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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

LOS PADRES FORESTWATCH, a non-profit)
organization,)
)
Plaintiff,)
)
v.)
)
UNITED STATES FOREST SERVICE, PEGGY)
HERNANDEZ, in her official capacity as Forest)
Supervisor for the Los Padres National Forest,)
)
Defendants.)
)
_____)

Case No. C 10-03653

**JOINT STIPULATED REQUEST TO
CONTINUE PRELIMINARY
INJUNCTION HEARING;
~~PROPOSED~~ ORDER**

Date: September 7, 2010
Time: 2 p.m.
Courtroom 4, 5th Floor

Honorable Lucy H. Koh (LHK)

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2 Plaintiff Los Padres ForestWatch and Defendants United States Forest Service and Peggy
3 Hernandez (together the “parties”) have been engaged in good faith discussions to try to resolve this
4 lawsuit through a negotiated settlement. The parties have agreed to some interim measures that will
5 be in place while the parties continue their settlement discussions. The parties thus hereby jointly
6 request that the Court continue the preliminary injunction hearing, and the briefing related thereto,
7 in this matter currently set for September 7, 2010 at 2:00 p.m., pursuant to the following stipulation
8 as set forth below.

9 1. The Forest Service agrees to work with the U.S. Fish and Wildlife Service (“FWS”) on the following:

10 a. The Forest Service will promptly initiate consultation with FWS regarding the
11 potential impacts of the Road Clearing Project (the “Project”) on Threatened, Endangered, and
12 Proposed Species, as per Section 7 of the Endangered Species Act, as amended (“ESA”). The Forest
13 Service shall provide Plaintiff via email delivery all relevant documents submitted to and received
14 from FWS for this consultation promptly upon submitting or receiving such documents;

15 b. The Forest Service will reinitiate programmatic consultation with the FWS to
16 update the December 22, 2000 “Biological Opinion for Ongoing Activities Occurring in the Monterey
17 Ranger District of the Los Padres National Forest, Monterey County, California (2670) (1-8-99-F-
18 74)” for the federally-endangered Smith’s blue butterfly (*Euphilotes enoptes smithi*) (the “December
19 2000 BO”), incorporating the most recent and best available science;

20 2. Defendants agree to the following conditions for continued implementation of the
21 Project, and Plaintiff agrees to allow the Project to continue to proceed on these conditions:

22 a. The Forest Service will employ a qualified biologist to review on-site areas
23 proposed for clearing prior to any clearing activities (the “On-site Biologist”). The On-site Biologist
24 will ensure that all mandatory and recommended restrictions set forth in the Biological Assessment
25 (“BA”) and Botanical Issues memo (the “Botanical Memo”), attached hereto as Exhibits 1 & 2
26 respectively, are applied, as appropriate;

27 b. The Forest Service will avoid vegetation removal within 15 feet of the
28 boundaries of any riparian or wetland areas within the Project areas as determined by the On-site

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Biologist. The Biologist shall make the boundary determination based on the area distinguished by characteristic plant and/or animal communities of riparian or wetland habitats, as appropriate. The Forest Service may extend the buffer beyond 15 feet if recommended by the On-site Biologist;

c. The Forest Service will avoid vegetation removal in all Wilderness Areas and designated or proposed Research Natural Areas;

d. The Forest Service will not clear roads outside of Monterey County during the period this stipulation remains in effect;

e. The Forest Service will provide a weekly email report to Plaintiff summarizing the progress of the Project, which stipulations were/were not implemented during the report time period, whether those stipulations were effective at avoiding impacts, and whether any monitoring occurred and if so, the results/findings of such monitoring. As part of the report, provide a description of how many, if any, seacliff buckwheat plants were cut and their locations as per the terms and conditions of the December 2000 BO;

f. The Forest Service will avoid vegetation removal in the Brazil Canyon Ranch Area between May 1 and September 30 in all areas determined by the On-site Biologist to be occupied by Smith's blue butterflies or to be suitable habitat for Smith's blue butterflies, in accordance with the standard set forth in the FWS' September 13, 2007 Biological Opinion;

g. The Forest Service will incorporate measures to avoid impacts to California condors, including measures to avoid condors interacting with equipment and/or personnel, particularly in the vicinity of Anderson Peak;

h. The Forest Service will use its best efforts to avoid vegetation removal in all areas identified by the On-site Biologist likely to constitute habitat for all Forest Service sensitive species;

i. The Forest Service shall not remove any tanbark oak. The Forest Service may conduct trimming of tanbark oak if under 6 inches in diameter, but will avoid any cutting or trimming of tanbark oak over six inches in diameter.

3. The Parties' agreement to these terms and conditions is made without admission that the agreed terms and conditions set forth in this stipulation are legally-required or legally-sufficient;

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2 4. The Parties agree and hereby request that the preliminary injunction hearing currently
3 set for September 7, 2010 be continued for approximately 45 days, the exact date to be set by the
4 Court.

5 **SO STIPULATED**

6 /s/ Michael W. Graf
7 Michael W. Graf
8 Attorneys for Plaintiff

9 /s/Peter C. Whitfield
10 Peter C. Whitfield,
11 United States Department of Justice
12 Attorneys for Defendants

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PURSUANT TO STIPULATION, IT IS SO ORDERED:

The Court, having reviewed the Joint Stipulated Request to Continue Preliminary Injunction Hearing, hereby continues the hearing currently set for September 7, 2010 at 2 p.m. to November 2, 2010 at 2 p.m.:

Defendants' brief in response to Plaintiff's motion shall be due ten (10) days before the hearing date and Plaintiff's reply in support of its motion shall be due five days before the hearing date. If the case settles, the parties shall file a stipulation of dismissal at least five (5) days prior to the November 2, 2010 hearing.

Dated: September 2, 2010


Honorable Lucy H. Koh (LHK)