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THE HONORABLE NATHANAEL COUSINS

5 *Attorney for Plaintiffs*

6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8

9 KLAMATH-SISKIYOU WILDLANDS CENTER,)
CENTER FOR BIOLOGICAL DIVERSITY, and)
10 KLAMATH FOREST ALLIANCE,)

11 Plaintiffs,)

v.)

12 NATIONAL OCEANIC AND ATMOSPHERIC)
ADMINISTRATION, NATIONAL MARINE)
13 FISHERIES SERVICE, and UNITED STATES)
14 FISH AND WILDLIFE SERVICE,)

15 Defendants,)

16 and)

17 FRUIT GROWERS SUPPLY COMPANY,)

18 Defendant-Intervenor.)
19 _____)

Case No. 3:13-cv-3717-NC

**STIPULATIONS AND AGREED
ORDER SETTLING COSTS AND
ATTORNEYS' FEES**

20 Pursuant to Civil Local Rule 7-12, this stipulation is entered into by and between

21 Plaintiffs Klamath-Siskiyou Wildlands Center, Center for Biological Diversity, and Klamath
22 Forest Alliance and Federal Defendants National Oceanic and Atmospheric Administration,
23

24 STIPULATION AND ORDER ON ATTORNEYS' FEES, COSTS, AND OTHER
EXPENSES – Case No. 3:13-cv-3717-NC – Page 1

1 National Marine Fisheries Service, and U.S. Fish and Wildlife Service. Plaintiffs and Federal
2 Defendants hereby agree and stipulate as follows:

3 WHEREAS, Plaintiffs' lawsuit challenged Federal Defendants' issuance of Incidental
4 Take Permits to Defendant-Intervenor Fruit Growers Supply Company under Section 10 of the
5 Endangered Species Act, *see* 16 U.S.C. § 1539(a)(2)(B);

6 WHEREAS, The Court granted Plaintiffs' cross-motion for summary judgment in part
7 and denied the motion in part;

8 WHEREAS, Plaintiffs filed a Motion for Attorneys' Fees, Costs, and Other Litigation
9 Expenses on August 27, 2015. Doc. No. 107;

10 WHEREAS, The parties have reached a settlement agreement that obviates the need for
11 further litigation of Plaintiffs' motion for fees and costs;

12 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
13 FOLLOWS:

14 1. Plaintiffs are entitled to an award of costs and attorneys' fees under the
15 Endangered Species Act, 16 U.S.C. § 1540(g). Federal Defendants shall pay Plaintiffs a total of
16 four hundred and eighty thousand dollars (\$480,000.00) for attorneys' fees, costs, and other
17 litigation expenses for this lawsuit.

18 2. Federal Defendants shall make the payment required by Paragraph 1 and the
19 agreed order below by electronic funds transfer to the client trust account of the Western
20 Environmental Law Center, 1216 Lincoln Street, Eugene, Oregon 97401.

21 3. Plaintiffs agree to furnish Federal Defendants with the information necessary to
22 effectuate the payment required by Paragraph 1 of this stipulation and the agreed order below.
23 Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys'

1 fees award to the Department of the Treasury's Judgment Fund Office within ten (10) business
2 days of entry of the Order below by the court or the receipt of the information described in this
3 Paragraph, whichever is later.

4 4. Plaintiffs agree to accept Federal Defendants' payment of \$480,000.00 in full
5 satisfaction of any and all claims for attorneys' fees and costs of litigation incurred in this matter
6 to date. Plaintiffs agree that receipt of this payment from Federal Defendants shall operate as a
7 release of Plaintiffs' claims for attorneys' fees and costs in this matter to date.

8 5. Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to
9 this Stipulation arising in any future litigation or continuation of the present action. Federal
10 Defendants reserve the right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including
11 hourly rates and the number of hours billed, in any future litigation or continuation of the present
12 action. Further, this Stipulation as to attorneys' fees and costs has no precedential value and
13 shall not be used as evidence in any other attorneys' fees litigation.

14 6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a
15 requirement that Federal Defendants are obligated to pay any funds exceeding those available, or
16 take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
17 appropriations law.

18 7. This Stipulation shall be binding on the parties and their successors, agents,
19 designees, employees, and all those acting by and through their authority.

20 8. The parties agree that this Stipulation was negotiated in good faith and that this
21 Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By
22 entering into this Stipulation, the parties do not waive any claim or defense.

1 **E-FILING ATTESTATION**

2 Pursuant to Civil Local Rule 5-1(i)(3), I attest that Travis J. Annatoyn has concurred in
3 the filing of this document.

4 /s/ John R. Mellgren
5 JOHN R. MELLGREN, Oregon Bar # 114620

6 *Attorney for Plaintiffs*
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1 **ORDER**

2 The above STIPULATION concerning attorneys’ fees, costs, and other litigation
3 expenses in the above-captioned litigation is hereby APPROVED and GRANTED.

- 4 1. Federal Defendants shall pay Plaintiffs \$480,000.00 in full satisfaction of any and all
5 claims for attorneys’ fees, costs, and other litigation expenses in the above-captioned
6 litigation to date;
- 7 2. Federal Defendants shall submit all necessary paperwork for the processing of the
8 attorneys’ fees award to the Department of the Treasury’s Judgment Fund Office
9 within ten (10) business days of entry of this Order or the receipt of the required
10 information from Plaintiffs, as described in Paragraph 3 of the Stipulation;
- 11 3. The Court shall retain jurisdiction to enforce the terms of the above Stipulation and
12 this Order, see Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375
13 (1994);
- 14 4. This Order resolves Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Other
15 Litigation Expenses, Doc. No. 107.

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17
18
19 Dated: November 20, 2015

20 THE HONORABLE
United States

