

1 BENJAMIN B. WAGNER
 United States Attorney
 2 KELLI L. TAYLOR
 RICHARD ELIAS
 3 Assistant United States Attorneys
 501 I Street, Suite 10-100
 4 Sacramento, CA 95814
 Telephone: (916) 554-2700
 5 Facsimile: (916) 554-2900
 6 Attorneys for the United States

7
 8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

11	UNITED STATES OF AMERICA,)	No. 2:09-cv-2445 KJM EFB
12	Plaintiff,)	SETTLEMENT AGREEMENT AND
13	vs.)	STIPULATION; MUTUAL
14	SIERRA PACIFIC INDUSTRIES, INC., <i>et al.</i> ,)	RELEASES; DISMISSAL; AND
15	Defendants.)	ORDER
16	_____)	
17	AND RELATED CROSS-ACTIONS.)	
18)	
19	_____)	
20	SIERRA PACIFIC INDUSTRIES, <i>et al.</i> ,)	No. 2:11-cv-1250 KJM EFB
21	Plaintiffs,)	SETTLEMENT AGREEMENT AND
22	vs.)	STIPULATION
23	UNITED STATES DEPARTMENT OF)	
24	AGRICULTURE,)	
24	_____)	
24	Defendant.)	

25 ///

26 ///

1 This Settlement Agreement is entered into by and between the United States; Sierra Pacific
2 Industries (“Sierra Pacific”); Eunice Howell, individually and dba Howell’s Forest Harvesting
3 Company (“Howell’s”); W.M. Beaty & Associates, Inc. (“Beaty”) and the following parties
4 (hereinafter collectively “the Landowners”): Ann McKeever Hatch, as Trustee of the Hatch 1987
5 Revocable Trust; Richard L. Greene, as Trustee of the Hatch Irrevocable Trust; Brooks Walker, Jr.,
6 as Trustee of the Brooks Walker, Jr. Revocable Trust, and the Della Walker Van Loben Sels Trust for
7 the Issue of Brooks Walker, Jr.; Brooks Walker, III, Individually and as Trustee of the Clayton
8 Brooks Danielsen Trust, the Myles Walker Danielsen Trust, the Margaret Charlotte Burlock Trust,
9 and the Benjamin Walker Burlock Trust; Leslie Walker, Individually, and as Trustee of the Brooks
10 Thomas Walker Trust, the Susie Kate Walker Trust, and the Della Grace Walker Trust; Wellington
11 Smith Henderson, Jr., as Trustee of the Henderson Revocable Trust; Elena D. Henderson,
12 Individually; Mark W. Henderson, as Trustee of the Mark W. Henderson Revocable Trust; John C.
13 Walker, Individually, and as Trustee of the Della Walker Van Loben Sels Trust for the Issue of John
14 C. Walker; James A. Henderson, Individually; Charles C. Henderson, as Trustee of the Charles C.
15 and Kirsten Henderson Revocable Trust; Joan H. Henderson, Individually; Jennifer Walker,
16 Individually, and as Trustee of the Emma Walker Silverman Trust, and the Max Walker Silverman
17 Trust; Kirby Walker, Individually; and Lindsey Walker, a.k.a. Lindsey Walker-Silverman,
18 Individually, and as Trustee of the Reilly Hudson Keenan Trust, and the Madison Flanders Keenan
19 Trust. Beaty, Sierra Pacific, Howell’s and the Landowners are herein collectively referred to as
20 “Defendants” and, together with the United States, are collectively “the Parties.” In consideration of
21 the mutual promises, covenants, conditions, terms, and obligations set forth in this Agreement, and
22 except as set forth herein, the Parties hereby agree to settle and compromise each and every claim of
23 any kind, known or unknown, arising directly or indirectly from the acts and omissions that gave rise
24 to the above-captioned actions, under the terms and conditions set forth below.

25 1. Defendants agree to pay their allocated portion of the collective sum of \$55 million
26 (the “Settlement Amount”) to the United States as follows:

27 a. Sierra Pacific shall pay or cause to be paid \$17 million within sixty days from the date
28 of filing of this Settlement Agreement. Sierra Pacific shall pay or cause to be paid an additional \$30

1 million of the Settlement Amount in twice-yearly payments of \$3 million each, on January 1 and July
2 1 every year starting January 1, 2013, until full payment is received.

