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05 FEB -4 AM 8:38

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

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14 **Attorneys for Federal Defendants**

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA
17

18 BORDER POWER PLANT WORKING
19 GROUP,

20 Plaintiff,

21 v.

22 DEPARTMENT OF ENERGY, ET AL.,

23 Federal Defendants.

CASE NO. CIV. NO. 02-0513-IEG (POR)

THE PARTIES' STIPULATION FOR THE
COURT TO CONTINUE TO DEFER THE
SETTING ASIDE OF PRESIDENTIAL
PERMITS

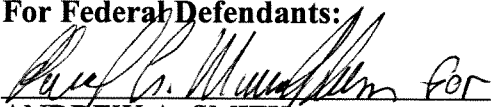
24 Consistent with the Court's Orders of July 8, 2003, Doc. No. 162, May 20, 2004, Doc.
25 No. 174, and November 4, 2004, Doc. No. 177, the Parties respectfully request that the Court
26 continue to defer setting aside the original permits (as that term is defined in the Court's Order of
27 July 8, 2003) at issue in this litigation, to allow Defendant-Intervenors to continue to operate the
28 transmission lines for which these permits were issued to export electricity into the United States


1 from the power plants in Mexico during the Court's remand period. Federal Defendants
2 completed an environmental impact statement under the National Environmental Policy Act
3 ("NEPA") on December 17, 2004, see 69 Fed. Reg. 75535 (Dec. 17, 2004), and will be issuing
4 Records of Decision ("RODs") in the near future. Federal Defendants intend to inform the Court
5 of the effect of the completion of the NEPA process on the status of the litigation and the current
6 permits once those RODs are issued.

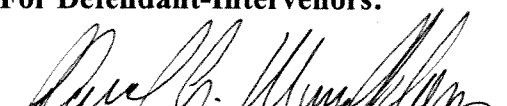
7 In order to determine its position on the effect of the completion of the NEPA process on
8 this litigation, Plaintiff has requested that Federal Defendants produce a provisional
9 administrative record for the RODs. Federal Defendants estimate that it will take approximately
10 4 months to produce an administrative record for Plaintiff, at which time Plaintiff will need
11 approximately 60 days to review the administrative record materials and to inform Federal
12 Defendants of its position.

13 Therefore, the Parties propose and stipulate to an amended schedule for presenting to the
14 Court their respective positions on the effect of the NEPA process on this litigation, as set forth
15 below.

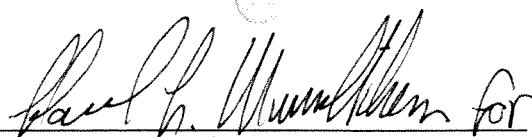
16 Respectfully submitted this 1st day of February, 2005

18 **For Federal Defendants:**
19  for
20 ANDREW A. SMITH
21 United States Department of Justice

22 **For Plaintiff:**
23  for
24 MARCELLO MOLLO
25 Earthjustice Legal Defense Fund

26 **For Defendant-Intervenors:**
27 
28 DAVID L. MULLIKEN
Latham & Watkins LLP

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ERIC J. MURDOCK
Hunton & Williams

ORDER

Pursuant to the Stipulation of the Parties:

- 1) The Court defers the setting aside of Federal Defendants' original permits at issue in this litigation until September 26, 2005.
- 2) The agencies, having completed an environmental impact statement on December 17, 2004, will issue their RODs in accordance with the NEPA process (and, if appropriate, issue new permits), on or before April 30, 2005.
- 3) On or before June 1, 2005, Federal Defendants will provide Plaintiff with a copy of a provisional administrative record for the NEPA process.
- 4) On or before August 1, 2005, Plaintiff (i) will inform Federal Defendants of its position on the effect of the completion of the NEPA process on this litigation, and will advise Federal Defendants of any issues that it intends to pursue with the Court concerning the effect of the NEPA process on this litigation, and (ii) if Plaintiff intends to challenge any agency action resulting from the NEPA process, will provide Federal Defendants with a proposed amended complaint.
- 5) If Plaintiff does not intend to pursue further litigation, the Parties will file a stipulation of dismissal on or before August 15, 2005.
- 6) If no stipulation of dismissal is filed pursuant to Paragraph 5, on or before August 22, 2005, Federal Defendants will seek a hearing date and file a brief showing cause, if necessary, why the Court should not set the aside the original permits on September 26, 2005. The Parties shall meet and confer, and by August 15, 2005 shall file a schedule with the Court for briefing with respect to any further relief that may be sought by the Plaintiff.

IT IS HEREBY ORDERED.

FEB 3 2005

IRMA E GONZALEZ

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing THE PARTIES' STIPULATION FOR THE COURT TO CONTINUE TO DEFER THE SETTING ASIDE OF PRESIDENTIAL PERMITS by regular mail first class postage prepaid on the 13th day of February, 2005, addressed to the following:

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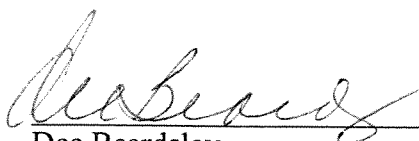
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