

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the Effective Date (defined below) by and between Defendants U.S. Forest Service (“Forest Service”) and U.S. Fish and Wildlife Service (“FWS”), Plaintiff Idaho Conservation League (“ICL”), and Plaintiffs Wildlands Defense, Alliance for the Wild Rockies, Native Ecosystems Council, and Yellowstone to Uintas Connection (collectively “Wildlands Defense”).

WHEREAS, on April 14, 2021, the Forest Service signed a Decision Notice (DN) authorizing the Sage Hen Integrated Restoration Project (“Sage Hen Project” or “Project”), based on the Forest Service’s November 12, 2020 Environmental Assessment and Finding of No Significant Impact (EA/FONSI) and the U.S. Fish and Wildlife Service’s January 6, 2021 Biological Opinion; and

WHEREAS, on August 30, 2021, ICL sent a Notice of Intent to Sue alleging the Forest Service and FWS violated the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* when it approved the Sage Hen Project; and

WHEREAS, on September 8, 2021, Wildlands Defense sent a Notice of Intent to Sue alleging the Forest Service and FWS violated the ESA when it approved the Sage Hen Project; and

WHEREAS, on November 1, 2021, Wildlands Defense filed the Complaint in Case No. 1:21-cv-425 (D. Idaho), and on November 15, 2021, filed an Amended Complaint, alleging Federal Defendants violated the ESA, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA) when they approved the Sage Hen Project; and

WHEREAS, on December 20, 2021, ICL filed the Complaint in Case No. 1:21-cv-504 (D. Idaho) alleging Federal Defendants violated the ESA, NEPA, the APA, and the National Forest Management Act (NFMA) when they approved the Sage Hen Project; and

WHEREAS, on March 1, 2022, the cases were consolidated in Case No. 1:21-cv-425-DCN (D. Idaho); and

WHEREAS, counsel for the parties have conferred about the litigation and explored ideas for settlement to resolve the matter informally and without the need for further litigation and to conserve party and judicial resources.

NOW, THEREFORE, the parties agree to the following terms of settlement:

A. Forest Service Agreements and Obligations:

1. Project Withdrawal and Deadline. On or before December 31, 2022, the Forest Service shall withdraw the Decision Notice for the Sage Hen Project, and promptly provide a copy of the withdrawal to ICL and Wildlands Defense. As a result of such withdrawal, the Forest

Service will not undertake any project activities associated with the Sage Hen Project, except as provided in paragraphs 2 and 3 below.

2. Interim Activities Allowed. In the interim period before the Decision Notice for the Sage Hen Project is withdrawn under paragraph 1 above, the Forest Service may undertake or allow the following specified activities to proceed as authorized by the Decision Notice: The Forest Service (or its contractors) may complete the harvest and restoration activities described in the Decision Notice for the Joe's Creek Salvage Reoffer South, the Antelope Swale Salvage and the Southside Salvage GNA Direct Sales.

3. Post Withdrawal Commitments. After withdrawing the Decision Notice pursuant to paragraph 1 above, the Forest Service will not undertake or authorize any other vegetation treatment projects within the Sage Hen Project area, until such time as the Forest Service has issued a new decision in compliance with NEPA and the ESA. Any such NEPA analyses, shall include an alternative with reduced timber harvest treatments and new road construction from what was considered under the proposed action in the 2021 Decision.

4. Payment of Costs & Fees. The parties agree to settle Plaintiffs' claims for attorney fees and costs in this litigation under the ESA and/or Equal Access to Justice Act, or any other statute. In full and complete satisfaction of any and all claims for attorney fees, the Forest Service shall pay the following amounts as part of settlement of this matter:

- a. The Forest Service shall pay \$15,000 to ICL by electronic funds transfer into the Lawyer Trust Account of ICL's counsel. Upon execution of this Settlement Agreement, ICL's counsel shall provide to the Forest Service's counsel the information necessary to facilitate the payment. The Forest Service shall submit the necessary paperwork for the payment within thirty (30 days) after Plaintiffs' counsel signs this agreement and provides the information necessary to facilitate payment.
- b. The Forest Service shall pay \$15,000 to Wildlands Defense by electronic funds transfer into the Lawyer Trust Account of Wildlands Defense's counsel. Upon execution of this Settlement Agreement, Wildlands Defense's counsel shall provide to the Forest Service's counsel the information necessary to facilitate the payment. The Forest Service shall submit the necessary paperwork for the payment within thirty (30 days) after Plaintiffs' counsel signs this agreement and provides the information necessary to facilitate payment.
- c. Counsel for Plaintiffs shall confirm payment within ten (10) days of receipt. Plaintiffs also acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney fee award Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

