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16 *Attorneys for Federal Defendants*

17 WHEREAS, on May 30, 2017, this Court entered a Final Judgment in this matter, ECF
18 No. 142, entering judgment in favor of Plaintiff on two claims under the National Environmental
19 Policy Act;

20 WHEREAS, Plaintiff filed its Motion for Attorneys' Fees, ECF No. 151, and a
21 Stipulation to stay litigation on that Motion on June 16, 2017, seeking attorneys' fees and costs
22 from Federal Defendants pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §
23 2412, and the citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g)(4);

24 WHEREAS, Plaintiff renewed its Motion for Attorneys' Fees, ECF No. 192, on August
25 6, 2019;

26 WHEREAS, Plaintiff's Motion for Attorneys' Fees remains pending;

27 WHEREAS, Plaintiff and Federal Defendants have engaged in good faith settlement
28 negotiations in an effort to avoid the time and expense of further litigation;

NOW THEREFORE, it is stipulated and agreed to by Plaintiff and Federal Defendants as
follows:

Settlement Agreement

- 1
2 1. Federal Defendants hereby agree, by way of compromise and settlement, to settle
3 Plaintiffs' claim for attorneys' fees, costs, and expenses for the sum of one hundred
4 and forty thousand dollars (\$140,000) for any and all claims for attorneys' fees, costs,
5 and expenses related to this litigation. Federal Defendants make this agreement in
6 reliance on Plaintiff's attestation in the declaration attached hereto that they qualify as
7 "parties" under EAJA.
- 8 2. Payment(s) of the settlement funds shall be accomplished by mailing a check to
9 Denise Boggs, the Executive Director of Conservation Congress.
- 10 3. Plaintiff agrees to accept payment(s) totaling \$140,000 in full satisfaction of any and
11 all claims for attorneys' fees, costs, and expenses related to the above-captioned
12 litigation. Plaintiff hereby releases any and all claims and/or potential claims under
13 any statute or other authority, including but not limited to 33 U.S.C. § 1365(d), 28
14 U.S.C. § 2412(d)(1)(A), and 16 U.S.C. § 1540(g)(4), for any and all costs of
15 litigation, attorneys' fees, expert fees, and court costs.
- 16 4. Upon the execution and filing of this Settlement Agreement, Plaintiff's Motion for
17 Attorney's Fees, ECF No. 151, and its renewal of that Motion, ECF No. 192, are
18 hereby withdrawn with prejudice.
- 19 5. Plaintiff and its attorneys agree to hold Federal Defendants harmless in any litigation,
20 further suit, or claim arising from the payment(s) of the agreed-upon settlement.
- 21 6. Pursuant to 31 U.S.C. § 3711; 26 U.S.C. § 6402(d); 31 C.F.R. § 285.5, 901.3, and
22 other authorities, the United States will offset against the settlement amount any
23 delinquent debts that Plaintiff owes to the United States. *See Astrue v. Ratliff*, 560
24 U.S. 586 (2010).
- 25 7. This Settlement Agreement is the result of compromise and settlement, and it is based
26 on and limited solely to the facts involved in this case. It does not represent an
27 admission by any Party to any fact, claim, or defense concerning any issue in this
28 case.

1 8. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a
2 requirement that Federal Defendants are obligated to pay any funds exceeding those
3 available, or to take any action in contravention of the Anti-Deficiency Act, 31 U.S.C.
4 § 1341, or any other applicable appropriations law.

5 9. This Settlement Agreement has no precedential value and shall not be used as
6 evidence either by Plaintiff or Federal Defendants in any other litigation except as
7 necessary to enforce the terms of this Agreement.

8 10. The undersigned representatives of Plaintiff and Federal Defendants certify that they
9 are fully authorized by the respective Parties whom they represent to enter into the
10 terms and conditions of this Settlement Agreement and to legally bind such Parties to
11 it.

12 11. Nothing in the terms of this Settlement Agreement shall be construed to limit or deny
13 the power of a federal official to promulgate or amend regulations.

14 12. This Settlement Agreement represents the entirety of the undersigned Parties'
15 commitments with regard to settlement of claims for attorneys' fees, costs, and
16 expenses.

17 13. The terms of this Settlement Agreement shall become effective upon execution of this
18 Settlement Agreement. The Parties agree that this Settlement Agreement may be
19 executed in one or more counterparts, each of which shall constitute an original, and
20 all of which, taken together, shall constitute the same instrument. Facsimile or
21 scanned signatures submitted by electronic mail shall have the same effect as an
22 original signature in binding the parties.

23 IN WITNESS THEREOF, this Settlement Agreement between Plaintiff and Federal
24 Defendants has been duly executed by their authorized legal representatives.

25 Respectfully submitted this 22nd day of December, 2019.

26
27 /s/ Steven Sugarman (with permission on
28 1/7/2020)
STEVEN SUGARMAN, NM 5717

JEAN E. WILLIAMS
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United States Department of Justice

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Attorneys for Federal Defendants

ORDER

The Court having considered the stipulation of the parties, IT IS SO ORDERED.

Dated: 1/22/2020

/s/ John A. Mendez
Hon. John A. Mendez
United States District Court Judge

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