

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILD HORSE FIRE BRIGADE,

Plaintiff,

v.

THE UNITED STATES BUREAU OF
LAND MANAGEMENT,

Defendant.

Case No. 1:22-cv-3006

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Wild Horse Fire Brigade (“Plaintiff”) and Federal Defendant U.S. Bureau of Land Management (“BLM”), who, by and through their undersigned counsel (collectively “the Parties”), state as follows:

WHEREAS, BLM manages wild horses and burros in the Pokegama herd management area (“HMA”), the boundaries of which encompass both private and public lands;

WHEREAS, on August 26, 2020, BLM issued a Decision Record to implement the gather of wild horses from the private land of Green Diamond Resource Company (“Green Diamond”), which owns land within the boundaries of the Pokegama HMA, as well as adjacent to the HMA, in response to Green Diamond’s request for the removal under Section 4 of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1334 (“WHBA”), in Project #: DOI-BLM-ORWA-L040-2020-0009-CX;

WHEREAS, on October 5, 2022, the Plaintiff filed this lawsuit challenging the Decision Record based on alleged violations of the Administrative Procedure Act (“APA”), the WHBA, and the National Environmental Policy Act (“NEPA”);

WHEREAS, on May 18, 2023, Green Diamond withdrew its request for the removal of wild horses from its private land;

WHEREAS, the Parties, through their authorized representatives, and without any final adjudication of the issues of fact or law with respect to Plaintiff's legal claims, have negotiated a settlement that they consider to be in the public interest and an appropriate way to resolve the disputes set forth in Plaintiff's Complaint:

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. BLM will withdraw the August 26, 2020 Decision Record in light of the withdrawal by Green Diamond of the underlying request for the removal of wild horses from its private land.
2. BLM will conduct a routine herd monitoring survey for the Pokegama HMA, which BLM expects will begin in the summer of 2023 if the agency is able to secure funding and personnel.
3. BLM's survey will be guided, but not limited, by the applicable policies and standard operating procedures for wild horse and burro population inventory and estimation in effect at the time of the survey. While those policies and procedures are currently documented in BLM's Wild Horses and Burros Management Handbook ("Handbook") H-4700-1 and BLM Policy Manual MS-4720, Removal of Excess Wild Horses and Burros ("Manual MS-4720") and described in BLM Instruction Memorandum 2010-057, they are subject to change.
4. BLM will provide a copy of the Pokegama survey results, once finalized, to Plaintiff at Harris@nhlandlaw.com.
5. Unless being performed in response to an emergency, BLM will not perform any gathers in the Pokegama HMA under Section 3 of the WHBA until the agency has prepared a

new gather plan consistent with the requirements of the WHBA, NEPA, and the implementing regulations for these statutes. BLM intends to follow its policies and standard operating procedures in effect at the time of developing any such management plan. While those policies and procedures are currently documented in BLM Instruction Memorandums 2019-004 and 2022-044, BLM Handbook H-4700-1, and BLM Manual MS-4720, they are subject to change.

6. Nothing in this Agreement shall be construed as limiting BLM's authority and responsibility to remove animals prospectively from private property at the request of a landowner, consistent with the requirements of Section 4 of the WHBA and the BLM's implementing regulations at 43 C.F.R. Part 4700. BLM agrees to provide Plaintiff notification of any Section 4 gather request received by BLM for the Pokegama HMA within 3 years of the execution of this Agreement.

7. The Agreement is binding on Plaintiff and BLM once signed by both parties. Within three days of execution of this Agreement, the Parties shall file a joint motion requesting dismissal of this action with prejudice. Each party shall bear their own costs, expenses, and fees, including attorney fees.

8. Plaintiff acknowledges and agrees that any future challenge to a BLM action concerning wild horses and burros in or adjacent to the Pokegama HMA brought under either the WHBA or NEPA after the date of this agreement must take the form of a new civil action under the judicial review provisions of the Administrative Procedure Act and may not be asserted as a claim for violation of this Agreement or in a motion to enforce the terms of this Agreement. Nothing in this Agreement precludes or limits the Plaintiff from raising any claims against future decisions relating to the management of wild horses in the Pokegama HMA, including those

based on WHBA or NEPA. BLM reserves the right to raise any applicable claims or defenses to any such challenge.

9. No provision of this Agreement will be interpreted as, or constitute, a commitment or requirement that BLM take action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation. This Agreement was negotiated in good faith and constitutes a full settlement of Plaintiff's claims. This Agreement is based on and limited solely to the facts involved in this case. This 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 will not be cited or used as evidence by any party in any other litigation except as necessary to enforce the terms of the Agreement.

10. This Agreement constitutes the entire agreement of the parties, contains the complete and total terms and conditions of the parties' agreement, and supersedes all previous understandings and agreements between the parties, whether oral or written.

11. The undersigned representatives of each party 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.

Dated: July 7, 2023

/s/Michael Ray Harris

Michael Ray Harris (DC Bar # CO0049)
Senior Attorney
BCM Environmental &
Land Law
3 Maple Street
Concord, NH 03301
(802) 356-3040 (main)
(802) 831-1631 (fax)
harris@nhlandlaw.com

Attorneys for Plaintiff

TODD KIM
Assistant Attorney General
S. JAY GOVINDAN, Section Chief
BRIDGET K. McNEIL, Assistant Section Chief

/s/ Anthony D. Ortiz

ANTHONY D. ORTIZ
Trial Attorney, (DC Bar 978873)
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Tel | (202) 305-5708; Fax | (202) 305-0275
Anthony.D.Ortiz@usdoj.gov

/s/ LeeAnn Kim

LEEANN KIM
Trial Attorney (NY Bar No. 5539705)
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
PO Box 7611
Washington, DC 20002
Phone: (202) 305-0468
leeann.kim@usdoj.gov

Attorneys for Defendant