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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

NATIONAL WILDLIFE FEDERATION,
et al.

Plaintiffs,

and

STATE OF OREGON, et al.,
Intervenor-Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, et al.,
Defendants,

and

PUBLIC POWER COUNCIL, et al.,
Intervenor-Defendants.

Civ. No. 3:01-cv-00640-SI

JOINT MOTION TO LIFT STAY

EXPEDITED CONSIDERATION
REQUESTED

MOTION

The National Wildlife Federation (NWF) Plaintiffs,¹ the State of Oregon, the State of Washington, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation (collectively, “Moving Parties”) respectfully request that the Court lift the stay of this litigation. The June 12, 2025, Presidential Memorandum and consequent withdrawal by the Federal Defendants from the December 2023 Memorandum of Understanding (MOU) and related documents represent a significant change in circumstances that warrant lifting the stay of litigation.² Counsel for NWF Plaintiffs certify that they contacted all counsel for the parties on the current service list prior to filing, providing a draft of this motion and an opportunity to review and submit comments, including as to the request to expedite. *See* LR 7-1.

Federal Defendants do not oppose this motion; however, Federal Defendants do not agree that expedited consideration of the motion to lift the stay is warranted. Given that the administrative records have been compiled, the Federal Defendants’ position is that this case could proceed directly to summary judgment.

Intervenor-Defendant State of Idaho takes no position on this motion. Intervenor-Defendant Inland Ports and Navigation Group (IPNG) takes no position on the motion to lift the stay but opposes the request for expedited consideration of this motion.

¹ The NWF Plaintiffs are: Pacific Coast Federation of Fishermen’s Associations, the Institute for Fisheries Resources, Sierra Club, Idaho Rivers United, Northwest Sport Fishing Industry Association, NW Energy Coalition, National Wildlife Federation, Columbia Riverkeeper, Idaho Conservation League, and Fly Fishers International, Inc.

² This motion is directed only to lifting the stay of the claims brought by the NWF Plaintiffs and Intervenor-Plaintiff State of Oregon.

Intervenor-Plaintiffs, the Spokane Tribe of Indians and the Coeur d’Alene Tribe take no position on this Motion at this time and are not seeking—and would oppose any efforts—to lift the stay entered on September 20, 2023, ECF 2443, by this Court on their two Plaintiff-Intervenor complaints, EFC 2320 and 2330.

Amicus the Northwest Power & Conservation Council takes no position on this motion. *Amicus* Confederated Tribes of the Colville Reservation does not oppose this motion and takes no position on the request for expedited consideration.

Counsel for the NWF Plaintiffs did not receive a response regarding this motion from the remaining parties.

MEMORANDUM IN SUPPORT

BACKGROUND³

Following earlier stays and extensive mediation, the NWF Plaintiffs, the State of Oregon, the State of Washington, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and Federal Defendants (the “MOU Parties”) signed a MOU in December 2023. ECF 2450, Exhibit A (ECF 2450-1). Based on the MOU and its attachments, including the United States Government Commitments in Support of the Columbia Basin Restoration Initiative (“USG Commitments”), as well as President Biden’s September 27, 2023, Memorandum on “Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin,”⁴ the MOU Parties jointly requested an initial five-year stay on

³ For a more detailed discussion of the background on this issue, please refer to ECF 2450, Joint Motion to Stay Litigation Through 2028, and the notice recently filed with the Court at ECF 2478.

⁴ 88 Fed. Reg. 67617, 67617–18 (Sept. 27, 2023).

December 14, 2023. ECF 2450. This Court granted the motion on February 8, 2024, ECF 2465, and until January 2025, the parties to the MOU worked to implement the agreement.

On June 12, 2025, President Trump issued a Memorandum entitled “Stopping Radical Environmentalism to Generate Power for the Columbia River Basin,” which revoked the Biden Presidential Memorandum, and directed the Secretary of Energy, the Secretary of the Interior, the Secretary of Commerce, and the Assistant Secretary of the Army for Civil Works to withdraw from the MOU.⁵ The Memorandum also directed the heads of departments to rescind a December 18, 2024, Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) on the Columbia River System Operations, 89 Fed. Reg. 102869 (Dec. 18, 2024), issued pursuant to the USG Commitments. Finally, the Memorandum instructed the relevant agencies to identify actions to recoup funds obligated to implement the MOU.

In a letter dated June 24, 2025, the agencies identified in the Presidential Memorandum provided “official notice of the United States’ withdrawal from the Memorandum of the [sic] Understanding (MOU) of December 14, 2023, effective immediately.” ECF 2480 (Exhibit A to ECF 2478). On July 7, 2025, the agencies published a withdrawal of the Notice of Intent to Prepare a SEIS. 90 Fed. Reg. 29854 (July 7, 2025).

On July 17, 2025, the non-federal MOU Parties filed a Notice with the Court explaining these developments and noting that the parties were conferring about next steps. ECF 2478. The Moving Parties now request the Court to lift the stay.

⁵ <https://www.whitehouse.gov/presidential-actions/2025/06/stopping-radical-environmentalism-to-generate-power-for-the-columbia-river-basin/>.

STANDARD OF REVIEW

A district court has “broad discretion” in deciding whether to stay proceedings. *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (observing that the power to stay proceedings is “incidental to the power inherent in every court to control the disposition of the causes on its docket”).⁶ That same discretion extends to a decision to lift a stay. *Canady v. Erbe Elektromedizin GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C. 2002) (finding that a “court that imposes a stay of litigation has the inherent power and discretion to lift the stay”). When “circumstances have changed such that the court’s reasons for imposing the stay no longer exist or are inappropriate, the court may lift the stay.” *Id.* at 74; *see also Johnson v. Inos*, 619 F. App’x 651 (9th Cir. 2015) (finding district court did not err by “requiring a showing of ‘changed circumstances’ as a prerequisite for lifting the stay” as part of its assessment).

ARGUMENT

In granting a stay, this Court concluded its determination to grant the stay with a finding that the

orderly course of justice is best served by staying this litigation. The issues in this case are complex and have been litigated for decades. The Moving Parties have reached a consensus to attempt to resolve these issues, perhaps permanently, without the need for further litigation.

ECF 2465, Order at 4–5. The “orderly course of justice” is no longer served by continuing

⁶ In considering a request for a stay, a court assesses: (1) “the possible damage which may result from the granting of a stay,” (2) “the hardship or inequity which a party may suffer in being required to go forward,” and (3) “the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254–55).

the stay given that the consensus to resolve this litigation, as embodied by the MOU, is no longer present. *Id.* at 5. The MOU Parties’ organized efforts to pursue non-litigation remedies have come to an end, and in light of these significantly changed circumstances, the Court’s “reasons for imposing the stay no longer exist.” *Marsh v. Johnson*, 263 F. Supp. 2d 49, 52 (D.D.C. 2003) (citing cases); *see also CMAX*, 300 F.2d at 270 (recognizing the option for lifting a stay in the face of a “substantial change of circumstances”).

CONCLUSION

The reasoning underpinning the Court’s decision to impose the stay has been nullified by recent events. The Court should lift the stay in this case and allow interested parties to proceed with the litigation.

Respectfully submitted this 11th day of September, 2025.

/s/ Amanda W. Goodin

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CERTIFICATE OF SERVICE

I certify that on September 11, 2025, I filed the foregoing through the Court's CM-ECF system, which will automatically notify counsel of record.

/s/ Amanda W. Goodin

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