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13 *Attorney for Federal Defendants*

14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 HILLS CONSERVATION NETWORK, a
17 non-profit corporation,

18 Plaintiff,

19 v.

20 FEDERAL EMERGENCY
21 MANAGEMENT AGENCY, a federal
22 agency; KAREN ARMES, in her official
23 capacity; MARK GHILARDUCCI, in his
24 official capacity; THE REGENTS OF THE
25 UNIVERSITY OF CALIFORNIA; CITY
26 OF OAKLAND, a California municipality;
27 and EAST BAY REGIONAL PARK
28 DISTRICT, a special district,

Defendants.

Case No. 3:15-cv-01057-LB

**STIPULATED SETTLEMENT
AGREEMENT**

Hon. Laurel Beeler

Stipulated Settlement Agreement

1 This Stipulated Settlement Agreement is entered into by and between Plaintiff Hills
2 Conservation Network (“HCN”), Defendants Federal Emergency Management Agency
3 (“FEMA”), Karen Armes, in her official capacity as Acting Regional Administrator, FEMA,
4 Mark Ghilarducci, in his official capacity as Director of the California Governor’s Office of
5 Emergency Services (“Cal OES”), and the East Bay Regional Park District, collectively the
6 “Parties.”

7 WHEREAS, HCN filed this action (“Action”) on March 6, 2015, challenging FEMA’s
8 February 2015 “Hazardous Fire Risk Reduction Record of Decision” (“ROD”), the related
9 November 2014 Final Environmental Impact Statement, and the subsequent approval of grant
10 funding for four grants alleging violations of the National Environmental Policy Act (“NEPA”),
11 and FEMA regulations;

12 WHEREAS, defendants deny the allegations in the complaint and deny that any
13 violations of NEPA or any other law occurred;

14 WHEREAS, the Parties believe it is in the best interest of the public, the Parties, and
15 judicial economy to compromise and settle the issues in this Action;

16 NOW, THEREFORE, in consideration of the promises and covenants contained in this
17 Stipulated Settlement Agreement (“Agreement”), the Parties agree to settle all claims and causes
18 of action arising in or related to this Action as follows:

19 1. Termination of Grants:

- 20 a. Within fourteen (14) days of the effective date of this Agreement, FEMA and Cal
21 OES (“Agencies”) will terminate the grants to the University of California
22 (“UCB”) (PDMC-PJ-09-CA-2005-003; PDMC-PJ-09-CA-2005-011).
- 23 b. Within fourteen (14) days of the effective date of this Agreement, the Agencies
24 will terminate the grant to the City of Oakland (“Oakland”) (PDMC-PJ-09-CA-
25 2006-004) except as it applies to the following three East Bay Regional Park
26 District “(Park District”) Projects: Tilden-Grizzly, Sibley Triangle and Island,
27 and Claremont Canyon-Stonewall (the “2006-04 Projects”).

28 Stipulated Settlement Agreement

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c. The Parties agree that the grant to the Park District (HMCP #1731-16-34R) will remain in full force and effect.

d. As to the part of the Oakland grant related to the Park District's 2006-04 Projects, the Agencies intend to make the Park District the subgrantee as to the funds to be allocated to those 2006-04 Projects. The Parties agree this part of the grant will remain in full force and effect. HCN agrees not to challenge the action to designate the Park District as the subgrantee or the reallocation of funds from the Oakland grant (PDMC-PJ-09-CA-2006-004) to the Park District to implement projects from the Park District's Fire Hazard and Resource Management Plan.

2. Withdrawal of Project Decision:

a. FEMA will withdraw the parts of the February 2015 "Hazardous Fire Risk Reduction Record of Decision" ("ROD") that relate to the UCB and Oakland projects. FEMA intends to issue public notice of its action withdrawing these parts of the ROD.

b. The Parties agree that the remainder of the ROD will remain in full force and effect.

3. HCN agrees not to challenge the November 2014 Final Environmental Impact Statement ("FEIS") as it relates to Park District projects to implement the Park District's Fire Hazard and Resource Management Plan. HCN agrees not to challenge the parts of the ROD that remain in full force and effect.

4. HCN agrees not to challenge any action to reallocate funding authorized by the ROD to the Park District or challenge the use of such funding by the Park District, provided the funding is used to implement the Park District's Fire Hazard and Resource Management Plan consistent with the Settlement Agreement between HCN and the Park District.

5. Nothing in this Agreement shall limit the Agencies' authority to make future decisions regarding East Bay Hills fuel risk vegetation management. FEMA agrees that any grant application for East Bay Hills fuel risk vegetation management by UCB or Oakland will

- 1 be subject to additional NEPA procedures including the preparation of an appropriate
2 environmental review document, public notice, and an opportunity for public comment.
- 3 6. HCN agrees that any challenge it may wish to bring to a future FEMA decision for East
4 Bay Hills fuel risk vegetation management will be brought in a new complaint.
- 5 7. HCN shall file a request for dismissal with prejudice under Fed. R. Civ. P. 41(a)(2) in the
6 form attached hereto within seven (7) days of the termination of the grants identified in
7 paragraphs 1.a and 1.b of this Agreement. The Parties agree that the Court will not retain
8 any jurisdiction over this Action. If the Court declines to dismiss the case, this
9 Agreement is voidable by any Party.
- 10 8. This Agreement resolves and releases all claims related to or arising from the ROD and
11 2014 FEIS which have been or could have been asserted in this Action.
- 12 9. FEMA agrees to pay HCN \$90,000 in full settlement and satisfaction of all of HCN's
13 claims for attorneys' fees, costs, and other expenses in the above-captioned case.
14 Payment shall be accomplished by electronic funds transfer to HCN in accordance with
15 account information to be transmitted separately by HCN's counsel to FEMA's counsel.
16 FEMA agrees to submit all necessary paperwork to accomplish the funds transfer within
17 thirty (30) business days of the later of the receipt of the needed account and other
18 information from Plaintiffs' counsel or the dismissal of this action pursuant to paragraph
19 7. Under 31 U.S.C. §§ 3711, 3716; 26 U.S.C. § 6402(d); 31C.F.R. §§ 285.5, 901:3; and
20 other authorities, the United States will offset against the attorney fee payment plaintiff's
21 delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).
- 22 10. HCN agrees to accept the payment provided pursuant to paragraph 9 in full satisfaction of
23 any and all claims for attorneys' fees, costs, and expenses to which HCN asserts that it is
24 or may be entitled and release Federal Defendants from any liability for attorneys' fees,
25 costs, and other expenses incurred or claimed, or that could have been claimed, for work
26 performed on this case, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d),
27 and/or any other statute and/or common law theory. HCN or its counsel shall submit
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confirmation of receipt of the payment made pursuant to paragraph 9 to counsel for Federal Defendants, within fourteen (14) days of receipt of payment.

11. Once payment is made pursuant to paragraph 9, HCN and HCN's counsel release and hold Federal Defendants harmless from any liability for attorneys' fees, costs, expenses, or other claims that might be made as to the payment.

12. Except as provided in paragraphs 9-10, each Party shall bear its own costs and fees related to this litigation.

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

14. This Agreement is the result of compromise and settlement, and it is based on and limited solely to the facts involved in this case. This Settlement Agreement does not represent an admission by any party to any fact, claim, or defense concerning any issue in this case. Further, this Agreement has no precedential value and is intended solely for the benefit of the Parties.

15. The undersigned representatives of HCN, FEMA, Cal OES and the Park District certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.

16. Each Party represents that it has not relied on, and does not rely on, any representations or agreements other than those expressly stated in this Agreement, about any facts or about the nature or extent of any claims, demands, damages or rights it may have against any other Party. Other than those expressly stated in this Agreement, no representations have been made to the Parties to induce them to enter into and execute this Agreement. Each Party expressly agrees it is assuming any and all risks that the facts and law may be or become different from the facts and law as known to, or believed to be, by the Party as of the date of this Agreement. This Agreement supersedes any prior agreements or

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understandings among the Parties in compromise of this case. The Parties acknowledge and agree that this is an integrated agreement.

17. This Agreement represents the entirety of the undersigned Parties' commitments with regard to settlement. The terms of this Agreement shall become effective upon final approval and signature by the United States.

Respectfully submitted,



Dated: August 23, 2016

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Dated:

9/16/16

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Dated:

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Case No. 3:15-cv-01057-LB

**PLAINTIFF'S REQUEST FOR
DISMISSAL WITH PREJUDICE
PURSUANT TO FED. R. CIV. P. 41(a)(2)**

Hon. Laurel Beeler

Attachment 1 to Stipulated Settlement Agreement

1 Plaintiff Hills Conservation Network (“HCN”) hereby requests this Court to dismiss this
2 action with prejudice under the authority in Fed. R. Civ. P. 41(a)(2). This request is made to
3 effectuate a settlement agreement between HCN and defendants Federal Emergency
4 Management Agency (“FEMA”); Karen Armes, in her official capacity as Acting Regional
5 Administrator, FEMA; Mark Ghilarducci, in his official capacity as Director of the California
6 Governor’s Office of Emergency Services (“Cal OES”); and East Bay Regional Park District.
7 The settlement has resolved all claims in the pending lawsuit. Upon dismissal, the Court will not
8 retain jurisdiction over this matter. Defendants FEMA, Karen Armes, Cal OES and the Park
9 District support the request for dismissal. Defendants City of Oakland and Regents of the
10 University of California [do not oppose/oppose] the request for dismissal.

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Dated: *, 2016

Respectfully submitted,

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28 DISTRICT, a special district,

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Case No. 3:15-cv-01057-LB

**ORDER OF DISMISSAL WITH
PREJUDICE PURSUANT TO FED. R.
CIV. P. 41(a)(2)**

Hon. Laurel Beeler

Order of Dismissal

