

1 SAM HIRSCH  
 Acting Assistant Attorney General  
 2 Environment and Natural Resources Div.  
 CYNTHIA S. HUBER (IL3125279; DC390616)  
 3 Assistant Section Chief  
 Natural Resources Section  
 4 Environment and Natural Resources Div.  
 U.S. Dept. of Justice  
 5 P.O. Box 7611  
 Washington, D.C. 20044-7611  
 6 Tel: 202-514-5273  
 Fax: 202-305-0506  
 7 [cynthia.huber@usdoj.gov](mailto:cynthia.huber@usdoj.gov)

8 Attorneys for Defendants

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 Central Sierra Environmental Resource )  
 12 Center, The Wilderness Society, and )  
 Public Employees for Environmental )  
 13 Responsibility, )

Civil No. 10-02172-KJM-GGH

14 Plaintiffs, )

STIPULATED  
SETTLEMENT AGREEMENT

15 v. )

16 United States Forest Service, an agency )  
 of the Dept. of Agriculture, )  
 17 Susan Skalski, in her official capacity as )  
 Forest Supervisor of the Stanislaus )  
 18 National Forest, and Randy Moore, in )  
 his official capacity as Regional Forester )  
 19 U.S. Forest Service, Pacific Southwest )  
 Region, )

Date: n/a  
Time: n/a  
Place: n/a  
Judge: Hon. Kimberly J. Mueller

21 Federal Defendants, )

22 and )

23 California Ass'n of Four Wheel Drive )  
 Clubs, et al., )

24 Defendant Intervenors. )

1           Whereas Plaintiffs Central Sierra Environmental Resource Center, The Wilderness  
2 Society, and Public Employees for Environmental Responsibility (“Plaintiffs”) brought this  
3 action challenging the 2009 Stanislaus National Forest Motorized Travel Management Decision  
4 (“2009 Decision”) and the Final Environmental Impact Statement (“FEIS”) related to that  
5 decision. ECF 1. Plaintiffs alleged violations of the National Environmental Policy Act  
6 (“NEPA”), the Administrative Procedure Act (“APA”), Executive Orders 11644 and 11989, and  
7 the 2005 Travel Management Rule.  
8

9           Whereas, Federal Defendants United States Forest Service, Susan Skalski and Randy  
10 Moore (“Federal Defendants”) deny any violations of NEPA, the Executive Orders and the  
11 Travel Rule.  
12

13           Whereas, California Ass’n of Four Wheel Drive Clubs, Merced Dirt Riders, Modesto  
14 Houndsmen, District 36 Motorcycle Sports Committee, California Off Road Vehicle  
15 Association, Blue Ribbon Coalition, and California Outdoor Heritage Alliance (“Defendant  
16 Intervenor”) sought and were granted intervention in this action. ECF 23.  
17

18           Whereas, on January 4, 2013, the Court granted in part and denied in part Plaintiffs' and  
19 Defendants’ motions for summary judgment and ordered additional briefing as to the appropriate  
20 remedy. ECF 65, 2013 WL 77499.  
21

22           Whereas, the Plaintiffs, Federal Defendants and Defendant Intervenor (collectively  
23 “Parties”) thereafter engaged in negotiations to determine if they could amicably resolve the  
24 issue of remedy. The Parties believe it is in the best interest of the public, the Parties and judicial  
25 economy to resolve the issue of remedy and have reached agreement as to remedy and related  
26 issues as embodied in this Settlement Agreement.  
27

28           THEREFORE, the Parties agree and stipulate as follows:

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

1. The 2009 Stanislaus National Forest Motorized Travel Management Decision will be remanded to the Forest Service for further action consistent with the January 4, 2013 Order. 2013 WL 77499. The Forest Service agrees to take the necessary steps to demonstrate its application of the 2005 Travel Management Rule Subpart B minimization criteria, 36 C.F.R. § 212.55(b), to the 2009 Decision. 2013 WL 77499 \*15, 16.
2. During the time period while the Forest Service is taking the actions necessary to demonstrate compliance with the Subpart B minimization criteria (the “Interim Period”), the 2009 Decision shall remain in full force and effect except as provided in paragraph 3 of this Settlement Agreement.
3. The Forest Service agrees that during the Interim Period, 40.34 miles of trails authorized under the 2009 Decision will not be shown on the Motor Vehicle Use Map (“MVUM”) for the Stanislaus National Forest. Such trails will not be open to public motor vehicle use except as provided by 36 C.F.R. § 261.13. The trail segments that will remain closed during the Interim Period are shown on Attachment A to this Settlement Agreement (table). Notwithstanding the previous sentence, the Parties agree the MVUM may be revised to reflect designations authorized in any separate NEPA and trail or area designation process.
4. The Forest Service agrees to prepare an MVUM excluding the trails shown in Attachment A on or before May 22, 2014.
5. During the Interim Period, the Forest Service agrees to make reasonable efforts to enforce the closures shown in Attachment A.

