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8 Attorneys for Plaintiffs

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 10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 HIGH SIERRA HIKERS ASSOCIATION, et al. No. C-00-1239 EDL
 14 al.

15 Plaintiffs,

16 v.

17 RANDY MOORE, et al,

18 Defendants,

19 NATIONAL FOREST RECREATION
 ASSOCIATION, et al.

20 Defendants-Intervenors.

**PARTIES' STIPULATION AND
 [PROPOSED] ORDER RE: PLAINTIFFS'
 AMENDED MOTION FOR
 ATTORNEYS' FEES, COSTS, AND
 EXPENSES PURSUANT TO EAJA**

1 **RECITALS**

2 1. In April, 2000, Plaintiffs brought suit against the Federal Defendants for declara-
3 tory and injunctive relief under the Administrative Procedure Act, 5 U.S.C. § 701–706, arising
4 out of the Federal Defendants’ alleged violations of the National Environmental Policy Act,
5 42 U.S.C. §§ 4321–4370f, the National Forest Management Act, 16 U.S.C. §§ 1600–1687, and
6 the Wilderness Act, 16 U.S.C. §§ 1131–1136. Plaintiffs challenged the Forest Service’s issuance
7 of pack stock permits for commercial operators in the John Muir and Ansel Adams Wilderness
8 Areas on the Sierra and Inyo National Forests.

9 2. The Federal Defendants are the U.S. Forest Service; Gail Kimbell, Chief of the
10 Forest Service; Jim Upchurch, Supervisor of the Inyo National Forest; Edward Cole, Supervisor
11 of the Sierra National Forest; and Randy Moore, Regional Forester for Region 5.

12 3. On June 5, 2001, the district court issued a decision on the parties’ cross-motions
13 for summary judgment. The district court entered an injunction in 2002. Plaintiffs and the
14 Federal Defendants thereafter took cross-appeals to the Ninth Circuit. On December 1, 2004, the
15 court of appeals issued an opinion affirming in part and reversing in part the district court’s
16 decision. *High Sierra Hikers Ass’n v. Blackwell* (“*Blackwell*”), 390 F.3d 630 (9th Cir. 2004).

17 4. On March 16, 2005, the Ninth Circuit ruled on the Plaintiffs’ request for
18 attorneys’ fees, costs, and other expenses for the appeal in *Blackwell*, awarding costs and a
19 portion of the requested fees. On July 3, 2007, the district court entered an order approving the
20 parties’ stipulation to an award to Plaintiffs of attorneys’ fees, costs, and other expenses, for the
21 proceedings incurred through the date of the Ninth Circuit’s mandate in *Blackwell*.

22 5. After the Ninth Circuit’s remand in *Blackwell*, the Plaintiffs amended their
23 complaint to challenge the Federal Defendants’ actions on remand. On October 30, 2007, the
24 district court issued a decision on the merits, granting in part and denying in part Plaintiffs’
25 motion for summary judgment, and granting in part and denying in part the Federal Defendants’
26 cross-motion for summary judgment. Subsequently, on May 8, 2008, the district court entered

1 an order granting in part and denying in part Plaintiffs' motion for a permanent injunction.

2 6. The Plaintiffs have filed a motion for attorneys' fees, costs, and other expenses
3 for the district court proceedings following the issuance of the Ninth Circuit's mandate in
4 *Blackwell*, pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A).
5 The Federal Defendants have opposed Plaintiffs' motion.

6 7. The Plaintiffs and Federal Defendants, in the interests of avoiding further litiga-
7 tion and to reach a mutually acceptable resolution of Plaintiffs' claims for attorneys' fees, costs,
8 and other expenses under EAJA, have negotiated a settlement of those claims.

9 **STIPULATION**

10 The Plaintiffs and Federal Defendants hereby agree as follows:

11 1. The provisions of this Stipulation and [Proposed] Order shall apply to Plaintiffs,
12 their agents, successors and assigns, and anyone acting on their behalf, and to the Federal
13 Defendants.

14 2. The Federal Defendants will pay to Plaintiffs \$245,000.00 in full settlement and
15 satisfaction of all of the Plaintiffs' claims for attorneys' fees, costs, and other expenses, in the
16 above-captioned case incurred since the Ninth Circuit's mandate in *Blackwell*. Payment shall be
17 accomplished by the Forest Service using an electronic funds transfer into an account identified
18 by Plaintiffs' counsel. Within 5 business days of the date this Settlement Agreement is filed,
19 Plaintiffs shall submit (if not already submitted) the account information and other information
20 necessary for the Forest Service to process payment. The Forest Service shall submit the paper-
21 work for the payment within twenty (20) business days after this Settlement Agreement is
22 approved by the Court or Plaintiffs submit the required payment information, whichever is later.

