

MELINDA HAAG (CSBN 132612)
United States Attorney
ALEX G. TSE (CABN 152348)
Chief, Civil Division
MICHAEL T. PYLE (CSBN 172954)
Assistant United States Attorney
150 Almaden Boulevard, Suite 900
San Jose, California 95113
Telephone: (408) 535-5087
FAX: (408) 535-5081
michael.t.pyle@usdoj.gov

SAM HIRSCH,
Acting Assistant Attorney General
SETH M. BARSKY, Chief
COBY HOWELL, Senior Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
c/o U.S. Attorney's Office
1000 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 727-1023
Facsimile: (503) 727-1117
E-mail: coby.howell@usdoj.gov

Attorneys for Federal Defendants

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH
FOUNDATION, a non-profit corporation,
and ECOLOGICAL RIGHTS
FOUNDATION, a non-profit corporation,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, PENNY PRITZKER, as
Secretary of Commerce, RODNEY
MCINNIS, as Regional Administrator of

Civil Case No.: 3:14-cv-01130-MEJ

JOINT CASE MANAGEMENT
STIPULATION AND ~~PROPOSED~~ ORDER

1 the National Marine Fisheries Service)
2 Southwest Region, UNITED STATES)
3 FISH AND WILDLIFE SERVICE, and)
4 SALLY JEWELL, as Secretary of the)
5 Interior,)
6 Defendant.)
7
8

9 On May 15, 2014, the Clerk of Court issued an order requiring the parties to file their
10 case management statement no later than August 1, 2014, and setting the case management
11 conference for August 8, 2014. ECF No. 22. At the parties' request, the Court subsequently
12 issued another order directing Federal Defendants to file their responsive pleading to Plaintiffs'
13 amended complaint and administrative record for the Administrative Procedure Act ("APA")
14 claim challenging the 2008 National Marine Fisheries Service ("NMFS") biological opinion no
15 later than July 18, 2014. ECF No. 29.

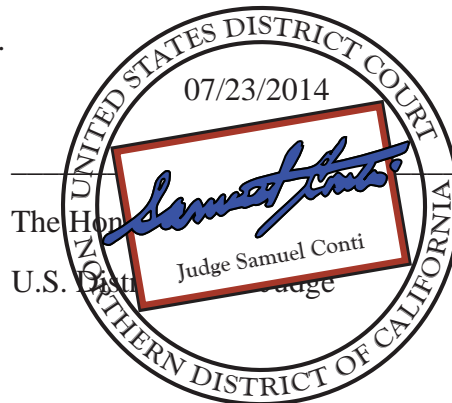
16 NMFS is in the process of issuing a new biological opinion on the U.S. Army Corps of
17 Engineers' section 404 Clean Water Act permit ("2014 biological opinion") and the parties agree
18 that this new biological opinion will moot Plaintiffs' existing APA claim challenging the 2008
19 biological opinion. NMFS currently anticipates that the 2014 biological opinion will be
20 complete by mid-August, 2014. If NMFS issues the 2014 biological opinion, Plaintiffs will
21 voluntarily dismiss their APA claim challenging the 2008 biological opinion.

22 The parties have discussed this new development and believe the following stipulated
23 schedule is the most efficient manner for the Court and parties to pursue this case. Thus, the
24 parties stipulate and respectfully request the Court to amend the scheduling order as follows:

- 25
26 1. If the Federal Defendants do not issue the 2014 biological opinion by September 15,
27 2014, the Federal Defendants shall file their responsive pleading to Plaintiffs' amended
28 complaint on that date;

- 1 2. The case management statement is currently due on August 1, 2014, and is rescheduled
2 August 29, 2014.
for ~~August 22, 2014~~.
- 3 3. The case management conference set for August 8, 2014 is rescheduled to
4 September 05, 2014 at 10:00 AM.¹
- 5 4. If NMFS has not issued the 2014 biological opinion by September 15, 2014, NMFS shall
6 submit a status report to the Court explaining its progress toward issuance of the 2014
7 biological opinion and stating its projections as to when it will issue the 2014 biological
8 opinion.
- 9 5. If NMFS has not issued the 2014 biological opinion by October 15, 2014, NMFS shall
10 lodge the administrative record for the 2008 biological opinion with the Court by
11 November 1, 2014.

12 Pursuant to stipulation, it is so ORDERED.



Dated: July 15, 2014.

Respectfully Submitted,

MELINDA HAAG
UNITED STATES ATTORNEY
MICHAEL T. PYLE
Assistant U.S. Attorney

SAM HIRSCH,
Acting Assistant Attorney General
SETH M. BARSKY, Chief

28 ¹ The parties respectfully request a case management conference to be rescheduled for
September 5, 2014, or a date convenient for the Court.

1 /s/ Coby Howell
2 COBY HOWELL
3 Senior Trial Attorney
4 U.S. Department of Justice
5 Environment & Natural Resources Division
6 Wildlife & Marine Resources Section
7 c/o USAO
8 1000 S.W. Third Avenue
9 Room 600
10 Portland, OR 97204
11 Telephone: (503) 727-1023
12 Facsimile: (503) 727-1117
13 E-mail: coby.howell@usdoj.gov

14 Attorneys for Federal Defendants

15
16 By permission: Christopher a. sproul
17 Christopher Sproul
18 Attorney for Plaintiffs Our Children's Earth
19 Foundation and Ecological Rights
20 Foundation

21
22 By Permission: /s/ Sarah Flanagan
23 Sarah G. Flanagan
24 Pillsbury Winthrop Shaw Pittman LLP
25 Attorneys for Defendant-Intervenor The
26 Board of Trustees of the Leland Stanford
27 Junior University
28

CERTIFICATE OF SERVICE

29 I certify that on July 15, 2014, the foregoing will be electronically filed with the Court's
30 electronic filing system, which will generate automatic service upon on all Parties enrolled to
31 receive such notice.

32 /s/ Coby Howell
33 Coby Howell