

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

---

SNOWLANDS NETWORK, WINTER )  
WILDLANDS ALLLIANCE, and )  
CENTER FOR BIOLOGICAL )  
DIVERSITY, )  
Plaintiffs, )  
v. )  
UNITED STATES FOREST SERVICE, )  
Defendant, )  
and )  
THE INTERNATIONAL )  
SNOWMOBILE MANUFACTURER’S )  
ASSOCIATION, *et al.*, )  
Defendant-Intervenors. )

---

CASE NO. 2:11-cv-02921-MCE-DAD

**SETTLEMENT AGREEMENT**

WHEREAS, on November 3, 2011, Plaintiffs Snowlands Network, Winter Wildlands Alliance, and Center for Biological Diversity filed this suit against the U.S. Forest Service alleging violation of the National Environmental Policy Act (“NEPA”);

WHEREAS, Plaintiffs seek relief directing the Forest Service to conduct environmental analysis under NEPA for certain activities related to over snow vehicle (“OSV”) recreation on eleven National Forests in California;

1           WHEREAS, on June 1, 2012, July 24, 2012 and September 21, 2012 (Docket Nos. 12, 25  
2 & 36), the Court granted the parties' joint motions to extend the deadline for Defendant Forest  
3 Service to file an Answer to Plaintiffs' Complaint and for the parties to file a joint status report in  
4 order to allow the parties to pursue settlement discussions;

5           WHEREAS, on October 4, 2012 (Docket No. 37), the Court granted Defendant-  
6 Intervenor's Motion to Intervene;

7           WHEREAS, on November 9, 2012 (Docket No. 39), Defendant Forest Service filed an  
8 Answer to Plaintiffs' Complaint;

9           WHEREAS, on January 25, 2013 (Docket No. 45), the Parties filed a Joint Status Report  
10 setting forth a litigation schedule for this case while continuing to pursue settlement negotiations;

11           WHEREAS, On April 23, 2013 (Docket No. 47), the Court granted the Parties' request  
12 for an extension of the litigation deadlines to allow the Parties to finalize the proposed  
13 settlement;

14           WHEREAS, on June 20, 2013 (Docket No. 50), the Court granted the Parties' second  
15 request for an extension of the litigation deadlines to allow the Parties to finalize the proposed  
16 settlement; and

17           WHEREAS, the parties have concluded their discussions and believe it is in the interest  
18 of the public, the parties and judicial economy to resolve this action through settlement;

19           THEREFORE, the parties agree as follows:

- 20           1. Defendant Forest Service will complete appropriate NEPA Analysis(es) to  
21 identify snow trails for grooming on the Plumas National Forest, Tahoe National Forest,  
22 Eldorado National Forest, Stanislaus National Forest, and Lassen National Forest. Activities  
23 such as the plowing of related parking lots and trailheads will be analyzed as part of the effects  
24  
25  
26  
27  
28

1 analysis. The analysis will consider a range of alternative actions that would result in varying  
2 levels of snowmobile use.

3 2. For the NEPA Analysis(es) described in paragraph 1, Defendant Forest Service  
4 will issue draft NEPA Analysis(es) documents no later than May 30, 2015 and will use its best  
5 efforts to issue Final NEPA Analysis(es) and Decision documents no later than November 30,  
6 2015. The Parties may agree to modify the dates in this Paragraph if the Forest Service  
7 determines there is a need for interagency consultation, or encounters other issues that result in a  
8 delay. In the event the Parties do not agree on an appropriate modification of the dates in this  
9 Paragraph, any dispute relating to the dates shall be subject to the dispute resolution procedure in  
10 Paragraph 10.  
11 Paragraph 10.