3 b. Howell's shall pay or cause to be paid \$1 million within sixty days from the date of
4 filing of this Settlement Agreement.

5 c. Beaty and the Landowners shall collectively pay or cause to be paid \$7 million within
6 sixty days from the date of this Settlement Agreement.

7 Upon payment of Beaty, Landowners and Howell's share of the Settlement Amount, Beaty,
8 Landowners and Howell's will have satisfied all of their obligations under this Settlement Agreement
9 and shall have no further obligation to provide additional consideration of any kind to satisfy the
10 conditions herein. Upon payment of Sierra Pacific's share of the settlement amount, and the
11 conveyance of fee simple title to 22,500 acres of Sierra Pacific land as more specifically set forth
12 below, and dismissal of Case No. 2:11-cv-1250, Sierra Pacific will have satisfied all of its obligations
13 under this Settlement Agreement and shall have no further obligation to provide additional
14 consideration of any kind to satisfy the conditions herein.

15 All payments will be made by electronic funds transfer pursuant to written instructions
16 provided by the United States Attorney's Office for the Eastern District of California. If Sierra
17 Pacific makes timely payments as set out in Paragraph 1(a) above, no interest shall accrue on
18 amounts owed or to be paid under this Settlement Agreement.

19 2. In addition to its payment obligation in Paragraph 1, Sierra Pacific agrees to convey
20 fee simple title to 22,500 acres of land (the "Settlement Land") to the United States, free and clear of
21 all liens and encumbrances except those acceptable to the United States under the Attorney General's
22 title standards, to be selected by the Regional Forester in the manner set forth in Paragraphs 3-7
23 below. Sierra Pacific will transfer only existing legal parcels.

24 3. Within ten days of the filing of this Agreement, Sierra Pacific will identify 200,000
25 acres of undeveloped wildland owned by Sierra Pacific in California, from which the Regional
26 Forester may select any part or parts as potential Settlement Land. If the Regional Forester, in his
27 sole discretion, does not select 22,500 acres of potential Settlement Land from the initial 200,000
28 acres offered, within ten days of notice of that fact, Sierra Pacific will identify another 100,000 acres

1 of undeveloped wildland for his consideration. This process of identifying additional 100,000 acre
2 blocks will continue until 22,500 acres of potential Settlement Land has been identified.

3 4. Sierra Pacific will provide any information or reports to the Regional Forester within
4 30 days of request for that information. Upon completion of whatever inquiry he considers
5 appropriate, the Regional Forester will give written notice of acceptance or rejection of potential
6 Settlement Land. The Regional Forester, in his sole discretion, may accept or reject all or any part of
7 any potential Settlement Land. Once a parcel is rejected by the Forest Service, it is rejected for all
8 time, unless Sierra Pacific at its own discretion renews the offer.

9 5. Within one hundred twenty days after receipt of written notice of acceptance of any
10 Settlement Land, Sierra Pacific will convey fee simple title to that land to the United States, free and
11 clear of all liens and encumbrances except those acceptable to the United States under the Attorney
12 General's title standards. Any costs required to obtain and convey clear title to such properties,
13 including but not limited to closing costs, will be borne by Sierra Pacific. The Administrator of
14 General Services, or his designee, shall have charge of the accepted property on behalf of the United
15 States, and shall then assign custody and accountability of the property to the U.S. Department of
16 Agriculture to be administered as part of the National Forest System.

17 6. In the event that the Regional Forester deems any potential Settlement Land
18 unacceptable for conveyance to the United States, he will give written notice of rejection to Sierra
19 Pacific, and may designate any combination of acres of undeveloped wildland owned by Sierra
20 Pacific, equal in number, for conveyance to the United States under the same terms and conditions set
21 forth in Paragraph 3 above. This selection process shall continue in the same manner until the
22 Regional Forester has accepted, and Sierra Pacific has conveyed, all 22,500 acres of land pursuant to
23 this Agreement.

24 7. Notwithstanding any contrary provision set forth above, the Regional Forester may, in
25 his sole discretion, accept land subject to mineral rights of third parties in partial or full satisfaction of
26 Sierra Pacific's obligations under this Agreement. Sierra Pacific shall disclose the existence of such
27 rights in any property when offering potential Settlement Land for the Regional Forester's
28 consideration.

1 8. Within five days of filing of this Agreement, the Forest Service, U.S. Department of
2 Agriculture will withdraw its prior *Touhy* decisions concerning Diane Welton and Karen Juska, and
3 will issue new decisions stating that these two witnesses will be made available to testify in one trial
4 of Defendants' choosing in the state court litigation arising from the Moonlight Fire, but not allowing
5 any further depositions of these witnesses. Defendants agree not to challenge these new *Touhy*
6 decisions. Defendants further agree that within ten days after receiving the new *Touhy* decisions for
7 Welton and Juska, they will prepare and file a stipulation to dismiss Case No. 2:11-cv-1250 with
8 prejudice. The terms of the stipulation shall be as follows and nothing more: "The parties hereby
9 agree to dismiss this action in its entirety with prejudice, all parties to bear their own costs and fees."

10 9. Subject to the exceptions in Paragraph 10 below, and conditioned upon complete
11 satisfaction of a Defendant's settlement obligation(s), including full payment of that Defendant's
12 portion of the Settlement Amount and in the case of Sierra Pacific, conveyance of the Settlement
13 Land, the United States (on behalf of itself and the Forest Service) releases that Defendant and their
14 current and former owners, directors, officers, agents (including but not limited to attorneys),
15 shareholders, employees, and insurers from all liability for any claims, demands, obligations, actions,
16 causes of action, damages, costs, losses, attorney's fees and expenses, including any claims for
17 compensatory or punitive damages, arising out of or related to the Moonlight Fire or the allegations
18 in the above-captioned actions.

19 10. Notwithstanding any term of this Agreement, the United States reserves and excludes
20 from the scope and terms of this Agreement, as to any entity or person (including Defendants), the
21 following claims:

22 a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code
23 (Internal revenue Code);

24 b. Any criminal liability; and

25 c. Any liability to the United States (or its agencies) for any claims not arising out of or
26 related to the Moonlight Fire or the allegations in the above-captioned actions.

27 11. In consideration of the obligations of the United States set forth in this agreement, and
28 conditioned upon complete satisfaction of its settlement obligations, Defendants hereby release the

1 United States and its employees, agents, agencies, and departments from all liability for any claims,
2 demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees and expenses,
3 including, any claims for compensatory or punitive damages, arising out of or relating to the
4 Moonlight Fire or the allegations in the above-captioned actions.

5 12. This Agreement is not an admission of any wrongful conduct or liability by the
6 Defendants, or a concession by the United States that its claims and allegations are not well-founded.
7 Each Defendant explicitly denies its liability for the Moonlight Fire. This settlement is entered into
8 to compromise disputed claims and avoid the delay, uncertainty, inconvenience, and expense of
9 further litigation.

10 13. The Parties shall bear their own costs, attorneys' fees and expenses incurred in
11 connection with the investigation, litigation, and resolution of the above-captioned actions.

12 14. This Agreement is intended to be for the sole benefit of the Parties and those released
13 herein. The Parties do not release any claims against any other person or entity not expressly
14 released by this Agreement.

15 15. Each person signing this Agreement on behalf of Defendants warrants and represents
16 that he or she possesses full authority to bind the party or parties on whose behalf he or she is signing
17 to the terms of the Agreement. The undersigned Assistant U.S. Attorney represents that she is
18 signing this Agreement in her official capacity and that she is authorized to do so.

19 16. Each Party represents and warrants that it has not transferred anything being released
20 under this Agreement, and is not aware of any such transfer, and that the Party is not aware of any
21 prohibition of any type that prevents the Party from performing the terms of this Settlement
22 Agreement.

23 17. Nothing in this Agreement constitutes an agreement by the United States concerning
24 characterization of any part of the Agreement for purposes of Title 26, United States Code (Internal
25 Revenue Code).

26 18. This Settlement Agreement and the terms of the settlement are not confidential. The
27 Parties consent to the public disclosure of this Settlement Agreement, and of information about this
28 case and this Settlement Agreement.

1 19. This Agreement is binding on Defendants' successors in interest, transferees, and
2 assigns, including any entity that acquires an ownership interest in Defendants through merger or
3 liquidation.

