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 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

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 14 **ENVIRONMENTAL PROTECTION**  
**INFORMATION CENTER,**  
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 Plaintiff,  
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 v.  
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 18 **JERRY AYERS; STAFFORD LEHR;**  
**CHARLTON H. BONHAM, NEIL MANJI,**  
 19 **PAT OVERTON; ROWAN GOULD; JEFF**  
**UNDERWOOD; UNITED STATES FISH**  
 20 **AND WILDLIFE SERVICE,**  
 21  
 Defendants.

Case No. C-13-00656-MMC-NJV  
 ORDER APPROVING  
**STIPULATION AND ~~PROPOSED~~**  
**ORDER FOR DISMISSAL AND TO**  
**RESOLVE ATTORNEYS' FEES AND**  
**COSTS**  
 Courtroom: 7  
 Judge: Honorable M.M. Chesney  
 Trial Date: None Set  
 Action Filed: February 13, 2013

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 24 Plaintiff Environmental Protection Information Center, Defendants Stafford Lehr, Charlton  
 25 H. Bonham, and Neil Manji ("State Defendants"), and Defendants Daniel Ashe, Jeff Underwood,  
 26 and U.S. Fish and Wildlife Service ("Federal Defendants") hereby stipulate to and respectfully  
 27 request that the Court dismiss this case and resolve Plaintiff's claim for costs and attorneys' fees,  
 28 as set forth below.

1           The parties had previously stipulated to stay this case with certain conditions. A Hatchery  
2 and Genetic Management Plan (“HGMP”) to govern operations at the Mad River Hatchery has  
3 been submitted to the National Marine Fisheries Service (“NMFS”), and enough progress has  
4 been made toward approval of that plan that the parties are prepared to resolve this case. Counsel  
5 for the parties have also engaged in good faith and confidential settlement negotiations  
6 concerning Plaintiff’s claims for attorneys’ fees, costs, and other expenses, and have reached a  
7 settlement of those claims.

8           Therefore, Plaintiff, State Defendants, and Federal Defendants hereby stipulate and agree as  
9 follows:

- 10           1.    The parties request that this case be dismissed with prejudice, with the Court retaining  
11                jurisdiction to ensure compliance with paragraph 2 below until NMFS approves an  
12                HGMP for the Mad River Hatchery.
- 13           2.    Prior to NMFS’s approval of an HGMP for the Mad River Hatchery:
  - 14                a.    State Defendants (and employees at the California Department of Fish and  
15                        Wildlife) may collect, trap, and use natural-origin (Endangered Species Act-  
16                        listed) steelhead trout from the Mad River for use as broodstock at the Mad  
17                        River Hatchery, provided that:
    - 18                        i.    For each spawning pair of steelhead trout in that time period, the Mad  
19                                River Hatchery will use at least one natural-origin steelhead;
    - 20                        ii.   The goal for the broodstock collected in a given year in that time period is  
21                                to produce 150,000 steelhead yearlings for release in the following year,  
22                                but if not enough natural-origin steelhead are available for use in the  
23                                broodstock, under the terms of this stipulation, then only offspring of at  
24                                least one natural-origin steelhead will be released in that time period;
    - 25                        iii.   If more natural-origin steelhead are available at the Mad River Hatchery,  
26                                the hatchery will try to match natural-origin steelhead with natural-origin  
27                                steelhead;
  - 28                b.    State Defendants (and employees at the California Department of Fish and

1 Wildlife) may release steelhead trout into the main stem of the Mad River, at  
2 either the Mad River Hatchery or at the boat ramp located at the Mad River  
3 Estuary (at Mad River Beach County Park);

4 c. The U.S. Fish and Wildlife Service may fund operations at the Mad River  
5 Hatchery consistent with this stipulation.

6 2. The parties need not submit a joint case management conference statement as directed  
7 in the Court's December 9, 2014 order.