12 3. The Forest Service will consider an alternative submitted by Plaintiffs and/or  
13 Intervenor in each NEPA Analysis(es) so long as the alternative meets the purpose and need,  
14 and is feasible and within the scope of the NEPA Analysis(es), and Plaintiffs and/or Intervenor  
15 provide the Forest Service with a detailed description of that alternative during the scoping  
16 period for the NEPA Analysis(es). Should the Forest Service conclude that further detail is  
17 required to consider the alternative, it will notify Plaintiffs and/or Intervenor and provide one  
18 opportunity for them to provide further detail so long as any additional submissions are made  
19 within 30 days of such notification.  
20  
21

22 4. For purposes of this Settlement Agreement only, and without conceding liability  
23 for attorneys' fees or costs, Defendant agrees to pay Plaintiff a total of \$15,000.00 in full and  
24 complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the  
25 Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), and/or any other statute and/or  
26  
27  
28

1 common law theory, for all attorneys' fees and costs incurred by Plaintiff in connection with this  
2 litigation.

3 5. Defendant's payment shall be accomplished by electronic funds transfer to the  
4 Advocates for the West Lawyer Trust Account. Plaintiffs' attorneys shall provide to the  
5 undersigned counsel the appropriate account number and other information needed to facilitate  
6 payment. Defendant shall submit the paperwork for the payment within 20 days after the  
7 stipulation of dismissal is entered by the Court, or within 20 days of Plaintiffs providing the  
8 necessary information to facilitate the payment, whichever is later. Plaintiffs' attorneys shall  
9 provide notice to Defendant's attorney when payment is received.  
10

11 6. Plaintiffs agree that receipt of this payment from Defendant shall operate as a  
12 release of Plaintiffs' claims for attorneys' fees and costs in connection with this matter.  
13

14 7. Within fourteen days of Court approval of this settlement, Plaintiffs shall dismiss  
15 their Complaint.

16 8. Any challenge by Plaintiffs to the validity or sufficiency of any of the NEPA  
17 analysis(es) completed pursuant to paragraph 1 and 2 above, including the Forest Service's  
18 consideration of alternatives as required in paragraph 3, shall be made only upon (1) completion  
19 of such NEPA process through the issuance of the applicable Forest Service's NEPA  
20 Analysis(es) and Decision document(s), and (2) Plaintiffs' exhaustion of any and all available  
21 administrative review opportunities with regard to such NEPA process.  
22

23 9. Plaintiffs agree not to challenge in court the lack of NEPA review of current  
24 ongoing OSV Activities on any National Forest or administrative unit of any National Forest  
25 named in Plaintiffs' complaint before November 30, 2015 (or the completion of the applicable  
26 Decision documents should such date be extended as provided in Paragraph 2). Nothing herein  
27  
28

1 shall preclude any one or several Plaintiffs from bringing such challenges after November 30,  
2 2015 (or such later completion date provided in Paragraph 2). Furthermore, nothing herein shall  
3 preclude any one or several Plaintiffs from raising challenges at any time to decisions issued by  
4 the Forest Service other than the decisions described in Plaintiffs' Complaint that continue  
5 current ongoing OSV Activities. For instance, this settlement would not preclude challenges to  
6 Forest Plan revisions or decisions with respect to new or modified OSV trailheads or expansion  
7 or relocation of grooming or plowing activities. As used in this Paragraph, the term "OSV  
8 Activities" shall refer to grooming of snow trails for winter recreation and includes ancillary  
9 activities such as the plowing of related parking lots and trailheads for winter recreation  
10

11           10. In the event of a dispute arising out of or relating to this Settlement Agreement, or  
12 in the event that either party believes that the other party has failed to comply with any term or  
13 condition of this Settlement Agreement, the party raising the dispute, or seeking enforcement  
14 shall provide the other party with notice of the claim. The Parties agree that they will meet and  
15 confer (either telephonically or in-person) at the earliest possible time in a good faith effort to  
16 resolve the claim before seeking further relief. If the Parties are unable to resolve the dispute  
17 themselves within 30 days of the receipt of the notice of a claim or such longer time to which  
18 they agree, either party may seek relief in court.  
19

20           11. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a  
21 commitment or requirement that Federal Defendant obligate or pay funds, or take any other  
22 actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable  
23 law. Nothing in this Settlement Agreement shall be construed to deprive a federal official of  
24 authority to revise, amend or promulgate regulations, or to amend or revise land and resource  
25 management plans. Nothing in this Settlement Agreement is intended to or shall be construed to  
26  
27  
28

