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Counsel listed on signature page

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SAN LUIS OBISPO COASTKEEPER, <i>et al.</i> ,)	Case No. 2:19-cv-08696 AB(JPRx)
)	
Plaintiffs,)	STIPULATED MOTION FOR
)	STAY OF LITIGATION
v.)	
)	Date: August 25, 2023
SANTA MARIA VALLEY WATER CONSERVATION DISTRICT, <i>et al.</i> ,)	Time: 10:00 a.m.
)	Judge: Hon. Andre Birotte, Jr.
Defendants,)	
)	
and)	
)	
GOLDEN STATE WATER COMPANY, <i>et al.</i> ,)	
)	
Intervenor-Defendants)	
)	

1 Plaintiffs San Luis Obispo Coastkeeper and Los Padres ForestWatch
2 (“Plaintiffs”) and Defendants United States Department of the Interior, the U.S.
3 Bureau of Reclamation, and Camille Touton,¹ Commissioner of the U.S. Bureau of
4 Reclamation (collectively the “Bureau”) (altogether referred to as “the Moving
5 Parties”) hereby state as follows:

6 WHEREAS Plaintiffs filed their “Complaint for Declaratory and Injunctive
7 Relief,” ECF No. 1, on October 9, 2019;

8 WHEREAS, on January 15, 2020, the City of Santa Maria and Golden State
9 Water Company were granted status as Defendant-Intervenors in this action, ECF
10 No. 57;

11 WHEREAS Plaintiffs’ Complaint alleges that the Bureau and Defendant
12 Santa Maria Valley Water Conservation District (the “District”) are violating
13 Section 9 of the Endangered Species Act (“ESA”), 16 U.S.C. § 1538, through the
14 operation and management of Twitchell Dam on the Cuyama River, particularly by
15 limiting water releases from Twitchell Dam to the downstream river’s percolation
16 capacity, causing insufficient flows in the Santa Maria River for migration of
17 endangered Southern California Steelhead (“Steelhead”), and thereby allegedly
18 causing harm to, and take of, Steelhead without incidental take permit
19 authorization;

20
21 WHEREAS, the relief requested in the Complaint includes, among other
22 requests, an order from this Court requiring the Bureau to modify the Standard
23 Operating Procedures (“SOP”) for Twitchell Dam and for the Bureau and District
24 to modify the operation of Twitchell Dam, particularly the current flow regime, as
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27 ¹ Pursuant to Fed. R. Civ. P. 25(d), current agency officials have been substituted
28 for their predecessors in office.

1 necessary to come into compliance with ESA Section 9, 16 U.S.C. § 1538;

2 WHEREAS, subject to compliance with applicable laws and regulations, the
3 Bureau will use its best efforts in good faith to issue a timely final decision on the
4 Twitchell Dam Pilot Project, as described below, by January 10, 2024, with the
5 goal that supplemental flow releases will commence by that date if triggered as
6 described herein;

7 WHEREAS, the Bureau intends that, after adoption, the Pilot Project would
8 remain in effect until or unless it is replaced by a subsequent final agency action by
9 the Bureau modifying the Standard Operating Procedures for Twitchell Dam;

10 WHEREAS, the Moving Parties, through their authorized representatives,
11 without final adjudication of the facts or law with respect to Plaintiffs' claims,
12 have reached this Stipulation to resolve this case, with the Moving Parties agreeing
13 to undertake and perform the measures set forth in this Stipulated Stay (referred to
14 as the "Stipulation").
15

16 THEREFORE, the Parties stipulate as follows and jointly request that the
17 Court stay all judicial proceedings in this case pending the Moving Parties'
18 completion of the activities detailed below, specifically to allow the completion of
19 the ESA consultation process, through the issuance by the National Marine
20 Fisheries Service of a Letter of Concurrence or a final Biological Opinion, and the
21 Bureau's issuance of a Temporary Standing Order for the Twitchell Dam Pilot
22 Project, as well as such annual reports as necessary until the Bureau documents the
23 release of Supplemental Flows in accordance with a final Temporary Standing
24 Order.

