

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CONSERVE SOUTHWEST UTAH;
CONSERVATION LANDS FOUNDATION;
CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; SOUTHERN
UTAH WILDERNESS ALLIANCE;
WILDERNESS SOCIETY and WILDEARTH
GUARDIANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR; UNITED STATES BUREAU OF
LAND MANAGEMENT; and UNITED STATES
FISH AND WILDLIFE SERVICE,

Defendants,

and

UTAH DEPARTMENT OF TRANSPORTATION
and WASHINGTON COUNTY, UTAH,

Intervenor-Defendants.

No. 1:21-CV-01506-ABJ

SETTLEMENT AGREEMENT

Plaintiffs and Federal Defendants in the above-captioned action hereby enter into this Settlement Agreement (Agreement).

BACKGROUND

WHEREAS, this action arises from the Final Environmental Impact Statement to Consider a Highway Right-of-Way, Amended Habitat Conservation Plan and Issuance of an Incidental Take Permit for the Mojave Desert Tortoise, and Proposed Resource Management Plan Amendments, Washington County, UT (FEIS), and two records of decision (ROD or

RODs) issued by the Department of the Interior's Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS); BLM's Right-of-Way Grant UTU-93260; and the FWS's Incidental Take Permit No. TE036719-1 (ITP), each of which was issued in January 2021.

WHEREAS, the BLM ROD approved certain amendments to both the Red Cliffs National Conservation Area (NCA) Resource Management Plan (RMP) and the St. George Field Office RMP, as well as the Utah Department of Transportation's (UDOT) 2018 right-of-way (ROW) application for a four-lane divided highway through the NCA. The FWS ROD documented and approved FWS's decision to issue the ITP to Washington County for incidental take of Mojave desert tortoise associated with covered activities identified in the 2020 Amended Washington County HCP.

WHEREAS, on June 3, 2021, Plaintiffs filed the Complaint in this matter (ECF No. 1); and on July 27, 2021, Plaintiffs filed the First Amended Complaint asserting violations of the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), the Omnibus Public Lands Management Act of 2009, and the Land and Water Conservation Fund Act (ECF No. 16).

WHEREAS, on February 27, 2023, Plaintiffs filed a Motion for Summary Judgment (ECF No. 42), Statement of Facts under LCvR 7(h)(2) (ECF No. 42-1), Opening Summary Judgment Brief in Support of Motion for Summary Judgment (ECF No. 42-2), and eleven declarations from Plaintiffs' members and staff providing evidence relating to standing (ECF Nos. 43—44-4), seeking summary judgment on its claims in the First Amended Complaint (ECF No. 16).

WHEREAS, on May 22, 2023, Federal Defendants filed a Motion for Remand and Partial Vacatur (ECF No. 53) (Motion), seeking a voluntary remand of the FEIS and both RODs, the

NCA and St. George Field Office RMPs, and the ITP and the associated biological opinion; and remand and vacatur of the ROW decision and grant.

WHEREAS, Plaintiffs and Federal Defendants desire to settle this action and dismiss the above-captioned matter without prejudice.

AGREEMENT

In exchange for the mutual covenants and promises set forth below and consistent with the Federal Defendants' Motion, Plaintiffs and Federal Defendants hereby agree as follows:

1. Upon signature of this settlement agreement by Plaintiffs and Federal Defendants, Plaintiffs agree to either join the Motion or file a response in support of the Motion. If the Court denies the request to remand the ROW consistent with the timeline proposed in the Motion or denies the Motion in whole, the Agreement will contemporaneously terminate.
2. If the Court issues an order on the Motion remanding the ROW consistent with the proposed timeline and otherwise granting the Motion in whole or in part, but does not dismiss the case, Plaintiffs and Federal Defendants shall jointly move to voluntarily dismiss this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and this Agreement before any further briefing may be required in this case.

Notwithstanding the dismissal of this action, however, Federal Defendants acknowledge that Plaintiffs retain the right to seek relief from judgment or otherwise move to re-open this lawsuit if Federal Defendants do not comply with the terms of this Agreement and any remand order.

