

1 THE HONORABLE RICHARD A. JONES

2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 (SEATTLE)

10 CENTER FOR BIOLOGICAL DIVERSITY,

11 Plaintiff,

12 v.

13 U.S. ARMY CORPS OF ENGINEERS, *et al.*;

14 Federal Defendants,

15 and

16 PORT OF SEATTLE,

17 Defendant-Intervenor.
18
19
20

CASE NO. 2:21-cv-00275-RAJ-BAT

**STIPULATION TO DISMISS WITH
PREJUDICE (Fed. R. Civ. P. 41(a)(1)(A)(ii))
AND AGREEMENT**

21 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff Center for
22 Biological Diversity and Intervenor Port of Seattle (“Port”) submit the following Stipulation to
23 Dismiss and Agreement. The U.S. Army Corps of Engineers, Lieutenant General Scott A.
24 Spellmon, the Secretary of the Department of Commerce, and the National Marine Fisheries
25 Service (“Fisheries Service”) (collectively, “Federal Defendants”) take no position on Plaintiff
26

1 and the Port’s Agreement and are not parties to this Agreement, but do not oppose voluntary
2 dismissal of Plaintiff’s claims in this case.

3 WHEREAS, Plaintiff alleges that Federal Defendants acted contrary to the National
4 Environmental Policy Act (“NEPA”) and Endangered Species Act (“ESA”).

5 WHEREAS, Plaintiff’s complaint alleges that the Corps failed to take a hard look at the
6 Seattle Harbor Navigation Improvement Project-related impacts under NEPA, the Fisheries
7 Service failed to properly analyze the effects of the Project on endangered Southern Resident
8 killer whales under the ESA, and that both the Fisheries Service’s and the Corps’ failure to
9 reinstate and complete consultation on the impacts of the Project on Southern Resident killer
10 whales and their critical habitat violates the ESA.

11 WHEREAS, the Port moved to intervene in this case as a party defendant. Federal
12 Defendants and the Port contest Plaintiff’s allegations.

13 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff and the Port:

14 **COMMITMENTS OF THE PORT**

15 **Dredging and Shipping Noise Reduction**

16 The Port agrees to take the following actions with regard to noise reduction:

- 17 1. Fund Quiet Sound annually at \$14,000, and to use its best efforts to ensure that its
18 regional partners continue their present funding efforts for a period of three years;
- 19 2. Conduct an in-situ dredge noise monitoring study and publicly publish the
20 findings to be completed by December 31, 2023;
- 21 3. Fund a desktop study at an amount of \$200,000 to be conducted by the Fisheries
22 Service and/or the University of Washington Applied Physics Lab to evaluate gaps in the
23 hydrophone network and recommend improvements to effectively monitor vessel noise in the
24 Salish Sea. The report will be provided to Plaintiff by June 30, 2023, along with an accounting of
25 funds. Any funds left over after the study shall be used to purchase hydrophones or listening
26 stations to collect ship noise data. If the Fisheries Service and/or the University of Washington

1 Physics Lab are unavailable to conduct the study, Plaintiff and the Port will confer to agree upon
2 how the funds will be used;

3 4. Develop and make public by December 31, 2022, an underwater noise mitigation
4 and management study as part of the Port's Green Marine certification efforts.

5 **Salmon Habitat Restoration**

6 The Port agrees to take the following actions with regard to habitat restoration:

7 5. Fund a \$200,000 habitat improvement project at Terminal 108 that will provide
8 suitable salmon habitat with an estimated completion date of March 1, 2022;

9 6. Fund a scoping study for habitat improvements at the Terminal 5 Southeast site,
10 also known as Mission to Seafarer's Site (expected to cost approximately \$50,000) and commit
11 additional funds in the amount of \$50,000 for shoreline restoration work at that site commenced
12 by December 31, 2022, unless the scoping study indicates that the site is, in the Port's discretion,
13 unsuitable for shoreline restoration work. In that event, the Port shall commit \$50,000 to
14 shoreline restoration work at another site by the same date; and

15 7. Report progress on the above habitat improvement projects to Plaintiff semi-
16 annually, including representative photographs.

