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10 *Attorneys for Federal Defendants*

11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**
 14

15	HOOPA VALLEY TRIBE,)	Case No. 3:16-cv-04294-WHO
16)	
17	Plaintiff,)	STIPULATED SETTLEMENT OF
18)	PLAINTIFF’S CLAIM FOR COSTS OF
19	v.)	LITIGATION INCLUDING
20)	REASONABLE ATTORNEY AND
21)	EXPERT WITNESS FEES
22	U.S. BUREAU OF RECLAMATION, et al.,))	
23)	
24	Defendants,)	
25	and)	
26)	
27	KLAMATH WATER USERS)	
28	ASSOCIATION, et al.,)	
)	
	Defendant-Intervenors.)	

26 This Stipulated Settlement Agreement is made between Plaintiff Hoopa Valley Tribe
 27 (“Plaintiff”) and Federal Defendants the Bureau of Reclamation and National Marine Fisheries
 28 Service (the “Federal Defendants”) (collectively referred to as “the Parties”) to resolve

1 Plaintiff's claim to recover the costs of litigation, including reasonable attorney and expert
2 witness fees, incurred in the above-captioned matter pursuant to § 11(g)(4) of the Endangered
3 Species Act, 16 U.S.C. § 1540(g)(4).

4 In support of this Stipulation, the Parties state as follows:

5 WHEREAS Plaintiff filed a complaint in the above-captioned litigation on July 29, 2016
6 asserting four separate claims for relief; and

7 WHEREAS Federal Defendants filed a motion to dismiss the complaint on October 5,
8 2016; and

9 WHEREAS on December 1, 2016 Plaintiff filed a motion for partial summary judgment
10 solely on its first claim for relief; and

11 WHEREAS on January 27, 2017, the Court held a hearing on all of the pending motions;
12 and

13 WHEREAS on February 8, 2017, the Court issued an Order: (1) denying Federal
14 Defendants' motion to dismiss; (2) denying Federal Defendants' motion to limit review to the
15 administrative record; and (3) granting Plaintiff's motion for partial summary judgment on its
16 first claim for relief; and

17 WHEREAS the Court instructed the parties to meet and confer on the terms of a
18 proposed order, which they timely submitted to the Court, and which the Court entered on
19 March 24, 2017 as a modified injunction; and

20 WHEREAS on July 26, 2017, Plaintiff stipulated to the voluntary dismissal of all
21 remaining claims and the Court entered a final judgment on August 3, 2017; and

22 WHEREAS the final judgment extended the period of time to file any motion for
23 recovery of attorneys' fees and/or costs to ninety (90) days from the date of the final judgment;
24 and

25 WHEREAS Federal Defendants filed notices of appeal on April 21, 2017 and
26 September 29, 2017; and

1 WHEREAS on October 30, 2017 the Court approved the Parties' October 20, 2017
2 stipulation to enlarge the time for Plaintiff's motion for costs of litigation, including reasonable
3 attorney and expert witness fees until January 30, 2018; and

4 WHEREAS on January 23, 2018 the Court approved the Parties' January 23, 2018
5 stipulation to enlarge the time for Plaintiff's motion for costs of litigation, including reasonable
6 attorney and expert witness fees until ninety (90) days after the appeals in the U.S. Court of
7 Appeals for the Ninth Circuit were fully resolved; and

8 WHEREAS the U.S. Court of Appeals for the Ninth Circuit granted Federal Defendants'
9 and Defendant-Intervenors' motions to voluntarily dismiss their respective appeals on
10 December 21, 2018 and, pursuant to the Parties' request, remanded the case to the District Court
11 for a determination of Plaintiff's entitlement to the costs of litigation; and

12 WHEREAS on March 13, 2019, the Parties stipulated to further extend the deadline for
13 Plaintiff to file a motion for attorneys' fees, costs, and expenses from January 30, 2019 to April
14 30, 2019; and

15 WHEREAS Plaintiff filed a motion to recover the costs of litigation, including attorney
16 and expert witness fees, on March 18, 2019; and

17 WHEREAS the Court approved the Parties' March 13, 2019 stipulation on March 21,
18 2019; and

19 WHEREAS on April 23, 2019, the Parties filed a stipulation to extend the date for
20 Plaintiff to file any amendment to its motion for costs of litigation, including attorney and expert
21 witness fees, to May 22, 2019; and

22 WHEREAS Plaintiff filed an amended motion for costs of litigation, including attorney
23 and expert witness fees, on April 30, 2019; and

24 WHEREAS on May 17, 2019 the Court approved the Parties' May 14, 2019 stipulation
25 to stay briefing on Plaintiff's motion for costs of litigation, including attorney and expert
26 witness fees for a period of 30 days, to June 16, 2019; and

1 WHEREAS without any admission or final adjudication of the issues of fact or law with
2 respect to Plaintiff's claim for costs of litigation, including attorneys' fees, the Parties have
3 reached a settlement of Plaintiff's claim;

4 NOW, THEREFORE, in the interests of judicial economy and to avoid the need for
5 further litigation, the Parties, for good and valuable consideration, the adequacy of which is
6 hereby acknowledged, hereby stipulate and agree as follows:

7 1. Federal Defendants agree to settle Plaintiff's entire claim for any and all attorney
8 and expert witness fees, expenses, and costs in the above-captioned matter by payment to
9 Plaintiff in the amount of \$250,000.00 pursuant to Section 11(g) of the Endangered Species Act
10 ("ESA"), 16 U.S.C. § 1540(g).

