

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

CENTER FOR BIOLOGICAL DIVERSITY, and)	
WESTERN WATERSHEDS PROJECT,)	Case No. 07-CV-0279-E-MHW
)	
Plaintiffs,)	STIPULATION REGARDING
)	SETTLEMENT AGREEMENT;
v.)	AND ORDER THEREON
)	
U.S. SHEEP EXPERIMENT STATION;)	
U.S. DEPARTMENT OF AGRICULTURE;)	
AGRICULTURAL RESEARCH SERVICE;)	
and U.S. FOREST SERVICE,)	
)	
Defendants.)	
_____)	

The parties have reached an agreement to resolve this case, with the parties agreeing to undertake and perform the measures set forth in this stipulated Settlement Agreement. Pursuant to Federal Rule of Civil Procedure 41, the parties, through their attorneys, stipulate as follows:

1. The U.S. Agricultural Research Service shall prepare an "environmental assessment" ("EA") or "environmental impact statement" ("EIS"), pursuant to the National Environmental Policy Act ("NEPA"), regarding the grazing of sheep and related activities on U.S. Sheep Experiment Station lands. The associated Decision Notice or Record of Decision shall be completed and signed on or before November 28, 2008. Plaintiffs do not concede that an EA may be appropriate, and Plaintiffs retain the right to legally challenge the Decision Notice or Record of Decision and associated environmental analysis.

2. The U.S. Agricultural Research Service shall provide notice to Plaintiffs, and allow meaningful public involvement in the NEPA process regarding the U.S. Sheep Experiment Station lands, as required by NEPA. Plaintiffs shall be notified of the dates and times when research and monitoring by government personnel or government contractor personnel will occur regarding the NEPA analysis required in Paragraph 1, and Plaintiffs shall be permitted to accompany such personnel in order to conduct independent research and monitoring during this time. The independent research and monitoring referenced in the preceding sentence shall not be ground disturbing and the parties will utilize the dispute resolution process set forth in paragraph 7 to resolve any dispute that may arise if Plaintiffs propose a research or monitoring activity that government personnel do not allow.¹

3. The U.S. Agricultural Research Service shall consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act regarding the grazing of sheep and related activities on U.S. Sheep Experiment Station lands. The U.S. Agricultural Research Service agrees to work with the U.S. Fish and Wildlife Service in a good faith effort to complete the consultation by the date that the associated Decision Notice or Record of Decision is completed. Plaintiffs retain the right to legally challenge the biological assessment and the letter of concurrence or biological opinion resulting from the Endangered Species Act consultation.

4. Plaintiffs retain the right to judicially challenge the categorical exclusions and Decision Memos prepared and completed by the U.S. Forest Service in 2007 regarding the Kelly

¹Plaintiffs' position is that the U.S. Sheep Experiment Station lands are public lands that may be accessed by the public. Defendants disagree.

Canyon, Snakey Canyon, and Meyers Creek grazing allotments on the Caribou-Targhee National Forest.

5. Defendants shall pay Plaintiffs' reasonable costs and attorney fees. Within 30 days of the approval of this Settlement Agreement, Plaintiffs will submit their reasonable costs and attorney fees to counsel for Defendants. The parties agree to work together in good faith to resolve any disputes concerning Plaintiffs' submitted costs and fees. Upon the parties' final resolution and agreement concerning Plaintiffs' costs and fees, Defendants shall submit all paperwork necessary to process any payment for the costs and fees within 30 days. In the event that the parties are unable to reach an agreement upon the amount of Plaintiffs' reasonable attorneys' fees and costs within 60 days of the approval of this Settlement Agreement, Plaintiffs shall file a motion with the Court regarding the reasonableness of their attorneys' fees and costs.

6. Plaintiffs agree to dismiss this action with prejudice, except as to the Fourth Claim for Relief, pursuant to Rule 41 of the Federal Rules of Civil Procedure, subject to this Court's retention of jurisdiction to (1) resolve any disputes over Plaintiffs' attorneys' fees and costs, and (2) enforce and oversee compliance with the terms of this Settlement Agreement. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Plaintiffs agree to dismissal of the Fourth Claim for Relief without prejudice.

7. In the event there is a dispute over compliance with any term or provision of this Settlement Agreement and Order of Dismissal, the disputing party will notify the other party in writing of the nature of the dispute, and, within 7 days after such notification (or additional time if the parties agree), the parties will discuss and attempt to resolve the dispute. If the parties do not resolve the dispute within 15 days thereafter, either party may file a motion to enforce the

provisions of this Stipulation. The parties understand that the district court's review of any action related to this settlement agreement will be governed by the standards of review set forth in the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* for judicial review of federal agency actions. The parties seeking to enforce this agreement agree not to seek to invoke the contempt powers of the Court in aid of enforcement of this Agreement.

8. This Settlement Agreement contains all of the agreements between the parties, and is the final and sole agreement between the parties. Any modifications to this Settlement Agreement must be in writing, and must be signed by the parties. None of the provisions or obligations of this Settlement Agreement shall become effective and binding unless and until the Court enters its approval.

9. Nothing in this Settlement Agreement shall be utilized for the purpose of precedent or argument in any other case, and this Settlement Agreement shall not bind any Party as to any claim or issue except those specifically addressed herein. Likewise, nothing in this Settlement Agreement, and no actions taken by any Party hereto with regard to this Settlement Agreement, shall be construed as an admission by any Party of liability as to any of the matters settled. Moreover, no action taken by any Party in effectuating this Settlement Agreement may be used as an admission of liability in any respect in any future or pending demand, administrative proceeding, or litigation or similar action involving any of the Parties.

10. The releases contained herein extend to and bind the principals, agents, employees, related or affiliated entities, representatives, successors, and assigns of the Parties.

11. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a commitment or requirement that Defendants obligate or pay funds, or take any other action in

contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other applicable law regarding the expenditure of public funds.

12. The Parties represent that the persons executing the Settlement Agreement on each Party's behalf have been duly authorized by all necessary and appropriate action to enter into this Settlement Agreement.

Dated: 2/4/08



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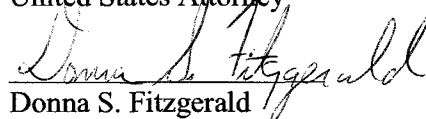
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Dated: 2/12/08



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United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section

IT IS SO ORDERED.

Dated: _____

HONORABLE B. LYNN WINMILL
UNITED STATES DISTRICT JUDGE