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16  
17 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

18 \_\_\_\_\_ ) Case No. 05-CV-01207 OWW GSA  
19 NATURAL RESOURCES DEFENSE )  
COUNCIL, *et al.*, )  
20 Plaintiffs, )  
21 v. ) STIPULATION TO SETTLE ATTORNEYS'  
22 KENNETH LEE SALAZAR, in his official ) FEES AND COSTS AND ORDER  
capacity as Secretary of Interior *et al.*, )  
23 Defendants. )  
24 \_\_\_\_\_ )  
25 SAN LUIS & DELTA-MENDOTA WATER )  
AUTHORITY, *et al.*, )  
26 Defendant-Intervenors. )  
27 \_\_\_\_\_ )  
28 ANDERSON-COTTONWOOD IRRIGATION )  
DISTRICT, *et al.*, )  
Joined Parties. )

1 **STIPULATION**

2 WHEREAS the Court entered Final Judgment in this case on September 23, 2009 (Doc.  
3 873); and

4 WHEREAS, on October 8, 2009, the Court entered an order extending the deadline for  
5 Plaintiffs to file a motion for attorneys’ fees, costs and other expenses to December 22, 2009,  
6 assuming no appeal (Doc. 875); and

7 WHEREAS several parties timely appealed, including Plaintiffs and Federal Defendants,  
8 suspending the timeline for filing a motion for fees, costs and other expenses (Doc. 881; Doc. 883);  
9 and

10 WHEREAS, on July 29, 2010, Plaintiffs filed a Motion for Award of Attorneys’ Fees and  
11 Costs (Doc. 903); and

12 WHEREAS, counsel for Plaintiffs and Federal Defendants (“the Parties”) have subsequently  
13 engaged in extensive, good faith and confidential settlement negotiations concerning Plaintiffs’  
14 claims for attorneys' fees and costs; and

15 WHEREAS, the Parties have reached a settlement of Plaintiffs' claims for attorneys’ fees and  
16 costs;

17  
18 NOW THEREFORE, in the interests of judicial economy and to avoid litigating the pending  
19 motion for attorneys’ fees and costs, Plaintiffs and Federal Defendants, for good and valuable  
20 consideration, the adequacy of which is hereby acknowledged, hereby stipulate and agree as follows:

21 1. Federal Defendants agree to settle Plaintiffs’ pending claims for costs and attorneys’  
22 fees for the amount of \$1,906,500.

23 2. Plaintiffs agree to accept payment of \$1,906,500 in full satisfaction of any and all  
24 claims for attorneys’ fees and costs of litigation to which they allege they are entitled through the  
25 date of execution of this Stipulation, including any claims for fees related to the preparation of  
26 Plaintiffs’ fee application or this Stipulation, with the exception stated below.

27 3. Federal Defendants and Plaintiffs agree and acknowledge that Plaintiffs expressly  
28 reserve the right to seek any additional fees and costs to which they may be entitled for any and all

1 work performed on the challenge regarding long-term contracts described in their Second Claim for  
2 Relief in their Third Amended Complaint, presently on appeal to the Ninth Circuit in *Natural*  
3 *Resources Defense Council, et al. v. Salazar, et al.*, Case. No. 09-17661, after disposition of the  
4 appeal. Subject to the foregoing exception, Plaintiffs release Federal Defendants from any and all  
5 claims regarding attorneys' fees and costs in this case, through the date of execution of this  
6 Stipulation.

7 4. Payment shall be made to Earthjustice, counsel for Plaintiffs, using an electronic fund  
8 transfer into the Earthjustice Attorney Client Trust Account Fund, The Mechanics Bank, Richmond  
9 CA. Plaintiffs' counsel shall provide the appropriate account number to counsel for the Federal  
10 Defendants.

11 5. Federal Defendants agree to submit all necessary paperwork to the Department of the  
12 Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) business days  
13 of receipt of the signed court order approving this Stipulation.

14 6. Any obligations of the United States to expend funds under this Stipulation are  
15 subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. §  
16 1341. This Stipulation shall not be construed to require the United States to obligate or pay funds in  
17 contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

18 7. The undersigned representatives of the Parties certify that they are fully authorized by  
19 the party or parties whom they represent to enter into the terms and conditions of this Stipulation and  
20 to legally bind the Parties to it.

21 8. This Stipulation is executed solely for the purpose of compromising and settling  
22 Plaintiffs' claims for attorneys' fees and costs. Nothing in this Stipulation shall constitute, or be  
23 construed to constitute, a precedent in any other context. Nothing in this Stipulation shall constitute,  
24 or be construed to constitute, an admission of liability on the part of the Federal Defendants as to  
25 Plaintiffs' claims for attorneys' fees, costs, and other expenses settled herein, or an admission on the  
26 part of Plaintiffs that the settlement payment is sufficient consideration for Plaintiffs' claims for  
27 attorneys' fees and costs. Nothing in this Stipulation shall constitute, or be construed to constitute,  
28

1 an admission of liability or waiver of any defense on the part of the Federal Defendants as to  
2 Plaintiffs' claims in the underlying action.

3 Accordingly, the parties respectfully request that this Court approve the stipulation as stated  
4 above.

5 Respectfully submitted this 28th day of January, 2011.

6 /s/ Michael R. Sherwood  
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**ORDER**

Having considered the foregoing Stipulation, and good cause appearing in support thereof,  
the foregoing Stipulation is HEREBY APPROVED.

IT IS SO ORDERED.

Dated: **February 1, 2011**

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE