

1 JOHN C. CRUDEN
Assistant Attorney General

2 TYLER L. BURGESS, Trial Attorney
3 United States Department of Justice
4 Environment and Natural Resources Division
5 Natural Resource Section
6 Ben Franklin Station, P.O. Box 7611
7 Washington, D.C. 20044-7611
8 Tel: (202) 616-4119
9 Fax: (202) 305-0506
10 tyler.burgess@usdoj.gov

11 J. BRETT GROSKO, Trial Attorney
12 United States Department of Justice
13 Environment and Natural Resources Division
14 Wildlife and Marine Resources Section
15 Ben Franklin Station, P.O. Box 7611
16 Washington, D.C. 20044-7611
17 Tel: (202) 305-0342
18 Fax: (202) 305-0275
19 brett.grosko@usdoj.gov

20 *Attorneys for Defendants*

21 JAMES J. TUTCHTON (CA Bar No. 150908)
22 Tuthton Law Office, LLC
23 6439 E. Maplewood Ave.
24 Centennial, CO 80111
25 Tel: (720) 301-3843
26 jtuthtonlo@gmail.com

27 STUART NICHOLAS WILCOX (Pro Hac Vice)
28 Stuart Wilcox LLC
1840 Vine St. #5
Denver, CO 80206
Tel: (720) 331-0385
stuart.wilcox5@gmail.com

STEVEN SUGARMAN (Pro Hac Vice)
347 County Road 55A
Cerrillos, New Mexico 87010
Tel: (505) 672-5082
stevensugarman@hotmail.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

CONSERVATION CONGRESS,

Plaintiff,

v.

UNITED STATES FOREST
SERVICE, and the UNITED
STATES FISH AND WILDLIFE
SERVICE,

Defendants,

TRINITY LUMBER CO.,

Proposed
Defendant –
Intervenor.

CASE NO. 2:13-cv-1977-JAM-DAD

**JOINT STIPULATION
FOR STAY OF PROCEEDINGS**

Plaintiff Conservation Congress, by its undersigned
counsel, and Defendants, the 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

1 timber sale project, the Smokey Project (the "Project"),
2 proposed on the Mendocino National Forest. Plaintiff alleges
3 that the Project will impact Northern spotted owls, a threatened
4 species under the Endangered Species Act ("ESA"). Dkt. No. 27.
5 Plaintiff also raised claims that the Forest Service violated
6 the National Environmental Policy Act and the National Forest
7 Management Act by approving the Project. *Id.* Plaintiff seeks to
8 have the Court enjoin the Project from proceeding, among other
9 relief.
10

11 On December 6, 2013, the parties jointly requested that the
12 Court enter a stay of these proceedings to allow the Forest
13 Service to reinitiate consultation with the Fish and Wildlife
14 Service under the ESA on the Project. Dkt. No. 14. On December
15 19, 2013, the Court stayed this case to allow the Defendants to
16 complete their reinitiated consultation. Dkt. No. 15. On April
17 9, 2014, the Forest Service submitted its Supplemental
18 Biological Assessment to the Fish and Wildlife Service to
19 request re-initiation of ESA consultation. Dkt. No. 23. On
20 November 3, 2014, the Fish and Wildlife Service issued the
21 Biological Opinion for the Project and transmitted it to the
22 Forest Service on November 4, 2014. *Id.*
23
24

25 Plaintiff filed a first amended complaint on February 4,
26 2015. Dkt. No. 27. Defendants' answer to the first amended
27
28

1 complaint was filed on March 18, 2015, and the parties' Joint
2 Status Report is due April 1, 2015. Dkt. Nos. 38 & 45.

3 The Forest Service now intends to reinitiate ESA
4 consultation again to consider a recently-discovered Northern
5 spotted owl activity center. Plaintiff's counsel has informed
6 Defendants' counsel that Plaintiff intends to amend its
7 complaint again to revise its claims in light of this new
8 information. In addition, the FWS may amend its biological
9 opinion further following ESA consultation, and the Forest
10 Service will consider whether its NEPA analysis remains valid.
11

12 In light of these further activities, the Parties wish to
13 avoid having the Court or Parties expend time and resources on
14 claims that may become moot when the re-initiation of ESA
15 consultation is complete. Accordingly, Plaintiff and Defendants
16 respectfully stipulate to and request a further stay of these
17 proceedings to preserve judicial resources and the Parties'
18 resources. The Parties have included in this Stipulation a
19 schedule for apprising the Court of the Parties' respective
20 positions and progress to efficiently manage the case.
21
22
23

24 For these reasons, and for good cause shown, the Parties
25 stipulate as follows and request that the Court approve this
26 stipulation:
27
28

1 1. The case is stayed and all current deadlines and due
2 dates are vacated.

