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21 **UNITED STATES DISTRICT COURT FOR THE**
22 **CENTRAL DISTRICT OF CALIFORNIA**
23 **WESTERN DIVISION**

24 LOS PADRES FORESTWATCH,

25 Plaintiff,

26 vs.

UNITED STATES FOREST SERVICE,
et al.,

Defendants.

Case No.: 2:18-cv-6958-SJO-MAA

STIPULATION TO STAY

1 Plaintiff Los Padres ForestWatch (“Plaintiff”) and Defendants the United
2 States Forest Service (“Forest Service”) and United States Fish and Wildlife
3 Service (“FWS”) *et al.* (collectively, “Defendants”), jointly request that the Court
4 stay Plaintiff’s case against Defendants. The Parties believe the stay would allow
5 this litigation to be resolved without further motions practice. In support of this
6 stipulation (“stipulation”), the Parties state and stipulate as follows:

7 WHEREAS, on September 20, 2005, the Forest Service issued its Record of
8 Decision adopting revisions to the Los Padres National Forest Land Management
9 Plan (“Forest Plan”), including adopting Standard 36 relating to recreational target
10 shooting.

11 WHEREAS, on September 30, 2013, the FWS issued its Programmatic
12 Biological Opinion for the Revised Land Management Plans for the Four Southern
13 California National Forests, California (“Biological Opinion”), which concluded
14 that implementation of the Forest Plan, including Standard 36, was not likely to
15 jeopardize the continued existence of endangered species or adversely modify
16 critical habitat.

17 WHEREAS, on August 6, 2018, the Forest Service issued Forest Order No.
18 05-07-00-18-07, which prohibited discharging a firearm within the Los Padres
19 National Forest, except, among other things, in the Winchester Canyon and Ojai
20 Valley Gun Clubs and except for lawful hunting, from August 6, 2018 through
21 January 14, 2019.

22 WHEREAS, on August 14, 2018, Plaintiff filed its complaint. *See* ECF No.
23 1.

24 WHEREAS, in its complaint, Plaintiff asserts a number of claims under the
25 National Forest Management Act (“NFMA”) and the Endangered Species Act
26 (“ESA”), including that:

- 1 1. The Forest Service allegedly violated NFMA by failing to close the forest
- 2 to dispersed shooting pursuant to Standard 36 in the 2005 Forest Plan;
- 3 2. The FWS violated the ESA by issuing an allegedly flawed Biological
- 4 Opinion for the Forest Plan;
- 5 3. The Forest Service allegedly violated the ESA by relying on FWS's
- 6 Biological Opinion; and
- 7 4. The Forest Service and FWS allegedly violated the ESA by not
- 8 reinitiating Section 7 consultation under the ESA.

9 WHEREAS, the Forest Service and FWS deny Plaintiff's claims.

10 WHEREAS, on October 9, 2018, the Forest Service sent FWS a letter
11 requesting reinitiation of formal consultation under 16 U.S.C. §1536(a)(2). While
12 the agencies may look at anything with respect to the Forest Plan, the reinitiated
13 consultation will look at the potential effects of the current management of
14 recreational target shooting in the Los Padres National Forest on ESA-listed
15 species and their designated critical habitat.

16 WHEREAS, on October 25, 2018, FWS acknowledged the Forest Service's
17 request and confirmed reinitiated consultation.

18 WHEREAS, the Forest Service, in aid of the reinitiated consultation, will
19 issue a new biological assessment.

20 WHEREAS, FWS, at the conclusion of the ongoing reinitiated consultation,
21 will issue a new superseding biological opinion.

22 WHEREAS, Forest Order No. 05-07-00-18-07 expired on January 14, 2019.

23 WHEREAS, Forest Order No. 05-07-00-19-01, issued on January 11, 2019,
24 is in effect from January 14, 2019 to January 13, 2020. This Forest Order prohibits
25 discharging a firearm within the Los Padres National Forest, except, among other
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1 things, in the Winchester Canyon and the Ojai Valley Gun Clubs and except for
2 lawful hunting.

3 NOW, THEREFORE, the Parties hereby stipulate to the following terms for
4 a stay of litigation:

- 5 1. The Forest Service agrees to keep Forest Order No. 05-07-00-19-01 in effect
6 until FWS issues and the Forest Service receives a new superseding
7 biological opinion or January 13, 2020, whichever comes first.
- 8 2. If Forest Order No. 05-07-00-19-01 is likely to expire prior to the issuance
9 of a new superseding biological opinion, the Forest Service will decide
10 whether to initiate any required legal process for issuing a new or
11 substantially similar closure order before Forest Order No. 05-07-00-19-01
12 expires.
- 13 3. If Forest Order No. 05-07-00-19-01 expires before the Forest Service
14 receives a new superseding biological opinion, and if the Forest Service does
15 not issue a Forest Order that extends the closure of the Forest to unmanaged
16 recreational target shooting, Plaintiff, in its sole discretion, may petition the
17 Court to lift the stay for the purpose of seeking temporary injunctive relief.
18 Before moving to lift the stay, Plaintiff agrees to confer with Defendants in
19 good faith to attempt to resolve this issue without Court involvement.
- 20 4. Forest Order No. 05-07-00-19-01 and any future orders or extensions to that
21 Order issued pursuant to this stipulation will be posted and displayed
22 consistent with Forest Service regulation 36 C.F.R. § 261.51.
- 23 5. The Forest Service will provide Plaintiff notice, through its undersigned
24 counsel, within 14 days of receiving any Complaint filed by a third party
25 prior to the date that the Forest Service receives a new superseding
26

1 biological opinion, or expiration of the order, whichever comes first,
2 challenging either:

3 a. Forest Order No. 05-07-00-19-01, or

4 b. Any future order issued pursuant to this stipulation,

5 6. Defendants will provide Plaintiff a copy of the biological assessment
6 prepared pursuant to this stipulation within 14 days of provision to FWS.

7 Defendants will provide Plaintiff a copy of the superseding biological
8 opinion prepared pursuant to this stipulation within 14 days of receipt from
9 FWS.

10 7. Plaintiff will dismiss this litigation within 14 days after Defendants provide
11 Plaintiff a copy of the new superseding biological opinion, as follows:

12 a. Plaintiff will dismiss claim 1 against the Forest Service and Forest
13 Service official Kevin Elliott for alleged violations of NFMA without
14 prejudice; and

15 b. Plaintiff will dismiss claims 2, 3, and 4 against the Forest Service,
16 FWS, and officials of those agencies, for alleged violations of the
17 ESA with prejudice.

18 8. The Parties agree that the Court will retain jurisdiction to resolve any issues
19 regarding attorneys' fees, as needed.

20 9. If the Forest Service or FWS fail to meet any of the terms and conditions of
21 this stipulation, Plaintiff may petition the Court to lift the stay and
22 recommence the litigation.

23 In light of the above stipulation, the Parties respectfully request that the
24 Court enter a stay in this litigation.

25 Dated: April 1, 2019

Respectfully Submitted,

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