

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 22, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KETTLE RANGE CONSERVATION

GROUP, a non-profit organization,

Plaintiff,

v.

JOSHUA WHITE, in his official
capacity as Forest Supervisor, Colville
National Forest; RANDY MOORE, in his
official capacity as Chief of the U.S.
Forest Service; UNITED STATES
FOREST SERVICE, a federal agency,
Defendants.

No. 2:23-CV-00147-SAB

ORDER OF DISMISSAL

Before the Court is the parties' Stipulation and Joint Motion for Order for Dismissal with Retained Jurisdiction, ECF No. 48. Plaintiff is represented by Andrew Hawley and Matthew Bishop. Defendants are represented by Davis Backer, Hayley Carpenter, and John Tustin. The motion was considered without oral argument.

Having reached a settlement, the parties request the Court dismiss this matter with prejudice pursuant to Fed. R. Civ. P. 41(a)(2). The parties also request the Court enter the Settlement Agreement and retain jurisdiction for enforcement.

1 The Court grants the Motion and requests.

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. The parties’ Stipulation and Joint Motion for Order for Dismissal with
4 Retained Jurisdiction, ECF No. 48, is **GRANTED**.

5 2. The above-captioned case is **DISMISSED with prejudice**.

6 3. The Court shall retain jurisdiction in this matter for the sole purpose
7 of overseeing compliance with the terms of the Settlement Agreement and any
8 motions to modify the terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
9 U.S. 375 (1994). The Settlement Agreement is entered as follows:

10
11 **SETTLEMENT AGREEMENT**

12 Plaintiff Kettle Range Conservation Group and Defendants Joshua White, in
13 his official capacity as Forest Supervisor of the Colville National Forest, the
14 United States Forest Service, and Randy Moore, in his official capacity as Chief of
15 the Forest Service (collectively, “Defendants”), by and through their undersigned
16 representatives, enter into the following Settlement Agreement (“Agreement”) for
17 the purpose of resolving *Kettle Range Conservation Group v. White, et al.*, Case
18 No. 2:23-cv-00147-SAB (E.D. WA). The Parties state as follows:

19 *Whereas*, Plaintiff challenges the Forest Service’s May 28, 2024, decision to
20 authorize the Bulldog Project in Washington’s Kettle Range mountains in the
21 Colville National Forest;

22 *Whereas*, Plaintiff filed its second amended complaint on August 2, 2024,
23 alleging that Defendants violated the National Environmental Policy Act
24 (“NEPA”), 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.16, the National Forest
25 Management Act (“NFMA”), 16 U.S.C. § 1604(i), and Section 7 of the
26 Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2);

27 *Whereas*, Plaintiff seeks as relief, among other things, that the Court “vacate
28 the Forest Service’s decision, related [Supplemental Environmental Assessment]

1 and biological assessment, and any decisions, actions, permits or contracts
2 implementing the portions of the Bulldog project challenged in this case, as well as
3 the 2020 changes made to the [Lynx Analysis Units],” ECF No. 34 at 71 ¶ C, and
4 remand the matter for “(1) completion of a new NEPA analysis analyzing the
5 direct, indirect, and cumulative effects to lynx, preparation of an EIS, and
6 completion of new, formal Section 7 consultation and the issuance of a biological
7 opinion for the Bulldog project; and (2) completion of a NEPA analysis and
8 Section 7 consultation on changes to the LAUs.” ECF No. 34 at 71-72 ¶ D;

9 *Whereas*, Defendants dispute Plaintiff’s allegations and deny that Plaintiff is
10 entitled to the requested relief;

11 *Whereas*, on August 27, 2024, Defendants decided not to proceed with
12 Project treatments within LAUs at this time (ECF No. 40-1);

13 *Whereas*, on August 28, 2024, the Parties jointly moved to stay all
14 proceedings and vacate remaining briefing deadlines and the October 18, 2024
15 hearing to consider Defendants’ decision and to explore the potential of settlement
16 discussions (ECF No. 40);

17 *Whereas*, on August 29, 2024, the Court granted the stay and vacated the
18 remaining briefing deadlines and hearing date (ECF No. 41);

19 *Whereas* the Court later continued the stay and ordered the Parties to file a
20 status report by November 29, 2024 (ECF No. 43);

21 *Whereas*, the Parties have engaged in good faith settlement negotiations to
22 avoid the time and expense of further litigation;

23 *Whereas*, the Parties believe that it is in the interest of the Parties and
24 judicial economy to resolve the claims in this action without additional litigation;

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

26 1. Bulldog Project: Defendants agree to:

27 a. Rescind the new (2020) LAU boundaries in the Kettle/Wedge Core

28 Area and return to using the old (1995) LAU boundaries as mapped in

1 the 2019 Colville Land Management Plan for core habitat for all
2 projects in the Kettle/Wedge Core Area, including the Bulldog
3 Project, until there is a future decision regarding LAU boundaries for
4 the Core Area;

