

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**FRIENDS OF THE COLUMBIA GORGE,
INC.; and IN DEFENSE OF ANIMALS,**

05-CV-646-BR

Plaintiffs,

ORDER

v.

**ROY ELICKER, DIRECTOR, OREGON
DEPARTMENT OF FISH AND WILDLIFE;
MARLA RAE, CHAIR, OREGON FISH
AND WILDLIFE COMMISSION, and
UNITED STATES FOREST SERVICE,**

Defendants.

**GARY K. KAHN
JARED B. KAHN**
Reeves, Kahn, Hennessy, & Elkins
P.O. Box 86100
4035 SE 52nd Ave.
Portland, OR 97286-0100
(503) 777-5473
Attorneys for Plaintiffs

DWIGHT C. HOLTON
United States Attorney
STEPHEN J. ODELL
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600

Portland, OR 97204-2902
(503) 727-1024

Attorneys for Defendant United States Forest Service
(hereinafter referred to as USFS)

JOHN R. KROGER

Attorney General of Oregon

JOHN CLINTON GEIL

MATTHEW J. DONOHUE

CECIL A. RENICHE-SMITH

Assistant Attorneys General

OREGON DEPARTMENT OF JUSTICE

1162 Court Street NE

Salem, OR 97301-4096

(503) 378-4402

Attorneys for State Defendants Roy Elicker, Director of Oregon Department of Fish and Wildlife, and Marla Rae, Chair of Oregon Fish and Wildlife Commission (the agencies hereinafter referred to as ODFW and OFWC respectively and the individuals in their capacities referred to collectively as State Defendants)

BROWN, Judge.

This matter comes before the Court on the parties' Joint Motion to Dismiss Action and Vacate and Remove Court Decisions from Publication (#192).

The parties have entered into a Settlement and Joint Dismissal Agreement, which is attached to their motion. Pursuant to their Settlement Agreement, the parties jointly moved the U.S. Court of Appeals for the Ninth Circuit to dismiss USFS's appeal and Plaintiffs' cross-appeal in this matter without prejudice to reinstatement under the terms specified in the Settlement Agreement. On May 20, 2011, the Ninth Circuit granted the requested relief (#191).

Now, pursuant to the Settlement Agreement, the parties jointly request that the Court dismiss this action with prejudice and vacate and remove from publication the Court's Opinion and Order on Summary Judgment (#143), Opinion and Order on Reconsideration (#148), and Judgment (#183), which are collectively published as *Friends of the Columbia Gorge v. Elicker*,

598 F. Supp. 2d 1136 (D. Or. 2009), and which will be hereinafter collectively referred to as the “Judicial Rulings.”

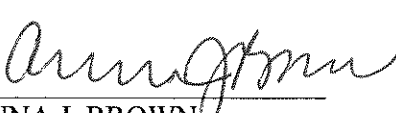
As the parties have noted, the outcome in this case was highly fact-dependent, turning on the specific and unique facts at issue, and it further appears that the dispute is unlikely to reoccur. *See* Memorandum in Support of Joint Motion to Dismiss Action and Vacate and Remove Court Decisions from Publication (#193) at 7–9. Defendant USFS has withdrawn from its Memorandum of Understanding with ODFW regarding the release of Rocky Mountain goats within the Scenic Area, and Defendants have agreed via the Settlement Agreement to formally rescind the remaining agency documents that gave rise to the litigation. In addition, Curtis Melcher, ODFW Deputy Director, has stated by Declaration (#194) that ODFW and OFWC do not intend to release Rocky Mountain goats within the Columbia River Gorge National Scenic Area during the current ten-year period governed by OFWC’s Rocky Mountain goat statewide management plan, which expires in December 2013, and also do not anticipate proposing any future releases of Rocky Mountain goats within the National Scenic Area within the foreseeable future thereafter.

Federal Rule of Civil Procedure 60(b) provides that a district court “may relieve a party or its legal representative from a final judgment” where “the judgment has been satisfied, released, or discharged . . . or applying it prospectively is no longer equitable,” or for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5), (6). A district court also has authority to remove its decisions from publication, including when requested to do so by the parties via a settlement agreement. *See, e.g., Termine v. William S. Hart Union High Sch.*, 360 F.3d 1141 (9th Cir. 2004); *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1027 (9th Cir. 2000); *Auto. Club of S. Cal. v. Mellon Bank (De) Nat’l Ass’n*, 224 F.R.D. 657, 659 (C.D. Cal. 2004).

Based on the parties' motion and accompanying documents, the Court finds it equitable to vacate and remove from publication the Judicial Rulings. Pursuant to Federal Rule of Civil Procedure 60(b), the Court **GRANTS in full** the Joint Motion to Dismiss Action and Vacate and Remove Court Decisions from Publication (#192), and enters a separate Judgment accordingly.

IT IS SO ORDERED.

DATED this 26th day of July 2011.



ANNA J. BROWN
United States District Judge