

MICHAEL R. EITEL, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
999 18th Street, South Terrace, Suite 302
Denver, Colorado 80202
Tel. (303) 844-1479/ Fax (303) 844-1350
Email: Michael.Eitel@usdoj.gov

Additional Attorneys listed on Signature Page

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

| | | |
|--------------------------------|---|-----------------------------------|
| DEFENDERS OF WILDLIFE, et al., |) | Case No. cv-09-77-M-DWM (Lead) |
| |) | cv-09-82-M-DWM |
| Plaintiffs, |) | (consolidated cases) |
| v. |) | |
| |) | JOINT STIPULATION AND |
| KEN SALAZAR, et al., |) | [PROPOSED] ORDER TO SETTLE |
| |) | PLAINTIFFS' CLAIM FOR |
| Defendants. |) | ATTORNEYS' FEES AND COSTS |
| |) | |
| _____ |) | |
| |) | |
| GREATER YELLOWSTONE |) | |
| COALITION, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| |) | |
| KEN SALAZAR, et al., |) | |
| |) | |
| Defendants |) | |
| _____ |) | |

This Stipulated Settlement Agreement (hereinafter, “Agreement”) is made between Plaintiffs, Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Humane Society of the United States, Center for Biological Diversity, Jackson Hole Conservation Alliance, Friends of the Clearwater, Alliance for the Wild Rockies, Oregon Wild, Cascadia Wildlands, Western Watersheds Project, Wildlands Network, and Hells Canyon Preservation Council, (collectively, “Plaintiffs”), and Federal Defendants, Ken Salazar, Secretary of the Interior, Daniel Ashe, Director of the U.S. Fish and Wildlife Service, and the U.S. Fish and Wildlife Service (collectively, “Federal Defendants”).

WHEREAS, on June 2, 2009, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief (ECF No. 1);

WHEREAS, on June 24, 2009, Federal Defendants filed an Answer to the Complaint (ECF No. 24);

WHEREAS, Plaintiffs filed a motion for preliminary injunction on August 20, 2009 (ECF No. 58), which was denied on September 8, 2009 (ECF No. 93);

WHEREAS, Plaintiffs filed a motion for summary judgment on October 26, 2009 (ECF No. 105), and Federal Defendants filed a cross motion for summary judgment on November 23, 2009 (ECF No. 113);

WHEREAS, the Court entered an order granting in part and denying in part Plaintiffs’ motion for summary judgment on August 5, 2010 (ECF No. 164), and the Court entered Judgment in Plaintiffs’ favor on August 5, 2010 (ECF No. 165);

WHEREAS, Federal Defendants filed an appeal of the Court’s August 5, 2010 order on October 1, 2010 (ECF No. 172);

WHEREAS, the U.S. Court of Appeals for the Ninth Circuit issued an order on November 7, 2012 dismissing the appeals as moot and vacating the Court’s August 5, 2010 Judgment (ECF No. 211);

WHEREAS, the District Court issued an order dismissing the case as moot on November 9, 2012 (ECF No. 212);

WHEREAS, Plaintiffs filed a motion for attorneys' fees and costs on November 21, 2012 (ECF No. 214);

WHEREAS, Plaintiffs have provided Federal Defendants with their contemporaneous time records and other information for their claim for attorneys' fees and costs, and counsel for Plaintiffs and Federal Defendants ("Parties") have engaged in good faith, confidential settlement negotiations concerning Plaintiffs' claims for attorneys' fees and costs;

WHEREAS, the Parties have reached an agreement as to an appropriate settlement of Plaintiffs' claims for fees and costs and agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve Plaintiffs' claims for fees and costs; and

WHEREAS, the Parties enter the Agreement below without any admission of fact or law, or waiver of any claims or defenses, factual or legal, except as specified in the Agreement;

NOW THEREFORE, in the interests of judicial economy and to avoid further litigation over Plaintiffs' claims for attorneys' fees and costs, Plaintiffs and Federal Defendants, for good and valuable consideration, the adequacy of which is hereby acknowledged, stipulate and agree as follows:

1. Federal Defendants agree to settle all of Plaintiffs' claims to attorneys' fees and costs in the above-captioned litigation, including fees and costs incurred on appeal, for a total amount of \$380,000.00.

