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14 *Attorneys for Defendants*

15 UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 CENTER FOR BIOLOGICAL DIVERSITY, ) No. 3:18-cv-07211-WHA  
19 et al., )

20 Plaintiffs, )

21 v. )

22 ) STIPULATED SETTLEMENT  
23 ) AGREEMENT AND  
24 ) [PROPOSED] ORDER

25 DAVID BERNHARDT, in his official )  
26 capacity as Secretary of the United )  
27 States Department of the Interior, et al., )

28 Defendants. )  
\_\_\_\_\_ )

29 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between the  
30 Center for Biological diversity (“Center”) and Environmental Protection Information Center  
31 (“EPIC”) (“collectively, “Plaintiffs”) and the United States Fish and Wildlife Service (“FWS”),  
32 and David Bernhardt, in his official capacity as Secretary of the United States of the Interior  
33 (collectively “Defendants”) who, by and through their undersigned counsel, state as follows:

1 WHEREAS, the Center submitted a petition to FWS on July 11, 2012 to list the Shasta  
2 salamander (*Hydromantes shastae*) as threatened or endangered under the Endangered Species  
3 Act (“ESA”), 16 U.S.C. §§ 1531, *et seq.*;

4 WHEREAS, on September 18, 2015, FWS issued a 90-day finding on the Center’s  
5 petition to list the Shasta salamander, pursuant to 16 U.S.C. § 1533(b)(3)(A), concluding that the  
6 Center’s petition presented substantial scientific or commercial information indicating that listing  
7 the Shasta salamander under the ESA may be warranted, 80 Fed. Reg. 56,429;

8 WHEREAS, on July 26, 2018 the Center sent Defendants a letter stating its intent to file  
9 suit to compel FWS to issue a finding pursuant to 16 U.S.C. § 1533(b)(3)(B) (“12-month finding”)  
10 as to whether listing the Shasta salamander under the ESA is warranted, not warranted, or  
11 warranted but precluded;

12 WHEREAS, on November 29, 2018, Plaintiffs filed the above-captioned action to compel  
13 FWS to issue a 12-month finding as to whether the listing of the Shasta salamander is warranted,  
14 not warranted, or warranted but precluded;

15 WHEREAS, the Parties, through their authorized representatives, and without any final  
16 adjudication of the issues of fact or law with respect to Plaintiff’s claims, have negotiated a  
17 settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes  
18 set forth in Plaintiff’s Complaint;

19 WHEREAS, the Parties agree that settlement of this action in this manner is in the public  
20 interest and is an appropriate way to resolve Plaintiffs’ Complaint;

21 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:  
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- 1 1. No later than April 30, 2021, FWS shall review the status of the Shasta salamander and  
2 submit to the *Federal Register* for publication a 12-month finding as to whether listing  
3 the Shasta salamander is warranted pursuant to the ESA, 16 U.S.C. § 1533(b)(3)(B);
- 4  
5 2. The Order entering this Agreement may be modified by the Court upon good cause shown,  
6 consistent with the Federal Rules of Civil Procedure, by written stipulation between the  
7 Parties filed with and approved by the Court, or upon written motion filed by one of the  
8 Parties and granted by the Court. In the event that either Party seeks to modify the terms  
9 of this Agreement, including the deadline specified in Paragraph 1, or in the event of a  
10 dispute arising out of or relating to this Agreement, or in the event that either Party  
11 believes that the other Party has failed to comply with any term or condition of this  
12 Agreement, the Party seeking the modification, raising the dispute, or seeking  
13 enforcement shall provide the other Party with notice of the claim or modification. The  
14 Parties agree that they will meet and confer (either telephonically or in person) at the  
15 earliest possible time in a good-faith effort to resolve the claim before seeking relief from  
16 the Court. If the Parties are unable to resolve the claim themselves, either Party may seek  
17 relief from the Court.
- 18  
19 3. In the event that Defendants fail to meet the deadline in Paragraph 1 and have not sought  
20 to modify this Agreement, Plaintiffs' first remedy shall be a motion to enforce the terms  
21 of this Agreement, after following the dispute resolution procedures described above. This  
22 Agreement shall not, in the first instance, be enforceable through a proceeding for  
23 contempt of court.
- 24  
25 4. This Agreement requires only that Defendants take the action specified in Paragraph 1.  
26  
27 No provision of this Agreement shall be interpreted as, or constitute, a commitment or  
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1 requirement that Defendants take action in contravention of the ESA, the Administrative  
2 Procedure Act (“APA”), or any other law or regulation, either substantive or procedural.  
3 Nothing in this Agreement shall be construed to limit or modify the discretion accorded  
4 to Defendants by the ESA, APA, or general principles of administrative law with respect  
5 to the procedures to be followed in making any determination required herein, or as to the  
6 substance of any determinations made pursuant to Paragraph 1 of the Agreement. To  
7 challenge any final determination issued pursuant to Paragraph 1, Plaintiffs must file a  
8 separate action. Defendants reserve the right to raise any applicable claims or defenses to  
9 such challenges.  
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11  
12 5. No part of this Agreement shall have precedential value in any litigation or in  
13 representations before any court or forum or in any public setting. No Party shall use this  
14 Agreement or the terms herein as evidence of what does or does not constitute a reasonable  
15 timeline for issuing a 12-month listing decision for any listed species.  
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17 6. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as  
18 an admission or concession of any wrongdoing, liability, or any issue of fact or law  
19 concerning the claims settled under this Agreement or any similar claims brought in the  
20 future by any other party. Except as expressly provided in this Agreement, none of the  
21 Parties waives or relinquishes any legal rights, claims, or defenses it may have. This  
22 Agreement is executed for the purpose of settling Plaintiffs’ Complaint, and nothing  
23 herein shall be construed as precedent having preclusive effect in any other context.  
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25 7. Without waiving any defenses or making any admissions, Defendant agrees to pay  
26 Plaintiff \$6,000 in attorneys’ fees and costs. Plaintiff agrees to accept the \$6,000 from  
27 Defendant in full satisfaction of any and all claims, demands, rights, and causes of action  
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1 for any and all attorneys' fees and costs Plaintiff reasonably incurred in connection with  
2 the above captioned litigation through the signing of this Agreement.