25 1. The Bureau will propose to include the schedule below for Twitchell Dam
26 operations, hereinafter referred to as the Twitchell Dam Pilot Project, in a
27 Temporary Standing Order, which will constitute the final decision on the
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1 Twitchell Dam Pilot Project:

2 A. INITIATE SUPPLEMENTAL FLOW RELEASES: Between December
3 1 and April 30, when either the total accumulated inflow into Twitchell Reservoir
4 or Twitchell Reservoir storage is greater than or equal to 13,000 acre-feet and
5 average daily streamflows in the lower Sisquoc River, as measured at the Garey
6 gage (USGS 11140000) are between 350 and 550 cubic feet per second (“cfs”),
7 and have already remained at or above that level for at least two previous days,
8 releases from Twitchell Dam, up to 400 cfs, will be made such that the combined
9 streamflows at the confluence of the Sisquoc and Cuyama rivers will target
10 approximately 600 cfs. These releases are referred to as “Supplemental Releases”
11 herein.
12

13 B. CONTINUE SUPPLEMENTAL RELEASES: Through monitoring of
14 conditions and subject to the non-storage provisions and limitations of Paragraph
15 1A and Paragraph 1C, daily adjustment to Supplemental Releases, up to 400 cfs,
16 may be made when the Bureau determines it is needed to preserve a minimum of
17 250 cfs through the “critical passage reach” (the reach of the Santa Maria River
18 that begins about one mile downstream of Highway 1 and continues past Bonita
19 School Road) or to prevent loss of life or significant damage to property, through
20 monitoring of conditions.

21 C. END SUPPLEMENTAL RELEASES: Twitchell Dam Supplemental
22 Releases will cease when flows in the lower Sisquoc River, as measured at the
23 Garey gage, fall below 150 cfs, but shall be reinitiated pursuant to the Garey gage
24 flow conditions in Paragraph 1A until 10 consecutive days of approximately 600
25 cfs at the confluence of the Sisquoc and Cuyama have been achieved, or 8,000
26 acre-feet of cumulative Twitchell Dam Supplemental Releases have been made
27 during any December 1 to April 30 period.
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1 D. MONITORING: The Bureau will monitor Twitchell Dam releases and
2 the Sisquoc River flows at the Garey gage.

3 2. Within 25 working days of the effective date of this Stipulation, the Bureau
4 will initiate informal consultation pursuant to ESA Section 7(a)(2), 16 U.S.C. §
5 1536(a)(2), with the National Marine Fisheries Service (“NMFS”) by requesting
6 information and inviting informal dialogue regarding the presence of ESA-listed
7 species and designated critical habitats in the vicinity of Twitchell Dam prior to
8 Reclamation’s submission of a Biological Assessment (“BA”) on a Twitchell Dam
9 Pilot Project. As used in this Stipulation, a “working day” is any day not a
10 Saturday, Sunday or legal holiday, with legal holiday defined per Fed. R. Civ. P.
11 6(a)(6).

12 3. The Bureau will produce a draft BA for the Twitchell Dam Pilot Project
13 within 75 working days of the effective date for comment by the Moving Parties.
14 The BA will include the level of detail specified in 50 C.F.R. § 402.14(c)(1)(i)-
15 (vi). The Moving Parties shall have 15 working days to submit written comments
16 on the draft BA to the Bureau.

17 4. Within 20 working days after the deadline to receive the Moving Parties’
18 comments, the Bureau will submit its BA to NMFS setting forth its evaluation of
19 effects for the ESA-listed species and designated critical habitat that may be
20 affected by the Twitchell Dam Pilot Project. The Bureau will notify the Moving
21 Parties within five (5) working days of such submittal.

22 5. The Bureau will initiate preparation of National Environmental Policy Act
23 (“NEPA”) analysis of the Twitchell Dam Pilot Project within 10 working days
24 after submittal of its BA to NMFS, consistent with applicable law and NEPA
25 regulations.

26 6. In the event NMFS provides written notice to the Bureau of its non-
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1 concurrence to informal ESA consultation, the Bureau will notify the Moving
2 Parties within 10 working days and the Moving Parties agree to meet and confer
3 regarding potential consequences for the Twitchell Dam Pilot Project as proposed
4 in the BA, ESA consultation schedule, and other matters as appropriate.

5 7. The Bureau will provide the Moving Parties with NMFS' written
6 concurrence concluding informal consultation or its Biological Opinion on the
7 Twitchell Dam Pilot Project within 10 working days of receipt.

8 8. The Bureau retains the discretion to adopt a Twitchell Dam Pilot Project that
9 varies from the Pilot Project proposal stated above, following consultation with
10 NMFS during the ESA Section 7 consultation process.

11 9. Within 45 working days of the effective date of the Stipulation, the Bureau
12 will confer with the U.S. Geologic Survey ("USGS") and the County of Santa
13 Barbara on the efficacy of installing a gage within the "critical passage reach."

