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The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

NORTHWEST ENVIRONMENTAL )  
ADVOCATES, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Defendant, )  
and )  
 )  
NORTHWEST PULP & PAPER ASS'N, )  
et al., )  
 )  
Defendant-Intervenors. )

No. 2:14-cv-0196-RSM  
UNOPPOSED JOINT MOTION FOR A STAY  
OF PROCEEDINGS PENDING  
VOLUNTARY RECONSIDERATION  
NOTE ON MOTION CALENDAR:  
October 16, 2018

Plaintiff Northwest Environmental Advocates and Defendant U.S. Environmental Protection Agency (“EPA”) hereby move the Court to enter the attached [Proposed] Order Granting Stay Pending Voluntary Reconsideration. This motion and the attached proposed order are distinct from the separately filed Unopposed Joint Motion for Partial Dismissal (ECF No. 93) and its separate, stipulated proposed order (ECF No. 93-1), which would resolve different claims raised by Plaintiff than those addressed by this motion. During the stay of judicial proceedings

1 requested by this motion, EPA intends to reconsider certain state submittals, which serve as the  
2 bases for certain claims raised by Plaintiff, by either approving or disapproving certain state  
3 water quality standards under the Clean Water Act, 33 U.S.C. § 1313(c), or determining that  
4 certain state provisions are not water quality standards subject to review and approval by EPA  
5 under that provision. The undersigned Counsel for EPA has been authorized by the respective  
6 counsel for each of the intervenors in this case -- Defendant-Intervenors State of Washington  
7 Department of Ecology, Washington Cattlemen's Association, Northwest Pulp and Paper  
8 Association, Washington Forest Protection Association, and American Forest Resource Council -  
9 - to state that each such party does not oppose the relief requested by this motion. Accordingly,  
10 this joint motion is unopposed. The grounds for this motion are as follows:

11 1) In its First Amended Complaint, Plaintiff asserts that certain EPA decisions, dated  
12 February 11, 2008, and May 14, 2008, approving and making other determinations under 33  
13 U.S.C. § 1313(c) regarding Washington's submissions of specific changes to its water quality  
14 standards, were inconsistent with the federal water quality standards regulations and the Clean  
15 Water Act, were arbitrary, capricious and otherwise contrary to law, or were made without the  
16 requisite consultations under section 7 of the Endangered Species Act; that EPA failed to  
17 reinstate consultation under section 7 of the ESA with respect to certain decisions made on  
18 February 11, 2008; and furthermore that EPA has failed to act on certain water quality standards  
19 submitted by Washington in 2003 and 2006.

20 2) In accordance with its terms, the separately filed Stipulated Proposed Order for  
21 Partial Dismissal (ECF No. 93-1) will, if entered, resolve the First and Second Claims alleging  
22 Endangered Species Act violations, as well as the portions of the Third Claim related to WAC  
23 173-201A-200(1)(c)(ii)(B), 173-201A-210(1)(c)(ii)(B), and WAC 173-204, Part V, and the  
24 portion of the Fourth Claim related to WAC 173-201A-210(1)(c)(ii), WAC 173-201A-  
25 200(1)(e)(i) and WAC 173-201A-210(1)(e)(i), alleging Clean Water Act violations. Stipulated  
26 Proposed Order for Partial Dismissal ¶ 3 (ECF No. 93-1).

1           3)     If the Court grants ECF No. 93 and enters the Stipulated Proposed Order for  
2 Partial Dismissal, ECF No. 93-1, portions of the Third and Fourth Claims in the First Amended  
3 Complaint will remain. EPA intends to voluntarily reconsider the administrative actions that are  
4 the basis for those remaining claims and, therefore, EPA and Plaintiff jointly request that the  
5 Court stay all judicial proceedings in this case pending EPA's reconsideration process.  
6 Specifically, EPA intends to reconsider under 33 U.S.C. § 1313(c) whether the following state  
7 submittals should be approved or disapproved under the Clean Water Act, or to determine that  
8 certain such state provisions are not water quality standards subject to review and approval under  
9 that provision. These state submittals that EPA intends to reconsider are, with regard to the  
10 relevant portions of Claim Three in the First Amended Complaint: WAC 173-210A-410 (Short  
11 Term Modifications), WAC 173-201A-210(2)(b)(i) (Marine Shellfish Harvesting Compliance),  
12 WAC 173-201A-210(2)(b)(ii) and WAC 173-201A-210(3)(b)(i) (Marine Water Bacteria  
13 Averaging Narrative), and WAC-201A-200(1)(c)(vii) and WAC 173-201A-210(1)(c)(v)  
14 (Temperature Guidelines); and with regard to the relevant portions of the Forth Claim in the First  
15 Amended Complaint: WAC-201A-200(1)(c)(i) and WAC 173-201A-210(1)(c)(i) (Allowable  
16 Temperature Increase Above Natural Conditions), WAC 173-201A-200(1)(c)(v) (Narrative  
17 Temperature Criteria for Lakes), WAC 173-201A-200(1)(d)(i) and WAC 173-201A-210(1)(d)(i)  
18 (Narrative Dissolved Oxygen Criteria), WAC 173-201A-200(1)(d)(ii) (Narrative Dissolved  
19 Oxygen Criteria for Lakes), and WAC 173-201A-260(1) (Natural and Irreversible Human  
20 Conditions). These provisions will remain in effect during this reconsideration process, which  
21 EPA expects could take three years.

22           4)     As set out in the attached proposed order, at the completion of the referenced  
23 three-year reconsideration process, the relevant claims in the First Amended Complaint may be  
24 rendered moot. Accordingly, a stay of judicial proceedings pending the completion of that  
25 process will not only allow EPA to undertake that administrative reconsideration, but may  
26 ultimately preserve judicial resources and those of the parties by eliminating the need for this

1 Court to adjudicate those claims.

2 5) 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 generally Leyva v.*  
4 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979), and a stay here is  
5 particularly appropriate since, as noted above, this joint motion is unopposed.

6 WHEREFORE, Plaintiff and EPA respectfully request that Court enter the attached  
7 [Proposed] Order Granting Stay Pending Voluntary Reconsideration.

8 DATED this 16<sup>th</sup> day of October, 2018.

9 Respectfully submitted,

10 By: /s/ Allison LaPlante (by consent 10/15/18)

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2018, I electronically filed the foregoing filing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ David Kaplan

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