4 20. Each Party represents and warrants that it has been represented by, and has sought and
5 obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this
6 Settlement Agreement. The Parties hereby declare that the terms of this Settlement Agreement have
7 been completely read, fully understood, and voluntarily accepted following opportunity for review by
8 legal counsel of their choice.

9 21. Each Party warrants and represents that it freely and voluntarily enters into this
10 Settlement Agreement without any duress or compulsion whatsoever; that no other Party or its
11 representative has made any promise, representation or warranty, express or implied, except as
12 expressly set forth in this Settlement Agreement; and that no Party has relied on any inducements,
13 promises, or representations made by any Party to this Settlement Agreement, or its representatives,
14 or any other person, except as expressly set forth herein.

15 22. For purposes of construction, this Settlement Agreement shall be deemed to have been
16 drafted by all Parties to this Settlement Agreement. The words of this Settlement Agreement shall
17 not, therefore, be construed against any Party for that reason in any subsequent dispute, but shall be
18 construed so as to effect their fair meaning, the Parties having waived the benefit of California Civil
19 Code § 1654 and similar laws.

20 23. This Agreement constitutes the complete agreement between the Parties, and
21 supersedes and replaces all prior negotiations and agreements, whether written or oral, regarding the
22 resolution of the Parties' claims with respect to the above-captioned actions.

23 24. Beaty and the Landowners hereby dismiss their cross claims against Sierra Pacific
24 Industries and Howell's in the above-captioned actions. Such dismissal, as well as the dismissal of
25 the above captioned actions, shall have no preclusive, res judicata, collateral estoppel, or other effect
26 on Beaty's and/or the Landowners' cross claims in cases in state court arising from the Moonlight
27 Fire, and shall have no preclusive, res judicata, collateral estoppel, or other effect on Sierra Pacific
28 and Howell's claims available in cases in state court arising from the Moonlight Fire.

1 Neither Beaty nor Landowners, nor their insurers, will seek any indemnity, contribution or
2 subrogation of any kind against Sierra Pacific, Howell's or their insurers arising from the defense or
3 settlement of the above-captioned actions. Neither Sierra Pacific nor Howell's, nor their insurers,
4 will seek any indemnity, contribution or subrogation of any kind against Beaty, the Landowners or
5 their insurers arising from the defense or settlement of the above-captioned actions.

6 Beaty and the Landowners hereby release and discharge Sierra Pacific and Howell's and their
7 current and former owners, directors, officers, agents (including but not limited to attorneys),
8 shareholders, employees, and insurers from all liability for any claims, demands, obligations, actions,
9 causes of action, damages, costs, losses, indemnity rights, contribution rights, subrogation rights,
10 attorney's fees and expenses, compensatory damages, or punitive damages, arising from the defense
11 or settlement of the above-captioned actions. Sierra Pacific and Howell's hereby release and
12 discharge Beaty and the Landowners and their current and former owners, directors, officers, agents
13 (including but not limited to attorneys), shareholders, employees, and insurers from all liability for
14 any claims, demands, obligations, actions, causes of action, damages, costs, losses, indemnity rights,
15 contribution rights, subrogation rights, attorney's fees and expenses, compensatory damages, or
16 punitive damages, arising from the defense or settlement of the above-captioned actions. Nothing
17 herein releases the Landowners, Beaty, Sierra Pacific, or Howell's contractual and/or equitable
18 indemnity rights, or such other rights as they may have, in relation to any litigation related to the
19 Moonlight Fire other than the above-captioned federal court actions.

20 25. The Parties understand and acknowledge that the facts and/or potential claims with
21 respect to liability or damages regarding the above-captioned actions may be different from facts now
22 believed to be true or claims now believed to be available ("Unknown Claims"). Each Party accepts
23 and assumes the risks of such possible differences in facts and potential claims and agrees that this
24 Settlement Agreement shall remain effective notwithstanding any such differences. Subject to the
25 exceptions in Paragraph 10 and 24 concerning excluded claims, and subject to complete satisfaction
26 of all settlement obligations set forth herein, Defendants intend to release fully, finally and forever all
27 Unknown Claims that arise out of or relate to the Moonlight Fire or the allegations in the above-
28 captioned actions as to the United States, and the United States intends to release fully, finally and