11 2. Plaintiff agrees to accept payment of \$250,000.00 pursuant to this Stipulated
12 Settlement Agreement in full satisfaction of any and all claims for attorney and expert witness
13 fees, expenses, and costs of litigation in the above-captioned matter, including any claim for
14 fees and costs related to the preparation of Plaintiff's fee application and this Stipulated
15 Settlement Agreement.

16 3. Plaintiff agrees that receipt of this payment of \$250,000.00 shall operate as a
17 complete and total release of any and all claims for attorney and expert witness fees, expenses,
18 and costs of litigation that it possesses against the United States, including each named Federal
19 Defendant, in the above-captioned matter incurred through and including the date of this
20 Stipulated Settlement Agreement.

21 4. Federal Defendants' payment will be made by electronic funds transfer of the
22 agreed-upon settlement amount (\$250,000.00) into the account of Plaintiff identified pursuant
23 to paragraph 5. Plaintiff and its attorneys agree to hold harmless Federal Defendants in any
24 litigation, further suit, or claim arising from the payment of the agreed-upon settlement amount,
25 other than for an allegation of Federal Defendants' breach of this Agreement.

26 5. Plaintiff agrees to provide to counsel for Federal Defendants within ten (10)
27 business days after the entry of an order approving this Stipulated Settlement Agreement the
28 following information necessary for Federal Defendants to process payment: the payee's name;

1 the payee's address; the payee's account name; the payee's bank account number; the account
2 type; the Automated Clearing House ("ACH") routing number (for ACH payment) or the
3 American Banking Association ("ABA") routing number for FedWire payment; the financial
4 institution's name, city, and state; the bank routing transit number ("RTN"); and the payee's
5 tax identification number.

6 6. Federal Defendants agree to submit all necessary paperwork for the processing
7 of the subject payment to the Department of the Treasury's Judgment Fund Office, pursuant to
8 16 U.S.C. § 1540(g), within ten (10) business days of the court's order approving this Stipulated
9 Settlement Agreement or Plaintiff having submitted the information required by paragraph 5,
10 whichever is later. Following notification from the Department of Treasury that payment has
11 been completed, Federal Defendants' counsel will notify Plaintiff's counsel that payment was
12 electronically transmitted to Plaintiff's account.

13 7. Nothing in this Stipulated Settlement Agreement shall be interpreted as, or shall
14 constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding
15 those available or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. §
16 1341, or any other law or regulation.

17 8. This Stipulated Settlement Agreement is executed solely for the purpose of
18 compromising and settling Plaintiff's claim for costs of litigation, including reasonable attorney
19 and expert witness fees, in the above-captioned matter. By this Agreement, Federal Defendants
20 do not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including
21 hourly rates, in any future litigation or continuation of the above-captioned matter.

22 9. The Parties agree that this Stipulated Settlement Agreement was negotiated in
23 good faith and constitutes a settlement of claims for attorneys' fees and costs that were
24 vigorously contested, denied, and disputed by the Parties. By entering into this Stipulated
25 Settlement Agreement the Parties do not waive any future claim or defense except those
26 expressly released in this Agreement.

27 10. This Stipulated Settlement Agreement shall apply to and be binding upon the
28 Parties, and upon Plaintiff's members, delegates, and assigns. The undersigned representatives

1 of each party certify that they are fully authorized by the party or parties they represent to agree
2 to the Court's entry of the terms and conditions of this Agreement and to legally bind the Parties
3 represented to it.

4 11. This Stipulated Settlement Agreement represents the entirety of the Parties'
5 commitments with regard to settlement of attorneys' fees, expenses, and costs in the above-
6 captioned matter. The terms of this Stipulated Settlement Agreement shall become effective
7 upon entry of an order by the Court approving this Agreement.

8 Dated: June 10, 2019

9 Respectfully submitted,

10 JEAN E. WILLIAMS,
11 Deputy Assistant Attorney General
12 SETH M. BARSKY, Chief

13 /s/ Robert P. Williams
14 ROBERT P. WILLIAMS
15 Sr. Trial Attorney (SBN 474730 (DC))
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20 *Attorneys for Federal Defendants*

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Attorneys for Plaintiff Hoopa Valley Tribe

ATTESTATION PURSUANT TO CIVIL Local Rule 5-1(i)(3)

I, Robert Williams, attest that concurrence in the filing of the document has been obtained from each of the other Signatories indicated with a “conformed” signature (/s/) within this e-filed document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

/s/ Robert P. Williams
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PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: June 11, 2019


WILLIAM H. ORRICK
United States District Judge