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Of Attorneys for Defendants United States

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT ASS’N,

Plaintiff,

Case No. 05-1587-ST

v.

SETTLEMENT AGREEMENT

U.S. DEPARTMENT OF THE INTERIOR,
GALE A. NORTON, Secretary, U.S. Department
of the Interior, **ELAINE M. BRONG**, State
Director, Oregon State Office, U.S. Bureau of
Land Management, and **DANA SHUFORD**,
District Manager, Burns District BLM,

Defendants.

Plaintiff Oregon Natural Desert Association (“Plaintiff”) and Defendants U.S. Department of the Interior *et al.* (“Defendants”), by and through their undersigned attorneys, hereby say as follows:

WHEREAS, Plaintiff filed this action on October 17, 2005, alleging that Defendants have violated the Freedom of Information Act (“FOIA”) and Administrative Procedure Act (“APA”) with respect to processing Plaintiff’s FOIA requests dated November 20, 2003 and November 15, 2004; and

WHEREAS, Defendants filed their Answer to said Complaint on November 17, 2005, denying Plaintiffs’ claims in all material respects; and

WHEREAS, Defendants filed their Motion for Summary Judgment with an attached Vaughn Index on November 28, 2005; and

WHEREAS, Plaintiffs filed a Response to Defendants’ Motion for Summary Judgment and Motion for Summary Judgment on December 16, 2004; and

WHEREAS, the parties proposed and the court set a briefing schedule with respect to said motions for summary judgment; and

WHEREAS, each party, by and through the undersigned counsel, consented, pursuant to 28 U.S.C. § 636(c), to U.S. Magistrate Judge Stewart to handle this matter and render judgment; and

WHEREAS, Plaintiff has indicated that four documents (numbers 7, 8, 14, 18) were not properly withheld under Exemption 5 of the FOIA, and Defendants, upon further review of those documents, still believes that those documents were properly excluded under Exemption 5; and

WHEREAS, counsel for the parties have been pursuing settlement options to avoid further litigation of this matter, and the parties have now reached a compromise settlement to resolve all Plaintiff's claims herein;

NOW THEREFORE, the parties hereby AGREE AS FOLLOWS:

1 Defendants shall initiate a new search for documents responsive to ONDA's November 20, 2003 FOIA request (as amended and renewed November 15, 2004). Defendants shall search the Bureau of Land Management's ("BLM") records within the Burns District or with or between the BLM State or D.C. Headquarters offices and produce any and all such non-exempt records that would be responsive to Plaintiff's FOIA request as of the date of publication of the Record of Decision for the Andrews-Steens Resource Management Plan (August, 2005). If the search produces information or documents which the agency considers is protected by one of the nine FOIA exemptions or other applicable law, the agency will provide to Plaintiff an explanation for withholding such document. The explanation will include an identification of each document withheld, the statutory exemption or other law applicable to each document, and a detailed explanation as to how disclosure of the particular document would damage the interest protected by the claimed exemption or protected right.

2. Defendants shall complete the search and production process described in Paragraph 1 within forty-five (45) days of the signing of this settlement agreement. As part of the search, Defendants shall provide copies of the relevant documents and, if applicable, the information described above supporting the withholding of any documents. If the parties are unable to reach agreement as to the applicability of any exemption or right to withhold documents, either party may invoke the Court's continuing jurisdiction as requested in the Notice to Court Regarding Pending Settlement.

3. Defendants shall, within seven (7) days of the signing of this settlement agreement, provide additional information to Plaintiff further explaining the contents of the redacted documents (numbers 7, 8, 14, 18) and their place in the BLM's decisions surrounding the Oregon Natural Desert Association's wilderness inventory proposals and the Andrews-Steens Resource Management Plan. If the parties are unable to reach agreement as to the applicability of any exemption or right to withhold these documents, either party may invoke the Court's continuing jurisdiction as requested in the Notice to Court Regarding Pending Settlement.

4. Defendants agree to pay Plaintiff its reasonable attorney fees and costs associated with Plaintiff's litigation of this matter, in the amount of \$ 18,299.87. Defendants will immediately initiate the process to complete payment of these funds and provide documentation (via a letter) regarding the initiation of that process. Payment of the settlement amount will be made by the Treasury of the United States for Eighteen Thousand Two Hundred Ninety Nine dollars and Eighty Seven cents (\$ 18,299.87) and made payable to Oregon Natural Desert Association, Plaintiff. Plaintiffs' attorney agrees to confirm that settlement proceeds are distributed to the Plaintiff, and to obtain a dismissal of the above-captioned action.

5. Upon full satisfaction of the terms of this Settlement Agreement by the parties, Plaintiff's claims herein and this entire action shall be dismissed by a stipulated notice of dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1). Satisfaction of the terms of this Settlement Agreement by the parties shall resolve and satisfy any and all claims, demands, rights, and causes of action related to the specific Freedom of Information Act request which was the subject and described in this underlying litigation. This Settlement Agreement shall have no impact on other FOIA requests or FOIA actions initiated by the Plaintiff.

6. Notwithstanding the parties' entry into this settlement agreement, the parties have requested that U.S. Magistrate Judge Stewart retain jurisdiction over this matter pending full satisfaction of the terms of this Agreement.

7. The parties agree that satisfaction of and compliance with the terms of this Agreement shall be made in good-faith. In the event either party is dissatisfied with the other party's satisfaction of the terms of this Agreement, the parties agree to seek to resolve any such conflict with the other party. The parties therefore agree that in the event of any such conflict, the non-satisfied party shall promptly notify the other party of the perceived conflict. The parties agree that they shall then engage in a period of good-faith negotiation, not to exceed seven (7) days, in an attempt to resolve any such conflict. In the event the parties cannot resolve such conflict even after such negotiation, either party may then invoke the Court's continuing jurisdiction, as described above in Paragraph 6.

8. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement, and do hereby agree to the terms herein.

9. Subject to the qualifications in Paragraph 5, no provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the Defendants take actions in contravention of the FOIA or any other law or regulation, either substantive or procedural.

10. This Settlement Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed claims under

the Freedom of Information Act and/or claims against federal employees and avoiding the expenses and risks of further litigation.

11. The terms of this Agreement shall become effective upon the parties' signing of the Agreement.

IT IS SO AGREED.

FOR PLAINTIFF

_____ DATED _____

Peter M. Lacy (OSB # 01322)
Oregon Natural Desert Association

Of Attorneys for Plaintiff

FOR DEFENDANTS

_____ DATED _____

Tim W. Simmons, OSB # 92461
Attorney for the United States