

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

Jun 07, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONVERSATION NORTHWEST
and WILDEARTH GUARDIANS,

Plaintiffs,

v.

US FOREST SERVICE and
RODNEY SMOLDEN, Forest
Supervisor, Colville National Forest,

Defendants.

NO: 2:20-CV-450-RMP

STIPULATED ORDER OF
DISMISSAL WITH PREJUDICE

Plaintiffs Conservation Northwest and WildEarth Guardians (“Plaintiffs”) and Defendants the United States Forest Service and Rodney Smoldon, Forest Supervisor of the Colville National Forest (“Defendants”) (collectively “the Parties”) stipulate and state as follows:

WHEREAS, in September of 2019, Defendant Rodney Smoldon signed a document entitled “Rational and Justification for MVUM changes 2019” that stated the U.S. Forest Service was modifying the designated classes of vehicles allowed on specific roads within the Colville National Forest (“Action”);

1 WHEREAS, the Action changed the vehicle use class designations for 26 road
2 segments from open to highway legal vehicles only to open to all vehicles, which
3 opened those roads to use by all-terrain vehicles;

4 WHEREAS, on April 1, 2020, the U.S. Forest Service published new motor
5 vehicle use maps that adopted the vehicle use class designation changes announced
6 in the Action (“Maps”);

7 WHEREAS, on September 14, 2020, Plaintiffs provided Defendants with 60-
8 days’ notice of Plaintiffs’ intent to sue Defendants under the Endangered Species
9 Act (“ESA”), alleging, among other things, that Defendants had violated the ESA by
10 failing to initiate or complete consultation under ESA section 7(a)(2) before issuing
11 the Action and the Maps;

12 WHEREAS, on December 7, 2020, Plaintiffs filed their Complaint against
13 Defendants alleging violations of the ESA, the National Environmental Policy Act,
14 the Travel Management Rule, and the Administrative Procedure Act;

15 WHEREAS, in their Complaint Plaintiffs asked the Court to set aside and
16 vacate the Action and the Maps, to reinstate the former motorized use designations
17 and use maps, and to award Plaintiffs litigation expenses including costs and
18 reasonable attorneys’ fees;

19 WHEREAS, on April 30, 2021, Defendants decided to withdraw the Action
20 and the Maps and to reinstate the former motorized use designations and use maps;
21 and

1 WHEREAS, in light of Defendants’ decision to withdraw the decision
2 challenged in this lawsuit, Plaintiffs and Defendants, through their authorized
3 representatives, have agreed to dismiss the case on the terms set forth below and to
4 allow Plaintiffs to apply for an award of attorneys’ fees and costs under the ESA.

5 NOW THEREFORE, Plaintiffs and Defendants agree and stipulate as follows:

6 1. In light of Defendants’ withdrawal of the challenged Action and Maps
7 and the reinstatement of the former motorized use designations and use maps, upon
8 entry of these stipulations as an order of the Court this case is dismissed with
9 prejudice;

10 2. Nothing in this Stipulated Order of Dismissal shall preclude Plaintiffs
11 from challenging, in a separate lawsuit, any of Defendants’ future decisions, maps,
12 or compliance with applicable laws;

13 3. Plaintiffs are entitled to an award of attorneys’ fees and costs under the
14 ESA because an award is “appropriate” because Plaintiffs achieved some degree of
15 success on the merits. 16 U.S.C. § 1540(g)(4). Plaintiffs’ lawsuit catalyzed
16 Defendants’ voluntary compliance with the law and there are no special
17 circumstances that make an award of costs and fees unjust;

18 4. Plaintiffs have the right to seek recovery of attorneys’ fees and costs
19 under the ESA incurred in connection with this action and Defendants have the right
20 to contest the reasonableness of Plaintiffs’ attorneys’ time and hourly rates and to
21 request that time billed on non-ESA-related claims be excluded. The deadline set

1 forth in Federal Rule of Civil Procedure 54(d) is extended from fourteen (14) days to
2 sixty (60) days. Plaintiffs may file a petition for litigation expenses, attorneys' fees,
3 and costs under the ESA up to sixty (60) days after entry of this Stipulated Order of
4 Dismissal as an Order of the Court;

5 5. The Parties agree that Plaintiffs will not separately apply for an award
6 of attorneys' fees and costs under the Equal Access to Justice Act or any other
7 statute; and

8 6. These stipulations become effective upon entry as an Order of the
9 Court.

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

11 1. The parties' Stipulated Motion to Dismiss, **ECF No. 21**, is
12 **GRANTED**, and the parties' Stipulated Order of Dismissal is **APPROVED**.

13 2. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

14 3. All pending motions, if any, are **DENIED AS MOOT**.

15 4. All scheduled court hearings, if any, are **STRICKEN**.

16 5. Plaintiffs may file a petition for litigation expenses, attorneys' fees, and
17 costs under the ESA up to sixty (60) days after entry of this Stipulated Order of
18 Dismissal.

19 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
20 Order, enter judgment of dismissal with prejudice, and provide copies to counsel.

21 **DATED** June 7, 2021.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge