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16 *Attorneys for Defendants*

17
 18 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

| | | | |
|----|--|---|---|
| 20 | CENTER FOR BIOLOGICAL DIVERSITY, <i>et al.</i> , |) | Case No.: 3:16-cv-06040-WHA |
| | Plaintiffs, |) | STIPULATED FEE AGREEMENT |
| 21 | |) | |
| 22 | vs. |) | and |
| | |) | |
| 23 | U.S. FISH & WILDLIFE SERVICE, <i>et al.</i> , |) | PROPOSED ORDER |
| | Defendants, |) | |
| 24 | |) | |
| 25 | and |) | |
| | |) | |
| 26 | AM. FOREST RESOURCE COUNCIL, <i>et al.</i> , |) | |
| | Defendant Intervenors. |) | |
| 27 | |) | |

1 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between
2 Plaintiffs Center for Biological Diversity, Environmental Protection Information Center, Sierra
3 Forest Legacy, and Klamath-Siskiyou Wildlands Center (collectively, “Plaintiffs”), and the United
4 States Fish and Wildlife Service (“FWS”), David L. Bernhardt, in his official capacity as Secretary
5 of the Interior, and Margaret Everson, in her official capacity as Principal Deputy Director of the
6 United States Fish and Wildlife Service (collectively, “Defendants”) who, by and through their
7 undersigned counsel, state as follows:

8 WHEREAS, on October 18, 2016, Plaintiffs filed the above-captioned case, *Center for*
9 *Biological Diversity, et al., v. U.S. Fish and Wildlife Service, et al.*, 3:16-cv-06040-WHA,
10 challenging the FWS’s withdrawal of a proposed rule to list a distinct population segment of fisher
11 under the Endangered Species Act (“ESA”);

12 WHEREAS, on September 21, 2018, ECF No. 80, the Court granted in part and denied in
13 part Plaintiffs’ motion for summary judgment, denied Defendants’ cross-motion for summary
14 judgment, and entered judgment in favor of Plaintiffs;

15 WHEREAS, on November 20, 2018, ECF No. 91, the Court modified its entry of judgment;

16 WHEREAS, Defendants filed a notice of appeal to the Ninth Circuit on January 18, 2019;

17 WHEREAS, on April 10, 2019, the Court of Appeals granted Defendants’ motion for
18 voluntary dismissal of their appeal in this case and returned mandate to this Court;

19 WHEREAS, on May 17, 2019, ECF No. 105, the Court granted Defendants’ Motion for
20 Extension of Time to Comply with the Court’s November 20, 2019 Order;

21 WHEREAS, all appeals having been concluded, Plaintiffs’ motion for attorneys’ fees and
22 costs is currently due on or before August 30, 2019, *see* ECF No. 110;

23 WHEREAS, by letter dated December 7, 2018, Plaintiffs provided Defendants with an offer
24 to settle their claim for attorneys’ fees and costs;

25 WHEREAS, the parties to this Agreement believe it is in their interests and in the interest of
26 judicial economy to avoid litigating a fees motion;

27 WEHERAS, the parties to this Agreement have engaged in good faith, and confidential
28 settlement negotiations concerning Plaintiffs’ claims for attorneys’ fees and costs and have reached a

1 settlement that they consider to be a just, fair, adequate, and equitable resolution of Plaintiffs'
2 request for attorneys' fees and costs;

3 WHEREAS, Plaintiffs and Defendants agree that settlement of Plaintiffs' motion for
4 attorneys' fees and costs in this manner is in the public interest and is an appropriate way to resolve
5 the dispute between them;

6 WHEREAS, the parties enter the Agreement below without any admission of fact or law, or
7 waiver of any claims or defenses, factual or legal, except as specified in the Agreement;

8 NOW, THEREFORE, Plaintiffs and Defendants hereby stipulate and agree as follows:

9 1. Defendants agree to pay Plaintiffs' reasonable attorneys' fees and costs incurred in
10 connection with their complaint and motion for summary judgment, and pursuant to section 11(g)
11 of the ESA, 16 U.S.C. § 1540(g), in the amount of \$250,000. Plaintiffs agree to accept this amount
12 in full satisfaction of any and all claims, demands, rights, and causes of action for attorneys' fees
13 and costs incurred in connection with the above-captioned litigation pursuant to the ESA, 16 U.S.C.
14 § 1540(g), and/or any other statute and/or common law theory, through and including the date of
15 this agreement. Plaintiffs agree that receipt of this payment from Defendants shall operate as a
16 release of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the
17 date of this agreement.

18 2. Plaintiffs' release set forth in paragraph 1 is expressly limited to the above-captioned action
19 and does not apply to any other litigation including, but not limited to, any future litigation
20 regarding any fisher listing decision. By this Agreement, Defendants do not waive any right to
21 contest attorneys' fees claimed by Plaintiffs, or their counsel, including hourly rates, in any future
22 litigation, or continuation of the present actions. Further, this Agreement has no precedential value
23 and shall not be used as evidence in any other attorneys' fees litigation.

24 3. Plaintiffs agree to furnish Defendants with the information necessary to effectuate the
25 payment specified in paragraph 1 above. Defendants agree to submit all necessary paperwork for
26 the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund
27 Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) days of the receipt of the necessary
28 information from Plaintiffs or the approval of this Agreement by the Court, whichever is later.

1 Plaintiffs' attorneys agree to send confirmation of the receipt of the payment to counsel for
2 Defendants within 14 days of such payment.

3 4. Plaintiffs and Defendants agree that this Agreement was negotiated and entered into in good
4 faith and that it constitutes a settlement of claims that were vigorously contested, denied, and
5 disputed. By entering into this Agreement, neither Plaintiffs nor Defendants waive any claim or
6 defense, except as expressly provided herein.

7 5. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or
8 requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency Act,
9 31 U.S.C. § 1341, or any other law or regulation.

10 6. No provision of this Agreement shall be interpreted to or constitute a commitment or
11 requirement that the Defendants take action in contravention of the ESA, the APA, or any other law
12 or regulation, either substantive or procedural.

13 7. The Agreement contains all of the agreement between Plaintiffs and Defendants, and is
14 intended to be the final and sole agreement between them. Plaintiffs, and Defendants agree that any
15 prior or contemporaneous representations or understanding not explicitly contained in this written
16 Agreement, whether written or oral, are of no further legal or equitable force or effect.

17 8. The terms of this Agreement shall become effective upon entry of an order by the Court
18 (similar in substance to the attached Proposed Order) approving the Agreement.

19 9. The undersigned representatives of each party certify that they are fully authorized by the
20 party or parties they represent to agree to the Court's entry of the terms and conditions of the
21 Agreement and do hereby agree to the terms herein.

22
23 Respectfully submitted,

24 JEAN E. WILLIAMS
25 Deputy Assistant Attorney General
26 SETH M. BARSKY, Chief
MEREDITH L. FLAX, Assistant Chief

27 Dated: August 12, 2019

28 /s/ Nicole M. Smith
NICOLE M. SMITH, Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division

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6 *Attorneys for Federal Defendants*

7 Dated: August 12, 2019

8 /s/ Gregory C. Loarie (as authorized August 12, 2019)

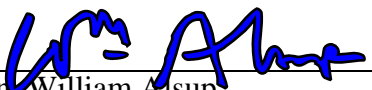
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15 *Attorneys for Plaintiffs*

16 ~~PROPOSED~~ ORDER

17 Pursuant to stipulation, IT IS SO ORDERED that the parties' stipulation is APPROVED and
18 ADOPTED.

19 Dated: August 13, 2019.

20 
21 _____
22 Hon. William Aisup
23 United States District Court Judge