5 b. Modify the Bulldog Project, as described in the Decision Notice and
6 Finding of No Significant Impact for the Bulldog Project
7 Supplemental Environmental Assessment, May 28, 2024, as follows:

- 8 i. Not authorize vegetation management activities in any area
9 covered by the LAUs, both old and new;
- 10 ii. Not authorize vegetation management activities in units 15, 16,
11 17, 18, and 19 of the Project area, as identified in Exhibit 1 to
12 this Agreement;
- 13 iii. Maintain a canopy cover of greater than 40% in units 140, 141,
14 145, 146, 147, 156, 160, and 856 of the Project area;
- 15 iv. Include western red cedar (*Thuja plicata*) as a preferred leave
16 species in units 140, 141, 145, 146, 147, 156, 160, and 856 of
17 the Project area, giving preference to the largest and most
18 vigorous trees.

19 2. Dismissal of Complaint: The Parties request that the Court enter the
20 accompanying proposed order dismissing this action with prejudice under
21 Federal Rule of Civil Procedure 41(a)(2).

22 3. Notice: Defendants will provide Plaintiff with documentation of the action
23 taken in accordance with Paragraph 1(a) of this Agreement within fourteen
24 (14) days after the documents are finalized. Any notice, including
25 correspondence, required or made with respect to this agreement, shall be in
26 writing and shall be effective upon receipt. For any matter relating to this
27 agreement, the contact persons are:
28

1 For Plaintiff:

2
3 Andrew McAleer Hawley
4 Western Environmental Law Center
5 119 1st Ave S, Suite 330
6 Seattle, WA 98104
7 206-487-7250
8 hawley@westernlaw.org

9
10 Matthew K. Bishop
11 Western Environmental Law Center
12 103 Reeder's Alley
13 Helena, Montana 59601
14 (406) 324-8011
15 bishop@westernlaw.org

16
17 For Defendants:

18
19 John P. Tustin
20 Davis A. Backer
21 Environment and Natural Resources Division
22 U.S. Department of Justice
23 P.O. Box 7611
24 Washington, DC 20044-7611
25 (202) 305-3022 (Tustin)
26 (202) 514-5243 (Backer)
27 john.tustin@usdoj.gov
28 davis.backer@usdoj.gov

1 4. Dispute Resolution: If either Party believes the other Party to be in breach of
2 this Agreement, such Party must give written notice to the other Party as
3 soon as possible. The other Party shall have 14 days to respond to the claim
4 of breach. If such a response is provided, the Parties shall have 30 days to
5 meet and confer (virtually, telephonically, or in person) regarding the
6 alleged breach, and any potential remedy. The Parties agree to suspend the
7 disputed activity or action(s) at issue in the alleged breach during this meet
8 and confer period. If the Parties are unable to resolve the dispute within that
9 time, then a Party may file a motion to enforce the Order. The Parties agree
10 that neither will seek contempt of court as a remedy for any violation of this
11 Settlement Agreement, and the Parties therefore knowingly waive any right
12 that they might have to seek an order for contempt for any such violation.
13 No Party shall seek action by this Court or any other court regarding the
14 alleged breach until either (a) the expiration of the meet and confer period,
15 or (b) the Parties have reached an impasse during the meet and confer
16 period.

17 5. Attorneys' Fees and Costs:

18 a. Subject to Paragraph 5(b) below, the Parties agree to settle Plaintiff's
19 claim to attorney's fees and costs in this litigation for a total payment
20 of \$150,000 (one hundred fifty thousand dollars) pursuant to the
21 Equal Access to Justice Act, 28 U.S.C. § 2412 et seq. or any other
22 statute, in full and complete satisfaction of any and all claims,
23 demands, rights, and causes of action Plaintiff may have for the
24 recovery of attorney's fees or litigation costs in this matter.

25 b. Defendants' payment, as identified in Paragraph 5(a) above, shall be
26 accomplished by electronic funds transfer to Western Environmental
27 Law Center's IOLTA account on behalf of Plaintiff. Counsel for
28 Plaintiff will provide counsel for Defendants the appropriate account

1 number and other information needed to facilitate payment.

2 Defendants will make all reasonable efforts to submit the necessary
3 paperwork for the payment within thirty (30) days after issuance of
4 the Order described in Paragraph 2 above and Plaintiff provides the
5 information necessary to facilitate payment.

6 c. Counsel for Plaintiff shall confirm payment within ten (10) days of
7 receipt. Plaintiff also acknowledges that under 31 U.S.C. §§ 3711,
8 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other
9 authorities, the United States will offset against the award of
10 attorneys' fees and costs Plaintiff's delinquent debts to the United
11 States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

12 d. Plaintiff and its attorneys agree to hold harmless Defendants in any
13 litigation, further suit, or claim arising from the payment of the agreed
14 upon \$150,000 settlement amount.

