

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

CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
Plaintiff,)	CASE NO. 2:14-cv-1101-JGB-CW
)	
v.)	
)	
S.M.R. JEWELL, in her official capacity)	
as Secretary of the Interior; the UNITED)	
STATES FISH & WILDLIFE SERVICE;)	
and DANIEL M. ASHE, in his official)	
capacity as Director of the United States)	
Fish & Wildlife Service,)	
)	
Defendants.)	

STIPULATED SETTLEMENT AGREEMENT

The Parties, Center for Biological Diversity (“Plaintiff”) and S.M.R. Jewell, in her official capacity as Secretary of the Interior, the United States Fish and Wildlife Service, and Daniel M. Ashe, in his official capacity as Director of the United States Fish and Wildlife Service (“FWS”) (“Federal Defendants”), have agreed to settle the above-captioned case in its entirety on the terms memorialized in this Stipulated Settlement Agreement (“Stipulation”):

WHEREAS on July 2, 2002, the FWS listed the Southern California Distinct Population Segment (“DPS”) of mountain yellow-legged frog as endangered under the Endangered Species Act (“ESA”). *See* 67 Fed. Reg. 44,382 (July 2, 2002).

WHEREAS on April 28, 2011, Plaintiff sent to FWS a notice of intent to sue regarding alleged violations of law regarding FWS’s duty to develop and implement a recovery plan for the Southern California DPS of mountain yellow-legged frog under Section 4(f) of the ESA, 16 U.S.C. § 1533(f) and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 706(1).

WHEREAS, on February 12, 2014, Plaintiff filed a Complaint for injunctive and

declaratory relief in this action, alleging that Federal Defendants failed to develop and implement a recovery plan for the Southern California DPS of mountain yellow-legged frog under the ESA.

WHEREAS the Plaintiff and Federal Defendant, through their authorized representatives, without any admission of legal fault or error, and without final adjudication of the issues of fact or law with respect to Plaintiff's claims, have reached a settlement resolving this action;

WHEREAS the Parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve this dispute;

THE PARTIES THEREFORE STIPULATE AS FOLLOWS:

1. On or before December 29, 2018, FWS shall complete a final recovery plan for the Southern California DPS of mountain yellow-legged frog.

2. ATTORNEYS' FEES - Federal Defendants agree to pay \$14,250.00 to settle Plaintiff's claim for fees and costs. A check shall be made payable in this amount to Center for Biological Diversity, c/o Judy Anderson, P.O. Box 710, Tucson, AZ 85702-0710. The Federal Defendants agree to submit all necessary paperwork to the Department of Treasury's Judgment Fund Office pursuant to 16 U.S.C. § 1540(g)(4) within ten (10) business days of receipt of the signed court order approving this Stipulation.

3. Plaintiff agrees to accept this payment in full satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), the ESA, 16 U.S.C. § 1540(g), and/or any other statute and/or common law theory, through and including the date of this Stipulation, incurred in connection with this litigation.

4. By this Stipulation, the Federal Defendants do not waive any right to contest fees claimed by Plaintiff, including the hourly rate, in any future litigation or continuation of the present action.

5. MODIFICATION OF AGREEMENT - Either Party may seek to modify the deadline for the actions specified in Paragraph 1 for good cause shown, consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes the other party has failed to comply with any term or condition of this Stipulation, the Parties shall use the dispute resolution procedures specified in Paragraph 6 below.

6. DISPUTE RESOLUTION - This Stipulation may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, either (i) by written stipulation between the Parties filed with and approved by the Court, or (ii) upon written motion filed by one of the Parties and granted by the Court. In the event that either Party seeks to modify the terms of this Stipulation, including the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Stipulation, or in the event that either Party believes that the other Party has failed to comply with any term or condition of this Stipulation, the Party seeking the modification, raising the dispute, or seeking enforcement shall provide the other Party with notice of the claim. The Parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either Party may seek relief from the Court.

7. ENFORCEMENT OF AGREEMENT - In the event that FWS fails to meet the deadlines identified in paragraph 1, Plaintiff's first remedy shall be a motion to enforce the terms of this Stipulation, subject to following the dispute resolution procedures described in Paragraph 6 above. This Stipulation shall not, in the first instance, be enforceable through a proceeding for contempt of court.

8. No provision of this Stipulation shall be interpreted as, or constitute, a

commitment or requirement that Federal Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Federal Defendants by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

9. This Stipulation is being entered into so as to avoid further litigation of the Plaintiff's pending lawsuit. Nothing in this Stipulation shall be construed to constitute an admission of any issue of fact, law or liability by any of the Parties. Except as expressly provided in this Stipulation, none of the Parties waives or relinquishes any legal rights, claims or defenses it may have.

10. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

11. This Stipulation only requires that Federal Defendants take action by the deadline specified in Paragraph 1 and does not limit FWS's authority with regard to the substantive outcome of any determinations. To challenge any final determination issued in accordance with this Stipulation, Plaintiff will be required to file a separate action. Plaintiff does not waive its ability to challenge substantive decisions made by Federal Defendants pursuant to Paragraph 1, and Federal Defendants do not waive any applicable defenses.

12. The undersigned representatives of each Party certify that they are fully authorized by the Party or Parties they represent to agree to the Court's entry of the terms and

conditions of this Stipulation and do hereby agree to the terms herein.

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

14. The terms of this Stipulation shall become effective upon entry of an Order by the Court ratifying the Stipulation.

15. Upon approval of this Stipulation by the Court, Plaintiff's Complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Stipulation and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Dated: October 15, 2014.

Respectfully submitted,

SAM HIRSCH,
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SETH M. BARSKY, Chief
KRISTEN L. GUSTAFSON, Assistant Chief

/s/ Jeremy Hessler
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Attorney for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Judge Jesus G. Bernal
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system (ECF/CM).

Dated: October 15, 2014.

/s/ Jeremy Hessler
Attorney for the Federal Defendants