3 2. Until the ESA consultation is complete, the Defendants
4 shall submit a status report apprising the Court of the status
5 of the ESA consultation no later than 60 days after the date the
6 case is stayed, and every 60 days thereafter until consultation
7 is complete.
8

9 3. The Forest Service will promptly transmit to Plaintiff a
10 copy of any new Biological Assessment that it prepares for
11 purposes of the re-initiated ESA consultation, as soon as
12 reasonably possible after the document has been transmitted to
13 the Fish and Wildlife Service. Likewise, as soon as the Fish and
14 Wildlife Service transmits an appropriate consultation document
15 to the Forest Service to complete the re-initiated consultation,
16 a copy of that document shall be promptly provided to Plaintiff,
17 and in any event no later than the Notice contemplated in
18 Paragraph 4 below.
19
20

21 4. Defendants will file a Notice with the Court and counsel
22 as soon as reasonably possible after Defendants have completed
23 the re-initiated ESA consultation ("Defendants' Notice"). The
24 stay will expire when Defendants' Notice is filed.
25

26 5. Plaintiff will file a Notice with the Court and counsel
27
28

1 no later than 14 days after Defendants' Notice is filed
2 informing the Court and Defendants whether Plaintiff intends to
3 file a second amended complaint regarding the Project
4 ("Plaintiff's Notice").

5 6. If no second amended complaint is filed, no later than
6 14 days after Plaintiff's Notice is filed, the Parties will file
7 a Joint Status Report addressing the issues contemplated in the
8 Court's September 23, 2013 Order Requiring Joint Status Report.

9 7. If Plaintiff's Notice states that Plaintiff intends to
10 file a second amended complaint, its second amended complaint
11 will be filed no later than 77 days after the date that
12 Defendants' Notice is filed. Defendants will file an answer or
13 response no later than 21 days after the date the second amended
14 complaint is filed. No later than 7 days after the filing of the
15 answer to the second amended complaint, the Parties will file a
16 Joint Status Report addressing the issues contemplated in the
17 Court's September 23, 2013 Order Requiring Joint Status Report.

18 8. The Forest Service will maintain the suspension of
19 operations on the Project until (a) 45 days after the final
20 summary judgment brief is filed; or (b) the Court rules on the
21 parties' summary judgment motions, whichever occurs first.

22 For all the foregoing reasons, the Plaintiff and Defendants
23 request that the Court approve this Joint Stipulation for Stay
24
25
26
27
28

of Proceedings.

Respectfully submitted this 25th day of March, 2015,

/s/ Steven Sugarman
(signed by filer with written authorization
provided on March 25, 2015)

JAMES J. TUTCHTON (CA Bar No. 150908)
Tutchton Law Office, LLC
6439 E. Maplewood Ave.
Centennial, CO 80111
Tel: (720) 301-3843
jtutchtonlo@gmail.com

STUART NICHOLAS WILCOX
(Pro Hac Vice)
Stuart Wilcox LLC
1840 Vine St. #5
Denver, CO 80206
Tel: (720) 331-0385
stuart.wilcox5@gmail.com

STEVEN SUGARMAN
(Pro Hac Vice)
347 County Road 55A
Cerrillos, New Mexico 87010
Tel: (505) 672-5082
stevensugarman@hotmail.com

Attorneys for Plaintiff

JOHN C. CRUDEN
Assistant Attorney General

/s/ Tyler L. Burgess
TYLER L. BURGESS
Trial Attorney
United States Department of Justice
Environment and Natural
Resources Division
Natural Resource Section
Ben Franklin Station
P.O. Box 7611

1 Washington, D.C. 20044-7611

2 Tel: (202) 616-4119

3 Fax: (202) 305-0506

4 tyler.burgess@usdoj.gov

5 SETH M. BARSKY, Chief

6 S. Jay Govindan, Assistant Chief

7 J. BRETT GROSKO, Trial Attorney

8 United States Department of Justice

9 Environment and Natural Resources Division

10 Wildlife and Marine Resources Section

11 Ben Franklin Station, P.O. Box 7611

12 Washington, D.C. 20044-7611

13 Tel: (202) 305-0342

14 Fax: (202) 305-0275

15 brett.grosko@usdoj.gov

16 *Attorneys for Defendants*

17
18 It is so ordered this ____ day of March, 2015.