1 forever all Unknown Claims that arise out of or relate to the Moonlight Fire or the allegations in the
2 above-captioned actions as to the Defendants. Accordingly, this Settlement Agreement, and the
3 releases contained herein, shall remain in full force as a complete release of Unknown Claims
4 notwithstanding the discovery or existence of additional or different claims or facts before or after the
5 date of this Settlement Agreement. Except as otherwise stated in Paragraph 24, each Party hereby
6 waives any and all rights or benefits that any of them may have under Section 1542 of the Civil Code
7 of the State of California, or any comparable provision under the law of any state, territory or
8 country. Section 1542 of the California Civil Code provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
10 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
11 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

12 26. This Settlement Agreement may be executed in counterparts, each of which
13 constitutes an original and all of which taken together shall constitute one valid and binding
14 Settlement Agreement between the Parties.

15 27. The Agreement may not be altered, amended, or modified, except by a writing duly
16 executed by authorized representatives of all Parties.

17 28. Electronic signatures, faxed signatures, or other electronic copies of signatures shall
18 constitute acceptable, binding signatures for purposes of this Settlement Agreement.

19 29. All Parties agree to cooperate fully and to execute any and all supplementary
20 documents and to take all additional actions that may be necessary or appropriate to give full force
21 and effect to the terms and intent of this Settlement Agreement.

22 30. With the sole exception of Landowners' and Beaty's cross-claims, upon approval by
23 the Court as provided below, Case No. 2:09-cv-2445 is hereby DISMISSED IN ITS ENTIRETY
24 WITH PREJUDICE, and the Clerk of the Court is requested to enter this dismissal and release in the
25 official docket. Upon approval by the Court as provided below, all of Landowners and Beaty's cross-
26 claims in Case No. 2:09-cv-2445 are hereby DISMISSED IN THEIR ENTIRETY, and the Clerk of
27 the Court is requested to enter this dismissal and release in the official docket.

28 ///

1 31. Notwithstanding the entry of a dismissal herein, the United States District Court
2 (Kimberly J. Mueller, District Judge) shall retain jurisdiction to enforce the terms of this compromise
3 settlement and the parties agree that this court shall be the sole venue for any dispute arising
4 hereunder.

5 THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

1 Dated: July __, 2012

BENJAMIN B. WAGNER
United States Attorney

2
3 By: _____¹

KELLI L. TAYLOR
Assistant United States Attorney
Attorneys for the United States

4
5
6 Dated: July 13, 2012

Dun & Martinek, LLP

7
8 By: _____

DAVID H. DUN
Attorneys for Sierra Pacific Industries

9
10 Dated: July 13, 2012

RUSHFORD & BONOTTO

11
12 By: _____

PHILLIP BONOTTO
Attorneys for Eunice Howell, Individually and
dba Howell's Forest Harvesting Company

13
14
15 Dated: July 13, 2012

MATHENY, SEARS, LINKERT & JAIME LLP

16
17 By: _____

RICHARD S. LINKERT
Attorneys for the Landowners and
W.M. Beaty & Associates, Inc.

18
19
20 Dated: July 13, 2012

KEKER & VAN NEST LLP

21
22 By: _____

STEVEN P. RAGLAND
Attorneys for the Landowners

23
24
25
26
27 _____

28 ¹ The court acknowledges receipt of a copy of the agreement signed by all parties.

ORDER

1 With the sole exception of Landowners' and Beaty's cross-claims, Case No. 2:09-cv-2445 is
2 hereby DISMISSED IN ITS ENTIRETY WITH PREJUDICE.

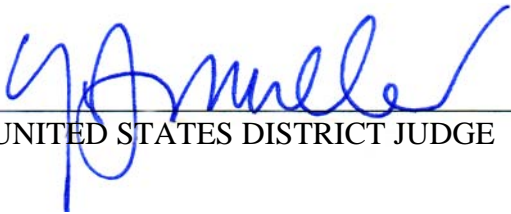
3 All of Landowners' and Beaty's cross-claims in Case No. 2:09-cv-2445 are hereby
4 DISMISSED IN THEIR ENTIRETY.

5 The Clerk of the Court is directed to enter this Order in the official docket.

6 Notwithstanding the entry of a dismissal herein, this Court (Kimberly J. Mueller, District
7 Judge) shall retain jurisdiction to enforce the terms of this compromise settlement.

8 IT IS SO ORDERED.

9
10 Date: July 18, 2012.

11 
12 _____
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28