15 6. Modifications of this Agreement: This Agreement may only be modified
16 upon good cause shown by stipulated motion of all Parties filed with and
17 approved by the Court, or upon written motion filed by one of the Parties
18 and as granted by the Court after appropriate briefing. If either Plaintiff or
19 Defendants seek to modify the terms of this Agreement, they will provide
20 written notice of the proposed modification and the reasons for such
21 modification. The Parties will then meet and confer (virtually,
22 telephonically, or in person) at the earliest possible time and seek this
23 Court's approval for modification. If either Party believes that the other
24 Party has failed to comply with any term or condition of this Agreement, it
25 shall use the dispute resolution procedures specified in Paragraph 4 above.

26 7. Representative Authority: The undersigned representatives of Plaintiff and
27 Defendants certify that they are fully authorized by the Party or Parties
28 whom they represent to enter into the terms and conditions of this

1 Agreement and to legally bind those Parties to it.

- 2 8. Compliance with Other Laws: Nothing in this Agreement shall be
3 interpreted as, or shall constitute, a commitment or requirement that
4 Defendants obligate or pay funds, or take any other actions in contravention
5 of the AntiDeficiency Act, 31 U.S.C. § 1341, or any other applicable law.
6 Nothing in this Agreement is intended to, or shall be construed to, waive any
7 obligation to exhaust administrative remedies; to constitute an independent
8 waiver of the United States' sovereign immunity; to change the standard of
9 judicial review of federal agency actions under the APA; or to otherwise
10 extend or grant the Court jurisdiction to hear any matter, except as expressly
11 provided in the Agreement.
- 12 9. Mutual Drafting and Other Provisions: It is hereby expressly understood
13 and agreed that this Agreement was jointly drafted by Plaintiff and
14 Defendants. Accordingly, the Parties hereby agree that any rule of
15 construction to the effect that ambiguity is construed against the drafting
16 party shall be inapplicable in any dispute concerning the terms, meaning, or
17 interpretation of the Agreement.
- 18 10. Sole and Final Agreement: This Agreement contains all the agreements
19 between Plaintiff and Defendants and is intended to be and is the final and
20 sole agreement between them. Plaintiff and Defendants agree that any other
21 prior or contemporaneous representations or understandings not explicitly
22 contained in this Agreement, whether written or oral, are of no further legal
23 or equitable force or effect. Any subsequent modifications to this Agreement
24 must be made pursuant to Paragraph 6.
- 25 11. No Precedential Value: This Agreement is the result of compromise and
26 settlement, and does not constitute an admission or concession, implied or
27 otherwise, by Plaintiff or Defendants to any fact, claim, or defense on any
28 issue in this litigation. This settlement has no precedential value in any

1 pending or future litigation, representations before any court, administrative
2 action, forum, or any public setting. Defendants do not waive any defenses
3 they may have concerning the claims settled under this Agreement.

4 12. Continued Jurisdiction: The Court will retain jurisdiction over this matter
5 solely to oversee compliance with the terms of this Agreement. *See*
6 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). Any
7 dispute over compliance with any provision of this Settlement Agreement
8 shall proceed as set forth in Paragraph 4.

9 13. Force Majeure: The Parties understand that notwithstanding their efforts to
10 comply with the commitments contained herein, events beyond their control
11 may prevent or delay such compliance. Such events may include natural
12 disasters as well as unavoidable legal barriers or restraints, including those
13 arising from actions of persons or entities that are not party to this
14 Settlement Agreement. A Party is entitled to delay or forego actions under
15 this Settlement Agreement due to events beyond their control, but force
16 majeure shall not continue beyond the circumstances and conditions that
17 prevent timely performance, and shall not apply if alternative means of
18 compliance are available. The Party claiming force majeure shall have the
19 burden of proof in proceedings to enforce or modify the Settlement
20 Agreement.

21 14. Waiver and Release: This Agreement constitutes the complete and final
22 resolution of all legal, equitable, and administrative claims arising out of the
23 Decision Notices, Findings of No Significant Impact, and approval of the
24 Bulldog Project. In acknowledgement of and in exchange for the promises
25 and other consideration contained in this Agreement and the payment by
26 Defendants to Plaintiff referenced in Paragraph 5 above, Plaintiff and its
27 respective affiliates, successors, and assigns hereby unconditionally and
28 irrevocably release, waive, covenant not to sue, and forever discharge

1 Defendants (including its past, present, and future officers, agents, and
2 affiliates) from any and all claims, causes of action, allegations, demands,
3 suits, judgments, liabilities, fees, interests, or obligations, whether known or
4 unknown, foreseen or unforeseen, disclosed or undisclosed, presently
5 asserted or otherwise, based on the same transactions or occurrences that are
6 set forth in the Complaint, Amended Complaint, and Second Amended
7 Complaint, ECF Nos. 1, 19, and 34.

8 15. Effective date: This Agreement becomes effective on the date the Court
9 issues the Order referenced in Paragraph 2 above.

10
11 **IT IS SO ORDERED.** The Clerk of the Court is hereby directed to enter
12 this Order, to provide copies to counsel, and **close** the file.

13 **DATED** this 22nd day of January 2025.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

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Stanley A. Bastian
Chief United States District Judge