

HONORABLE BENJAMIN H. SETTLE

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILD FISH CONSERVANCY, <i>et al.</i> ,)	No. 3:12-CV-05109-BHS
)	
Plaintiffs,)	STIPULATION AND ORDER
v.)	
)	
NATIONAL PARK SERVICE, <i>et al.</i> ,)	
)	
Defendants,)	
)	

STIPULATION AND NOTICE

WHEREAS, Plaintiffs have brought this action under the Endangered Species Act, National Environmental Policy Act, Elwha River Ecosystem and Fisheries Restoration Act, and the Wilderness Act based on, among other things, claims that Federal and Tribal defendants' actions related to operation of the Elwha River Hatchery Programs cause harm to species listed as endangered or threatened under the ESA, including but not limited to Puget Sound Steelhead; and

1 WHEREAS, Plaintiffs had informed Defendants that they planned to seek interim relief
2 in the form of a motion for preliminary injunction seeking to prohibit Tribal Defendants from
3 releasing any Chambers Creek Steelhead from the Tribal Hatchery into the Elwha River while
4 this matter is pending; and

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6 WHEREAS, Plaintiffs and the Tribal Defendants, as identified herein, both desire to
7 eliminate the need to litigate these issues of preliminary relief, and have accordingly reached
8 agreement as follows:

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- 10 1. During 2012, Tribal Defendants will not release any Chambers Creek steelhead from
11 the Elwha River Hatchery operated by the Lower Elwha Klallam Tribe (“Tribal
12 Hatchery”) into the Elwha River or its tributaries, and will take any and all such
13 actions as are necessary to ensure that Chambers Creek steelhead from this hatchery
14 are not released into the Elwha River and its tributaries during 2012.
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16 2. Tribal Defendants reserve all defenses, and by entering into this Stipulation do not
17 admit or concede anything, including: that any of the claims in this lawsuit have
18 merit; that any of the facts alleged in the complaint are true; that they have acted or
19 failed to act as alleged in the complaint; that they are liable as to any claims in the
20 lawsuit; that interim relief is necessary or appropriate; that release of Chambers Creek
21 steelhead would result in any harm or hardship to the plaintiffs or any other person or
22 party; or that the Court has jurisdiction as to Tribal Defendants or the claims against
23 them.
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25 3. Plaintiffs reserve all remedies except for any motion to seek a preliminary injunction
26 to prevent the release of Chambers Creek steelhead from the Tribal Hatchery into the
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1 Elwha River and its tributaries during 2012. Plaintiffs expressly promise not to seek,
2 and will not seek, a preliminary injunction in this case, or related to the claims in this
3 case, seeking to prevent the release of Chambers Creek steelhead from the Tribal
4 Hatchery into the Elwha River or its tributaries in 2012 unless Tribal Defendants
5 release or give notice that they plan to release Chambers Creek Steelhead into the
6 Elwha River or its tributaries at any time in 2012. Plaintiffs reserve the right to seek
7 any other form of preliminary relief, including a preliminary injunction to prevent the
8 release of Chambers Creek steelhead from the Tribal Hatchery into the Elwha River
9 or and its tributaries after 2012, which request for relief may be filed before the
10 expiration of 2012. In the event Plaintiffs intend to seek preliminary or interim relief
11 for any purpose in 2012, Plaintiffs shall provide Tribal Defendants with at least three
12 weeks' advance written notice prior to the filing of any motion.
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16 4. Tribal Defendants will notify Plaintiffs in writing in the event they intend to release
17 Chambers Creek steelhead into the Elwha River or its tributaries in 2012. Plaintiffs
18 will have an opportunity to seek relief in the form of a preliminary injunction or
19 temporary restraining order to enforce this agreement. Tribal Defendants may defend
20 against the motion by asserting any defense, but will not release any Chambers Creek
21 steelhead into the Elwha River or its tributaries until the motion is heard and decided
22 by the Court. Tribal Defendants will abide by the decision of the Court.
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25 5. Tribal Defendants will promptly notify Plaintiffs in writing in the event they dispose
26 of the 2012 Elwha River Hatchery production of Chambers Creek Steelhead in a
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1 manner that renders it impossible to subsequently release such fish into the Elwha
2 River.

3 The undersigned representatives for the parties certify that they are authorized by the
4 parties they represent to enter into this Stipulation and to bind the parties thereto.

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6 For Tribal Defendants Robert Elofson in his official capacity as the Director of the River
7 Restoration Project for the Lower Elwha Klallam Tribe, Larry Ward in his official capacity as the
8 Hatchery Manager and Fisheries Biologist for the Lower Elwha Klallam Tribe, Doug Morrill in
9 his official capacity as the Fisheries Manager for the Lower Elwha Klallam Tribe, and Mike
10 McHenry in his official capacity as the Fisheries Habitat Biologist and Manager:

11 s/ Stephan H. Suagee
12 Stephen H. Suagee, WSBA #26776
13 Lower Elwha Klallam Tribe General Counsel
14 2851 Lower Elwha Road
15 Port Angeles, WA 98363
16 Tel: (360) 452-8471; Fax: (360) 452-3428
17 Email: steve.suagee@elwha.nsn.us

18 For Plaintiffs Wild Fish Conservancy, Wild Steelhead Coalition, Federation of Fly Fishers
19 Steelhead Committee, and Wild Salmon Rivers d/b/a Conservation Angler:

20 s/ Brian A. Knutsen
21 Brian A. Knutsen, WSBA # 38806
22 Smith & Lowney, PLLC
23 2317 E. John St.; Seattle, WA 98112
24 Tel: (206) 860-2883; Fax: (206) 860-4187
25 Email: briank@igc.org

1 PURSUANT TO THIS STIPULATION, IT IS SO ORDERED

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3 DATED this 27th day of February, 2012

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7 BENJAMIN H. SETTLE
8 United States District Judge

9 Presented by:

10 s/ Stephan H. Suagee
11 Stephen H. Suagee, WSBA #26776
12 Counsel for Tribal Defendants

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14 s/ Brian A. Knutsen
15 Brian A. Knutsen, WSBA #38806
16 Counsel for Plaintiffs