3 8. Plaintiff agrees to furnish Defendant with the information necessary to effectuate the  
4 \$6,000 payment set forth by Paragraph 8. Payment will be made to the Center by  
5 electronic funds transfer. Defendant agrees to submit all necessary paperwork for the  
6 processing of the attorneys' fees award within fifteen (15) days from receipt of the  
7 necessary information from Plaintiff or from approval of this Agreement by the Court,  
8 whichever is later.  
9

10 9. By this agreement, Defendant does not waive any right to contest fees and costs claimed  
11 by Plaintiff or Plaintiff's counsel in any future litigation or continuation of the present  
12 action.  
13

14 10. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that  
15 Defendants are obligated to pay any funds exceeding those available, or take any action  
16 in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable  
17 appropriations law.  
18

19 11. The Parties agree that this Agreement was negotiated in good faith and that it constitutes  
20 a settlement of claims that were dispute by the Parties. By entering into this Agreement,  
21 none of the Parties waive any legal rights, claims, or defenses except as expressly stated  
22 herein. This Stipulation contains all of the terms of agreement between the Parties  
23 concerning the Complaint, and is intended to be the final and sole agreement between the  
24 Parties with respect thereto. The Parties agree that any prior or contemporaneous  
25 representations or understanding not explicitly contained in this written Agreement,  
26 whether written or oral, are of no further legal or equitable force or effect.  
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1 12. The undersigned representatives of each Party certify that they are fully authorized by the  
2 Party or Parties they represent to agree to the terms and conditions of this Agreement and  
3 do hereby agree to the terms herein. Further, each Party, by and through its undersigned  
4 representative, represents and warrants that it has the legal power and authority to enter  
5 into this Agreement and bind itself to the terms and conditions contained in this  
6 Agreement.  
7

8 13. The terms of this Agreement shall become effective upon entry of an Order by the Court  
9 ratifying this Agreement.  
10

11 14. Upon adoption of this Agreement by the Court, all counts of Plaintiffs' Complaint shall  
12 be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the  
13 Parties hereby stipulate and respectfully request that the Court retain jurisdiction to  
14 oversee compliance with the terms of this Agreement and to resolve any motions to  
15 modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).  
16

17 Dated: June 26, 2019

Respectfully submitted,

18  
19 /s/ Jennifer L. Loda

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28 *Attorneys for Plaintiffs*

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Of Counsel:

LUKE MILLER  
United States Department of the Interior  
Office of the Solicitor  
Pacific Southwest Regional Office

*Attorneys for Defendants*

**[PROPOSED] ORDER**

The Stipulated Settlement Agreement is approved and all Parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
THE HONORABLE WILLIAM H. ALSUP  
UNITED STATES DISTRICT JUDGE

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**ATTESTATION OF CONCURRENCE**

In accordance with Civil Local Rule 5-1(i)(3), I hereby attest that I obtained concurrence in the filing for the signatures of all counsel indicated by a conformed signature (“/s/”) within this e-filed document.

*/s/ Davis A. Backer*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2019, I electronically filed the foregoing Stipulated Settlement Agreement with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Davis A. Backer  
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