

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01932-MSK-STV

CENTER FOR BIOLOGICAL DIVERSITY
and TAYLOR MCKINNON,

Plaintiffs

v.

DEBRA HAALAND, Secretary of the Interior,¹ and
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

STATE OF COLORADO, COLORADO DIVISION OF PARKS AND WILDLIFE,
COLORADO PARKS AND WILDLIFE COMMISSION, and,
NEW MEXICO DEPARTMENT OF GAME AND FISH,

Defendants-Intervenors.

**JOINT MOTION FOR ORDER RESOLVING PLAINTIFFS' ATTORNEYS' FEES AND
COSTS**

Plaintiffs Center for Biological Diversity and Taylor McKinnon and Federal Defendants Debra Haaland and the U.S. Fish and Wildlife Service jointly move for a court order that resolves Plaintiffs' claim to attorney fees and costs in this matter.

On November 16, 2020, Plaintiffs moved under the Endangered Species Act, 16 U.S.C. § 1540(g)(1)(C) to recover their attorneys' fees and costs. ECF Doc. 106. Pursuant to Local Rules, Federal Defendants' deadline for opposing the motion was December 4, 2020. Federal Defendants moved for and received an extension of time to respond until January 19, 2021, in

¹ Debra Haaland is automatically substituted for former defendant David Bernhardt pursuant to Federal Rule of Civil Procedure 25(d).

part because their appeal deadline was December 30, 2020 and to allow for the parties to negotiate a resolution. ECF Doc. 107. A second extension until March 22, 2021 was approved so that the parties could continue their negotiations. ECF Doc. 109. A further two-week extension was allowed so that Federal Defendants could secure final approvals of the parties' agreement in principle. ECF Doc. 111, 112.

As a result of their good faith negotiations, the parties have now reached an agreement on a reasonable amount of attorney fees and costs. The parties agree that it is in the interest of the parties and judicial economy to settle Plaintiffs' claim for attorney fees and costs in this action without additional litigation.

Accordingly, the parties agree and stipulate and request a court order as follows:

1. Federal Defendants will pay Plaintiffs \$140,000.00 to settle Plaintiffs' claim for costs and attorney fees. Plaintiffs agree to accept payment of \$140,000.00 in full satisfaction of any and all claims for attorneys' fees and costs incurred in this litigation, through and including the date of this Agreement.

2. Plaintiffs agree that receipt of this payment of \$140,000.00 shall operate as a release of any and all claims for attorneys' fees and costs that they possess against the United States, including each named Federal Defendant, incurred in the above-captioned matter, through and including the date of this Agreement.

3. Federal Defendants' payment, as identified in Paragraph 1 above, shall be accomplished via electronic payment. Within ten business days after the entry of an order approving this Agreement, Plaintiffs agree to provide Federal Defendants' counsel with the following information necessary for Federal Defendants to process the electronic transfer: (i) the names of the payees; (ii) the payees' addresses; (iii) the payees' telephone numbers; (iv) the

names of the payees' banks where the funds will be deposited; (v) the cities and states that the banks are located in; (vi) the payees' bank account numbers; (vii) account types; (viii) bank routing numbers; (ix) transit numbers; (x) the payees' tax identification numbers; and (xi) Plaintiffs' tax identification numbers.

4. Federal Defendants' counsel agrees to submit all necessary paperwork for the payment of the above amount to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) business days of receipt of a signed Court order approving this Agreement or Plaintiffs providing the necessary information outlined in Paragraph 3, whichever is later. Federal Defendants shall pay the agreed-upon amount to Plaintiffs by electronic funds transfer in accordance with information provided by Plaintiffs.

5. Plaintiffs shall send written confirmation of the receipt of payment to Federal Defendants' counsel.

6. Plaintiffs and Plaintiffs' counsel agree to hold Federal Defendants harmless in any litigation, further suit, or claim arising from errors not attributable to Federal Defendants that are related to the authorized transfer of the agreed-upon settlement amount.

7. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Federal 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 law or regulation.

8. By this Agreement, Federal Defendants do not waive any right to contest fees claimed by Plaintiffs or Plaintiffs' counsel in any future litigation. Further, this Agreement has no precedential value in any other context and shall not be cited in any other litigation except as necessary to enforce the terms of this Agreement.

9. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.

10. Plaintiffs and Federal Defendants have conferred with Defendant-Intervenors (*i.e.*, State of Colorado, Colorado Division of Parks and Wildlife, and Colorado Parks and Wildlife Commission; and New Mexico Department of Game and Fish) about this motion, and Defendant-Intervenors have confirmed that they will not oppose this motion.

11. Plaintiffs' Motion for Attorney Fees and Costs (ECF Doc. 106) is hereby withdrawn as moot.

12. The undersigned representatives of each party certify that they are fully authorized by the party they represent to agree to the Court's entry of the terms and conditions of this Agreement and that they agree to the terms herein.

Respectfully submitted,

Dated: April 1, 2021

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Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Kamela A. Caschette

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