

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General
 2 ALEXANDER K. HAAS
 Director, Federal Programs Branch
 3 ANTHONY J. COPPOLINO
 Deputy Director, Federal Programs Branch
 4 ANDREW I. WARDEN (IN #23840-49)
 Senior Trial Counsel
 5 U.S. Department of Justice
 6 Civil Division, Federal Programs Branch
 7 1100 L Street, NW
 Washington, D.C. 20530
 8 Tel.: (202) 616-5084
 Fax: (202) 616-8470
 9 *Attorneys for Defendants*

10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

13 STATE OF CALIFORNIA, *et al.*,
 14 Plaintiffs,
 15 v.
 16 JOSEPH R. BIDEN, JR., *et al.*,
 17 Defendants.

No. 4:19-cv-00872-HSG
 No. 4:19-cv-00892-HSG
 No. 4:20-cv-01494-HSG
 No. 4:20-cv-01563-HSG

**STIPULATION TO WITHDRAW
 PENDING CROSS-MOTIONS FOR
 PARTIAL SUMMARY JUDGMENT
 AND REQUEST TO REFER CASES
 TO A SETTLEMENT
 CONFERENCE, AND STAY
 FURTHER PROCEEDINGS
 PENDING SETTLEMENT
 DISCUSSIONS**

20 SIERRA CLUB, *et al.*,
 21 Plaintiffs,
 22 v.
 23 JOSEPH R. BIDEN, JR., *et al.*,
 24 Defendants.
 25
 26
 27
 28

1 Pursuant to Local Rules 6-2, 7-12, 16-8 and Alternative Dispute Resolution (ADR)
2 Local Rule 7-2, the Plaintiffs and Defendants in the above-captioned cases stipulate and agree
3 as follows:

4 1. On June 11, 2021, Defendants notified the Court and parties that the Department
5 of Defense (DoD) and Department of Homeland Security (DHS) completed their plans for the
6 redirection of funds concerning the southern border wall, as directed by Section 2 of Proclamation
7 No. 10142, 86 Fed. Reg. 7225, 7226 (Jan. 20, 2021). See ECF Nos. 295 in *California I* (19-CV-
8 872) & 93 in *California II* (20-CV-1563); ECF Nos. 310 in *Sierra Club I* (19-CV-892) & 49 in
9 *Sierra Club II* (20-CV-1494).

10 2. The DoD plan explains that DoD has cancelled all border wall projects undertaken
11 pursuant to 10 U.S.C. § 284 and 10 U.S.C. § 2808. Additionally, DoD announced it would restore
12 funding to 66 domestic and international military construction projects using \$2.2 billion of
13 available unobligated military construction appropriations.

14 3. The DHS plan states that DHS will not undertake any new barrier construction
15 work on the former § 284 and § 2808 projects, and will fund remediation work at the § 284 and
16 § 2808 projects sites that are turned over to DHS with its available Fiscal Year 2021 border wall
17 appropriation. The DHS plan also states that DHS will end border wall construction funded by
18 the Treasury Forfeiture Fund and return any excess money to the Fund. The DHS plan states
19 generally that DHS will undertake remediation at the former DoD project sites and lists several
20 categories of potential remediation projects that DHS may perform. Defendants also have
21 identified certain “close out activities” that DoD contractors will perform at some of the project
22 sites as part of the demobilization process. Beyond that, DHS’s plan does not further identify the
23 specific type of remediation that will be performed at the project sites, nor the specific amount of
24 funding that will be used for remediation.

25 4. In light of these changed circumstances, the parties agree to withdraw, without
26 prejudice to refile at a later date, their respective cross-motions for partial summary judgment
27 in *California II* and *Sierra Club II* addressing the funding and construction of border wall projects
28 undertaken in fiscal year 2020 pursuant to § 284. See ECF Nos. 55 & 62 in *California II*; ECF

1 Nos. 23 & 30 in *Sierra Club II* to allow the parties to discuss possible settlement of this matter
2 as discussed below.

3 5. The parties also agree to stay further proceedings in these cases and request that
4 the Court refer the cases to a magistrate judge for a settlement conference pursuant to Local Rule
5 16-8(a) and ADR Local Rule 7-2. While the parties have already initiated discussions to explore
6 the possibility of settlement, the parties believe that a magistrate judge will assist in facilitating
7 these discussions without burdening the resources of this Court. The parties would be amenable
8 to proceeding before any of the following Magistrate Judges, pending their availability: Judge
9 Beeler or Judge Ryu.

10 6. While the parties participate in a settlement conference, good cause exists to
11 maintain the current stay. A stay would further the interest of judicial economy by allowing the
12 parties to focus their efforts on discussing settlement, free from any competing litigation
13 obligations in these cases and without burdening the Court with potentially unnecessary motions
14 and disputes. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power
15 to stay proceedings is incidental to the power inherent in every court to control the disposition of
16 the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”).

17 7. The parties agree to submit a joint status report within 90 days addressing further
18 proceedings in these cases.

19 8. Approving this stipulation would not impact any other deadlines in these cases.

20 9. Pursuant to Local Rule 6-2(a), undersigned counsel for Defendants has submitted
21 a declaration and proposed order in support of this stipulation.

22
23
24 DATE: September 13, 2021

Respectfully submitted,

25 BRIAN M. BOYNTON
26 Acting Assistant Attorney General

27 ALEXANDER K. HAAS
28 Director, Federal Programs Branch

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Andrew I. Warden
ANDREW I. WARDEN
Senior Trial Counsel (IN Bar No. 23840-49)
RACHAEL L. WESTMORELAND
MICHAEL J. GERARDI
LESLIE COOPER VIGEN
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20530
Tel.: (202) 616-5084
Fax: (202) 616-8470
E-Mail: Andrew.Warden@usdoj.gov

Counsel for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DROR LADIN*
NOOR ZAFAR*
HINA SHAMSI*
OMAR C. JADWAT*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2660
dladin@aclu.org
hshamsi@aclu.org
ojadwat@aclu.org
nzafar@aclu.org

/s/ Cecilia D. Wang
CECILLIA D. WANG (SBN 187782)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770
cwang@aclu.org

SANJAY NARAYAN (SBN 183227)**
GLORIA D. SMITH (SBN 200824)**
SIERRA CLUB ENVIRONMENTAL
LAW PROGRAM
2101 Webster Street, Suite 1300
Oakland, CA 94612
Tel: (415) 977-5772
sanjay.narayan@sierraclub.org
gloria.smith@sierraclub.org

*Attorneys for Plaintiffs in
4:19-cv-00892-HSG and
4:20-cv-01494-HSG*

**Admitted pro hac vice
**Attorneys for Plaintiff Sierra Club only*

ROB BONTA
Attorney General of California
ROBERT W. BYRNE
MICHAEL L. NEWMAN
EDWARD H. OCHOA
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
JAMES F. ZAHRADKA II
Supervising Deputy Attorneys General
JANELLE M. SMITH
Deputy Attorney General

/s/ Lee I. Sherman
LEE I. SHERMAN
Deputy Attorney General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
Tel.: (213) 269-6404
E-mail: Lee.Sherman@doj.ca.gov

*Attorneys for Plaintiff State of
California in 4:19-cv-00872-HSG and
4:20-cv-01563-HSG*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION

I declare, under penalty of perjury, that the factual assertions contained in this stipulation are true and correct to the best of my knowledge.

/s/ Andrew I. Warden
ANDREW I. WARDEN
IN Bar No. 23840-49