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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NORTHWOODS WILDERNESS)
RECOVERY, et al.,)
)
Plaintiffs,)
v.)
)
DIRK KEMPTHORNE, et al.,)
Defendants.)

Case No. 08-CV-1407 (BMM) (SEC)
**STIPULATED SETTLEMENT
AGREEMENT AND PROPOSED
ORDER OF DISMISSAL**

Plaintiffs, Northwoods Wilderness Recovery, the Michigan Nature Association, Door County Environmental Council, the Habitat Education Center, Natural Resources Defense Council, and the Center for Biological Diversity; and Federal Defendants, Dirk Kempthorne, Secretary of the United States Department of the Interior, H. Dale Hall, Director of the United States Fish and Wildlife Service, and the United States Fish and Wildlife Service (collectively “Service”), by and through their undersigned counsel, state as follows:

WHEREAS, on January 26, 1995, the Service listed the Hine’s emerald dragonfly, *Somatochlora hineana* (“dragonfly”), as an endangered species under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-44; 60 Fed. Reg. 5,267;

WHEREAS, pursuant to 16 U.S.C. § 1533(b)(5), on July 26, 2006, the Service issued a proposed critical habitat designation for the dragonfly, 71 Fed. Reg. 42,442;

WHEREAS, pursuant to 16 U.S.C. § 1533(b)(2) and 16 U.S.C. § 1533(b)(6)(A), on September 5, 2007, the Service issued a final rule designating 13,221 acres as critical habitat for the dragonfly, 72 Fed. Reg. 51,102; 50 C.F.R. § 17.95(i);

WHEREAS, in making the final critical habit determination, the Service, pursuant to 16 U.S.C. § 1533(b)(2), excluded 14,269 acres of proposed critical habitat lands, including proposed units totaling 12,963 acres of Federal lands within Michigan’s Hiawatha National Forest, and proposed units totaling 786 acres, Federally owned in whole or in part, within Missouri’s Mark Twain National Forest, 72 Fed. Reg. at 51,117;

WHEREAS, on March 10, 2008, Plaintiffs filed a Complaint for declaratory and injunctive relief, challenging the Service’s designation of critical habitat pursuant to 16 U.S.C. § 1540(g)(1)(C);

WHEREAS, Plaintiffs' Complaint specifically challenged the Service's exclusion of Federally-owned National Forest lands ("federal exclusions") from the critical habitat designation;

WHEREAS, the parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' Complaint;

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Service agrees to a remand without vacatur of the critical habitat designation in order to reconsider the federal exclusions from the designation of critical habitat for the Hine's emerald dragonfly.
2. On or before April 15, 2009, the Service shall submit to the Federal Register a notice reopening the July 26, 2006 proposed critical habitat designation for public comment, and advising the public that the Service intends to revisit the federal exclusions. Upon publication of this notice, the July 26, 2006 proposed critical habitat designation shall be reinstated as a proposed rule.
3. The Service will submit a revised final critical habitat designation for the Hine's emerald dragonfly, pursuant to 16 U.S.C. § 1533(b)(6), to the Federal Register by April 15, 2010.
4. During the pendency of the remand described in Paragraphs 1-3, and until the effective date of the revised final critical habitat determination referenced in Paragraph 3, the existing designation of critical habitat for the Hine's emerald dragonfly shall remain in place and effective.

5. This Agreement only requires the Defendants to take actions by the deadlines specified in Paragraphs 2 and 3 and does not limit the Service's authority with regard to the substantive outcome of any determinations. To challenge any final rule issued in accordance with this Agreement, Plaintiffs will be required to file a separate action. Plaintiffs do not waive their ability to challenge substantive decisions made by the Defendants pursuant to Paragraphs 2 and 3, above, and Defendants do not waive any applicable claims or defenses.

6. The Order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadline for the actions specified in Paragraphs 2-3, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute or seeking enforcement, shall provide the other party with notice of the claim. The parties agree that they will meet and confer (in-person not required) at the earliest possible time in a good-faith effort to resolve the claim before pursuing relief from the Court. If the parties are unable to resolve the claim after meeting and conferring, either party may pursue relief from the Court.

7. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute lawful designation of critical habitat, or a lawful timetable therefor, in any other proceeding involving the Service's implementation of the ESA or any other statute.

8. Defendants agree that Plaintiffs are the “prevailing parties” in this action, and agree to pay to Plaintiffs reasonable attorneys’ fees and costs, pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540 (g). Therefore, Defendants agree to settle all of Plaintiffs’ claims for costs and attorneys’ fees in the above-captioned litigation for a total of \$30,000.00. A check will be made payable in that amount to Plaintiffs’ undersigned counsel, the Natural Resources Defense Council, and transmitted to Aaron Bloom, 40 West 20th St., New York, NY 10011.

9. Defendants agree to submit all necessary paperwork for the processing of the attorneys’ fee award 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 the court order approving this Agreement.

10. Plaintiffs agree to accept payment of \$30,000.00 in full satisfaction of any and all claims for attorneys’ fees and costs of litigation to which Plaintiffs are entitled in the above-captioned litigation, through and including the date of this agreement. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs’ claims for attorneys’ fees and costs in this matter, through and including the date of this agreement.

11. The parties agree that Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to this agreement arising from a need to enforce or defend against efforts to modify the underlying schedule outlined in Paragraphs 2-3, or for any other unforeseen continuation of this action. By this agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs or Plaintiffs’ counsel, including the hourly rate, in any future litigation, or continuation of the present action. Further, this stipulation as to attorneys’ fees and costs has no precedential value and shall not be used as evidence in any other attorneys’ fees litigation.

12. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the Endangered Species Act, the Administrative Procedure Act, or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

13. No provision of this Agreement shall be interpreted as, or constitute, a commitment, or requirement, that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

14. The parties agree that this Agreement was negotiated in good faith and constitutes a settlement of claims that were disputed by the parties. By entering into this Agreement no party waives any claim or defense.

15. 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 this Agreement and do hereby agree to the terms herein.

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

17. Upon entry of this Agreement by the Court, all counts of Plaintiffs' Complaint shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1). Notwithstanding the dismissal of this action, the parties hereby stipulate and respectfully request that the Court retain

jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994).

Dated: January 13, 2009

Respectfully submitted,

/s/ Aaron Bloom (as authorized on 1/13/09)
Aaron Bloom
NATURAL RESOURCES DEFENSE COUNCIL
Attorney for Plaintiffs

RONALD J. TENPAS
Assistant Attorney General
JEAN E. WILLIAMS, Section Chief

/s/ Lawson E. Fite
LAWSON E. FITE, Trial Attorney
U.S. Department of Justice
Wildlife & Marine Resources Section
Environment & Natural Resources Division

Attorneys for Defendants

ENTER:

HON. BLANCHE M. MANNING
UNITED STATES DISTRICT JUDGE