- 1           6. The Forest Service represents that it has been undertaking efforts to mitigate  
2           environmental impacts to resources associated with trails added to the Stanislaus  
3           National Forest's transportation system in the 2009 Decision as described in the  
4           Decision and the FEIS. During the Interim Period, the Forest Service agrees to  
5           provide summary information regarding its mitigation efforts to Plaintiffs and  
6           Defendant Intervenors in connection with the meeting conducted pursuant to  
7           paragraph 7.  
8
- 9           7. The Parties agree to meet at a mutually convenient time during the Interim Period for  
10           the purpose of discussing the Forest Service's efforts to demonstrate its application of  
11           the 2005 Travel Management Rule Subpart B minimization criteria to the 2009  
12           Decision. Plaintiffs together may send up to five participants and the Defendant  
13           Intervenors together may send up to five participants to attend the meeting. To  
14           facilitate the ability of the Parties to engage in meaningful discussions, the Forest  
15           Service will use the services of a professional facilitator to conduct the meeting.  
16
- 17           8. During the Interim Period and in connection with the process to demonstrate its  
18           application of the 2005 Travel Management Rule Subpart B minimization criteria to  
19           the 2009 Decision, the Forest Service agrees to include an opportunity for public  
20           input. The timing and scope of that opportunity for public input shall be in the sole  
21           discretion of the Forest Service.  
22
- 23           9. The Parties agree that any challenge to the procedures used or the conclusions drawn  
24           by the Forest Service to comply with the Court's Order (2013 WL 7749 \*15, 16) to  
25           demonstrate its application of the 2005 Travel Management Rule Subpart B  
26           minimization criteria, 36 C.F.R. § 212.55(b), to the 2009 Decision as set forth in  
27  
28

1 paragraph 1, shall not be brought until the process is complete and a notice is issued.

2 The Parties agree that any such challenge shall be brought in a newly filed complaint  
3 rather than as a continuation of this action.  
4

5 10. The Forest Service agrees to pay Plaintiffs \$100,000 in full settlement and satisfac-  
6 tion of all of Plaintiffs' claims for attorneys' fees, costs, and other expenses in the  
7 above-captioned case. Payment shall be accomplished by electronic funds transfer in  
8 accordance with account information to be transmitted separately by Plaintiffs'  
9 counsel to Federal Defendants' counsel. Federal Defendants agree to submit all  
10 necessary paperwork to accomplish the funds transfer within thirty (30) business days  
11 of the later of the receipt of the needed account and other information from Plaintiffs'  
12 counsel or the Effective Date of the Settlement Agreement.  
13

14 11. Plaintiffs agree to accept the payment provided pursuant to paragraph 10 in full  
15 satisfaction of any and all claims for attorneys' fees, costs, and expenses to which  
16 Plaintiffs assert that they are or may be entitled and release Federal Defendants from  
17 any liability for attorneys' fees, costs, and other expenses incurred or claimed, or that  
18 could have been claimed, for work performed on this case, pursuant to the Equal  
19 Access to Justice Act, 28 U.S.C. § 2412(d), and/or any other statute and/or common  
20 law theory. Plaintiffs or their counsel shall submit confirmation of receipt of the  
21 payment made pursuant to paragraph 10 to counsel for Federal Defendants, within 14  
22 days of receipt of payment.  
23  
24

25 12. Plaintiffs represent that the proper entity to receive payment pursuant to this  
26 Settlement Agreement is Earthjustice and that Earthjustice is receiving the payment in  
27 trust for Plaintiffs. Once payment has been made, Plaintiffs are solely responsible for  
28

1 any further apportionment of that payment. All Plaintiffs and Plaintiffs' counsel  
2 release and hold Federal Defendants harmless from any liability for attorneys' fees,  
3 costs, expenses, or other claims that might be made as to any apportionment among  
4 Plaintiffs and Plaintiffs' counsel of the payment made.  
5

6 13. Nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a  
7 requirement that Federal Defendants are obligated to pay any funds exceeding those  
8 available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. §  
9 1341, or any other applicable appropriations law  
10

11 14. Defendant Intervenors agree to bear their own costs and fees in connection with this  
12 action.