B. ICL and Wildlands Defense Obligations and Releases

1. Dismissal of Cases. In consideration of the Forest Service's agreements as set forth under section A above, ICL and Wildlands Defense agree to voluntarily dismiss the consolidated actions with prejudice; and shall file a Stipulation of Dismissal jointly approved by all parties (copy attached hereto) within 14 days of the Effective Date of this Settlement Agreement.

2. Release. In acknowledgement of and in exchange for the promises and other consideration contained in this Agreement and the payment by the Forest Service to Plaintiffs referenced in Paragraphs 3 and 4 above, Plaintiffs and their respective affiliates, successors, and assigns hereby unconditionally and irrevocably release, waive, covenant not to sue, and forever discharge the Forest Service (including its past, present, and future officers, agents, and affiliates) from any and all claims, causes of action, allegations, demands, suits, judgments, liabilities, fees, interests, or obligations, whether known or unknown, foreseen or unforeseen, disclosed or undisclosed, presently asserted or otherwise, regarding, arising out of, or in any way associated with this lawsuit. Plaintiffs reserve the right to challenge new final agency actions under the same legal theories that were alleged in this case.

3. Releases re Costs & Fees.

- a. ICL agrees that the payment under paragraph A.4.a of this Settlement Agreement shall constitute satisfaction in full of any claim for costs of suit or attorney fees incurred by ICL in this matter and that upon such payment ICL releases Federal Defendants from any claims regarding such fees and costs.
- b. Wildlands Defense agrees that the payment under paragraph A.4.b of this Settlement Agreement shall constitute satisfaction in full of any claim for costs of suit or attorney fees incurred by Wildlands Defense in this matter and that upon such payment Wildlands Defense releases Federal Defendants from any claims regarding such fees and costs.

C. General Provisions

1. Effective Date. The Effective Date of this Settlement Agreement shall be the date of last signature on this document.

2. Execution in Counterparts. This Settlement Agreement may be executed in one or more counterparts which, taken together, shall constitute one and the same document.

3. Authority to Sign. The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agreed to all of the terms and conditions of this Settlement Agreement.

4. Facsimile and Scanned Signatures. The parties' signatures to this Settlement Agreement may be transmitted by facsimile or by scan and email and shall be deemed binding.

5. Integrated Settlement Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Settlement Agreement are contained herein.

6. Modification. Any term set forth in this Settlement Agreement may be modified by written agreement signed by all of the parties hereto or their respective legal counsel.

7. Severability. If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

8. Construction. The language in all parts of this Settlement Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning and, because the Settlement Agreement was drafted jointly, shall not be construed to favor either party.

9. Governing Law. This Settlement Agreement shall be governed by and construed under federal law.

10. No Admission of Law or Fact. Nothing in this Settlement Agreement shall constitute an admission of fact or law by any party. This Settlement Agreement shall not be used or admitted in any proceeding against a party, including any agency or instrumentality of the United States, over the objection of that party.

11. Anti-Deficiency. Any obligations of the United States to expend funds under this Agreement are subject to the availability of funds appropriated for such purpose. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

12. No Contempt. This Settlement Agreement may not be enforced through a motion for contempt.

13. Delivery or Notice of Documents. Any notices or other documents required or provided for by this Settlement Agreement or related thereto that are to be provided to any of the parties pursuant to this Settlement Agreement shall be sent by e-mail transmission to the signatories of this Settlement Agreement.

IT IS SO AGREED.

For Idaho Conservation League:

Date: 10/19/22



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For Wildlands Defense, Alliance for the Wild Rockies, Native Ecosystems Council, and
Yellowstone to Uintas Connection:

Date: 10/18/22



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