2. Plaintiffs agree to accept payment of \$380,000.00 in the manner prescribed in Paragraph 3, below, in full satisfaction of any and all claims for attorneys' fees and costs that are related to the above-captioned litigation, including fees and costs incurred on appeal.

3. Federal Defendants agree to issue a check in the amount of \$380,000.00 or, as appropriate, make a wire transfer of the specified amount to: Earthjustice, 313 E. Main Street, Bozeman, MT 59715. Federal Defendants agree to submit all necessary paperwork to funding authorities at the Department of Treasury within thirty (30) business days of receipt of the signed court order approving this Stipulation.

4. This Agreement shall apply to and be binding upon the Parties, their members, delegates, and assigns. The undersigned representatives of the Parties certify that they are fully authorized to enter into the terms and conditions of this Agreement and to legally bind the Parties to it. Plaintiffs and their attorneys agree to hold Federal Defendants harmless in any litigation, further suit, or claim arising between Plaintiffs and their attorneys from the payment of the agreed-upon settlement amount pursuant to this Agreement.

5. This Agreement is executed solely for the purpose of compromising and settling Plaintiffs' claims for attorneys' fees and costs in the above-captioned case, including fees and costs incurred on appeal. Nothing in this Agreement shall constitute, or be construed to constitute, a precedent in any other context. Nothing in this Agreement shall be cited in any other litigation except as necessary to enforce the terms of the Agreement. By this Agreement, Federal Defendants do not waive any right to contest fees or costs claimed by Plaintiffs or Plaintiffs' counsel in any future litigation, and Plaintiffs do not waive any right to claim such fees or costs in any future litigation.

6. Any obligations of the United States to expend funds under this Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

7. This Agreement represents the entirety of the Parties' commitments with regard to settlement of attorneys' fees and costs in the above-captioned case. The terms of this Agreement shall become effective upon approval by this Court of this Agreement.

8. In an electronic mail dated February 19, 2013, counsel for Plaintiffs, Jenny Harbine, authorized Michael R. Eitel, counsel for Federal Defendants, to sign this joint stipulation and enter it in the CM/ECF system.

IT IS SO STIPULATED.

DATED February 19, 2013

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
SETH M. BARSKY, Acting Section Chief

/s/ Michael R. Eitel
MICHAEL R. EITEL, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
999 18th Street
South Terrace, Suite 302
Denver, Colorado 80202
Tel. (303) 844-1479/ Fax (303) 844-1350
Email: Michael.Eitel@usdoj.gov

Attorneys for Federal Defendants

DATED February 19, 2013

Respectfully submitted,

/s/ Jenny Harbine (with permission)
Douglas L. Honnold
Timothy J. Preso
Jenny K. Harbine
Earthjustice
313 E. Main St.
Bozeman, MT 59715
(406) 586-9699 | Phone
(406) 586-9695 | Fax
dhonnold@earthjustice.org

tpreso@earthjustice.org
jharbine@earthjustice.org

Attorneys for Plaintiffs

ORDER

The Court hereby approves and orders each and every term of this Stipulated Settlement Agreement. IT IS SO ORDERED.

Dated this _____ day of _____, 2013.

The Honorable Donald W. Molloy
United States District Court Judge

CERTIFICATE OF SERVICE

I certify that on February 19, 2013, the Department of Justice served copies of the attached document by CM/ECF to counsel of record. I also certify that I sent the foregoing via overnight mail, postage prepaid, to the following counsel:

Grant D. Parker
Rocky Mountain Elk Foundation
5705 Grant Creek
Missoula, Montana 59808
Tel: 406-523-4524

Clive J. Strong
Office of the Attorney General
700 West State Street, 2nd Floor
Boise, Idaho 83720-0010
Tel: 208-334-2400

/s/ Michael R. Eitel
MICHAEL R. EITEL
Trial Attorney