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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

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

Hon. John A. Mendez

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Deputy Assistant Attorney General
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Environment & Natural Resources Division

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The parties now jointly stipulate to an additional stay on the briefing of Plaintiff's motion for attorney fees and costs, which Plaintiff initially filed on June 16, 2017 and which Plaintiff renewed on August 6, 2019. ECF Doc. Nos. 151, 192. The Plaintiffs and Federal Defendants propose this stay solely to facilitate potential settlement and in seeking this stay do not concede or compromise any claim or defense in support or against the award of attorney's fees in this case. In support of this stipulation, Plaintiff and Federal Defendants state as follows:

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

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

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

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

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

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

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12 7. The Ninth Circuit resolved Plaintiff’s appeal adversely to Plaintiff, and issued its
13 mandate in this case on August 1, 2019.

14 8. Although the Court’s May 30, 2017, Judgment was not final for purposes of
15 EAJA or the ESA citizen suit provisions, Plaintiff filed its motion for attorney fees in an
16 abundance of caution to comply with the technical requirements of Local Rule 293. ECF Docs
17 Nos. 151, 192. At the request of Federal Defendants, Plaintiff filed a Renewed Motion for
18 Attorney Fees and Costs on August 6, 2019. ECF Doc. No. 192. Plaintiff has not yet filed a
19 Memorandum Brief in Support of its Motion for Attorney Fees and Costs in this matter.
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21 9. The parties represent to the Court that they desire to resolve the matter of the
22 amount of attorney fees and costs to be paid – if any – in the most expeditious and efficient
23 manner possible. Specifically, the parties believe that the matter of attorney fees and costs is
24 susceptible to resolution by a good faith negotiation and settlement. The parties desire to
25 proceed towards a final resolution of this case in that manner, and without further judicial
26 intervention or litigation on the matter of fees and costs.
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1 10. The parties represent to the Court that a stay of proceedings on Plaintiff's Motion
2 for Attorney Fees and Costs is necessary to facilitate a negotiated resolution of the fee and cost
3 issue, and further represent to the Court that the negotiation will be somewhat complicated
4 because of the unusual length and procedural history of this litigation, the fact that Plaintiff was
5 represented by multiple counsel over the case's pendency, and the fact that Plaintiff prevailed on
6 only a subset of its claims.
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8 11. It is within the Court's power to stay briefing on Plaintiff's motion to conserve the
9 resources of the Court and the parties. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)
10 (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the
11 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
12 for litigants.”).
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14 For these reasons, and for good cause shown, the parties stipulate as follows and request
15 that the Court approve this stipulation:
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- 17 1. Briefing on Plaintiff's motion for attorney's fees and costs is stayed until October 31,
18 2019.
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2. If the parties have not resolved the issue of fees and costs by October 31, 2019, they shall jointly inform the Court and shall propose to the Court a schedule for briefing Plaintiff's Motion for Attorney Fees and Costs pursuant to Local Rule 293.

Respectfully submitted this 6th day of August, 2019.

/s/ Steven Sugarman

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/s/Hayley A. Carpenter (with permission on August 5, 2019)

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Attorneys for Federal Defendants

ORDER

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

Dated: August 7, 2019

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