1 complaint was filed on March 18, 2015, and the parties' Joint
2 Status Report is due April 1, 2015. Dkt. Nos. 38 & 45.

3 The Forest Service now intends to reinitiate ESA
4 consultation again to consider a recently-discovered Northern
5 spotted owl activity center. Plaintiff's counsel has informed
6 Defendants' counsel that Plaintiff intends to amend its
7 complaint again to revise its claims in light of this new
8 information. In addition, the FWS may amend its biological
9 opinion further following ESA consultation, and the Forest
10 Service will consider whether its NEPA analysis remains valid.
11

12 In light of these further activities, the Parties wish to
13 avoid having the Court or Parties expend time and resources on
14 claims that may become moot when the re-initiation of ESA
15 consultation is complete. Accordingly, Plaintiff and Defendants
16 respectfully stipulate to and request a further stay of these
17 proceedings to preserve judicial resources and the Parties'
18 resources. The Parties have included in this Stipulation a
19 schedule for apprising the Court of the Parties' respective
20 positions and progress to efficiently manage the case.
21
22

23
24 For these reasons, and for good cause shown, the Parties
25 stipulate as follows and request that the Court approve this
26 stipulation:
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28

1 1. The case is stayed and all current deadlines and due
2 dates are vacated.

3 2. Until the ESA consultation is complete, the Defendants
4 shall submit a status report apprising the Court of the status
5 of the ESA consultation no later than 60 days after the date the
6 case is stayed, and every 60 days thereafter until consultation
7 is complete.
8

9 3. The Forest Service will promptly transmit to Plaintiff a
10 copy of any new Biological Assessment that it prepares for
11 purposes of the re-initiated ESA consultation, as soon as
12 reasonably possible after the document has been transmitted to
13 the Fish and Wildlife Service. Likewise, as soon as the Fish and
14 Wildlife Service transmits an appropriate consultation document
15 to the Forest Service to complete the re-initiated consultation,
16 a copy of that document shall be promptly provided to Plaintiff,
17 and in any event no later than the Notice contemplated in
18 Paragraph 4 below.
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20

21 4. Defendants will file a Notice with the Court and counsel
22 as soon as reasonably possible after Defendants have completed
23 the re-initiated ESA consultation ("Defendants' Notice"). The
24 stay will expire when Defendants' Notice is filed.
25

26 5. Plaintiff will file a Notice with the Court and counsel
27
28

1 no later than 14 days after Defendants' Notice is filed
2 informing the Court and Defendants whether Plaintiff intends to
3 file a second amended complaint regarding the Project
4 ("Plaintiff's Notice").

5 6. If no second amended complaint is filed, no later than
6 14 days after Plaintiff's Notice is filed, the Parties will file
7 a Joint Status Report addressing the issues contemplated in the
8 Court's September 23, 2013 Order Requiring Joint Status Report.

9
10 7. If Plaintiff's Notice states that Plaintiff intends to
11 file a second amended complaint, its second amended complaint
12 will be filed no later than 77 days after the date that
13 Defendants' Notice is filed. Defendants will file an answer or
14 response no later than 21 days after the date the second amended
15 complaint is filed. No later than 7 days after the filing of the
16 answer to the second amended complaint, the Parties will file a
17 Joint Status Report addressing the issues contemplated in the
18 Court's September 23, 2013 Order Requiring Joint Status Report.

19
20 8. The Forest Service will maintain the suspension of
21 operations on the Project until (a) 45 days after the final
22 summary judgment brief is filed; or (b) the Court rules on the
23 parties' summary judgment motions, whichever occurs first.

24
25 For all the foregoing reasons, the Plaintiff and Defendants
26 request that the Court approve this Joint Stipulation for Stay
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28

1 of Proceedings.

2 Respectfully submitted this 25th day of March, 2015,

3
4 /s/ Steven Sugarman
5 (signed by filer with written authorization
provided on March 25, 2015)

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Attorneys for Defendants

It is so ordered this ____ day of March, 2015.

The Honorable John A. Mendez
United States District Court Judge

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23 parties' summary judgment motions, whichever occurs first.

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26 For all the foregoing reasons, the Plaintiff and Defendants
27 request that the Court approve this Joint Stipulation for Stay
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1 of Proceedings.

2 Respectfully submitted this 25th day of March, 2015,

3
4 /s/ Steven Sugarman
5 (signed by filer with written authorization
provided on March 25, 2015)

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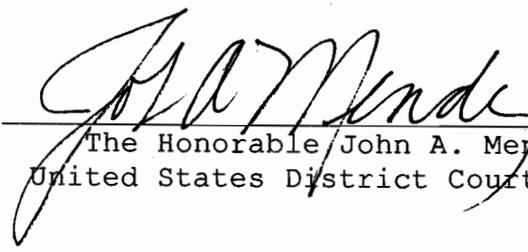
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Attorneys for Defendants

It is so ordered this 30th day of March, 2015.



The Honorable John A. Mendez
United States District Court Judge