

1 NOSSAMAN LLP
2 PAUL S. WEILAND (CA 237058)
3 pweiland@nossaman.com
4 18101 Von Karman Avenue, Suite 1800
5 Irvine, CA 92612
6 Telephone: 949.833.7800
7 Facsimile: 949.833.7878

8 Attorneys for Plaintiff
9 Dennis D. Murphy, Ph.D.

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 DENNIS D. MURPHY, PH.D.

13 Plaintiff,

14 vs.

15 UNITED STATES FOREST SERVICE;
16 THOMAS TIDWELL, in his official capacity as
17 Chief of the United States Forest Service;
18 NANCY J. GIBSON, in her official capacity as
19 Forester of the United States Forest Service;
20 UNITED STATES FISH AND WILDLIFE
21 SERVICE; DANIEL ASHE, in his official
22 capacity as direct of the United States Fish and
23 Wildlife Service

24 Defendants.

Case No: 2:13-cv-02315-GEB-AC

**STIPULATION AND [PROPOSED]
ORDER**

Date Action Filed: November 6, 2013

1 Plaintiff served his Complaint in this matter on November 13, 2013. Pursuant to Federal
2 Rule of Civil Procedure 4(i), Defendants' responsive pleading was due on January 13, 2014. The
3 parties stipulated to an extension of 15 days, up to and including January 28, 2014, for
4 Defendants to respond. In submitting the Joint Scheduling Report, Plaintiff indicated that he
5 would amend his Complaint to add claims, and filed a First Amended Complaint on February 6,
6 2014. (Dkt. No. 13) The Court entered a Scheduling Order in this matter on January 28, 2014.
7 (Dkt. No. 14).

8 Since the filing of the Joint Scheduling Report, the parties engaged in settlement talks
9 and exchanged drafts of (i) a written term sheet then (ii) a proposed settlement agreement. The
10 parties sought and the Court granted multiple extensions in an effort to seek resolution of the
11 matter without further litigation. Most recently, in a stipulation dated May 12, 2014, the parties
12 stated that they "are down to negotiating the language of the last few terms to the proposed
13 settlement agreement." (Dkt. No. 26) Unfortunately, the parties were unable to reach
14 agreement.

15 In light of these developments, as well as other considerations described below, the
16 parties respectfully seek an order from this Court as follows.

17 **I. AMENDMENTS**

18 On May 2, 2014, Plaintiff sent a 60-day notice of intent to sue to the Chief of the United
19 States Forest Service and the Secretary of the Department of the Interior alleging violations of
20 the Endangered Species Act. Plaintiff sent the notice of intent following the issuance of a final
21 rule listing the Sierra Nevada yellow-legged frog as endangered on April 29, 2014. In light of
22 the foregoing, Plaintiff anticipates, and Defendants stipulate to, the filing of a second amended
23 complaint not later than July 11, 2014, pursuant to Fed. R. Civ. P. 15(a)(2).

24 **II. UPCOMING MOTIONS**

25 **A. Motion to dismiss**

26 Defendants anticipate filing a motion to dismiss. Rather than file with respect to the First
27 Amended Complaint, Defendants request, and Plaintiff stipulates to, an extension of time to file
28 a responsive pleading to the anticipated Second Amended Complaint as follows:

1 Defendants' motion July 21, 2014
2 Plaintiff's opposition August 8, 2014
3 Defendants' reply August 18, 2014
4 Hearing date August 25, 2014

5 **B. Motion for preliminary relief**

6 Plaintiff anticipates filing a motion for preliminary relief. Defendants ceased work on the
7 challenged project in November 2013 due to weather, and will not cut additional trees before
8 September 1, 2014, as previously represented to this Court. (See Dkt. No. 26.) In order to allow
9 the Court to decide the motion before Defendants plan to commence the second phase of the
10 project and cut additional trees, Plaintiff and Defendants stipulate to the following schedule for
11 Plaintiff's motion for preliminary relief:

12 Plaintiff's motion July 21, 2014
13 Defendants' opposition August 8, 2014
14 Plaintiff's reply August 18, 2014
15 Hearing date August 25, 2014

16 **III. FURTHER STATUS REPORT**

17 The parties propose vacating the motion hearing schedule set out in the Court's prior
18 Status Order (Dkt. No. 14) and, instead, filing a joint status report on October 1, 2014, regarding
19 further proceedings, in the event the matter is not resolved as of that time. A status conference is
20 scheduled for October 27, 2014, at 9:00 a.m.

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1 Respectfully submitted,

2 DATED: May 28, 2014

NOSSAMAN LLP

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By /s/ Paul S. Weiland
Attorney for Plaintiff

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BENJAMIN B. WAGNER
United States Attorney

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By: /s/ Gregory T. Broderick (as authorized on May 28, 2014)
GREGORY T. BRODERICK
Assistant United States Attorney

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11 **IT IS SO ORDERED.**

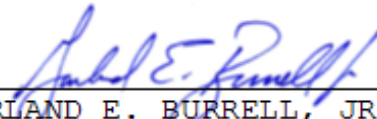
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13 DATED: MAY 28, 2014

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GARLAND E. BURRELL, JR.
Senior United States District Judge

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