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20 ECOLOGICAL RIGHTS FOUNDATION

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 ECOLOGICAL RIGHTS FOUNDATION, a  
24 non-profit corporation,

25 Plaintiff,

26 v.

27 UNITED STATES ENVIRONMENTAL  
28 PROTECTION AGENCY,

Defendant.

Case No: 4:18-cv-00394-DMR

STIPULATION AND [PROPOSED]  
ORDER REGARDING  
WITHHOLDINGS AND  
DISMISSAL OF CLAIMS

1                    **STIPULATION REGARDING WITHHOLDINGS AND DISMISSAL OF CLAIMS**

2                    WHEREAS, on June 3, 2021, the Court entered its Order Following In Camera Review (Dkt.  
3 113) (“Order”), which, among other things, required Plaintiff Ecological Rights Foundation  
4 (“EcoRights”) and Defendant United States Environmental Protection Agency (“EPA”) to file a joint  
5 letter setting forth a proposal for how the Court may efficiently resolve any outstanding disputes with  
6 respect to the withholdings of documents at issue in the case (“Joint Letter”);

7                    WHEREAS, as set forth in the Joint Letter filed herewith, pursuant to the guidance set forth in  
8 the Order, the parties have been able to resolve all remaining objections to the withholdings of  
9 documents at issue in this case;

10                    WHEREAS, the resolution of the withholding objections involves an agreement between the  
11 parties, which the parties desire to memorialize, pursuant to which EPA will produce certain  
12 information, and in exchange, EcoRights will agree to withdraw all remaining objections to the  
13 withholdings of documents at issue in this case and to dismiss all claims in the case with prejudice;

14                    WHEREAS, the resolution of the withholding objections does not resolve the sole remaining  
15 issue in the case, which is the forthcoming demand of EcoRights for an award of reasonable attorneys’  
16 fees and costs;

17                    WHEREAS, despite good faith efforts to reach agreement, the parties have been unable to reach  
18 agreement on a proposed process to resolve attorneys’ fees and costs, and the parties have set forth their  
19 respective proposal on the process for resolving attorneys’ fees and costs in the Joint Letter;

20                    WHEREAS, regardless of the process for resolving attorneys’ fees and costs, the parties agree  
21 that they should have an opportunity to try to resolve the fees and costs issue cooperatively; and

22                    WHEREAS, as a result the parties jointly stipulate as to the matters agreed upon between the  
23 parties relating to the resolution of the withholding objections and the dismissal of EcoRights’s claims.

24                    NOW THEREFORE, pursuant to Civil Local Rule 7-12, the parties, by and through their  
25 undersigned counsel, hereby jointly stipulate as follows:

- 26                    1.        On or before July 22, 2021, EPA shall:
- 27
- 28

- a. Release the names and biographic information at issue in Entry No. 6 (the Science Advisory Board recommendation document) of the revised *Vaughn* Index produced by EPA on June 24, 2021 (“Revised *Vaughn* Index”);
  - b. Provide a brief narrative regarding the Personal Security Detail documents (Entry Nos. 17 and 21 of the Revised *Vaughn* Index); and
  - c. Complete a further segregability analysis regarding the information in the EPA activity investigation documents (Entry Nos. 18, 19, and 20 of the Revised *Vaughn* Index) and release all information that can reasonably be segregated from those documents. Upon EPA’s release of those lesser-redacted records on or before July 22, 2021, however, EcoRights agrees not to challenge those records further, including EPA’s withholdings or segregability determinations.
2. EcoRights agrees to withdraw all remaining objections to the withholdings of documents at issue in this case and to dismiss all claims in the case with prejudice.
  3. Assuming the Court enters judgment following entry of this stipulated order, the parties agree that the 14-day timeframe for filing a fees and costs motion after entry of judgment under Federal Rule of Civil Procedure 54(d)(2)(B)(i) and Civil Local Rule 54-5(a) should be extended to allow the parties to try to resolve the fees and costs issue cooperatively.

DATED: July 15, 2021

Respectfully submitted,

STEPHANIE M. HINDS  
Acting United States Attorney

/s/ Jevetchius D. Bernardoni  
JEVECHIUS D. BERNARDONI  
Assistant United States Attorney

Attorneys for Defendant

/s/ Christopher Sproul  
CHRISTOPHER SPROUL  
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San Francisco, California 94121

Attorneys for Plaintiff

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury that all signatories have concurred in the filing of this document.

**[PROPOSED] ORDER**

PURSUANT TO STIPULATION, IT IS HEREBY ORDERED THAT:

1. On or before July 22, 2021, EPA shall:
  - a. Release the names and biographic information at issue in Entry No. 6 (the Science Advisory Board recommendation document) of the revised *Vaughn* Index produced by EPA on June 24, 2021 (“Revised *Vaughn* Index”);
  - b. Provide a brief narrative regarding the Personal Security Detail documents (Entry Nos. 17 and 21 of the Revised *Vaughn* Index); and
  - c. Complete a further segregability analysis regarding the information in the EPA activity investigation documents (Entry Nos. 18, 19, and 20 of the Revised *Vaughn* Index) and release all information that can reasonably be segregated from those documents. Upon EPA’s release of those lesser-redacted records on or before July 22, 2021, EcoRights shall not challenge those records further, including EPA’s withholdings or segregability determinations.
2. EcoRights has withdrawn all remaining objections to the withholdings of documents at issue in this case and all claims in the Amended Complaint for Declaratory and Injunctive Relief (Dkt. 37) are hereby dismissed with prejudice.
3. The 14-day timeframe for filing a fees and costs motion after entry of judgment under Federal Rule of Civil Procedure 54(d)(2)(B)(i) and Civil Local Rule 54-5(a) is extended until further notice to allow the parties to try to resolve the fees and costs issue cooperatively.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_

The Honorable Donna M. Ryu