

Judge Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL WILDLIFE FEDERATION;)
INDIANA WILDLIFE FEDERATION; SOUTH)
DAKOTA WILDLIFE FEDERATION;)
WASHINGTON WILDLIFE FEDERATION;)
ARKANSAS WILDLIFE FEDERATION;)
LOUISIANA WILDLIFE FEDERATION;)
KANSAS WILDLIFE FEDERATION,)

NO. C04-2169

STIPULATION OF SETTLEMENT

Plaintiffs,)

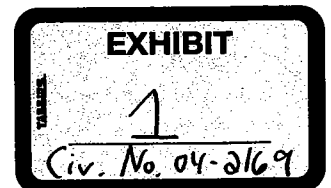
v.)

ANN VENEMAN, SECRETARY OF)
AGRICULTURE; THE UNITED STATES)
DEPARTMENT OF AGRICULTURE; JAMES R.)
LITTLE, ADMINISTRATOR OF THE FARM)
SERVICES AGENCY; JOHN JOHNSON,)
DEPUTY ADMINISTRATOR, FARM SERVICES)
AGENCY; THE FARM SERVICES AGENCY)

Defendants)

I. INTRODUCTION

This settlement agreement (hereinafter, "Settlement Agreement") is entered into between Plaintiffs National Wildlife Federation, Indiana Wildlife Federation, South Dakota Wildlife



Federation, Washington Wildlife Federation, Arkansas Wildlife Federation, Louisiana Wildlife Federation, and Kansas Wildlife Federation (hereinafter, "Plaintiffs"), and Defendants, Mike Johanns, Secretary, U.S. Department of Agriculture; the United States Department of Agriculture; Teresa C. Lasseter, Administrator of the Farm Service Agency; John Johnson, Deputy Administrator Farm Service Agency; the Farm Service Agency (hereinafter, "Defendants"). Plaintiffs and Defendants (hereinafter, "the Parties") desire to reach full and final settlement of all issues regarding Plaintiffs' Complaint, which was filed in the case styled NWF v. Veneman, Civil No. 04-2169 (W.D. Wa.). The Parties have therefore negotiated this Settlement Agreement.

II. RECITALS

1. Plaintiffs filed their Complaint on October 20, 2004, challenging management of the United States Department of Agriculture's ("USDA") managed haying and grazing program, authorized by the Farm Security and Rural Investment Act of 2002 ("2002 Farm Act"), Pub. L. No. 107-171, 116 Stat. 134 (May 13, 2002), amending the Food Security Act of 1985, for lands enrolled in the Conservation Reserve Program.

2. The Conservation Reserve Program ("CRP") is a private land conservation program through which farmers and other owners of highly erodible lands with eligible cropping histories and other eligible lands are compensated by USDA for voluntarily agreeing to remove the land from agricultural production and to manage the land for soil, water, and wildlife conservation purposes.

3. The 2002 Farm Act authorized the Secretary of Agriculture to permit managed haying and grazing of CRP acreage, subject to certain limitations.

4. Plaintiffs allege that Defendants have violated three federal laws. First, Plaintiffs contend that Defendants violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., by failing to evaluate adequately "the decision to allow managed haying and grazing once every three years," including the adverse impacts of the decision and alternative courses of action (Count I); by failing to evaluate the impact of unspecified actions by several

FSA state offices that allegedly will allow haying and grazing to occur during primary nesting season dates (Count II); by “failing to consider an adequate range of alternatives for implementing the CRP, and in particular, an alternative of different managed haying and grazing regimes” specific to the ecological type of that particular area of the country (Count III); and by failing to prepare an environmental assessment pursuant to NEPA for an unidentified number of individual conservation plans, which are to be entered into between FSA and individual farmers (Count VII).

5. Second, Plaintiffs contend that Defendants violated the 2002 Farm Act by allowing haying and grazing on a one-in-three-year frequency and by allowing FSA State Committees to determine primary nesting dates. Plaintiffs claim that the haying and grazing program as implemented is both inconsistent with the language of the 2002 Farm Security and Rural Investment Act of 2002, as well as arbitrary and capricious under the APA. (Count IV).

6. Third, Plaintiffs allege that Defendants violated the APA by failing to provide for notice and comment on the FSA's CRP Notices, the FSA State Committees' determinations of nesting season dates, unspecified individual conservation plans for each CRP participant, and unspecified state NRCS Field Office Technical Guides (Counts V and VI).

7. On January 14, 2005, Defendants filed a motion to dismiss the Complaint, arguing that Plaintiffs lacked standing, and that they had failed to identify discrete agency action, and therefore this Court did not have subject matter jurisdiction.

8. On May 19, 2005, the Court granted Defendants' motion to dismiss Counts VI and VII of the Complaint, and denied the motion as to Counts I - V of the Complaint.

9. On June 30, 2005, Defendants filed their answer, denying plaintiffs' legal claims.

10. On September 1, 2005, Defendants filed the administrative record.

III. TERMS

The Parties have negotiated this Settlement Agreement, and, in consideration of the mutual promises and undertakings set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms:

1). Haying and Grazing Limits: Unless and until FSA undertakes and completes one or more additional NEPA analyses identified in paragraph 2 below, managed haying and grazing of lands enrolled in the Conservation Reserve Program will be allowed under the terms set forth below in the nineteen states, or parts of such states, specified below on any new CRP contracts entered into after the date of this agreement. For this purpose, "new contracts" include re-enrollment but shall not include an extension of an existing contract in which managed haying and grazing has been approved prior to the date this Agreement is signed by all parties.

A) Managed haying and grazing is not allowed in the following states for the following periods during each calendar year: 1) Washington - April 1 to August 1; 2) Oregon -- March 1 to July 15; (3) Idaho --- April 1 to August 1; (4) Montana -- May 15 to August 1; (5) North Dakota -- April 15 to August 1; (6) South Dakota -- May 1 to August 1; (7) Nebraska -- May 1 to July 15; (8) Kansas -- April 15 to July 15; (9) Oklahoma -- May 1 to July 1; (10) Texas -- March 1 to July 1; (11) New Mexico -- March 1 to July 1; (12) Arizona -- April 1 to July 1; (13) Utah -- April 1 to July 15; (14) Wyoming -- May 15 to July 15; (15) California - April 1 to July 1; (16) Colorado --March 15 to July 15; (17) Nevada -- May 1 to July 15; 18) New York - April 1 to August 1; 19) Wisconsin - May 15 to August 1; 19) Indiana - April 1 to August 1 (hereinafter, referred to as "PNS restrictions")

B) Managed haying will be limited to no more than once every 10 years in the following states: Washington (east of the Cascade Mountain Range), Oregon (east of the Cascade Mountain Range), Idaho, Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, New Mexico, Arizona, Utah, Wyoming, California, Colorado and Nevada. Managed haying may be permitted on 50 percent of each field or contiguous fields, once in five years.

C) Managed grazing will be limited to no more than once every 10 years in the following states: Washington (east of the Cascade Mountain Range), Oregon (east of the Cascade Mountain Range), Idaho, Utah, New Mexico, Nevada, and Arizona. FSA agrees to use the Natural Resource Conservation Service's standards in FSA's determination of

the stocking rates, and further agrees that managed grazing will not be more than 75 percent of those rates.

D) Managed grazing will be limited to no more than once every 5 years in the following states: Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Colorado, Wyoming. FSA agrees to use the Natural Resource Conservation Service's standards in FSA's determination of the stocking rates, and further agrees that managed grazing will not be more than 75 percent of those rates.

Paragraphs B - D are hereinafter referred to as "haying and grazing frequencies." There shall be no limit imposed by this settlement agreement on managed haying and grazing outside the nineteen states, or part of such states, identified above,. Likewise, nothing in this Agreement shall effect CCC's authority with respect to emergency haying and grazing, including such emergency haying and grazing done by persons with permission to engage in managed haying and grazing. FSA will issue CRP Notices within 30 days of the effective date of this agreement that notify the affected state FSA offices of the terms and conditions set out above. It is understood that both haying and grazing will be permitted on any farm, subject to the limits identified in paragraphs A-D, above.

2) Optional NEPA Analysis: The scope of any additional NEPA analysis referred to in paragraph 1 on proposed changes in PNS restrictions or haying and grazing frequencies may be regional or more local, such as state-wide, county-wide, or multi-state or multi-county. Such NEPA analysis undertaken pursuant to this Settlement Agreement will include the impact of managed haying and grazing on:

- A) CRP plant stand vigor and diversity;
- B) habitat of the principal grassland bird and other wildlife species;
- C) wildlife, water, erosion, air quality, and socio-economic factors.

In addition, such analysis will consider a managed haying and grazing alternative that seeks to optimize the wildlife benefits of that activity, consistent with meeting soil

conservation and water quality objectives of the CRP. FSA agrees to solicit the views of the U.S. Fish and Wildlife Service and the Natural Resources Conservation Service on such alternative.

FSA shall not be bound by the PNS restrictions or haying and grazing frequencies in Paragraph 1 for a region or a more local area after it completes a NEPA analysis and issues a decision for the region or more localized area addressing a proposal to change the PNS restrictions or haying and grazing frequencies.

3. Releases: This Settlement Agreement constitutes the full, complete, and final resolution of all legal, equitable, or administrative claims regarding, emanating from, arising out of, or in any way associated with Plaintiffs' Complaint which Plaintiffs have asserted or could have asserted in this case, whether known or unknown. Plaintiffs and their respective affiliates, successors, and assigns hereby release and forever discharge defendants, and their agents and affiliates from any and all actions, suits, judgments, liabilities, demands, fees, interests, or obligations, whether known or unknown as of the date hereof, regarding, emanating from, arising out of, or in any way associated with Plaintiffs' Complaint.

4. No Precedent: It is specifically understood and agreed that this Settlement Agreement is executed for the sole purpose of settling Plaintiffs' Complaint. Nothing in this Settlement Agreement shall be utilized for the purpose of precedent or argument in any other case, and this Settlement Agreement shall not bind any Party as to any claim or issue except those specifically addressed herein. Likewise, nothing in this Settlement Agreement, and no actions taken by any Party hereto with regard to this Settlement Agreement, shall be construed as an admission by any Party of liability as to any of the matters settled. Moreover, no action taken by any Party in effectuating this Settlement Agreement may be used as an admission of liability in any respect in any future or pending demand, administrative proceeding, or litigation or similar action involving any of the Parties.

5. Fees: Each party will be responsible for its own costs and attorneys' fees.

6. Successors and Assigns: The releases contained herein extend to and bind the principals, agents, employees, related or affiliated entities, representatives, successors, and assigns of the Parties.

7. Authority: This Settlement Agreement shall be subject to any statutory changes and court orders, and nothing in this Settlement Agreement shall be interpreted as, or shall constitute, a commitment or requirement that Defendants obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other applicable law regarding the expenditure of public funds.

8. Integration: This Settlement Agreement is intended to be the total integration of the agreement of the Parties with respect to the subject matter of this Settlement Agreement, and shall constitute a merger of all communications, notices, representations, denials, or written or verbal agreements between the Parties which have preceded the date of this Settlement Agreement. This Settlement Agreement is the entire agreement between the Parties concerning settlement of Plaintiffs' Complaint, and there are no oral agreements or representations concerning the subject matter of this Settlement Agreement which are not expressly set forth. No supplement, modification, or amendment of this Settlement Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Settlement Agreement shall be deemed to constitute, or shall constitute, a waiver of any other provision, whether or not similar. No waiver shall be binding unless executed in writing by the Party making the waiver.

9. Counterparts: This Settlement Agreement may be executed in two or more counterparts. It shall not be necessary that the signatures of all Parties hereto be contained on any one counterpart, and each counterpart shall constitute one and the same agreement. Four originals of this Settlement Agreement will be created.

10. Authority to Sign: The Parties represent that the persons executing the Settlement Agreement on each Party's behalf have been duly authorized by all necessary and appropriate action to enter into this Settlement Agreement.

11. Construction: Each Party acknowledges that it was represented by counsel in connection with the negotiation and execution of this Settlement Agreement, is fully competent to execute this Settlement Agreement, and understands the terms and provisions of this Settlement Agreement. This Settlement Agreement shall be liberally construed as effecting a full and final settlement of the matters and controversies described herein.

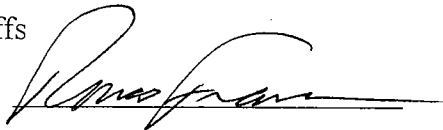
12. Enforcement: Nothing in this Settlement Agreement shall bar any Party from seeking judicial relief enforcing this Settlement Agreement in any court having appropriate jurisdiction. In the event there is a dispute over compliance with any term or provision of this Settlement Agreement, the disputing Party will notify the other Party in writing of the nature of the dispute, and within 7 days after such notification (or additional time if the Parties agree), the Parties will discuss and attempt to resolve the dispute. In no event shall the disputing Party seek enforcement until 60 days after delivery of the notice referenced above. Notice from Plaintiffs should be provided to the Deputy Administrator for Farm Programs. The parties understand that the district court's review of any action related to this settlement agreement will be governed by any relevant standards of review set forth in the Administrative Procedure Act, 5 U.S.C. § 701 et seq. for judicial review of federal agency actions. The parties seeking to enforce this agreement agree not to seek to invoke the contempt powers of the Court in aid of enforcement of this Agreement.

13. Effective Date: This agreement is effective upon being signed by all parties. Upon signature, the parties shall file a Joint Motion to Dismiss and Proposed Order with the Court.

The Parties have executed this Settlement Agreement as of the respective dates indicated below:

Plaintiffs

By:



Date: SEPTEMBER 26, 2006

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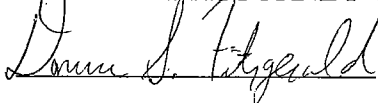
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/s/ Herbert E. Forrest

Date: Sept. 22, 2006

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