8 3. As to attorneys' fees, costs, and other expenses:

9 a. State Defendants and Federal Defendants shall pay Plaintiff's reasonable  
10 attorneys' fees and costs, pursuant to Section 11(g) of the Endangered Species  
11 Act, 16 U.S.C. § 1540(g), in the amount of \$65,000.00, payable to the IOLTA  
12 client trust account of the Western Environmental Law Center. Specifically,  
13 Federal Defendants will pay \$32,500.00 and State Defendants will pay  
14 \$32,500.00.

15 b. Plaintiff agrees to provide written notice to Federal Defendants of the form in  
16 which it elects to receive the funds, including all information necessary for  
17 Defendants to process the disbursement (including the payee's tax identification  
18 number), as soon as possible upon an Order of the Court approving this  
19 Stipulation.

20 c. Federal Defendants agree to submit all necessary paperwork for the processing  
21 of the attorneys' fees award to the Department of the Treasury's Judgment  
22 Fund Office, pursuant to 16 U.S.C. § 1540(g), within ten (10) business days of  
23 Plaintiff providing the information in paragraph 3(b) or entry of a Court order  
24 approving this stipulation, whichever is later.

25 d. Plaintiff agrees to provide State Defendants with a completed state standard  
26 form 204 (payee data record) as soon as possible upon the signing of this  
27 Stipulation regarding settlement.

28 e. This Stipulation resolves all claims for attorneys' fees, costs, and/or other

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expenses related to this action.

- f. Plaintiffs agrees to accept payment of \$65,000.00 in full satisfaction of any and all claims for attorneys’ fees, costs, and other expenses of litigation to which Plaintiff is entitled in the above-captioned litigation.
- g. Plaintiff agrees that receipt of this amount from State and Federal Defendants shall operate as a release of Plaintiff’s claims for attorneys’ fees, costs, and other expenses in this matter.
- h. Nothing in this agreement shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.
- i. By this agreement, State Defendants and Federal Defendants do not waive any right to contest fees claimed by Plaintiff or Plaintiff’s counsel, including the hourly rates, in any future litigation, or continuation of the present action. Further, this stipulation as to attorneys’ fees, costs, and other expenses has no precedential value and shall not be used as evidence in any other attorneys’ fees litigation.
- j. The parties agree that this Stipulation was negotiated in good faith. By entering into this agreement the parties do not waive any claim or defense.
- k. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court’s entry of the terms and conditions of this agreement and do hereby agree to the terms herein.

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1. The terms of this agreement shall become effective upon entry of this stipulation as an Order by the Court.

Dated: July 24, 2015                      Respectfully submitted,

/s/ Peter M.K. Frost (as authorized)

PETER M.K. FROST, *pro hac vice*  
SHARON E. DUGGAN  
*Attorneys for Plaintiff*

KAMALA D. HARRIS  
Attorney General of California  
GAVIN G. MCCABE  
Supervising Deputy Attorney General

/s/ Marc N. Melnick

MARC N. MELNICK  
Deputy Attorney General  
*Attorneys for State Defendants*

JOHN C. CRUDEN  
Assistant Attorney General  
U.S. Department of Justice  
Environment & Natural Resources Division  
S. JAY GOVINDAN, Assistant Chief

/s/ Trent S.W. Crable (as authorized)

TRENT S.W. CRABLE  
Trial Attorney  
Wildlife and Marine Resources Section

ROMNEY S. PHILPOTT  
Trial Attorney  
Natural Resources Section

*Attorneys for Federal Defendants*

Pursuant to Civil Local Rule 5.1(i)(3), I attest that Peter M.K. Frost and Trent S.W. Crable have concurred in the filing of this document and authorized me to submit their electronic signatures.

/s/ Marc N. Melnick

MARC N. MELNICK  
Deputy Attorney General  
*Attorneys for State Defendants*

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Pursuant to the stipulation of the parties, IT IS SO ORDERED. This case is DISMISSED.

Dated: July 27, 2015

  
MAXINE M. CHESNEY  
United States District Judge

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