

Settlement Agreement in *WildEarth Guardians v. Bail*
E.D. Wash. No. 2:20-CV-0440-TOR
9th Cir. No. 22-35635

Plaintiffs WildEarth Guardians and Western Watersheds Project (Plaintiffs) and Federal Defendants Kristin Bail, in her official capacity as the Forest Supervisor of the Okanogan-Wenatchee National Forest, and the U.S. Forest Service (Federal Defendants), through their undersigned counsel, hereby enter into this Settlement Agreement, and stipulate and agree as follows:

WHEREAS, Plaintiffs filed this action on November 20, 2020, alleging that the Federal Defendants violated the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA) when authorizing domestic sheep grazing on the Okanogan-Wenatchee National Forest in *WildEarth Guardians v. Bail*, No. 2:20-cv-00440 (E.D. Wash);

WHEREAS, Plaintiffs filed an appeal of the district court's decision in this action on August 5, 2022, *WildEarth Guardians v. Bail*, No. 22-35635 (9th Circuit);

WHEREAS, the Parties believe it is in the best interest of the public, the Parties, and judicial economy to resolve Plaintiffs' claims and have reached an agreement to do so as embodied in this Agreement;

THEREFORE, the Parties agree and stipulate as follows:

1. The Forest Service will complete a new NEPA process to amend the Forest Plan for the Okanogan-Wenatchee National Forest as set forth in the Notice of Intent published in the Federal Register in May 2019, 84 Fed. Reg. 22432 (May 17, 2019), and the correction published in the Federal Register in February 2023, 88 Fed. Reg. 10284 (Feb. 23, 2023);

2. As part of this NEPA process, the Forest Service will also identify which existing grazing allotments are suitable or unsuitable for domestic sheep grazing on the Okanogan-

Wenatchee National Forest based on a site-specific analysis and will include site-specific guidelines for domestic sheep grazing on suitable allotments;

3. The Forest Service will issue a final Environmental Impact Statement (EIS) and Record of Decision (ROD) no later than December 31, 2027;

4. Until the Forest Service completes the NEPA process, it will provide Plaintiffs and Intervenor-Defendant Martinez Livestock (Permittee), through their undersigned counsel, with annual status reports about progress on the NEPA process by no later than April 15 of each year, or within two weeks of the spring permittee meeting, whichever is later. These annual status reports will be basic updates, several paragraphs in length, briefly identifying the agency's progress and anticipated next steps. The Forest Service will also provide a copy of annual operating instructions (AOIs) or any other documents that identify the domestic sheep grazing management planned for the upcoming season on the Okanogan-Wenatchee National Forest to Plaintiffs and Permittee no later than April 15th of each year, or within two weeks of the spring permittee meeting, whichever is later;

5. If the Forest Service, through the EIS and ROD, determines that a permit for any existing domestic sheep allotment will be cancelled for domestic sheep grazing, it will, except in an emergency, provide the permittee with two-years notice prior to canceling the grazing permit and closing the allotment, pursuant to 36 C.F.R. § 222.4(a)(1). If the Forest Service, through the EIS and ROD determines that a permit for any existing domestic sheep allotment will be modified, it will provide the permittee with one year notice (except in case of emergency) before modifying the permit pursuant to 36 C.F.R. § 222.4(a)(8);

6. Within fourteen (14) days of execution of this Agreement, the Parties agree that Plaintiffs will voluntarily dismiss their pending Ninth Circuit appeal via a stipulated motion as

contemplated by Ninth Circuit General Orders, Appendix A(27). Dismissal shall be without prejudice and subject to reinstatement if and only if the district court refuses to retain jurisdiction. Consistent with the Ninth Circuit General Orders, Appendix A(27), Plaintiffs must file any notice of reinstatement within 28 days after the occurrence of this condition;

7. Within fourteen (14) days of the Ninth Circuit's dismissal of the appeal, the Parties agree that they will submit to the district court a request that the district court retain jurisdiction over this Agreement for the sole purpose of resolving disputes that may arise concerning the performance or alleged non-performance of this agreement until the Forest Service issues the Final Environmental Impact Statement and ROD described in Paragraph 3, above, at which time the court's jurisdiction shall terminate. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Should the district court refuse to retain jurisdiction, Plaintiffs may withdraw from this Agreement and move for reinstatement of their appeal as described above;

8. 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 a written notice outlining the nature of the dispute and requesting informal negotiations. The Parties shall meet and confer by phone or in person to attempt to resolve the dispute. If the Parties cannot reach an agreed-upon resolution after 60 days following receipt of a written notice describing the nature of the dispute and requesting informal negotiations or such longer time agreed to by the Parties, then any Party may petition the district court to resolve the dispute. This Agreement may not be enforced through a motion for contempt;

9. Plaintiffs release the Federal Defendants, and all other federal agencies, and all of their officials, from any claims or causes of action challenging the final agency actions that were challenged in the claims alleged in this lawsuit;

10. This Agreement represents the entirety of the undersigned Parties' commitments with regard to settlement;

11. Nothing in this Agreement prohibits Plaintiffs from filing future lawsuits against Federal Defendants to challenge any future agency action undertaken by the Forest Service, including those related to the NEPA and decision-making process described above;

12. This Agreement is for the purpose of settling litigation and nothing in this Agreement shall be deemed a precedent or constitute an admission of fact or law by any party. This Agreement shall not be used or admitted in any proceeding against a party over the objection of that party, except in connection with a motion or other filing seeking relief from the district court or Ninth Circuit as provided in Paragraphs 6 and 7, above;

13. The obligations imposed upon the Federal Defendants under this Agreement can be undertaken only using appropriated funds legally available for that purpose. 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;

14. This Agreement contains all the agreements between the Parties. The Parties 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. Any subsequent modifications to this Agreement must be in writing and must be signed and executed by the counsel of record for the Parties;

15. The parties agree to settle Plaintiffs' claims for attorney fees and costs in this litigation for a total payment of twelve thousand dollars (\$12,000) in full and complete satisfaction of any and all claims, demands, and causes of action Plaintiffs may have for the

recovery of attorneys fees and/or litigation expenses in this case. If the district court agrees to retain jurisdiction over this Agreement, Plaintiffs' counsel shall provide to Federal Defendants' counsel the appropriate account number and other information needed to facilitate payment. Within fourteen (14) days of the receipt of that information, the Federal Defendants will complete an electronic funds transfer to the account number provided by Plaintiffs' counsel. If the district court does not agree to retain jurisdiction, however, and the appeal is subsequently reinstated, then this provision shall have no effect;

16. 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.

**SOMMER
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