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UNITED STATES ARMY CORPS OF
ENGINEERS, ET AL.,

Defendants.

Joint Mot. for Dismissal Without Prejudice, Page 1

1 The parties to these centralized cases jointly move this Court to dismiss these
2 cases without prejudice pursuant to Fed. R. Civ. P. 41. In support of this Joint
3 Motion, the parties state as follows.

4 On July 31, 2013, Plaintiff filed in separate federal district courts three related
5 Complaints, one each in the District of Oregon (No. 3:13-cv-01310-ST) , the
6 Western District of Washington (No. 3:13-cv-05640-RBL) and the Eastern
7 District of Washington (No. 2:13-cv-282-LRS). The Complaints assert that the
8 Corps discharges pollutants from eight dams (collectively, “Dams”) that the Corps
9 owns and operates in Washington and Oregon, allegedly in violation of section
10 301(a) of the CWA, 33 U.S.C. § 1311(a). Specifically, the Complaint filed in the
11 District of Oregon addressed alleged discharges of pollutants from the portions of
12 the Bonneville, John Day and McNary dams located in the State of Oregon. The
13 Complaint filed in the Western District of Washington addressed alleged
14 discharges of pollutants from the portion of the Bonneville Dam located in the
15 State of Washington. Finally, the Complaint filed in this Court addressed alleged
16 discharges of pollutants from The Dalles, Ice Harbor, Lower Monumental, Little
17 Goose and Lower Granite dams, and also addressed alleged discharges of
18 pollutants from the portions of the John Day and McNary dams located in the State
19 of Washington. The Complaints seek similar relief regarding the Dams.
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1 On September 12, 2013, Plaintiff filed its Motion to Transfer and Consolidate
2 Under 28 U.S.C. § 1407 (“Motion to Transfer”) before the Judicial Panel on
3 Multidistrict Litigation (“Panel”). On December 13, 2013, the Panel issued a
4 Transfer Order that centralized the three cases in this Court.

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6 As this Court is aware, the parties to these cases have been involved in
7 settlement discussions in an effort to resolve these cases without further, protracted
8 litigation. Those negotiations have resulted in the parties’ execution of a
9 Settlement Agreement that is being filed as an attachment to the [Proposed] Order
10 of Dismissal Without Prejudice that is being submitted herewith.

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12 As set forth in the Settlement Agreement, the parties entered into the
13 Agreement without any admission of fact or law. The parties consider the
14 Agreement to be fair, adequate and reasonable. Accordingly, the parties believe
15 that entering into the Agreement rather than engaging in additional litigation is in
16 the interest of the public, the parties and judicial economy.

17 The Settlement Agreement provides that this Court shall retain jurisdiction over
18 these centralized cases for the purpose of resolving those disputes over which
19 Plaintiff or Defendants may petition the Court pursuant to the Agreement. *See*
20 Settlement Agreement, ¶ 8.B; *and see Kokkonen v. Guardian Life Ins. Co. of Am.*,
21 511 U.S. 375 (1994). The validity of the Settlement Agreement is premised upon
22 this Court’s entry of the [Proposed] Order of Dismissal Without Prejudice
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1 submitted herewith. *See* Settlement Agreement, ¶ 5. Upon entry of the [Proposed]
2 Order of Dismissal Without Prejudice, the cases that have been centralized in this
3 Court will be dismissed without prejudice.

4 NOW THEREFORE, the parties, by and through their undersigned counsel,
5 jointly request that the Court enter the attached [Proposed] Order of Dismissal
6 Without Prejudice, and thereby order that:
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8 (1) Subject to and in accordance with the terms and conditions of the
9 Settlement Agreement filed as an attachment to the [Proposed] Order of Dismissal
10 Without Prejudice, these centralized cases (Nos. Nos. 2:13-md-02494-LRS, 2:13-
11 cv-00282-LRS, 2:13-cv-00418-LRS and 2:13-cv-00030-LRS) are dismissed
12 without prejudice pursuant to Fed. R. Civ. P. 41; and
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14 (2) Subject to and in accordance with paragraph 8.B of the above-referenced
15 Settlement Agreement, this Court shall retain jurisdiction over these centralized
16 cases for the purpose of resolving those disputes for which Plaintiff or Defendants
17 may petition the Court. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
18 375 (1994).
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20 Respectfully submitted,

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17 ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on August 4, 2014, I caused to be filed electronically the foregoing JOINT MOTION FOR DISMISSAL WITHOUT PREJUDICE with the Clerk of Court using the Court's CM/ECF system, which sends a Notice of Electronic Filing to counsel of record.

/s/ Mark A. Nitczynski
Mark A. Nitczynski