

FILED
U.S. DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

SEP 10 1998 *du*

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FOREST GUARDIANS,)
)
Plaintiff,)
)
v.)
)
MICHELLE J. CHAVEZ, State)
Director, Bureau of Land Management,)
U.S. Department of the Interior,)
)
Defendant.)
_____)

Civil No. 96-0693 JP/LCS

SETTLEMENT AGREEMENT

WHEREAS, the plaintiff, Forest Guardians, commenced this lawsuit on May 20, 1996, against the federal defendant, Michelle Chavez^{1/}, in her official capacity as State Director, New Mexico State Office, Bureau of Land Management (BLM);

WHEREAS, this lawsuit originally involved plaintiff Forest Guardians claims of violations of the Endangered Species Act (ESA), 16 U.S.C. §§1531-1534 (Claims for Relief 1-3) and the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321-4370d (Claim for Relief 4);

WHEREAS, on November 8, 1996, this Court issued an order dismissing Claims for Relief one through three on the basis of a settlement agreement and stipulated dismissal entered into by the named parties to this action;

^{1/} The lawsuit was originally commenced against former State Director William Calkins in his official capacity as the State Director for the New Mexico Bureau of Land Management. Pursuant to Fed. R. Civ. P. 25(d), Michelle Chavez, the current State Director, has been substituted in her official capacity as the named defendant.

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WHEREAS, on November 12, 1997, the federal defendant proposed a settlement of the Fourth Claim for Relief;

WHEREAS, in February, 1998, the named parties entered into further settlement discussions concerning Plaintiff's Fourth Claim for Relief. Pursuant to this Court's order, the settlement discussions included counsel for parties identified as the proposed-intervenors;

WHEREAS, on or about April 2, 1998, Plaintiff amended its Complaint with three new Claims for Relief alleging violations of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1785, (Claims 5-7);

WHEREAS, in June, 1998, the named parties reinitiated settlement discussions regarding Plaintiffs NEPA and FLPMA claims. Again, those discussions included counsel for the proposed-intervenors;

WHEREAS, the BLM has completed Southwestern Willow Flycatcher Management Plans (SWFMP) for the following resource or district offices: (1) Farmington District; (2) Mimbres Resource Area; (3) Rio Puerco Resource Area; and (4) Taos Resource Area. As part of this process the BLM completed an accompanying environmental assessment (EA) for each of the four Management Plans;

WHEREAS, the Southwestern Willow Flycatcher Management Plans will serve as guidance pending completion of a recovery plan for the Southwestern Willow Flycatcher (SWF). The BLM began implementation in the spring of 1998;

WHEREAS, the plaintiff and the defendant agree, without admission or adjudication of fact or law, that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

THEREFORE, the parties agree as follows:

GENERAL PROVISIONS

1. The provisions of this agreement shall apply to the plaintiff and the federal defendant, and anyone acting on their behalf;
2. The undersigned representatives of each party certify that such representative is fully authorized by the party represented to enter into the terms and conditions of this settlement agreement and to legally bind them to it;
3. This written agreement contains all of the agreements between the parties, and is intended to be and is the final and sole agreement between the parties. The parties agree that any other 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;

ENVIRONMENTAL ANALYSIS

4. The BLM will prepare an Environmental Impact Statement (EIS) for the Farmington District, the Taos Resource Area, the Mimbres Resource Area, and the Rio Puerco Resource Area, respectively;
5. Each of the four EISs discussed above will analyze a broad range of reasonable alternative strategies for the management of the riparian and aquatic habitat found within the subject resource area, taking into account the competing demands placed on that habitat, including but not limited to recreation, livestock grazing, and mineral development. The BLM will consider at least one alternative that may not conform to the current Resource Management Plans (RMPs). If the

BLM selects such an alternative as the preferred alternative, the BLM will amend or revise the respective RMP or RMPs accordingly;

6. The current Environmental Assessments and Management Plans for each of the four district or resource areas will thus remain in effect up to and upon signing of Record of Decision (ROD) for the EISs;
7. The BLM will submit for publication in the Federal Register a Notice of Intent to complete an EIS for each of the four named district or resource areas and circulate to interested members of the public a scoping letter requesting input on their intent to complete the EISs no later than sixty days following approval of this agreement by the Court;
8. The parties agree that the substance of the riparian habitat management plans adopted at the conclusion of the NEPA process shall be binding on the BLM;