23 3. Plaintiffs will accept the sum of \$245,000.00 in full settlement and satisfaction of
24 all of their claims for attorneys' fees, costs, and other expenses incurred since the Ninth Circuit's
25 mandate in *Blackwell* and release the Federal Defendants from any liability for attorneys' fees,
26 costs, and other expenses incurred or claimed, or that could have been claimed, for work

1 performed after that date. Plaintiffs or their counsel shall submit confirmation of receipt of
2 payment in the above amount to counsel for the Federal Defendants, within 14 days of receipt of
3 payment.

4 4. Plaintiffs agree that, in any future proceedings in this case, they will not seek to
5 recover any attorneys' fees, costs, or other expenses claimed, or that could have been claimed,
6 for work performed since the date of the Ninth Circuit's mandate in *Blackwell*, through the entry
7 of an order approving this Stipulation and [Proposed] Order.

8 5. Plaintiffs represent that the proper entity to receive payment pursuant to this
9 Stipulation and [Proposed] Order is "Wilderness Watch," P.O. Box 9175, Missoula, Montana
10 59807. Plaintiffs represent that the tax I.D. of Wilderness Watch is 81-0457646. Plaintiffs are
11 solely responsible for any apportionment of the amount paid under this Stipulation and
12 [Proposed] Order as among themselves. All Plaintiffs and Plaintiffs' counsel release and hold
13 the Federal Defendants harmless from any liability for attorneys' fees, costs, expenses, or other
14 claims that might be made by entities other than Wilderness Watch as to the attorneys' fees,
15 costs, and other expenses settled herein arising from payment as provided above.

16 6. Nothing in this Stipulation and [Proposed] Order shall constitute or be construed
17 to constitute a waiver of sovereign immunity by the United States. Nothing in this Stipulation
18 and [Proposed] Order shall require, or be deemed to require, that the United States pay or obli-
19 gate any funds, or take any other action, in contravention of the Anti-Deficiency Act, 31 U.S.C.
20 § 1341, or any other federal appropriations law.

21 7. Nothing in this Stipulation and [Proposed] Order shall constitute, or be construed
22 to constitute, an admission of liability on the part of the Federal Defendants as to Plaintiffs'
23 claims for attorneys' fees, costs, and other expenses in the above-captioned litigation or an
24 admission that the Federal Defendants' position was not substantially justified. Nothing in this
25 Stipulation and [Proposed] Order shall constitute, or be construed to constitute, an admission of
26 liability or waiver of any defense on the part of the Federal Defendants as to Plaintiffs' claims in

1 the underlying suit. Nothing in this Stipulation and [Proposed] Order shall be cited in any other
2 proceeding for any purpose other than in a proceeding to enforce the terms hereof.

3 8. The undersigned representatives of each party certify that they are fully
4 authorized, or have received authorization by the party or parties whom they represent, to enter
5 into the terms and conditions of this Stipulation and [Proposed] Order, which shall be legally
6 binding on them.

7 9. This Stipulation and [Proposed] Order contains all of the agreements between
8 Plaintiffs and Federal Defendants and is intended to be and is the final and sole agreement
9 between these parties. The Plaintiffs and Federal Defendants agree that any other prior or
10 contemporaneous representations or understandings not explicitly contained in this Stipulation
11 and [Proposed] Order, whether written or oral, are of no further legal or equitable force or effect.
12 Any subsequent modifications to this Stipulation and [Proposed] Order must be in writing and
13 must be signed and executed by the parties and approved by the Court.

14 SO AGREED:

15 FOR THE PLAINTIFFS:

/s/ Peter M.K. Frost
PETER M.K. FROST
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20 FOR THE FEDERAL DEFENDANTS:

RONALD J. TENPAS
Assistant Attorney General

/s/ David B. Glazer
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ATTORNEY ATTESTATION OF CONCURRENCE

I hereby attest that I have obtained concurrences in this filing for the signatures indicated by a “conformed” signature (“/s/”) within this e-filed document.

Dated: December 5, 2008

/s/DAVID B. GLAZER
DAVID B. GLAZER
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[PROPOSED] ORDER

Pursuant to the Stipulation of the Parties set forth above, IT IS SO ORDERED.

Dated: _ 12/8/08 _____

