[SEQ CHAPTER \h \r 1][ADVANCE \y 72]JEFFREY H. WOOD,
Acting Assistant Attorney General
SETH M. BARSKY, Section Chief
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ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES, Plaintiff, vs. ENVIRONMENTAL PROTECTION AGENCY, Defendant.	Case No. 9:17-cv-00064-DLC **STIPULATED FEE SETTLEMENT**

Plaintiff Alliance for the Wild Rockies and Defendant the Environmental Protection Agency enter into the following Stipulated Fee Settlement Agreement ("Agreement") and state as follows:

WHEREAS, Plaintiff's complaint asserts a violation of the Endangered Species Act (ESA) stemming from Defendant's alleged failure to initiate Section 7 consultation with the U.S. Fish & Wildlife Service regarding the effects of ongoing remedial actions at the Silver Bow Creek/Butte Area (SBCBA) Superfund Site on designated bull trout critical habitat.

WHEREAS, based upon Defendant's initiation of consultation on the effects of ongoing remedial actions at the SBCBA Superfund Site on the bull trout and its designated critical habitat, Plaintiff agreed to stay the litigation until Defendant finalized its biological assessment.

WHEREAS, on January 31, 2018, Defendant transmitted its biological assessment to the U.S. Fish & Wildlife Service.

WHEREAS, on February 16, 2018, Plaintiff dismissed its lawsuit. *See* ECF No. 17.

WHEREAS, on February 20, 2018, Plaintiff filed a motion for attorneys' fees and costs. *See* ECF No. 19.

WHEREAS, on March 2, 2018, the Court granted Defendant's unopposed

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motion for an extension of time to file a response to Plaintiff's motion for attorneys' fees and costs until April 13, 2018 to allow the parties an opportunity to resolve the issue without Court involvement. *See* ECF No. 22.

WHEREAS, while Defendant continues to dispute Plaintiff's fee entitlement, Defendant wishes to settle nonetheless to promote efficiency and preserve limited resources.

WHEREAS, the parties have reached an agreement that obviates the need for any litigation regarding Plaintiff's fees and costs; and

WHEREAS, Plaintiff and Defendant, by and through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claim for attorneys' fees and costs, have reached a fee settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff's motion for attorneys' fees and costs.

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Plaintiff brought a claim for an award of attorneys' fees and costs under the ESA, 16 U.S.C. §1540(g). *See* ECF No. 19. Defendant agrees to settle Plaintiff's entire claim for attorneys' fees and costs in this lawsuit for a total of

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$15,000.00.

2. Defendant shall make the payment required by Paragraph 1 and the agreed order below by electronic funds transfer to Plaintiff's IOLTA Account. (Account Number: 101499416; Routing Number: 092901683). ~~[INSERT ACCOUNT INFO].~~

3. Plaintiff agrees to furnish Defendant with the information necessary to effectuate the payment required by Paragraph 1 of this stipulation. Defendant agrees to submit all necessary paperwork for the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund Office within 10 business days of the Court's approval of this Agreement or the receipt of the information described in this Paragraph, whichever is later.

4. Plaintiff agrees to accept Defendant's payment of $15,000.00 in full satisfaction of any and all claims for attorneys' fees and costs incurred in this matter to date. Plaintiff agrees that receipt of this payment from Defendant shall operate as a release of Plaintiff's claims for attorneys' fees and costs in this matter to date.

5. Plaintiff shall send written confirmation of payment receipt to Defendant within 10 business days of receiving the payment.

6. Nothing in this Agreement shall be interpreted as, or shall constitute, a

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commitment or requirement that Defendant is 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 law.

7. Because this Stipulation resolves all of Plaintiff's claims to fees and costs in this matter, Plaintiff hereby withdraws its motion for attorneys' fees and costs.

8. This Agreement shall be binding on the parties and their successors, agents, designees, employees, and all those acting by and through their authority. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were disputed by the parties. By entering into this Stipulation, the parties do not waive, in any future litigation, any claim or defense and Defendant does not waive any right to contest fees claimed by Plaintiff or Plaintiff's counsel, including the hourly rate. Further, this Stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation.

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

DATED this ##th day of April, 2018.

/s/ Kristine M. Akland
Kristine M. Akland
Akland Law Firm, PLLC

Timothy M. Bechtold
Bechtold Law Firm, PLLC

Attorneys for Plaintiff
~~[INSERT KRISTINE'S SIGNATURE BLOCK]~~

JEFFREY H. WOOD,
Acting Assistant Attorney General
SETH M. BARSKY, Chief
MEREDITH L. FLAX,
Assistant Chief

/s/ Rickey D. Turner, Jr.
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES, Plaintiff, vs. ENVIRONMENTAL PROTECTION AGENCY, Defendant.	Case No. 9:17-cv-00064-DLC **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.

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