TIMEFRAME

9. Upon close of the thirty day comment period on the scoping letter and a fifteen day review period, it is estimated that it may take as long as twenty-four months to complete the four EISs;
10. The parties acknowledge that the process to complete an Environmental Impact Statement is both time and resource intensive. The BLM shall make a diligent effort to ensure that they perform their responsibilities and obligations under this settlement agreement in a timely manner;

11. The plaintiff agrees that by signing this stipulation, it will forego the filing of any new complaint that purports to challenge the adequacy of the Management Plans or the Environmental Assessments;
12. Plaintiff hereby represents that Forest Guardians and its counsel have been provided an opportunity to review the Management Plans and Environmental Assessments for the Farmington District, the Rio Puerco Resource Area, the Mimbres Resource Area, and the Taos Resource Area;

FENCING OF RIPARIAN AREAS

13. a. BLM agrees to complete by October 15, 1998, the fencing of the following potential SWF habitat area in accordance with the SWF HMP for the Rio Puerco Resource Area: Coal Creek allotment;
- b. BLM agrees to promptly proceed with and complete by May 1, 1999, the fencing of the following potential SWF habitat area in accordance with the SWF HMP for the Rio Puerco Resource Area and the Farmington District: Rio Cebolla; Santa Cruz River; Azabache allotment; and Pump Canyon allotment;
- c. BLM agrees to promptly proceed with and complete by May 1, 2000, the fencing of the following potential SWF habitat area in accordance with the SWF HMP for the Taos Resource Area and the Farmington District: Santa Fe River, La Cieneguilla allotment; and, San Juan, La Plata, and Animas Rivers, numerous unfenced tracts;
- d. Pursuant to BLM's grazing regulations, BLM will consult with any affected permittee on the location of the fences;

ATTORNEYS FEES AND EXPENSES

14. The BLM agrees that it will pay plaintiff's reasonable attorney's fees and costs for the prosecution of this action. The plaintiff will provide the BLM with an itemized fee and cost bill within twenty days of execution of this agreement. The parties shall endeavor in good faith to reach agreement as to the appropriate amount of attorney's fees and costs within the forty-five day period following BLM's receipt of the fee and cost bill. If the parties are unable to reach agreement, the parties shall request the assistance of Magistrate Judge Leslie C. Smith in resolving the issue before the matter is litigated;

DISMISSAL OF ACTION


15. The parties agree that this action shall be dismissed with prejudice pursuant to the provisions of Federal Rule of Civil Procedure 41(a)(1), provided, however, that plaintiff reserves the right to challenge the riparian habitat management plans on any legal basis, including the right to challenge the substantive adequacy of the plans under FLPMA. Pursuant to this dismissal, the plaintiff agrees that it shall be barred from filing further substantive challenges to the adequacy of the BLM's management of riparian areas, as set forth in the four existing RMPs, which are the subject of plaintiff's FLPMA claims. The parties agree to file the attached Stipulation of Voluntary Dismissal. The Court shall retain jurisdiction over this matter for the limited purposes of resolving any subsequent litigation over the plaintiff's petition for attorney's fees and costs.

16. Nothing in this agreement shall be construed to commit federal funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

Respectfully submitted,

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Attorneys for Defendant

Dated: 8/27/98

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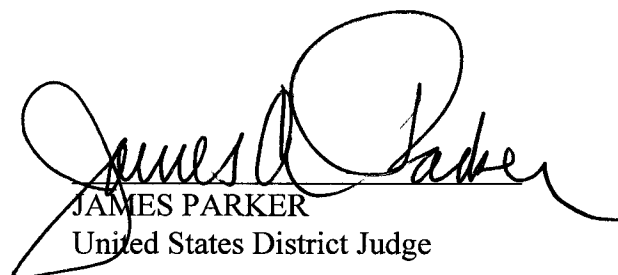
Attorney for Plaintiff

Dated: 9/7/98

ORDER

Based on the foregoing stipulation of the parties, and for good cause shown, the stipulation of the parties is hereby incorporated into, and made an order of the Court.

IT IS SO ORDERED this 10th day of SEPTEMBER, 1998.


JAMES PARKER
United States District Judge