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 6 DEPARTMENT OF TRANSPORTATION, CINDY McKIM

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 BESS BAIR; TRISHA LEE LOTUS; BRUCE
 EDWARDS; JEFFREY HEDIN; LOREEN ELIASON;
 12 ENVIRONMENTAL PROTECTION INFORMATION
 CENTER, a non-profit corporation; CENTER FOR
 13 BIOLOGICAL DIVERSITY, a non-profit corporation;
 and CALIFORNIAS FOR ALTERNATIVES TO
 14 TOXIC, a non-profit corporation,

15 Petitioners and Plaintiffs,

16 vs.

17 STATE OF CALIFORNIA DEPARTMENT OF
 TRANSPORTATION, CINDY McKIM, in her official
 18 capacity as Director of the State of California Department
 of Transportation, and DOES 1 through 20,

19 Respondents and Defendants.
 20

No. 3:10-cv-04360 WHA

**STIPULATION AND ~~PROPOSED~~
 ORDER RE: REVISED BRIEFING
 SCHEDULE AND HEARING DATE**

21 THE PARTIES, Plaintiffs Bess Bair, et al. ("Plaintiffs"), and Defendants State of California
 22 Department of Transportation, et al. ("Caltrans" or "Defendants"), by and through their respective
 23 counsel, stipulate as follows:

24 1. WHEREAS Plaintiffs filed this action challenging Defendants' approval of the
 25 Richardson Grove Operational Improvement Project ("Project") pursuant to the National
 26 Environmental Policy Act ("NEPA"), 42 U.S.C. section 4331 *et seq.*, and other applicable federal
 27 laws on September 27, 2010 (the "Federal Action"); and

28 2. WHEREAS Plaintiffs have filed a companion action, entitled *Lotus, et al. v.*

1 *California State Department of Transportation, et al.* (Humboldt County Superior Court Case No.
2 CV110002), challenging Defendants' approval of the Project pursuant to the California
3 Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* (the "State
4 Action"); and

5 3. WHEREAS on July 6, 2011, this Court issued an order preliminarily enjoining
6 construction and other activities in furtherance of the Project and establishing an expedited briefing
7 and hearing schedule on cross motions for summary judgment by the parties (Docket No. 84); and

8 4. WHEREAS on August 12, 2011, Plaintiffs and Defendants participated in a
9 settlement conference before the Honorable Magistrate Judge Elizabeth D. Laporte, at which
10 conceptual proposals for settlement were exchanged and discussed; and

11 5. WHEREAS, following the Settlement Conference, the parties have engaged in
12 exchange of settlement proposals and information, but have not reached agreement; and

13 6. WHEREAS on September 22, 2011, following each parties' submission of
14 confidential status reports to the Court, the Honorable Magistrate Judge Elizabeth D. LaPorte
15 requested the parties to schedule a further settlement conference for October 12, 2011, and informing
16 the parties that she was unavailable prior to that time for a settlement conference; and

17 7. WHEREAS Plaintiffs and Defendants require additional time to participate in
18 settlement negotiations prior to October 12, and to exchange and review detailed information in
19 pursuit of a potential settlement; and

20 8. WHEREAS the Parties previously stipulated to extend the briefing schedule after the
21 August 12th Settlement Conference, and which was approved by the Court in its Order of August 17,
22 2011, (Docket # 96); and

23 9. WHEREAS, pursuant to the current schedule, Plaintiff's Motion for Summary
24 Judgment Brief would be due on October 21, 2011, less than 10 days after the Settlement
25 Conference; and

26 10. WHEREAS both Plaintiffs and Defendants have agreed to seek a modification of the
27 briefing schedules and hearing dates in both the State and Federal Actions in to continue substantive
28 settlement discussions based upon the information which have been and will be exchanged on and

1 before October 12, 2011; and

2 11. WHEREAS the Parties agreed that if the briefing schedules in both the State and
3 Federal Actions cannot be further modified, there will not be sufficient time to exchange and review
4 information necessary to continue settlement discussions, and the Parties will be forced to litigate
5 these actions notwithstanding the possibility of settlement;