3. Upon the district court's ruling on the Motion, Federal Defendants will complete a supplemental EIS, and NHPA consultation (as necessary), by November 2024, subject to any unforeseen delays. BLM will issue a new ROW decision on UDOT's 2018 ROW

application by November 2024, subject to any unforeseen delays. Federal Defendants will submit to the Federal Register a Notice of Intent to prepare a supplemental environmental impact statement consistent with the Federal Defendants' Motion no later than 60 days after the order dismissing the case.

- a. Prior to any new decision on the ROW application, BLM agrees to make a compatibility determination to ensure that the decision is compatible with law, regulation, and policy for a National Conservation Area, consistent with the Omnibus Public Lands Management Act, the Federal Land Policy and Management Act, and those versions of BLM Manual 6220 and BLM's National Monument, National Conservation Areas, and Similar Designations Compatibility Analysis Framework in effect at the time of decision;
 - b. BLM further agrees that, if the new 2024 decision on the ROW application differs from the 2020 ROW decision, it will amend the RMPs to reflect the 2024 decision. Until that additional planning is complete, BLM will not consider or reconsider a similar ROW application within the NCA.
 - c. Within 60 days of a court order remanding the ROW, BLM will (1) inform FWS that the biological opinion associated with the ROW is no longer required and (2) request its withdrawal. Within 60 days of receipt of the request, FWS will withdraw the biological opinion.
4. Upon the district court's ruling on the Motion, the FWS agrees to reconsider the ITP based on BLM's new decision on the ROW application, the SEIS and other relevant information, and, if necessary, review and update the associated biological opinion,

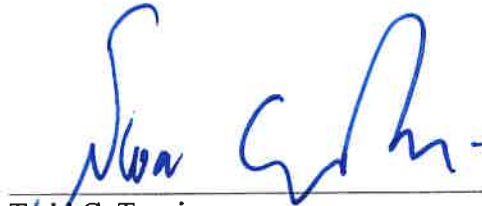
incidental take statement, and incidental take permit, with a timeline for reconsideration by November 2024.

5. Plaintiffs expressly retain any and all rights and opportunities to challenge the adequacy of new final decisions under Paragraphs 3 and 4 in a new civil action, and Federal Defendants retain any and all affirmative defenses.
6. Federal Defendants agree to pay Plaintiffs \$388,734.44 to resolve Plaintiffs' claims for attorneys' fees and costs. Plaintiffs agree to accept \$388,734.44 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys' fees and costs Plaintiffs reasonably incurred in connection with the above captioned litigation through the date of signing of this Agreement.
7. The payment described above will be made to Advocates for the West by electronic funds transfer. Plaintiffs agree to provide to Defendants' counsel the following information necessary for Defendants to process the disbursement: the Payee's address, the Payee's bank account number, the account type, the name of the Payee's bank, the bank routing transit number, the Payee's tax identification number, and each Plaintiff organization's tax identification number. Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award within 14 days from receipt of the necessary information from Plaintiffs or following dismissal of Plaintiffs' claims, whichever is later.
8. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law or regulation.

9. Nothing in this Agreement shall be construed to deprive any federal official of authority to revise, amend, or promulgate regulations, instruction memoranda, resource management plans, other land management decisions or policy or guidance. Nothing in this Agreement shall be deemed to limit the authority of the Executive Branch to make recommendations to Congress on any particular piece of legislation.
10. The Parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were disputed by the Parties in this action. By entering into this Agreement, the Parties do not waive any claim or defense except as expressly stated herein. This Agreement contains all of the terms of agreement between the Parties concerning the Complaint and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understandings not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.
11. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Further, each party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.
12. The terms of Paragraph 1 of this Agreement shall become effective upon execution. As noted in Paragraph 1 of this Agreement, the remaining terms of this Agreement shall become effective only upon entry of an Order by the Court remanding the ROW

consistent with the proposed timeline and otherwise granting the motion in whole or in part.

DATED this 30th day of August, 2023.



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