

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

Defendant.

Case No. 1:16-CV-00457-BLW

**SETTLEMENT AGREEMENT  
AND RELEASE**

WHEREAS Plaintiff Western Watersheds Project (“WWP”) alleged that the United States Forest Service (the “Forest Service”) violated the National Forest Management Act, the Sawtooth National Recreation Area Organic Act, the Federal Land Policy and Management Act, Forest Service Grazing Regulations, the Endangered Species Act, and the Administrative Procedure Act in *Western Watersheds Project v. U.S. Forest Serv.*, No. 1:16-CV-00457-BLW (D. Idaho) (“the Lawsuit”).

WHEREAS, WWP and the Forest Service wish to avoid further litigation over WWP’s claims alleged in this Lawsuit.

NOW, THEREFORE, through their undersigned counsel, WWP and the Forest Service hereby enter into this Settlement Agreement and Release (“the Agreement”), and stipulate and agree as follows:

1. The Forest Service will place the Upper and Lower East Fork Allotments in non-use for the 2017 and 2018 grazing seasons. If the ESA consultations discussed in Paragraph 2, below, are not completed prior to the 2019 grazing season, grazing will not be authorized in the Upper or Lower East Fork allotments, except as consistent with the provisions of the ESA, including section 7(d) (16 U.S.C. § 1536(d)). In conjunction with determining compliance with

section 7(d) of the ESA, the Forest Service will complete a substantial impairment analysis contemplated in Paragraph 3, below, on any unit in the Upper and Lower East Fork allotments authorized to graze under section 7(d).

2. The Forest Service will reinitiate consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries to assess the impacts from authorized livestock grazing on the East Fork allotments for the following listed species: Snake River Spring/Summer Chinook Salmon; Snake River Spring/Summer Steelhead; and Columbia River Bull Trout; and their designated critical habitats.

3. The Forest Service will complete a substantial impairment analysis for authorized livestock grazing in the Upper and Lower East Fork allotments in accordance with the Forest Plan.

4. After completion of the obligations identified in Paragraphs 2 and 3 above, the Forest Service will complete a Supplemental Information Report (SIR) to determine if a supplement to the 2003 EIS for the Upper and Lower East Fork allotments is warranted under the criteria set forth under 40 CFR § 1502.9(c). The SIR will discuss whether permits for the Upper and Lower East Fork allotments require modification or cancellation to be consistent with the Forest Plan and to comply with the SNRA Organic Act and ESA.

5. Consistent with the 2003 ROD for the Lower East Fork allotment, Boulder Creek pasture and Sullivan Creek in the French Creek pasture will remain in non-use until the Forest Service evaluates the Boulder Creek pasture and Sullivan Creek in the French Creek pasture and determines that the resource recovery requirements identified in the 2003 Record of Decision are met.

6. After completion of the obligations identified in Paragraphs 2, 3 and 4, above, the Forest Service shall take such action as it deems appropriate to modify or cancel the term grazing permits for the Upper and Lower East Fork allotments accordingly.

7. Western Watersheds Project agrees to dismiss the Lawsuit with prejudice.

8. Subject to Paragraph 9, the parties agree to settle WWP's claims for attorney fees and costs in this litigation for a total payment of thirty-five thousand dollars (\$35,000), pursuant to the Equal Access to Justice Act, 5 U.S.C. § 2412 *et seq.*, the Endangered Species Act, 16 U.S.C. § 1540(g)(4), or any other statute, in full and complete satisfaction of any and all claims, demands, rights, and causes of action WWP may have for the recovery of attorney fees and/or litigation expenses in this matter.

9. The Forest Service's payment, as identified in Paragraph 8 above, shall be accomplished by electronic funds transfer to Advocates for the West's IOLTA account on behalf of WWP. Counsel for WWP will provide counsel with the Forest Service the appropriate account number and other information needed to facilitate payment. The Forest Service shall submit the necessary paperwork for the payment within thirty (30) days after WWP's counsel signs this agreement and provides the information necessary to facilitate payment.

10. Advocates for the West acknowledges that it is receiving the payment on behalf of WWP and that Advocates for the West will distribute the appropriate settlement proceeds to WWP. WWP agrees to this procedure. Counsel for WWP shall confirm payment within ten (10) days of receipt. WWP also acknowledges 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 WWP's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

11. WWP and its attorneys agree to hold harmless the Forest Service in any litigation, further suit, or claim arising from the payment of the agreed upon \$35,000 settlement amount.

12. This Agreement constitutes the complete and final resolution of all legal, equitable, and administrative claims arising out of or in any way associated with WWP's Lawsuit. In acknowledgement of and in exchange for the promises and other consideration contained in this Agreement and the payment by the Forest Service to WWP referenced in Paragraphs 8 and 9 above, WWP and its 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 WWP's Lawsuit.

13. Nothing in this Agreement prohibits WWP from filing future lawsuits against the Forest Service to challenge any future final agency action undertaken by the Forest Service regarding the Upper and Lower East Fork allotments, including any final agency action that relies on the analyses contemplated by this settlement agreement.

14. This Agreement does not constitute, and shall not be construed as, an admission or concession on the part of any party with respect to any fact, claim, or defense in this action. This Agreement shall have no precedential value. WWP and the Forest Service agree that this Agreement will not be used as evidence or otherwise in any pending or future civil or administrative action against the Forest Service, or the United States, or any agency or

instrumentality of the United States. The Forest Service does not waive any defenses it may have concerning the claims settled under this Agreement.

15. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that the Forest Service is obligated to spend funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

16. This Agreement shall expire upon completion of the SIR described in Paragraph 4.

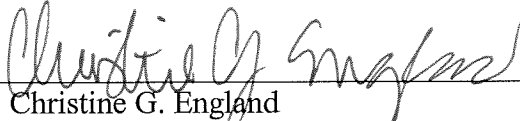
17. This Court will retain jurisdiction over this Agreement for the sole purpose of enforcing its terms. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). This Agreement may not be enforced through a motion for contempt.

18. The Agreement contains all of the agreements between WWP and the Forest Service, and is intended to be the final and sole agreement between them. WWP and the Forest Service agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

19. 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 the Agreement and do hereby agree to the terms herein.

Dated: July 3, 2017

Rafael M. Gonzalez, Jr.  
Acting United States Attorney  
District of Idaho  
By:



Christine G. England  
Assistant United States Attorney  
Counsel for the Forest Service

Dated: June 30, 2017

/s/Lauren M. Rule

Lauren M. Rule  
Advocates for the West  
Counsel for Western Watersheds Project