

1 BENJAMIN B. WAGNER  
United States Attorney  
2 GREGORY T. BRODERICK  
Assistant United States Attorney  
3 501 I Street, Suite 10-100  
Sacramento, CA 95814  
4 Telephone: (916) 554-2700  
Facsimile: (916) 554-2900

5 Attorneys for Defendants  
6

7 IN THE UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 DENNIS D. MURPHY

10 Plaintiff,

v.

11 UNITED STATES FOREST SERVICE;  
TOM TIDWELL, in his official capacity as  
12 Chief of the United States Forest Service;  
and NANCY J. GIBSON, in her official  
13 capacity as Forest Supervisor of the United  
States Forest Service,

14 Defendants  
15

CASE NO. 13-cv-02315-GEB-AC

STIPULATION AND [PROPOSED]  
ORDER REGARDING PRELIMINARY  
INJUNCTION BRIEFING SCHEDULE.

16 The parties seek an order from this Court modifying the preliminary injunction briefing  
17 schedule established by the Court's July 21, 2014, briefing schedule.

18 This case involves allegations that the United States Forest Service violated the National  
19 Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA") in approving and  
20 implementing the Echo Lake Hazardous Fuel Reduction Project, which is intended to reduce fire risk  
21 on forest land near Echo Lake. The situation on-the-ground is fluid. In April 2013—after the  
22 project was approved but before it commenced—the U.S. Fish and Wildlife Service proposed listing  
23 of the Sierra Nevada Yellow-Legged Frog and proposed designation of critical habitat for the species  
24 to include the project area. (The species was previously identified as a candidate for listing in 2003.)  
25 In April 2014—after this project was approved and had actually commenced—the United States Fish  
26 and Wildlife Service listed the Sierra Nevada Yellow-Legged Frog as an endangered species, and  
27 Plaintiff amended his complaint to state new ESA claims. (Dkt. No. 30). In addition, the project is  
28 to be implemented in a manner that involves no cutting of trees before Labor Day each year, which

1 effectively limits most project activities to the Fall of each year (because of weather). There have  
2 been no project activities in 2014. Given the dynamic nature of this project, *inter alia*, there have  
3 been two amended complaints as well as extensions and changes to the briefing schedule. (*See, e.g.*,  
4 Dkt. Nos. 12, 14, 21, 23, 25, 27, 31, and 33).

5 On July 21, 2014, this Court entered the current briefing schedule on stipulation of the  
6 parties. (Dkt. No. 33). The schedule required Plaintiff to file any preliminary injunction motion by  
7 August 11, with a hearing set for September 22, 2014, with the Forest Service agreeing not to take  
8 any further on-the-ground action on this project until at least October 15, 2014. (Dkt. No. 33 at  
9 2:24-27). The purpose behind this halt to project activities was to permit the Forest Service time to  
10 determine whether it would consult with the United States Fish and Wildlife Service regarding any  
11 potential effect the project may have on the newly-listed Sierra Nevada Yellow Legged Frog species.  
12 (*See id.*) The Forest Service has since determined that it will consult with the Fish and Wildlife  
13 Service regarding potential impacts to the frog, and has resolved to take no further on-the-ground  
14 activities on the project until consultation is complete and, in any event, no on-the-ground activities  
15 in 2014. In addition, the Forest Service is committed to taking no further activities without  
16 providing at least 35 days' notice to Plaintiff. This commitment effectively eliminates the need for  
17 Plaintiff to seek a preliminary injunction at this time, though Plaintiff reserves the right to seek a  
18 preliminary injunction once further project activities are imminent.

19 The consultation process may result in changes to the project, eliminating or narrowing some  
20 of the claims and issues in this litigation. Therefore, the parties believe that altering the briefing  
21 schedule in this manner is likely to conserve their resources, as well as this Court's resources. In  
22 addition, the prior scheduling order provided a due date of August 8, 2014, for Defendants to  
23 produce the administrative record. (Dkt. No. 33 at 3:8-9). The parties agree that such deadline shall  
24 be extended to October 15, 2014, in light of the change in schedule. Defendants' motion to dismiss,  
25 however, can still be heard on the present briefing schedule and should continue to be briefed and  
26 heard on that schedule. (*See* Dkt. No. 33 at 3:3-7).

27 ////

28 ////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Respectfully submitted,

DATED: August 5, 2014

By           /s/ Paul S. Weiland            
Attorney for Plaintiff

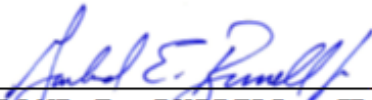
BENJAMIN B. WAGNER  
United States Attorney

By:           /s/ Gregory T. Broderick            
GREGORY T. BRODERICK  
Assistant United States Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.

Dated: August 6, 2014

  
\_\_\_\_\_  
GARLAND E. BURRELL, JR.  
Senior United States District Judge