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**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,

Federal Defendants,

and

TRINITY RIVER LUMBER CO.,

Defendant-Intervenor.

No. 2:13-CV-01977-JAM-DB

**JOINT STIPULATION AND ORDER
TO STAY PLAINTIFF'S MOTION
FOR ATTORNEY FEES AND
COSTS**

Hon. John A. Mendez

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2 Acting Assistant Attorney General
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19 *Attorneys for Federal Defendants*

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21 The parties now jointly stipulate to stay briefing of Plaintiff's motion for attorney fees
22 and costs, which Plaintiff filed simultaneously with this stipulation. In support of this
23 stipulation, Plaintiff and Federal Defendants state as follows:

24 1. Plaintiff intends to seek an award of attorney's fees and costs under the Equal
25 Access to Justice Act ("EAJA") and under the Endangered Species Act ("ESA") citizen suit
26 provision.

27 2. This Court entered judgment in this matter on May 30, 2017. ECF No. 142.

28 3. Plaintiff noticed its appeal to the Ninth Circuit on May 31, 2017. ECF No. 143.

4. Under Local Rule 293, "[m]otions for awards of attorneys' fees to prevailing
parties pursuant to statute shall be filed not later than twenty-eight (28) days after entry of final
judgment."

1 5. EAJA requires a party to file an application for fees and other expenses within 30
2 days of an unappealable final judgment. 28 U.S.C. § 2412(d)(1)(B). A “final judgment” under
3 EAJA is “a judgment that is final and not appealable.” *Id.* § 2412(d)(2)(G).

4 6. Under the ESA citizen suit provision, “[u]nless a statute or a court order provides
5 otherwise,” an application for attorney’s fees and expenses must “be filed no later than 14 days
6 after the entry of judgment.” *See* Fed. R. Civ. P. 54(d)(2)(B)(i).

7 7. Because Plaintiff has noticed an appeal, the Court’s May 30, 2017, Judgment is
8 not final for purposes of EAJA or the ESA citizen suit provisions.

9 8. Plaintiff has filed its motion for attorney’s fees and costs in an abundance of
10 caution to comply with the technical requirements of Local Rule 293.

11 9. Federal Defendants oppose Plaintiff’s motion for attorney’s fees and costs and
12 assert that Plaintiff’s motion is premature and Plaintiff should file a revised motion at the
13 appropriate time.

14 10. It is within the Court’s power to stay briefing on Plaintiff’s motion to conserve the
15 resources of the Court and the parties. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)
16 (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the
17 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
18 for litigants.”).

19 For these reasons, and for good cause shown, the parties stipulate as follows and request
20 that the Court approve this stipulation:
21

22 1. Briefing on Plaintiff’s motion for attorney’s fees and costs is stayed and
23 all current deadlines are vacated.
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2. Within fourteen (14) days of issuance of the Ninth Circuit's mandate, or other resolution of the appellate proceedings in this case, the parties will submit a Joint Status Report to address further proceedings on Plaintiff's motion for attorney's fees and costs.

Respectfully submitted this 16th day of June, 2017.

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The Court having considered the stipulation of the parties, IT IS SO ORDERED.

Dated: 6/19/2017

/s/ John A. Mendez
Hon. John A. Mendez
United States District Court Judge