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10 MALCOLM DOUGHERTY

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 TED SOUZA, an individual; FRIENDS OF DEL )  
14 NORTE; ENVIRONMENTAL PROTECTION )  
15 INFORMATION CENTER, a non-profit corporation; )  
16 CENTER FOR BIOLOGICAL DIVERSTY, a non-profit )  
17 corporation, )

18 Plaintiffs, )

19 vs. )

20 CALIFORNIA DEPARTMENT OF )  
21 TRANSPORTATION and MALCOLM DOUGHERTY, )  
22 in his official capacity as Director of the State of )  
23 California Department of Transportation; the NATIONAL )  
24 MARINE FISHERIES SERVICE; and EILEEN )  
25 SOBECK, in her official capacity as Assistant )  
26 Administrator for Fisheries, )

27 Defendants. )  
28

No. 4:13-cv-04407-JD

**STIPULATION AND  
~~PROPOSED~~ ORDER FOR A  
DISMISSAL WITHOUT  
PREJUDICE**

Judge: Hon. James Donato

29 Defendants California Department of Transportation (collectively with Malcolm  
30 Dougherty, "Caltrans") began the process of re-initiation of consultation with the National Marine  
31 Fisheries Service (collectively with Eileen Sobeck, "NMFS") under the Endangered Species Act  
32 ("ESA") and the Magnuson-Stevens Fisheries Conservation Act ("MSA") in May 2014 for coho  
33 salmon and its designated critical habitat under the ESA and essential fish habitat under MSA,  
34 including preparation of a new biological assessment and essential fish habitat assessment by

35 \_\_\_\_\_  
36 <sup>1</sup> Under Fed. R. Civ. Proc. 25(d), Eileen Sobeck is automatically substituted for Samuel D. Rauch as  
37 Assistant Administrator for Fisheries.

CALIFORNIA DEPARTMENT OF TRANSPORTATION - LEGAL DIVISION  
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1 Caltrans. In light of this event and at the suggestion of the Court, Plaintiffs, Caltrans, and NMFS  
2 (collectively as “Parties”) believe, based on the interests of judicial efficiency and conservation of  
3 party resources, good cause exists for dismissal of the instant action without prejudice in  
4 accordance with the terms below (“Dismissal”).

5 THE PARTIES HEREBY STIPULATE AND AGREE, IN ACCORDANCE WITH CIVIL  
6 LOCAL RULES 7-12, SUBJECT TO COURT APPROVAL:

7 1) This action is dismissed without prejudice to Plaintiffs’ filing of a new Complaint.

8  
9 2) With respect to any agency decisions or actions that were challenged in Plaintiffs’  
10 First Amended Complaint, Defendants shall not seek dismissal of any claim challenging such  
11 decisions or actions in Plaintiffs’ new filed Complaint as untimely and/or barred by an applicable  
12 statute of limitations if it is filed within 90 days after Defendants provide written notice (“Notice”) to  
13 Plaintiffs’ counsel via email and U.S. Mail of a decision regarding the ESA and MSA consultation  
14 described above, unless such claim would have been untimely if brought in the First Amended  
15 Complaint in this action (ECF Doc. 74) The foregoing Notice shall include copies of: (1) any further  
16 biological assessment and/or essential fish habitat assessment prepared by Caltrans concerning the  
17 197/199 Safe STAA Access Project (“Project”), whether superseded or final; (2) any letter of  
18 concurrence or biological opinion prepared by NMFS in response thereto, whether superseded or  
19 final; and (3) any further environmental document prepared by Caltrans concerning the Project  
20 pursuant to the National Environmental Policy Act (“NEPA”), the California Environmental Quality  
21 Act (“CEQA”), or any other law; or a statement by Caltrans that no such document is to be issued.  
22 Notice shall not be deemed to have been provided unless and until all of the foregoing documents are  
23 provided to Plaintiffs’ counsel.  
24

25  
26 3) With respect to any agency decisions or actions made after Dismissal, any  
27 challenges to such subsequent agency decisions or environmental documents after Dismissal shall  
28 be governed by the applicable statutes of limitations. Defendants shall not seek dismissal of any

1 such claim so brought by Plaintiffs on the basis that the claim is brought through an amended or  
2 supplemental complaint, rather than a new filed complaint, if such claim is brought within 90 days  
3 of the Notice described above in Paragraph 2. However, if a statute applicable to such claims  
4 requires advance written notice of such claims, such as the 60-day notice requirement of 16 U.S.C.  
5 § 1540(g), Plaintiffs must still provide such notice prior to supplementing their complaint with  
6 such claims. Federal Defendants reserve the right to seek dismissal of such claims on any basis,  
7 including for failure to provide the requisite notice, but agree not to seek dismissal on the basis  
8 that the claims are brought through an amended or supplemental complaint, rather than a new filed  
9 complaint. For claims brought more than 90 days after the Notice described above in Paragraph 2,  
10 amendment or supplementation of the Complaint shall be governed by Federal Rule of Civil  
11 Procedure 15.

12 4) The Order Granting Preliminary Injunction (ECF Doc. 87) shall continue in force  
13 until the Court issues an order terminating or modifying the injunction upon motion or stipulation,  
14 unless a new Complaint is not filed by Plaintiffs within 90 days after Defendants provide notice as  
15 described above in Paragraph 2, in which case it shall be automatically terminate.

16 5) The Dismissal in this proceeding is without prejudice to the rights (if any) of any  
17 Party to attorneys' fees and/or costs and the rights of any Party to make a motion for an award of  
18 attorneys' fees and/or costs after the Dismissal. The Parties shall meet and confer regarding any  
19 claim for attorneys' fees and/or costs within 30 days of this Order. Plaintiffs' counsel shall  
20 provide appropriate factual and legal support for any claim for fees, and the Parties shall make  
21 reasonable effort, including mediation, to resolve any claims prior to filing motions for fees.

22 6) The Court shall retain jurisdiction of this case for determination of issues, including  
23 any motions related to the Preliminary Injunction or attorneys' fees and/or costs.

24 7) Other than as specified above, Defendants reserve the right to oppose or seek  
25 dismissal of a proposed amendment or filed Complaint on appropriate grounds.  
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