

HONORABLE BENJAMIN H. SETTLE

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 [PROPOSED]
v.)	ORDER
)	
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

WHEREAS, Plaintiffs had informed Defendants that they planned to seek interim relief in the form of a motion for preliminary injunction seeking to prohibit Tribal Defendants from

STIPULATION AND [PROPOSED] ORDER - 1
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1 releasing any Chambers Creek Steelhead from the Tribal Hatchery into the Elwha River while
2 this matter is pending; and

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

- 7 1. During 2012, Tribal Defendants will not release any Chambers Creek steelhead from
8 the Elwha River Hatchery operated by the Lower Elwha Klallam Tribe ("Tribal
9 Hatchery") into the Elwha River or its tributaries, and will take any and all such
10 actions as are necessary to ensure that Chambers Creek steelhead from this hatchery
11 are not released into the Elwha River and its tributaries during 2012.
- 12 2. Tribal Defendants reserve all defenses, and by entering into this Stipulation do not
13 admit or concede anything, including: that any of the claims in this lawsuit have
14 merit; that any of the facts alleged in the complaint are true; that they have acted or
15 failed to act as alleged in the complaint; that they are liable as to any claims in the
16 lawsuit; that interim relief is necessary or appropriate; that release of Chambers Creek
17 steelhead would result in any harm or hardship to the plaintiffs or any other person or
18 party; or that the Court has jurisdiction as to Tribal Defendants or the claims against
19 them.
- 20 3. Plaintiffs reserve all remedies except for any motion to seek a preliminary injunction
21 to prevent the release of Chambers Creek steelhead from the Tribal Hatchery into the
22 Elwha River and its tributaries during 2012. Plaintiffs expressly promise not to seek,
23 and will not seek, a preliminary injunction in this case, or related to the claims in this
24 case, seeking to prevent the release of Chambers Creek steelhead from the Tribal
25

Hatchery into the Elwha River or its tributaries in 2012 unless Tribal Defendants release or give notice that they plan to release Chambers Creek Steelhead into the Elwha River or its tributaries at any time in 2012. Plaintiffs reserve the right to seek any other form of preliminary relief, including a preliminary injunction to prevent the release of Chambers Creek steelhead from the Tribal Hatchery into the Elwha River or and its tributaries after 2012, which request for relief may be filed before the expiration of 2012. In the event Plaintiffs intend to seek preliminary or interim relief for any purpose in 2012, Plaintiffs shall provide Tribal Defendants with at least three weeks' advance written notice prior to the filing of any motion.

4. Tribal Defendants will notify Plaintiffs in writing in the event they intend to release Chambers Creek steelhead into the Elwha River or its tributaries in 2012. Plaintiffs will have an opportunity to seek relief in the form of a preliminary injunction or temporary restraining order to enforce this agreement. Tribal Defendants may defend against the motion by asserting any defense, but will not release any Chambers Creek steelhead into the Elwha River or its tributaries until the motion is heard and decided by the Court. Tribal Defendants will abide by the decision of the Court.
5. Tribal Defendants will promptly notify Plaintiffs in writing in the event they dispose of the 2012 Elwha River Hatchery production of Chambers Creek Steelhead in a manner that renders it impossible to subsequently release such fish into the Elwha River.

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

1 For Tribal Defendants Robert Elofson in his official capacity as the Director of the River
2 Restoration Project for the Lower Elwha Klallam Tribe, Larry Ward in his official capacity as
3 the Hatchery Manager and Fisheries Biologist for the Lower Elwha Klallam Tribe, Doug Morrill
4 in his official capacity as the Fisheries Manager for the Lower Elwha Klallam Tribe, and Mike
5 McHenry in his official capacity as the Fisheries Habitat Biologist and Manager:

6 s/ Stephan H. Suagee
7 Stephen H. Suagee, WSBA #26776
8 Lower Elwha Klallam Tribe General Counsel
9 2851 Lower Elwha Road
10 Port Angeles, WA 98363
11 Tel: (360) 452-8471; Fax: (360) 452-3428
12 Email: steve.suagee@elwha.nsn.us

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

15 s/ Brian A. Knutsen
16 Brian A. Knutsen, WSBA # 38806
17 Smith & Lowney, PLLC
18 2317 E. John St.; Seattle, WA 98112
19 Tel: (206) 860-2883; Fax: (206) 860-4187
20 Email: briank@igc.org

PURSUANT TO THIS STIPULATION, IT IS SO ORDERED

DATED this _____ day of _____, 2012.

HONORABLE BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

Presented by:

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

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