17 **COMMITMENTS OF THE PLAINTIFF**

18 8. In acknowledgment of and in exchange for the promises and other consideration
19 contained in this Agreement, Plaintiff hereby releases Federal Defendants and the Port from all
20 existing and future claims relating to the Finding of No Significant Impact, the Environmental
21 Assessment, and the Fisheries Service's concurrence under the ESA prepared for the Seattle
22 Harbor Navigation Improvement Project referred to in the Chief's Report dated June 7, 2018,
23 and any claims for attorneys' fees and costs, including any claims that Plaintiff could have
24 brought, and including but not limited to those set forth in the Complaint filed in Case No. 2:21-
25 cv-00275 (filed March 4, 2021).

1 sressler@biologicaldiversity.org

2 For the Port:

3 Marie Quasius
4 Senior Port Counsel
5 Port of Seattle
6 Pier 69, 2711 Alaskan Way
7 P.O. Box 1209
8 Seattle, WA 98111
9 Quasius.m@portseattle.org

10 *With a copy to:*

11 Beth Ginsberg
12 Stoel Rives LLP
13 600 University Street, Suite 3600
14 Seattle, WA 98101
15 beth.ginsberg@stoel.com

16 11. If any revision of this agreement is sought or if a dispute arises, Plaintiff and the
17 Port shall schedule a meeting to confer within ten (10) business days of receiving written
18 notification from the other party of a request for a meeting to develop a mutually agreed upon
19 plan, including implementation dates, to resolve the dispute.

20 Dated: November 16, 2021

21 Respectfully submitted,

22 s/ Catherine Kilduff

23 s/ Sophia N. Ressler

24 Catherine Kilduff (CA Bar No. 256331)
25 CENTER FOR BIOLOGICAL DIVERSITY
26 1212 Broadway St. #800
Oakland, CA 94612
Phone: (510) 844-7100
Facsimile: (510) 844-7150
ckilduff@biologicaldiversity.org

1
2 Sophia N. Ressler (WA Bar No. 48406)
3 CENTER FOR BIOLOGICAL DIVERSITY
4 2400 NW 80th Street, #146
5 Seattle, WA 98117
6 Phone: (206) 327-2344
7 sressler@biologicaldiversity.org

8 Attorneys for Plaintiff

9
10 STOEL RIVES LLP

11 s/ Beth S. Ginsberg
12 Beth S. Ginsberg, WSBA No. 18523
13 beth.ginsberg@stoel.com
14 James C. Feldman, WSBA No. 51271
15 james.feldman@stoel.com

16 STOEL RIVES LLP
17 600 University Street, Suite 3600
18 Seattle, WA 98101
19 Telephone: 206.624.0900
20 Facsimile: 206.386.7500
21 *Attorneys for Port of Seattle*
22 *Defendant-Intervenor*

23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Federal Defendants' Joinder in Rule 41 Dismissal
Federal Defendants take no position on the agreement between Plaintiff and the Port, but agree to the dismissal of the case under Rule 41(a)(1)(A)(ii).

TODD KIM
Assistant Attorney General
Environment & Natural Resources Div.
U.S. Department of Justice

s/ Coby Howell
COBY HOWELL,
Senior Trial Attorney
Wildlife and Marine Resources Section
1000 SW Third Ave, Suite 600
Portland, OR 97204-2024

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

Tel: (503) 727-1023
Fax: (503) 727-1118
coby.howell@usdoj.gov

KRISTOFOR R. SWANSON,
Senior Trial Attorney
Natural Resources Section
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 305-0248
Fax: (202) 305-0506
kristofor.swanson@usdoj.gov

Counsel of Record for the Federal Defendants

IT IS SO ORDERED,

Date: _____, 2021 Signed By: _____

HON. RICHARD A. JONES
United States District Court Judge

1 **CERTIFICATE OF SERVICE**

2

3 I certify that the foregoing will be electronically filed with the Court’s electronic filing
4 system, which will generate automatic service upon on all Parties enrolled to receive such notice.

5 s/ Catherine Kilduff
6 CATHERINE KILDUFF

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26