14 10. The Bureau will provide Plaintiffs with a written report on or before
15 September 15 of each year until the stay is lifted or the Moving Parties file a
16 stipulated dismissal pursuant to paragraph 24, to include:

- 17 • The timing and rate of all releases from Twitchell Dam December 1
18 through April 30.
- 19 • All data from any gaging station operated within the critical passage reach
20 from December 1 through April 30, should such a gage be installed by
21 USGS or other government agency; and
- 22 • If the Bureau has not issued a Temporary Standing Order for the Twitchell
23 Dam Pilot Project, a description of the status of the Section 7 consultation
24 and of actions the Bureau is taking to consider the Twitchell Dam Pilot
25 Project, including an estimated timeline for issuance of the Temporary
26 Standing Order.
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1 11. Attorney fees and costs. Plaintiffs reserve any claims against Defendants for
2 recovery of costs of litigation (including reasonable attorney and expert witness
3 fees) through and including the effective date of this Stipulation pursuant to 16
4 U.S.C. § 1540(g). The Moving Parties agree to negotiate Plaintiffs' claim(s)
5 against Defendants for fees and costs of this action. If the Moving Parties fail to
6 resolve Plaintiffs' claim(s) for costs of litigation (including reasonable attorney and
7 expert witness fees) within two months of the effective date of this Stipulation, or
8 such other time as the parties may mutually agree and the Court approves,
9 Plaintiffs may file a motion for interim costs of litigation (including reasonable
10 attorney and expert witness fees) with the Court, notwithstanding the stay entered
11 pursuant to this Stipulation. The Bureau does not waive any right to contest any
12 fees, costs or expenses claimed by Plaintiffs, with the exception that the Bureau
13 agrees that its performance of the activities detailed in this Stipulation, ending with
14 issuance of a Temporary Standing Order will make an award in a reasonable
15 amount appropriate under 16 U.S.C. § 1540(g)(4).

17 12. Dispute resolution. In the event that any Party seeks to modify the terms of
18 this Stipulation, or in the event a dispute under this Stipulation arises, or any Party
19 believes that another Party has failed to comply with any term or condition of this
20 Stipulation, the Moving Parties shall meet and confer in good faith to resolve any
21 disputes within 10 working days, or as soon as reasonably achievable thereafter, of
22 receiving written notification from the other Party of a request for a meeting,
23 pursuant to this Paragraph. If the Moving Parties are unable to resolve the dispute
24 within 20 working days of the initial meet and confer, or such time thereafter as is
25 mutually agreed upon, then any Party may move to terminate the stay. In no case
26 shall a Party institute such action without first invoking the dispute resolution
27 procedures of this Paragraph.
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1 13. Plaintiffs’ sole remedy under this Stipulation is to move the Court to lift the
2 stay and pursue the claims for relief in its Complaint (or an amended or
3 supplemental Complaint). For the avoidance of doubt, the Moving Parties
4 acknowledge that, if the Bureau has not completed ESA Section 7 consultation and
5 issued the Temporary Standing Order for the Twitchell Dam Pilot Project, such
6 that Supplemental Releases may be implemented, on or before January 10, 2024,
7 or if the Bureau is not meeting its substantive obligations under the Stipulation,
8 Plaintiffs may, after dispute resolution as described in paragraph 12 above, and at
9 its sole discretion, move to terminate the stay, and pursue the claims for relief in its
10 Complaint (or an amended or supplemental complaint) which may include seeking
11 injunctive relief on those claims, in accordance with this Court’s local rules or an
12 alternative mutually agreed schedule. The Bureau and the United States preserve
13 all defenses they might have against such a challenge.
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15 14. If a lapse in the Bureau’s appropriations occurs prior to any deadline in this
16 Stipulation due to a shutdown of the federal government, that deadline shall be
17 extended automatically by one calendar day for each calendar day of the
18 government shutdown. No notice is required to extend time in connection with a
19 government shutdown. Nothing in this paragraph shall preclude the Bureau from
20 seeking an additional extension through stipulation of the Moving Parties or
21 modification of this Stipulation by motion to the Court.

22 15. Nothing in this Stipulation shall preclude Plaintiffs from challenging, in a
23 separate suit, any future actions taken by the Bureau, including bringing claims
24 challenging any final Bureau decisions under the Act of Sept. 3, 1954, Pub. L. No.
25 83-774, 68 Stat. 1190 (“Public Law 774”), the ESA, or other applicable law. Any
26 challenge to such agency action shall be brought in a new lawsuit. The Bureau and
27 the United States preserve all defenses they might have against such a challenge.
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1 16. Plaintiffs reserve the right to seek an award for costs of litigation incurred
2 after approval of this Stipulation, including in connection with any disagreement
3 between the Moving Parties concerning the interpretation, proposed modification,
4 or performance of any aspect of this Stipulation.

5 17. By entering into this Stipulation, the Bureau does not waive any right to
6 contest any matter except as otherwise agreed in this Stipulation, including costs of
7 litigation claimed by Plaintiffs, addressed herein in any future litigation or
8 continuation of the present action.

