

JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 MICHAEL T. PYLE (CSBN 172954)
 Assistant United States Attorney

U.S. Attorney's Office/Civil Division
 450 Golden Gate Avenue, 9th Floor
 San Francisco, California 94102-3495
 Telephone: (415) 436-7322
 Facsimile: (415) 436-6748
 E-mail: michael.t.pyle@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SIERRA CLUB,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
 AGRICULTURE ET AL.,

Defendants.

No. 08-4248 SC

**STIPULATION AND [PROPOSED]
 ORDER TO VACATE CASE
 MANAGEMENT CONFERENCE AND
 ENTER ORDER ESTABLISHING
 SCHEDULE FOR RESOLUTION OF
 CASE**

IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval of the Court, that the Case Management Conference currently scheduled for July 10, 2009 at 10:00 a.m. should be vacated and the Court should instead enter an order with a schedule agreed upon by the parties. This stipulation was agreed to by all of the parties (including the Intervening Defendants -- Brazos Electric Power Cooperative, Inc. and East Kentucky Power Cooperative, Inc.) for the following reasons. As explained in the Joint Subsequent Case Management Conference Statement filed on July 1, 2009, Defendants and the Intervening Defendants have each spent hundreds of hours reviewing the records at issue in this FOIA case. The records are in excess of 45,000 pages of records. The process is time consuming because many of the records at issue involve various submissions from the Intervening Defendants that potentially implicate

1 FOIA Exemption 4 (which concerns trade secret and confidential or proprietary business
2 information). For its part, the Sierra Club has begun to receive boxes of documents and will be
3 spending significant amounts of time to review those records and the records that will be
4 produced in the future. The parties have agreed on a schedule for this litigation and agree,
5 subject, of course, to the Court's approval, that it would be more cost effective and efficient to
6 vacate the CMC and instead enter an order setting forth a schedule for the remainder of the
7 litigation. The Plaintiff and Intervening Defendants (whose counsel would have to travel from
8 Washington, D.C, Texas and Kentucky) would like to avoid the expense of attending a Case
9 Management Conference and understand that the Court states on the Court's website that it does
10 not permit telephonic appearances. The parties represent that they have been working diligently
11 on this case and will continue to do so. They submit that this request is consistent with the
12 proposition that "[t]he FOIA is intended to work without court intervention." *Landmark Legal*
13 *Found v. EPA*, 272 F.Supp.2d 70, 85 (D.D.C. 2003). As indicated by the parties' proposed
14 schedule, the parties may ask the Court to rule on certain documents by means of motions for
15 summary judgment so some intervention by the Court may ultimately be necessary. The parties
16 believe, however, that their work to date and the work they will be undertaking in the coming
17 months will greatly reduce the number of potential disputes for the Court to resolve and there is
18 at least a chance that the parties will be able to resolve all of their disputes without any Court
19 intervention.

20 ///

21 ///

22 Respectfully Submitted,

23
24 July 2, 2009

/s/ William S. Eubanks II

25 William S. Eubanks II
26 Howard M. Crystal
27 *Pro hac vice*
Meyer Glitzenstein & Crystal
28 *Attorneys for Plaintiff Sierra Club*

1 JOSEPH P. RUSSONIELLO
2 United States Attorney

3 /s/ Michael T. Pyle
4 Michael T. Pyle
5 Assistant U.S. Attorney

6 *Attorney for Federal Defendants*

7 /s/ James Goldberg
8 James Goldberg
9 Deborah A. Goldfarb
10 Bryan Cave LLP

11 *Attorneys for Intervening Defendants Brazos Electric
12 Power Cooperative, Inc. and East Kentucky Power
13 Cooperative, Inc.*

14 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

15 The Case Management Conference scheduled for July 10, 2009 at 10:00 a.m. is vacated. The
16 parties shall comply with the following schedule for the resolution of the case:

- 17 (a) September 25, 2009 RUS shall use its best efforts to produce all records
18 responsive to the October 26, 2007 FOIA request and the
19 November 20, 2007 FOIA request, along with its Vaughn
20 Index for all withholdings and redactions for the October
21 26, 2007 and November 20, 2007 FOIA requests, along
22 with a letter that identifies which records produced are
23 responsive to which categories of Plaintiff's October
24 26,2007 and November 20, 2007 FOIA requests.
- 25 (b) November 13, 2009 Last day for Defendant and/or Intervenor(s) to file a motion
26 for summary judgment.
- 27 (c) December 4, 2009 Last day for Plaintiff to file opposition to any motion for
28 summary judgment filed by Defendant and/or Intervenor(s)
and last day for Plaintiff to file any cross-motion for
summary judgment.
- (d) December 22, 2009 Last day for Defendant and/or Intervenor(s) to file reply in
support of any motion for summary judgment and last day
for Defendant and/or Intervenor(s) to file opposition to any
motion for summary judgment filed by Plaintiff.

///

///

///

///

(e) January 8, 2010

Last day for Plaintiff to file reply in support of its cross-motion for summary judgment.

(f) ~~January 29~~, 2010 at 10 a.m.
February 5, 2010

Hearing on summary judgment motions.

DATED: July 2, 2009

