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14 **UNITED STATES DISTRICT COURT FOR THE**
15 **DISTRICT OF IDAHO**
16

17 WESTERN WATERSHEDS PROJECT,

18 Plaintiff,

19 v.

20 U.S. FISH AND WILDLIFE SERVICE,
21 NOAA FISHERIES, U.S. FOREST
22 SERVICE, JACK WHITWORTH, and
23 WHITWORTH RANCHES, INC.

24 Defendants.
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CASE NO. 4:12-cv-197-BLW

**STIPULATED SETTLEMENT
AGREEMENT; ORDER**

STIPULATED SETTLEMENT AGREEMENT

Plaintiff, the Western Watersheds Project, and the Federal Defendants, the United States Fish and Wildlife Service (“FWS”), the United States Forest Service (“USFS”), and the National Marine Fisheries Service (“NMFS”), and Jack Whitworth and Whitworth Ranches, Inc. (“the Whitworth Defendants”), by and through their undersigned counsel, state as follows:

WHEREAS, the USFS periodically authorizes livestock grazing on a 63,375 acre allotment located northeast of Challis, Idaho in the Salmon-Challis National Forest (the “Camas Creek Allotment”);

WHEREAS, the USFS most recently authorized livestock grazing of the Camas Creek Allotment in 2012;

WHEREAS, prior to authorizing grazing in 2012, the USFS consulted with FWS and NMFS on the potential effects of livestock grazing on federally-listed fish species and their critical habitat pursuant to the Endangered Species Act (“ESA”);

WHEREAS, the end result of the consultation process was the production of a cover letter and biological opinion by FWS for bull trout and a cover letter and biological opinion by NMFS for Chinook salmon and steelhead (the “Existing BiOps”);

WHEREAS, on April 18, 2012, Plaintiff filed suit alleging that the USFS, FWS and NMFS violated the ESA in connection with the grazing of the Camas Creek Allotment, and that the Whitworth Defendants unlawfully took protected species under the ESA in connection with grazing activities on the Camas Creek Allotment (Dkt. No. 1);

WHEREAS, on September 28, 2012, Plaintiff moved this Court for summary judgment on its claims (Dkt. No. 17);

WHEREAS, Plaintiff, the Federal Defendants and the Whitworth Defendants, through their authorized representatives, have reached agreement on the terms of a settlement, which is captured in the form of this Stipulated Settlement Agreement (“Agreement”), that they consider

1 to be a just, fair, adequate, and equitable resolution of the issues in this case;

2 WHEREAS, Plaintiff, the Federal Defendants and the Whitworth Defendants agree that
3 this Agreement is in the public interest and is an appropriate way to resolve the remaining
4 disputed issues;

5 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
6 FOLLOWS:
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8 1. Within twenty (20) days of the Court entering this Agreement as an Order of the
9 Court, the USFS will send a letter to both FWS and NMFS requesting that each agency withdraw
10 the Existing BiOps. The USFS will not authorize turnout of livestock on the Camas Creek
11 Allotment until (i) it reinitiates consultation with both FWS and NMFS, which will include
12 completing a new biological assessment; (ii) the reinitiated consultation is completed; and (iii)
13 FWS and NMFS have issued new biological opinions that supersede the Existing BiOps. In the
14 event that grazing of the Camas Creek Allotment is not authorized for the 2013 grazing season,
15 the Forest Service will authorize Whitworth Defendant's livestock to graze on an alternative
16 cattle allotment located on the Salmon-Challis National Forest only if one becomes available due
17 to another permittee's election to take non-use for personal convenience.
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19 2. The Order entering this Agreement, including the commitments specified in
20 Paragraph 1, may be modified by the Court upon good cause shown, consistent with the Federal
21 Rules of Civil Procedure, by written stipulation between the parties filed with and approved by
22 the Court, or upon written motion filed by one of the parties and granted by the Court. In the
23 event that either party seeks to modify the terms of this Agreement, including the commitments
24 specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement,
25 or in the event that either party believes that the other party has failed to comply with any term or
26 condition of this Agreement, the party seeking the modification, raising the dispute, or seeking
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1 enforcement shall provide the other party with notice of the claim. The parties will meet and
2 confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the
3 claim before pursuing relief from the Court. If the parties are unable to resolve the claim after
4 meeting and conferring, either party may pursue relief from the Court.

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6 3. In the event that the Federal Defendants fail to fulfill the commitments specified
7 in Paragraph 1 and the Federal Defendants have not sought to modify those commitments,
8 Plaintiff's, and the Whitworth Defendants', first remedy shall be a motion to enforce the terms of
9 this Agreement. This Agreement shall not, in the first instance, be enforceable through a
10 proceeding for contempt of court.