9 18. No provision of this Stipulation shall be interpreted as or constitute a
10 commitment or requirement that the Bureau obligate or pay funds exceeding those
11 available, take action in contravention of the Anti-Deficiency Act, 31 U.S.C. §
12 1341, or take action in contravention of the Administrative Procedure Act, 5
13 U.S.C. §§ 551-559, 701-706; Public Law 774; the ESA, 16 U.S.C. §§ 1531 to
14 1544, or any other law or regulation, either substantive or procedural. Nothing in
15 this Stipulation shall be construed to limit or modify the discretion accorded to the
16 Bureau by law with respect to the procedures to be followed in completing the
17 actions set forth above or the substance of any Bureau decision. No provision of
18 this Stipulation shall be interpreted as constituting a commitment or requirement
19 that the Bureau take actions in contravention of, or to modify the discretion
20 accorded to the Bureau by the ESA, Public Law 774, the Administrative Procedure
21 Act, or any other law or regulation, either substantive or procedural.

22 19. This Stipulation shall not constitute or be construed as an admission,
23 precedent, or adjudication of any question of fact or law with respect to any of the
24 claims raised in this matter. Nor is it an admission of violation of any law, rule,
25 regulation, or policy by the United States or Bureau.

26 20. Any notices required or provided for by this Stipulation shall be in writing,
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1 via email or other means, and sent to the counsel of record for the Moving Parties.

2 21. This Stipulation was negotiated by the Moving Parties in good faith and was
3 jointly drafted by the Moving Parties. Accordingly, the Moving Parties hereby
4 agree that any and all rules of construction to the effect that ambiguity is construed
5 against the drafting party shall be inapplicable in any dispute concerning the terms,
6 meaning, or interpretation of this Stipulation.

7 22. All negotiations leading up to the execution of this Stipulation, including, to
8 the extent allowable by law, any correspondence or other documents exchanged
9 during and for the purpose of settlement negotiations, are confidential, in
10 accordance with C.D. Cal. Local Rule 16-15.8 and the Order filed February 27,
11 2023 at ECF No. 126, except that any party may choose to disclose information or
12 analyses prepared by that party during settlement negotiations and which does not
13 disclose any communications made by another party.

14 23. This Stipulation shall become effective upon the date of its entry of an Order
15 by the Court approving the Stipulation (referred to herein as the “effective date”).
16 If for any reason the Court does not approve this Stipulation, the Moving Parties
17 shall use their best efforts to work together to modify the Stipulation within thirty
18 (30) calendar days so that it is acceptable to the Court. If the Parties are unable to
19 modify this Stipulation in a mutually acceptable manner, this agreement is void.

20 24. Within thirty (30) days of the first year where the Bureau’s report to
21 Plaintiffs, described above in paragraph 10, documents Supplemental Releases
22 from Twitchell Dam pursuant to the Twitchell Dam Pilot Project, the Moving
23 Parties will jointly submit, pursuant to Federal Rule of Civil Procedure 41, a
24 stipulated dismissal without prejudice.

25 25. Accordingly, a stay of judicial proceedings pending the completion of the
26 activities specified herein is intended to preserve judicial resources and those of the
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1 Parties by eliminating the need for this Court to adjudicate the claims in this case.
2 26. A stay of judicial proceedings is thus also in the public interest. This Court
3 possesses wide discretion to stay judicial proceedings in such situations, *see*
4 *generally Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th
5 Cir. 1979).

6 WHEREFORE, after reviewing the terms and conditions of this Stipulation,
7 the Moving Parties hereby consent and agree to the terms and conditions of this
8 Stipulation, respectfully request that the Court grant this motion and enter the
9 attached Proposed Order.

10 IT IS SO STIPULATED.

11
12
13 Dated: July 28, 2023

Respectfully submitted,

14 TODD KIM
15 Assistant Attorney General
16 U.S. Department of Justice
17 Environment & Natural Resources Division
18 S. JAY GOVINDAN, Section Chief
19 BRIDGET K. MCNEIL, Assistant Chief
20 Wildlife and Marine Resources Section

21 /s/ John H. Martin
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28 *Attorneys for United States Defendants*

1 Dated: July 28, 2023

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9 Dated: July 28, 2023

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17 Dated: July 28, 2023

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SIGNATURE ATTESTATION

I hereby attest that all signatories listed above, on whose behalf this report is submitted, concur in the filing’s content and have authorized the filing.

Dated: July 28, 2023 /s/ Erica A. Maharg
Erica A. Maharg

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing notice was filed with the Court’s CM/ECF system, which will generate service upon all counsel of record.

Dated: July 28, 2023 /s/ Erica A. Maharg
Erica A. Maharg