

EXHIBIT
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

YELLOWSTONE TO UINTAS
CONNECTION, and ALLIANCE FOR THE
WILD ROCKIES,

Plaintiffs,

v.

MEL BOLLING, Forest Supervisor Caribou-
Targhee National Forest, MARY
FARNSWORTH, Regional Forester for
Intermountain Region, and UNITED STATES
FOREST SERVICE, an agency of the U.S.
Department of Agriculture, and the UNITED
STATES ARMY CORPS OF ENGINEERS,

Defendants.

and

LOWER VALLEY ENERGY AND STATE
OF WYOMING,

Defendant-Intervenors.

Case No. 4:20-CV-00192-DCN

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Yellowstone to Uintas Connection and Alliance for the Wild Rockies (jointly “Plaintiffs”) and Defendants United States Department of Agriculture, Forest Service (“Forest Service”); United States Army Corps of Engineers; and Mel Bolling and Mary Farnsworth, in their official capacities (collectively, “Federal Defendants”). Plaintiffs and Federal Defendants are together the “Parties.” Plaintiffs and Federal Defendants are each a “Party.”

The Parties, by and through their undersigned counsel, state as follows:

WHEREAS, on September 11, 2020, Plaintiffs filed their amended complaint in this case, alleging that the Forest Service’s November 1, 2019 Record of Decision authorizing the Crow Creek Pipeline on the Caribou-Targhee National Forest in Idaho, and authorizing amendments to

the 2003 Revised Forest Plan, violated the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4331 et seq., the National Forest Management Act, 16 U.S.C. §§ 1600 et seq., the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq., the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq.; the National Trails System Act, 16 U.S.C. §1246(c); and the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;

WHEREAS, on March 28, 2022, the Forest Service withdrew the challenged Record of Decision (“ROD”);

WHEREAS, the Parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs’ claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs’ amended complaint;

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

NOW THEREFORE, it is hereby agreed to by the Parties as follows:

1. Supplemental Environmental Impact Statement. The Forest Service agrees that it will not issue a ROD or concurrence on a ROD for the Crow Creek Pipeline Project, or issue a ROD authorizing the Forest Plan amendments necessary for implementation of the Crow Creek Pipeline, unless and until the Forest Service completes a Supplemental Environmental Impact Statement (“Supplemental EIS”) for the Crow Creek Pipeline Project.

2. Attorneys’ Fees, Costs, and Expenses. The Parties have agreed to settle any and all of Plaintiffs’ claims for attorneys’ fees, costs, and expenses associated with this litigation for a lump sum payment of \$12,500 in full and complete satisfaction of any and all claims, demands, rights, and causes of action Plaintiffs may have for the recovery of attorneys’ fees or litigation costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 2412 *et seq.* or any other statute. The payment of the \$12,500 releases the Federal Defendants from any claims regarding such fees and costs that Plaintiffs have asserted or could have asserted under any law in connection with this matter. This Agreement represents the entirety of the undersigned Parties’

commitments with regard to settlement of claims for attorneys' fees, costs, and expenses. Plaintiffs and their attorneys agree to hold harmless Federal Defendants in any litigation, further suit, or claim arising from the payment of the \$12,500 in attorneys' fees, costs, and expenses.

3. Dispute Resolution. In the event of a dispute among the Parties concerning the interpretation or implementation of any aspect of this Agreement, the disputing Party shall provide the other Party with written notice outlining the nature of the dispute and requesting informal negotiations. The Parties agree that they will meet and confer (telephonically or via an online platform) at the earliest possible time in a good-faith effort to resolve the dispute. If the Parties are unable to resolve the dispute themselves after 60 days following receipt of written notice requesting informal negotiations, or such longer time agreed to by the Parties, either Party may initiate legal action to resolve the dispute. No motion or other proceeding seeking to enforce this Agreement or for contempt of court shall be properly filed unless the Party seeking to enforce this Agreement has followed the procedure set forth in this Paragraph, and the Party believes there has been noncompliance with an order of the Court. In addition, this Agreement shall not be enforceable through a proceeding for contempt of court.

4. Subsequent NEPA Challenges. Nothing in this Agreement precludes any challenge by Plaintiffs to the validity or sufficiency of the future NEPA review and analysis completed pursuant to Paragraph 1 above. The Parties agree that this Agreement does not extend the Court's jurisdiction to hear any dispute over the validity or sufficiency of any such subsequent NEPA review and analysis. Any such challenges shall be made in a new lawsuit only upon completion of the entire NEPA process following the issuance of the Forest Service's Supplemental EIS.

5. Offsetting Debts. 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 payment made pursuant to this Agreement Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

6. Compliance with Other Laws. Nothing in this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that Federal Defendants obligate or pay funds, or take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law. Nothing in this Agreement shall be construed to deprive a federal official of authority to revise, amend, or promulgate regulations. Nothing in this Agreement is intended to, or shall be construed to, waive any obligation to exhaust administrative remedies; to constitute an independent waiver of the United States' sovereign immunity; to change the standard of judicial review of federal agency actions under the APA; or to otherwise extend or grant this Court jurisdiction to hear any matter, except as expressly provided in the Agreement. Except as set forth in this Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have. Except as expressly provided in this Agreement, nothing herein shall be construed to limit or modify any discretion accorded Federal Defendants by statute, regulation or by general principles of administrative law.

7. Mutual Drafting and Other Provisions.

- a. It is hereby expressly understood and agreed that this Agreement was jointly drafted by Plaintiffs and Federal Defendants. Accordingly, the Parties hereby agree that any and all rules of construction, to the effect that ambiguity is construed against the drafting party, shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of the Agreement.
- b. This Agreement contains all of the agreements between Plaintiffs and Federal Defendants, and is intended to be and is the final and sole agreement between Plaintiffs and Federal Defendants concerning the complete and final resolution of Plaintiffs' claims. Plaintiffs and Federal Defendants agree that any other prior or contemporaneous representations or understandings not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force or effect.

c. This Agreement is the result of compromise and settlement and does not constitute an admission, implied or otherwise, by any Party to any fact, claim, or defense on any issue in this litigation. This Agreement has no precedential value and shall not be cited or otherwise used as evidence by either Party in any other litigation or administrative proceeding except as necessary to enforce the terms of this Agreement.

8. Force Majeure. The Parties understand that notwithstanding their efforts to comply with the commitments contained herein, events beyond their control may prevent or delay such compliance. Such events may include natural disasters as well as unavoidable legal barriers or restraints, including those arising from actions of persons or entities that are not party to this Agreement.

9. Representative Authority. The undersigned representative of each Party certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind that Party to the terms of this Agreement.

10. Dismissal. Concurrently with this Agreement, the Parties shall file a stipulation requesting dismissal of all claims in this action with prejudice. That stipulation will also request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any disputes arising under this Agreement. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994).

11. Effective Date. The terms of this Agreement shall become effective upon entry of an Order Dismissing the Case. The Parties agree that this Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute the same instrument. Facsimile or scanned signatures submitted by electronic mail shall have the same effect as an original signature in binding the parties.

Federal Defendants agree to submit all necessary paperwork for the payment of attorneys' fees and costs to the appropriate office within ten (10) business days after the U.S.

District Court for the District of Idaho enters the dismissal, or Federal Defendants have received from Plaintiffs the paperwork necessary for the payment of attorney's fees, whichever is later.

Dated: August 5, 2022.

/s/Rebecca K. Smith
REBECCA K. SMITH
Public Interest Defense Center, P.C.
Attorney for Plaintiff

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