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12 4. This Agreement requires the Federal Defendants only to fulfill the commitments
13 specified in Paragraph 1 and does not limit any federal agency's authority with regard to the
14 substantive outcome of any decisions. To challenge any final decision issued in accordance with
15 this Agreement, Plaintiff will be required to file a separate action. Plaintiff does not waive its
16 ability to challenge the substantive decision made by the Federal Defendants pursuant to
17 Paragraph 1, and the Federal Defendants do not waive any applicable defenses.

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19 5. The Federal Defendants agree to settle all of Plaintiffs' claims for costs and
20 attorneys' fees in this matter for a total of \$105,000. A check or electronic funds transfer will be
21 made payable in that amount to the Advocates for the West Lawyer Trust Account. The Federal
22 Defendants agree to submit all necessary paperwork for the processing of the attorneys' fee
23 award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. §
24 1540(g)(4), within ten (10) business days of receipt of the court order approving this Agreement.

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26 6. Plaintiff agrees to accept payment of \$105,000 in full satisfaction of any and all
27 claims for attorneys' fees and costs of litigation to which Plaintiff is entitled in this matter
28 through and including the date of this Agreement. Plaintiff agrees that receipt of this payment

1 from the Federal Defendants shall operate as a release of Plaintiff's claims for attorneys' fees
2 and costs in this matter, through and including the date of this Agreement.

3 7. By this Agreement, the Federal Defendants do not waive any right to contest fees
4 claimed by Plaintiff, including the hourly rate, in any future litigation or continuation of the
5 present action. Furthermore, this Agreement as to attorneys' fees and costs has no precedential
6 value and shall not be used as evidence in this or any other attorneys' fees litigation.
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8 8. No provision of this Agreement shall be interpreted as, or constitute, a
9 commitment or requirement that the Federal Defendants take action in contravention of the ESA,
10 the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or
11 procedural. Nothing in this Agreement shall be construed to limit or modify the discretion
12 accorded to the Federal Defendants by the ESA, the APA, or general principles of administrative
13 law with respect to the procedures to be followed in making any decision required herein, or as
14 to the substance of any final decision.
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16 9. Nothing in this Agreement shall be interpreted as, or shall constitute, a
17 requirement that the Federal Defendants are obligated to pay any funds exceeding those
18 available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or
19 any other appropriations law.
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21 10. Nothing in this Agreement may be cited by either party in connection with any
22 other administrative or judicial proceeding.

23 11. The parties agree that this Agreement was negotiated in good faith and that this
24 Agreement constitutes a settlement of claims that were denied and disputed by the parties. By
25 entering into this Agreement, the parties do not waive any claim or defense.

26 12. The undersigned representatives of each party certify that they are fully
27 authorized by the party or parties they represent to agree to the Court's entry of the terms and
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1 conditions of this Agreement and do hereby agree to the terms herein.

2 13. The terms of this Agreement shall become effective upon entry of an order by the
3 Court ratifying the Agreement.

4 14. Upon approval of this Agreement by the Court, all counts of Plaintiff's complaint
5 shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the
6 parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee
7 compliance with the terms of this Agreement and to resolve any motions to modify such terms.
8 See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994).
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11 APPROVED AND SO ORDERED:
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1 Dated: April 11, 2013

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3 Respectfully Submitted,

4 IGNACIA S. MORENO,
5 Assistant Attorney General
6 SETH M. BARSKY, Chief
7 S. JAY GOVINDAN, Assistant Chief

8 /s/ Erik E. Petersen
9 ERIK E. PETERSEN
10 Trial Attorney
11 U.S. Department of Justice
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20 Attorneys for Federal Defendants

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Attorneys for the Whitworth Defendants

1 UNITED STATES DISTRICT COURT FOR THE
2 DISTRICT OF IDAHO
3

4 WESTERN WATERSHEDS PROJECT,
5 Plaintiff,

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6 v.

CERTIFICATE OF SERVICE

7 U.S. FISH AND WILDLIFE SERVICE,
8 NOAA FISHERIES, U.S. FOREST
9 SERVICE, JACK WHITWORTH, and
10 WHITWORTH RANCHES, INC.

Defendants.

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12 I hereby certify that on April 11, 2013, I electronically filed the foregoing with the Clerk
13 of the Court using the CM/ECF system, which will send notification of such to the attorneys of
14 record.

15 /s/ Erik E. Petersen

16 ERIK E. PETERSEN
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