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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

CONSERVATION CONGRESS,
Plaintiff,

v.

UNITED STATES FOREST SERVICE,
and UNITED STATES FISH AND
WILDLIFE SERVICE,
Defendants.

Case No.: 2:13-cv-01977-JAM-DAD

JOINT STIPULATION
FOR STAY OF PROCEEDINGS

Plaintiff Conservation Congress, by its undersigned counsel, and Defendants United States Forest Service ("Forest Service") and United States Fish and Wildlife Service ("Fish and Wildlife Service"), by their undersigned counsel, hereby jointly stipulate to a stay of proceedings in this case and request the Court's approval of the stipulation.

Plaintiff challenges a Forest Service fuel reduction and timber sale project, the Smokey Project (the "Project"), proposed on the Mendocino National Forest. Plaintiff alleges that the Project will impact northern spotted owls, a threatened species under the Endangered Species Act ("ESA"), as well as the species' habitat. Plaintiff also raises claims that the Forest Service violated the National Environmental Policy Act and the National Forest Management Act by approving the Project. Plaintiff seeks to have the Court enjoin the Project from proceeding, among other relief.

1 The Forest Service has suspended operations on the Project
2 and no work has yet taken place. Furthermore, the Forest
3 Service intends in the near future to re-initiate ESA
4 consultation with the Fish and Wildlife Service regarding the
5 impact of the Project on northern spotted owls and their
6 habitat. As part of that consultation, the Fish and Wildlife
7 Service will reconsider the biological opinion at issue herein
8 regarding such impacts and may issue a new biological opinion.
9 If it does, Plaintiff will likely seek to reconsider its current
10 claims and amend its complaint to revise those claims.

11 The parties wish to avoid having the Court or parties
12 expend time and resources on claims that are reasonably likely
13 to become moot when the re-initiation of ESA consultation is
14 complete. Accordingly, Plaintiff and Defendants respectfully
15 stipulate to and request a stay of these proceedings to preserve
16 judicial resources and the parties' resources. The parties have
17 included in this Stipulation a schedule for apprising the Court
18 of the parties' respective positions and progress to efficiently
19 manage the case.

20 It is well-established that "the power to stay proceedings
21 is incidental to the power inherent in every court to control
22 the disposition of the causes on its docket with economy of time
23 and effort for itself, for counsel, and for litigants." *Landis*
24 *v. North American Co.*, 299 U.S. 248, 254 (1936). A court may
25 enter a stay "pending resolution of independent proceedings
26 which bear upon the case . . . whether the separate
27 proceedings are judicial, administrative, or arbitral in
28 character," and granting the stay "does not require that the
issues in such proceedings are necessarily controlling of the

1 action before the court." *Leyva v. Certified Grocers of*
2 *California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)
3 (citations omitted); see also *Lockyer v. Mirant Corp.*, 398 F.3d
4 1098, 1110 (9th Cir. 2005) (stay may serve the interests of
5 judicial economy by allowing development of factual and legal
6 issues). In this case, a stay will conserve the Court's
7 resources, and will allow the parties to avoid preparing
8 pleadings and motions that may well become moot after ESA
9 consultation is complete.

10 For these reasons, and for good cause shown, the parties
11 stipulate as follows and request that the Court approve this
12 stipulation:

- 13 1. The case is stayed and all current deadlines and due
14 dates are vacated.
- 15 2. Until the ESA consultation is complete, the Defendants
16 shall submit a status report apprising the Court of the
17 status of the ESA consultation no later than 60 days
18 after the date the case is stayed, and every 60 days
19 thereafter until consultation is complete.
- 20 3. The Forest Service will promptly transmit to Plaintiff a
21 copy of any new Biological Assessment that it prepares
22 for purposes of the re-initiated ESA consultation, as
23 soon as reasonably possible after the document has been
24 transmitted to the Fish and Wildlife Service. Likewise,
25 as soon as the Fish and Wildlife Service transmits a
26 Biological Opinion or document to the Forest Service to
27 complete the re-initiated consultation, a copy of that
28 Biological Opinion or other document shall be promptly

provided to Plaintiff, and in any event no later than the Notice contemplated in Paragraph 4 below.

4. Defendants will file a Notice with the Court and counsel as soon as reasonably possible after Defendants have completed the re-initiated ESA consultation ("Defendants' Notice"). The stay will expire when Defendants' Notice is filed.

5. Plaintiff will file a Notice with the Court and counsel no later than 14 days after Defendants' Notice is filed informing the Court and Defendants whether Plaintiff intends to file an amended complaint regarding the Project ("Plaintiff's Notice").

6. If no amended complaint is to be filed, Defendants will file an answer or response to Plaintiff's original complaint no later than 14 days after receiving Plaintiff's Notice. In addition, no later than 28 days after Plaintiff's Notice is filed, the Parties will file a Joint Status Report addressing the issues contemplated in the Court's September 23, 2013 Order Requiring Joint Status Report.

7. If Plaintiff's Notice states that Plaintiff intends to file an amended complaint, its amended complaint will be filed no later than 77 days after the date that Defendants' Notice is filed. Defendants will file an answer or response no later than 28 days after the date the amended complaint is filed. No later than 42 days after the filing of the amended complaint, the Parties will file a Joint Status Report addressing the issues

1 contemplated in the Court's September 23, 2013 Order
2 Requiring Joint Status Report.¹

3 8. The Forest Service will give Plaintiff 15 days notice
4 before lifting the suspension of operations on the
5 Project and will not lift the suspension of operations on
6 the Project before 15 days following the filing of
7 Defendants' Notice that the re-initiated ESA consultation
8 is complete.

9 For all the foregoing reasons, the Plaintiff and Defendants
10 request that the Court approve this Joint Stipulation for Stay
11 of Proceedings.

12
13 It is so ordered this 6th day of December, 2013.

14
15 /s/ John A. Mendez

16 The Honorable John A. Mendez
17 United States District Court Judge
18
19
20

21 ¹ The parties contemplate that Plaintiff might actually need to
22 file two amended complaints in this action, since new citizen's
23 suit claims against the Forest Service cannot be pled until
24 sixty days have elapsed from the time that Plaintiff provides
25 the Forest Service notice of its intent to sue under the
26 citizen's suit provision of the ESA. 16 U.S.C. § 1540(g)(2).
27 If there were a need for Plaintiff to seek interim injunctive
28 relief within that sixty day period, then Plaintiff would likely
file a First Amended Complaint pleading those new claims which
are **not** ESA citizen's suit claims as the basis for its motion
for interim injunctive relief. If Plaintiff indicates an intent
to amend its complaint two times, as set out above, then the
parties contemplate that Federal Defendants will answer only
after the complaint has been amended a second time.

Respectfully submitted this 6th day of December, 2013,

/s/Stuart Nicholas Wilcox
(signed by filer with written
authorization provided on
December 6, 2013)

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