19
20
21
22
23
24
25
26
27
28

The Honorable John A. Mendez
United States District Court Judge

1 STEVEN SUGARMAN (Pro Hac Vice)
2 347 County Road 55A
3 Cerrillos, New Mexico 87010
4 Tel: (505) 672-5082
5 stevensugarman@hotmail.com

6 *Attorneys for Plaintiff*

7
8 **UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 CONSERVATION CONGRESS,)

11 Plaintiff,)

12 v.)

13 CASE NO. 2:13-cv-1977-JAM-DAD

14 UNITED STATES FOREST)
15 SERVICE, and the UNITED)
16 STATES FISH AND WILDLIFE)
17 SERVICE,)

18 **JOINT STIPULATION**
19 **FOR STAY OF PROCEEDINGS**

20 Defendants,)

21 TRINITY LUMBER CO.,)

22 Proposed)
23 Defendant -)
24 Intervenor.)

25 Plaintiff Conservation Congress, by its undersigned
26 counsel, and Defendants, the United States Forest Service
27 ("Forest Service") and United States Fish and Wildlife Service
28 ("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

1 timber sale project, the Smokey Project (the "Project"),
2 proposed on the Mendocino National Forest. Plaintiff alleges
3 that the Project will impact Northern spotted owls, a threatened
4 species under the Endangered Species Act ("ESA"). Dkt. No. 27.
5 Plaintiff also raised claims that the Forest Service violated
6 the National Environmental Policy Act and the National Forest
7 Management Act by approving the Project. *Id.* Plaintiff seeks to
8 have the Court enjoin the Project from proceeding, among other
9 relief.
10

11 On December 6, 2013, the parties jointly requested that the
12 Court enter a stay of these proceedings to allow the Forest
13 Service to reinitiate consultation with the Fish and Wildlife
14 Service under the ESA on the Project. Dkt. No. 14. On December
15 19, 2013, the Court stayed this case to allow the Defendants to
16 complete their reinitiated consultation. Dkt. No. 15. On April
17 9, 2014, the Forest Service submitted its Supplemental
18 Biological Assessment to the Fish and Wildlife Service to
19 request re-initiation of ESA consultation. Dkt. No. 23. On
20 November 3, 2014, the Fish and Wildlife Service issued the
21 Biological Opinion for the Project and transmitted it to the
22 Forest Service on November 4, 2014. *Id.*
23

24 Plaintiff filed a first amended complaint on February 4,
25 2015. Dkt. No. 27. Defendants' answer to the first amended
26
27
28

1 complaint was filed on March 18, 2015, and the parties' Joint
2 Status Report is due April 1, 2015. Dkt. Nos. 38 & 45.

3 The Forest Service now intends to reinitiate ESA
4 consultation again to consider a recently-discovered Northern
5 spotted owl activity center. Plaintiff's counsel has informed
6 Defendants' counsel that Plaintiff intends to amend its
7 complaint again to revise its claims in light of this new
8 information. In addition, the FWS may amend its biological
9 opinion further following ESA consultation, and the Forest
10 Service will consider whether its NEPA analysis remains valid.
11

12 In light of these further activities, the Parties wish to
13 avoid having the Court or Parties expend time and resources on
14 claims that may become moot when the re-initiation of ESA
15 consultation is complete. Accordingly, Plaintiff and Defendants
16 respectfully stipulate to and request a further stay of these
17 proceedings to preserve judicial resources and the Parties'
18 resources. The Parties have included in this Stipulation a
19 schedule for apprising the Court of the Parties' respective
20 positions and progress to efficiently manage the case.
21
22

23
24 For these reasons, and for good cause shown, the Parties
25 stipulate as follows and request that the Court approve this
26 stipulation:
27
28

1 1. The case is stayed and all current deadlines and due
2 dates are vacated.