13 15. The provisions of paragraphs 4, 7, 8, and 10 each shall terminate upon its completion.  
14 The other provisions of this Settlement Agreement shall terminate upon the Forest  
15 Service's issuance of a notice that it has completed the Subpart B process with respect  
16 to the 2009 Decision in accordance with paragraph 1.  
17

18 16. This Settlement Agreement is the result of compromise and settlement, and it is based  
19 on and limited solely to the facts involved in this case. This Settlement Agreement  
20 does not represent an admission by any party to any fact, claim, or defense  
21 concerning any issue in this case. Further, this Settlement Agreement has no  
22 precedential value and shall not be used as evidence by any Party in any other  
23 litigation except as necessary to enforce the terms of the Settlement Agreement  
24 consistent with paragraphs 17, 18 and 19.  
25

26 17. The Parties agree that they will submit the accompanying stipulation of dismissal and  
27 proposed order dismissing the case with prejudice pursuant to Fed. R. Civ. P. 41,  
28

1 provided that the Court shall retain jurisdiction solely as specified in paragraph 18.  
2 *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). If the Court  
3 does not dismiss the case, the Settlement Agreement is voidable by any party.  
4

5 18. Except as provided in paragraph 9, the Parties agree that this Court shall retain  
6 jurisdiction of this matter until it is terminated in accordance with paragraph 15 for  
7 the limited purpose of determining compliance with the Settlement Agreement.

8 19. In the event of a dispute arising out of or relating to this Settlement Agreement, or in  
9 the event that a party believes another party has failed to comply with any term or  
10 condition of this Settlement Agreement, the party raising the dispute or seeking  
11 enforcement shall provide the other parties with written notice of the claim. The  
12 Parties agree that they will meet and confer (either telephonically or in person) in a  
13 good faith effort to resolve any requests, disputes or claims before seeking further  
14 relief. If the Parties are unable to resolve the request, dispute or claim themselves  
15 within 60 days of the receipt of the written notice of a request, dispute or claim (or  
16 such longer time to which they agree), then the Parties may seek relief from this  
17 Court. The Parties agree that they will not seek contempt of court as an available  
18 remedy for any alleged violation of this Settlement Agreement, and the Parties  
19 therefore knowingly waive any right they might have to seek an order of contempt for  
20 any such alleged violation.  
21

22 20. Nothing in the terms of this Settlement Agreement shall be construed to limit or deny  
23 the power of a federal official to promulgate or amend regulations.  
24

25 21. The undersigned representatives of Plaintiffs, Federal Defendants, and Defendant  
26 Intervenor certify that they are fully authorized by the respective Parties whom they  
27  
28

1 represent to enter into the terms and conditions of this Settlement Agreement and to  
2 legally bind such Parties to it.

3 22. This Settlement Agreement represents the entirety of the undersigned Parties'  
4 commitments with regard to settlement. The terms of this Settlement Agreement  
5 shall become effective upon dismissal of this action by the Court.  
6

7  
8 May 23, 2014

Respectfully submitted,

9 Sam Hirsch  
10 Acting Assistant Attorney General

11 /s/ Cynthia S. Huber  
12 Cynthia S. Huber  
13 Assistant Section Chief  
14 Natural Resources Section  
15 Environment and Natural Resources Division  
16 United States Department of Justice  
17 Benjamin Franklin Station, P.O. Box 7611  
18 Washington, D.C. 20044-7611  
19 Telephone: (202) 514-5273  
20 Facsimile: (202) 305-0506  
21 [Cynthia.Huber@usdoj.gov](mailto:Cynthia.Huber@usdoj.gov)

22 Counsel for Federal Defendants

23 /s/ Gregory C. Loarie (with permission)  
24 Gregory C. Loarie  
25 Earthjustice  
26 50 California Street, Suite 500  
27 San Francisco, CA 94111  
28 Telephone: (415) 217-2000  
Facsimile: (415) 217-2040

Counsel for Plaintiffs

/s/ Paul A. Turcke (with permission)  
Paul A. Turcke  
Moore Smith Buxton & Turcke, Chartered  
950 West Bannock, Suite 520  
Boise, Idaho 83702  
Telephone: (208) 331-1807  
Facsimile: (208) 331-1202

Counsel for Defendant Intervenors

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

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2014, I electronically transmitted the Stipulated Settlement Agreement (including Attachment A), and Stipulation of Dismissal using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Gregory C. Loarie  
Earthjustice  
[gloarie@earthjustice.org](mailto:gloarie@earthjustice.org)

Paul A. Turcke  
Moore Smith Buxton & Turcke, Chartered  
[pat@msbtlaw.com](mailto:pat@msbtlaw.com)

/s/ Cynthia S. Huber  
Attorney for Federal Defendants