

1 THE HONORABLE JUDGE MARSHA J. PECHMAN
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10 UNITED STATES DISTRICT COURT
11 FOR THE WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 THE TULALIP TRIBES, *et al.*,) Case No. 2:17-cv-652 MJP
14 Plaintiffs,)
15 v.) STIPULATION ON ATTORNEYS' FEES
16 KEVIN K. McALEENAN, *et al.*,) AND COSTS AND PROPOSED ORDER
17 Defendants.)
18) NOTE ON MOTION CALENDAR:
19) October 30, 2019
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1 This Stipulated Agreement (hereinafter, “Stipulation”) is made between Plaintiffs the
2 Tulalip Tribes and Suquamish Tribe, and Defendants, U.S. Coast Guard, et al., (referred to
3 collectively as the “Parties”).
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5 WHEREAS, Plaintiffs’ Complaint asserts that the U.S. Coast Guard failed to complete
6 consultation pursuant to Endangered Species Act (“ESA”) Section 7(a)(2), 16 U.S.C. § 1536(a)(2),
7 regarding its approval and implementation of its traffic separation scheme (“TSS”) rule for the
8 Strait of Juan de Fuca and its approaches; Puget Sound and its approaches; and Haro Strait,
9 Boundary Pass, and the Strait of Georgia, promulgated on April 26, 2011 and codified at 33 C.F.R.
10 §§ 167.1300 through 167.1332. ECF 1.

11 WHEREAS, the Coast Guard has completed the ESA consultation process described in the
12 Parties’ stipulated motion for stay of litigation (ECF 40) and the District Court has granted the
13 Parties’ stipulated dismissal of this action without prejudice on July 9, 2019. ECF 45.

14 WHEREAS, the Parties, without any admission or final adjudication of the issues of fact
15 or law with respect to Plaintiffs’ claim for attorneys’ fees, costs, and expenses, have reached a
16 settlement that they consider to be a lawful resolution of this claim;

17 WHEREAS, the Parties agree that settlement of Plaintiffs’ claim to an award of attorneys’
18 fees, costs, and other expenses in this manner is in the interest of the parties and is an appropriate
19 way to resolve the claim; and

20 WHEREAS, the Parties enter this Stipulation without any admission of fact or law.

21 NOW, THEREFORE, the Parties STIPULATE and move the Court to ORDER AS
22 FOLLOWS:

23 1. Defendants agree to settle Plaintiffs’ entire claim for an award of costs, attorneys’
24 fees, and any other expenses in the above-captioned litigation for a total of \$70,000.00 in full and
25 complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the

1 Endangered Species Act, 16 U.S.C. § 1540(g) and/or any other statutory or common law theory,
2 for all attorneys' fees, costs, and expenses incurred by Plaintiffs in this litigation through and
3 including the date of this Stipulation. Defendants agree to pay the entire amount to the IOLTA
4 account of Earthjustice, for appropriate distribution on behalf of Plaintiffs in this action. Plaintiffs
5 agree to furnish counsel for Defendants with the information necessary to effectuate this payment.
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7 Within twenty (20) business days after entry of this Stipulation or Plaintiffs' provision of the
8 necessary information, whichever is later, Defendants shall submit all paperwork necessary for the
9 processing of the \$70,000 payment. Plaintiffs shall provide confirmation of the receipt of the
10 payment to undersigned counsel for Defendants within twenty one (21) days of receipt of the
11 payment.

12 2. Plaintiffs agree to accept payment of \$70,000.00 in full satisfaction of any and all
13 claims for attorneys' fees and costs of litigation to which Plaintiffs may be entitled with respect to
14 the above-captioned litigation, through and including the date of this Stipulation. Plaintiffs agree
15 that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for
16 attorneys' fees and costs in this matter, through and including the effective date of this Stipulation.
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18 3. The Parties agree that this Stipulation was negotiated in good faith and it constitutes
19 a settlement of claims that were vigorously contested, denied, and disputed by the parties.

20 4. The undersigned representatives of each party certify that they are fully authorized
21 by the party or parties they represent to execute this Stipulation.

22 5. By entering into this Stipulation, Defendants do not waive any right to contest fees
23 claimed by Plaintiffs, or their counsel, including the hourly rate, in any future litigation. Further,
24 this Stipulation as to attorneys' fees and costs has no precedential value and shall not be used as
25 evidence by any party in any other attorneys' fees litigation.

26 6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a commitment

1 or requirement that Defendants are obligated to pay any funds exceeding those available, or take
2 any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
3 appropriations law.

4 7. Plaintiffs acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d),
5 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States intends to offset against the
6 attorneys' fee award Plaintiffs' delinquent debts to the United States, if any. See Astrue v. Ratliff,
7 560 U.S. 586 (2010).

8 8. Accordingly, the Parties jointly and respectfully request the Court's approval of
9 this Stipulation and the Order below.

10 IT IS SO STIPULATED.

11 Respectfully submitted October 30, 2019.

12 Presented by:

13 */s/ Stephen D. Mashuda (by permission)*
14 STEPHEN D. MASHUDA (WSB #36968)
15 KRISTEN L. BOYLES (WSB #23806)
16 Earthjustice
17 705 Second Avenue, Suite 203
18 Seattle, WA 98104
19 (206) 343-7340 | Phone
20 (206) 343-1526 | Fax
21 smashuda@earthjustice.org
22 kboyles@earthjustice.org

23 BRETTNY HARDY (*Pro Hac Vice*)
24 Earthjustice
25 50 California Street, Suite 500
26 San Francisco, CA 94111
27 (415) 217-2142 | Phone
28 **bhardy@earthjustice.org**

29 *Attorneys for Plaintiffs, The Tulalip Tribes and The Suquamish Tribe*

30 JEAN E. WILLIAMS, Deputy Assistant Attorney General
31 SETH M. BARSKY, Section Chief

/s/ John H. Martin
JOHN H. MARTIN, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
999 18th St., South Terrace, Ste. 370
Denver, CO 80202
Ph: 303-844-1383/ Fax: 303-844-1350
john.h.martin@usdoj.gov

BRIAN T. MORAN
United States Attorney
BRIAN C. KIPNIS
Assistant United States Attorney
5220 United States Courthouse
700 Stewart Street
Seattle, WA 98101-1671
Telephone: (206) 553-7970
Fax: (206) 553-4073
brian.kipnis@usdoj.gov

Attorneys for Defendants

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated this 31st day of October, 2019.

Wesley F. Tolman

Marsha J. Pechman
United States Senior District Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2019, I filed a true and correct copy of the foregoing document with the Court's CM/ECF system, which will generate a Notice of Filing to the attorneys of record.

/s/ John H. Martin