1 amend or require amendment of any Forest Plan; to waive any obligation to exhaust  
2 administrative remedies; to constitute an independent waiver of the United States' sovereign  
3 immunity; to change the standard of judicial review of federal agency actions under the  
4 Administrative Procedure Act ("APA"); or to otherwise extend or grant this Court jurisdiction to  
5 hear any matter, except as expressly provided in the Settlement Agreement.  
6

7 12. The terms of this Settlement Agreement constitute the entire agreement of the  
8 Parties, and no statement, agreement, or understanding, oral or written, which is not contained  
9 herein, shall be recognized or enforced. Except as expressly stated herein, this Settlement  
10 Agreement supersedes all prior agreements, negotiations, and discussions between the Parties  
11 with respect to the subject matters discussed herein.  
12

13 13. Each of the Parties' undersigned representatives certifies that they are fully  
14 authorized to enter into and execute the terms and conditions of this Settlement Agreement, and  
15 do hereby agree to the terms herein.  
16

17 14. The terms of this Settlement Agreement shall become effective upon entry of an  
18 order by the Court approving the Settlement Agreement. The Parties request the Court to retain  
19 jurisdiction for the sole purpose of enforcing compliance with the terms of this Agreement or  
20 resolving any disputes concerning its implementation, until Defendant Forest Service satisfies its  
21 obligations under the Agreement. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375  
22 (1994). The Parties agree that they may only seek enforcement of this Agreement, and the Parties  
23 therefore knowingly waive any right that they might have to seek an order of contempt for any such  
24 violation.  
25

26 15. In the event that the Forest Service issues multiple NEPA Analyses and Decision  
27 documents to comply with Paragraphs 1 and 2 of this Settlement Agreement, the obligations of  
28

1 this Settlement Agreement shall terminate as to the National Forests covered by the NEPA  
2 Analysis and Decision document that has been issued at the time those documents are issued.  
3 The obligations of this Settlement Agreement shall remain in effect for the remaining National  
4 Forests until the conditions for termination as described in this Paragraph have been satisfied.  
5 The obligations in this Settlement Agreement terminate upon the issuance of Final NEPA  
6 Analysis(es) and Decision documents as referenced in paragraph 2 of this agreement for all five  
7 forests described in Paragraph 1, above.  
8

9       16. This Settlement Agreement is the result of compromise and settlement, and it is  
10 based on and limited solely to the facts involved in the claims subject to this Settlement  
11 Agreement. This Settlement Agreement does not represent an admission by any party to any fact,  
12 claim, or defense concerning any issue in this case. Further, this Settlement Agreement has no  
13 precedential value and shall not be used as evidence of such in any litigation or in representations  
14 before any forum or public setting.  
15  
16  
17

18 Dated this 26th day of August, 2013

19 s/ Lauren M. Rule \*w/ permission via email  
20 Lauren M. Rule  
21 ADVOCATES FOR THE WEST  
22 3987 N. Mississippi Ave.  
23 Portland, OR 97227  
24 Tel: (503) 914-6388  
25 lrule@advocateswest.org  
26 ATTORNEY FOR PLAINTIFFS  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources Division

s/ Brian M. Collins  
BRIAN M. COLLINS  
U.S. Department of Justice  
Environment and Natural Resources Division  
601 D. St. NW  
Washington, DC 20004  
Tel: 202-305-0428  
Fax: 202-305-0267  
brian.m.collins@usdoj.gov  
ATTORNEY FOR DEFENDANT

s/James H. Lister \*w/ permission via email  
WILLIAM P. HORN (pro hac vice)  
JAMES H. LISTER (pro hac vice)  
Birch Horton Bittner & Cherot, PC  
1155 Connecticut Ave., NW, Suite 1200  
Washington, DC 20036  
Telephone: (202) 659-5800  
Facsimile: (202) 659-1027  
whorn@dc.bhb.com  
jlistner@dc.bhb.com

/s/ Paul A. Turcke \*w/ permission vial email  
PAUL A. TURCKE (pro hac vice)  
MOORE SMITH BUXTON & TURCKE,  
CHARTERED  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202  
pat@msbtlaw.com  
ATTORNEYS FOR DEFENDANT-INTERVENORS