3 2. Until the ESA consultation is complete, the Defendants
4 shall submit a status report apprising the Court of the status
5 of the ESA consultation no later than 60 days after the date the
6 case is stayed, and every 60 days thereafter until consultation
7 is complete.
8

9 3. The Forest Service will promptly transmit to Plaintiff a
10 copy of any new Biological Assessment that it prepares for
11 purposes of the re-initiated ESA consultation, as soon as
12 reasonably possible after the document has been transmitted to
13 the Fish and Wildlife Service. Likewise, as soon as the Fish and
14 Wildlife Service transmits an appropriate consultation document
15 to the Forest Service to complete the re-initiated consultation,
16 a copy of that document shall be promptly provided to Plaintiff,
17 and in any event no later than the Notice contemplated in
18 Paragraph 4 below.
19
20

21 4. Defendants will file a Notice with the Court and counsel
22 as soon as reasonably possible after Defendants have completed
23 the re-initiated ESA consultation ("Defendants' Notice"). The
24 stay will expire when Defendants' Notice is filed.
25

26 5. Plaintiff will file a Notice with the Court and counsel
27
28

1 no later than 14 days after Defendants' Notice is filed
2 informing the Court and Defendants whether Plaintiff intends to
3 file a second amended complaint regarding the Project
4 ("Plaintiff's Notice").

5 6. If no second amended complaint is filed, no later than
6 14 days after Plaintiff's Notice is filed, the Parties will file
7 a Joint Status Report addressing the issues contemplated in the
8 Court's September 23, 2013 Order Requiring Joint Status Report.

9 7. If Plaintiff's Notice states that Plaintiff intends to
10 file a second amended complaint, its second amended complaint
11 will be filed no later than 77 days after the date that
12 Defendants' Notice is filed. Defendants will file an answer or
13 response no later than 21 days after the date the second amended
14 complaint is filed. No later than 7 days after the filing of the
15 answer to the second amended complaint, the Parties will file a
16 Joint Status Report addressing the issues contemplated in the
17 Court's September 23, 2013 Order Requiring Joint Status Report.

18 8. The Forest Service will maintain the suspension of
19 operations on the Project until (a) 45 days after the final
20 summary judgment brief is filed; or (b) the Court rules on the
21 parties' summary judgment motions, whichever occurs first.

22 For all the foregoing reasons, the Plaintiff and Defendants
23 request that the Court approve this Joint Stipulation for Stay
24
25
26
27
28

1 of Proceedings.

2 Respectfully submitted this 25th day of March, 2015,

3
4 /s/ Steven Sugarman
5 (signed by filer with written authorization
provided on March 25, 2015)

6 JAMES J. TUTCHTON (CA Bar No. 150908)
7 Tuthton Law Office, LLC
8 6439 E. Maplewood Ave.
9 Centennial, CO 80111
Tel: (720) 301-3843
jtuthtonlo@gmail.com

10 STUART NICHOLAS WILCOX
11 (Pro Hac Vice)
12 Stuart Wilcox LLC
13 1840 Vine St. #5
14 Denver, CO 80206
Tel: (720) 331-0385
stuart.wilcox5@gmail.com

15 STEVEN SUGARMAN
16 (Pro Hac Vice)
17 347 County Road 55A
18 Cerrillos, New Mexico 87010
Tel: (505) 672-5082
stevensugarman@hotmail.com

19 Attorneys for Plaintiff

20
21 JOHN C. CRUDEN
22 Assistant Attorney General

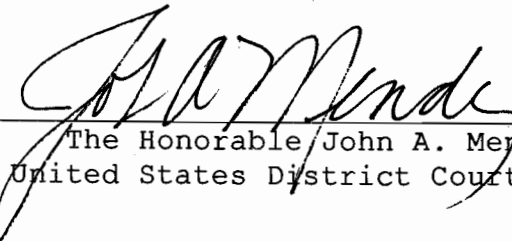
23 /s/ Tyler L. Burgess
24 TYLER L. BURGESS
25 Trial Attorney
26 United States Department of Justice
27 Environment and Natural
28 Resources Division
Natural Resource Section
Ben Franklin Station
P.O. Box 7611

1 Washington, D.C. 20044-7611
2 Tel: (202) 616-4119
3 Fax: (202) 305-0506
4 tyler.burgess@usdoj.gov

5 SETH M. BARSKY, Chief
6 S. Jay Govindan, Assistant Chief
7 J. BRETT GROSKO, Trial Attorney
8 United States Department of Justice
9 Environment and Natural Resources Division
10 Wildlife and Marine Resources Section
11 Ben Franklin Station, P.O. Box 7611
12 Washington, D.C. 20044-7611
13 Tel: (202) 305-0342
14 Fax: (202) 305-0275
15 brett.grosko@usdoj.gov

16 *Attorneys for Defendants*

17 It is so ordered this 30th day of March, 2015.

18 
19 The Honorable John A. Mendez
20 United States District Court Judge
21
22
23
24
25
26
27
28