

1 BENJAMIN B. WAGNER
United States Attorney
2 GREGORY T. BRODERICK
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900

5 Attorneys for Defendants
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7 **IN THE UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 DENNIS D. MURPHY

10 Plaintiff,

v.

11 UNITED STATES FOREST SERVICE;
TOM TIDWELL, in his official capacity as
12 Chief of the United States Forest Service;
and NANCY J. GIBSON, in her official
13 capacity as Forest Supervisor of the United
States Forest Service,

14 Defendants
15

CASE NO. 13-cv-02315-GEB-AC

**STIPULATION AND [PROPOSED]
ORDER FOR EXTENSION OF TIME TO
RESPOND TO COMPLAINT and TO
ALTER BRIEFING SCHEDULE.**

16 The parties seek an order from this Court further extending the time for the United States to
17 respond to Plaintiff's First Amended Complaint, and to amend the briefing schedule previously entered
18 by the Court so that the parties may continue to narrow, or possibly resolve, this dispute.

19 Plaintiff served its Complaint in this matter on November 13, 2013. Pursuant to Federal Rule of
20 Civil Procedure 4(i), Defendants' responsive pleading was due on January 13, 2014. The parties
21 stipulated to an extension of 15 days, up to and including January 28, 2014, for Defendants to respond.
22 In submitting the Joint Status Report, Plaintiff indicated that he would amend their Complaint to add
23 claims, and filed a Second Amended Complaint with additional claims alleging violations of the
24 Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) on February 6, 2014.
25 (Dkt. No. 13) After filing of the Joint Status Report, the parties engaged in settlement talks and
26 exchanged drafts of a written term sheet. This Court then granted a further extension up to and
27 including April 8, 2014. (See Dkt. No. 21.) On that date, the parties sought, and the Court later
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1 approved, a further extension to April 25, 2014. (*See* Dkt. Nos. 22-23.) The Court later approved a
2 further extension to May 12, 2014, and then to May 28, 2014. (Dkt. Nos. 25 & 27).

3 During this time, Plaintiff sent a second ESA “60-day notice letter” to Defendants. Among
4 other things, Plaintiff’s notice letter complains that the United States Forest Service did not consult
5 with the United States Fish and Wildlife Service regarding the alleged effects of the project on the
6 Sierra Nevada Yellow-Legged Frog when the species was listed as endangered. Settlement efforts
7 were ultimately unsuccessful, and the parties entered a stipulation regarding a briefing schedule for
8 Defendants’ motion to dismiss and for Plaintiff’s preliminary injunction motion, which this Court
9 approved on May 28, 2014. (Dkt. No. 28). The current schedule is as follows:

- | | | |
|----|---|-----------------|
| 10 | •Defendants’ responsive pleading | July 21, 2014 |
| 11 | •Plaintiff’s motion for preliminary injunction: | July 21, 2014 |
| 12 | •The parties’ respective oppositions: | August 8, 2014 |
| 13 | •The parties’ respective replies: | August 18, 2014 |
| 14 | •Hearing on both motions: | August 25, 2014 |

15 On July 8, 2014, Plaintiff filed a Second Amended Complaint, asserting new claims, including
16 claims based on its second ESA 60-day notice letter.

17 The Forest Service is in the process of making a decision whether to consult with the Fish
18 and Wildlife Service regarding the effects of the project on the frog. The Forest Service expects to
19 complete this decision-making process by August 1, 2014, and may take a variety of actions
20 depending on the decision made. This could include continuing the project as-is, altering the project,
21 further study, or other options. Such actions could render unnecessary any preliminary injunction
22 motion, lead to complete resolution of the case, or have no effect on the litigation. But, under the
23 present schedule, this will not be known until the middle of the briefing schedule.

24 The parties do not believe that it would be wise to use their resources and the Court’s limited
25 resources on a motion to dismiss and a preliminary injunction motion when circumstances are likely
26 to change mid-briefing and in light of the fact that the Forest Service has agreed not to take further
27 on-the-ground action on the project through at least October 15, 2014. As a consequence, the parties
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1 agree that it would be judicious to amend the briefing schedule as set forth below. Therefore, the
2 parties hereby stipulate to modify the briefing schedule as follows:

- 3 •Defendants’ responsive pleading August 11, 2014
- 4 •Plaintiff’s motion for preliminary injunction: August 11, 2014
- 5 •The parties’ respective oppositions: August 27, 2014
- 6 •The parties’ respective replies: September 9, 2014
- 7 •Hearing on both motions: September 22, 2014

8 In addition, the Forest Service will make every effort to provide the complete Administrative Record
9 to Plaintiff by August 8, 2014.

10 This schedule will permit the Forest Service time to complete its decision-making process
11 and to initiate consultation with the Fish and Wildlife Service, if it decides to do so. Alternatively, if
12 no such consultation is initiated, this schedule will permit the parties and the Court to brief the
13 motion to dismiss and the preliminary injunction on a reasonable time frame, and to permit time for
14 the matter to be decided before operations re-commence no sooner than October 15, 2014.

15 Respectfully submitted,

16 DATED: July 21, 2014

17 By /s/ Paul S. Weiland
18 Attorney for Plaintiff

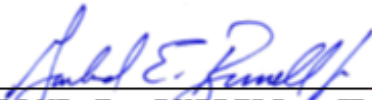
19 BENJAMIN B. WAGNER
20 United States Attorney

21 By: /s/ Gregory T. Broderick
22 GREGORY T. BRODERICK
23 Assistant United States Attorney

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IT IS SO ORDERED.

Dated: July 21, 2014



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