6 NOW THEREFORE THE PARTIES HEREBY STIPULATE AND AGREE, SUBJECT TO
7 COURT APPROVAL, AS FOLLOWS:

8 12. The Parties will meet and confer as to the contents of a joint statement of undisputed
9 facts by November 21, 2011. If the Parties reach agreement on the contents of such statement, they
10 shall submit such statement to the Court by December 5, 2011. In all other respects, the Court's
11 Order of August 8, 2011, Docket No. 92, remains unchanged.

12 13. Plaintiffs will file and serve their Motion for Summary Judgment by December 5,
13 2011.

14 14. Defendants will file and serve their Opposition to Plaintiffs' motion and their Cross-
15 Motion for Summary Judgment by December 28, 2011.

16 15. Plaintiffs will file and serve their Opposition to Defendants' cross-motion and Reply
17 in support of their Motion for Summary Judgment by January 18, 2012.

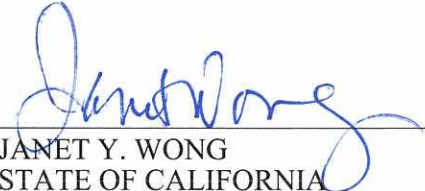
18 16. Defendants will file and serve their Reply in support of their cross-motion by
19 February 1, 2012.

20 17. The Parties request that this Court set this matter for hearing on February 23, 2012, or
21 on a date soon thereafter bases upon the Court's schedule.

22 18. In all other respects, the Court's Order of July 6, 2011, Docket No. 84, remains
23 unchanged, including pages limits established therein and the terms of the preliminary injunction,
24 which shall remain in effect until further order by the Court.

25 19. This Stipulation may be signed in counterparts and facsimile signatures are deemed
26 originals.

1 DATED: September 30, 2011



JANET Y. WONG
STATE OF CALIFORNIA
Attorney for Respondents Caltrans, et al.

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6 DATED: September 29, 2011


STUART GROSS
GROSS LAW
Attorney for Petitioners Bair, et al.

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9 IT IS SO ORDERED.

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12 DATED: October 7, 2011.


William Alsup
UNITED STATES DISTRICT JUDGE

Case Name: *Bess Bair, et al. v. State of California, et al.*
Case No.: United States District Court Northern District No. 3:10-cv-04360 WHA

PROOF OF SERVICE

I, the undersigned, state that I am, and was at all times herein mentioned, employed in the City and County of San Francisco, over the age of 18 years and not a party to the within action or proceedings; that my business address is 595 Market Street, Suite 1700, San Francisco, California 94105.

On the date set forth below, I served a true copy of the following document(s):

STIPULATION AND PROPOSED ORDER RE: REVISED BRIEFING SCHEDULE AND HEARING DATE

on all parties in said action by the following means:

√ (MAIL) by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the office of the State of California, Department of Transportation, 595 Market Street, Suite 1700, San Francisco, CA, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.

— (PERSONAL SERVICE) by causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

— (FACSIMILE TRANSMITTAL) by transmitting a true copy thereof by facsimile transmission from facsimile number (415) 904-2333 to the interested parties to said action at the facsimile number(s) shown below.

— (BY OVERNIGHT DELIVERY) By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to the office of the State of California, Department of Transportation, to be delivered by the express mail carrier, to the address(es) shown below.

— (E-MAIL) by attaching a copy of the Word processing file in PDF format.

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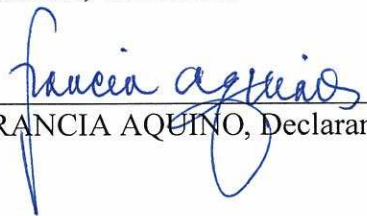
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on September 30, 2011, at San Francisco, California.


FRANCIA AQUINO, Declarant