

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

Civil Action No. 11-cv-03267-JLK

DAVID SCHERER and MICHAEL BEAN,

Plaintiffs,

v.

DANIEL JIRON, Regional Forester, United States  
Forest Service; and UNITED STATES FOREST SERVICE,

Defendants.

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**SETTLEMENT AGREEMENT**

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WHEREAS, this settlement agreement (hereinafter, "Settlement Agreement") is entered into by David Scherer and Michael Bean (hereinafter, "Plaintiffs"), Daniel Jiron, in his official capacity as Regional Forester, and the United States Department of Agriculture Forest Service (hereinafter, "Defendants");

WHEREAS, in September 2005, the Forest Service designated the Mount Evans Recreation Area as a "High Impact Recreation Fee Area" pursuant to then-applicable agency guidance interpreting the Federal Lands Recreation Enhancement Act ("REA"), 16 U.S.C. §§ 6801-6814, and began to collect a standard amenity recreation fee ("fee") from visitors to the Mount Evans Recreation Area under REA and the Mount Evans REA Implementation Plan;

WHEREAS, the Forest Service's practices regarding fee collection at the Mount Evans Recreation Area were subsequently refined over the course of several operating seasons (including, but not limited to, the fact that the area is no longer designated as a "High Impact Recreation Area");

WHEREAS, Plaintiffs brought claims in the matter of *Scherer, et al. v. Jiron, et al.*, Civil No. 1:11-cv-03267-JLK (D. Colo.) (the "lawsuit"), alleging inter alia violations of REA in connection with the collection of fees at the Mount Evans Recreation Area from visitors who do not use the developed facilities and services of the area;

WHEREAS, Plaintiffs and Defendants (hereinafter, "the Parties") have agreed to settle Plaintiffs' lawsuit, without any admission of fact or law, which they consider to be an equitable resolution of the claims raised in the lawsuit;

WHEREAS, it is in the interests of the public, the Parties, and judicial economy to resolve the claims in this action without continued litigation;

NOW THEREFORE, the Parties agree to the following terms:

**1. Revised Implementation Plan**

Consistent with Paragraph 1F, upon completion of review by the Colorado Recreation Resource Advisory Committee ("Recreation RAC"), the Forest Service will issue a Revised Mount Evans REA Implementation Plan that incorporates the following provisions:

A. Scope of Fee Collection and Enforcement. The Forest Service may collect required fees only at a welcome station at the base of Mt. Evans and at three distinct sites in the Mount Evans Recreation Area: Mount Goliath Natural Area/Dos Chappell Nature Center, Summit Lake Park, and the Summit of Mount Evans Interpretive Site

("the Fee Sites"). The Forest Service will enforce fees and issue notices of required fees only within the Fee Sites. The attached maps (Exhibits A, B, and C) indicate the boundaries of the Fee Sites. The reduction in the size of the Mount Evans Recreation Area will enable recreational use free of charge in more than 98 percent of the original fee area. The Forest Service will ensure that the boundaries of the Fee sites are evident to the public, including by posting signs alongside the highway indicating when visitors are entering and leaving the Fee Sites. The Forest Service's authority to collect fees at the Summit of Mount Evans Interpretive Site and the Mount Goliath Natural Area/Dos Chappell Nature Center arises under 16 U.S.C. § 6804(f)(3). The Forest Service's authority to collect fees at Summit Lake Park is pursuant to an agreement between the City and County of Denver and the Forest Service.

B. Visitors Subject to Fees. The Forest Service will not collect or enforce a fee or issue notices of required fees for:

- (1) Persons who enter the Mount Evans Recreation Area on bicycle, on foot, or on a horse;
- (2) Motorists who visit the Mount Evans Recreation Area and who are engaged in through travel or who do not park a motor vehicle in the Fee Sites; or
- (3) The Fee Sites outside the hours of 8:00 a.m. to 6:30 p.m.

C. Information Provided to Visitors. The Forest Service may continue to operate the welcome station located at the base of Mount Evans to provide information to visitors regarding recreation fees, recreation and educational opportunities throughout the area, weather conditions, and safety. The Forest Service will provide visitors with

information about the Fee Sites. This information will be available at the welcome station, via on-site signage, and on the Arapaho and Roosevelt National Forests and Pawnee National Grassland website. Upon execution of this Settlement Agreement, Plaintiffs will be furnished with the information that will be provided to Forest Service employees who will operate the welcome station, and the Forest Service will consider any suggestions Plaintiffs have on the content of this information. The decision as to the content of the information to be provided will rest solely with the Forest Service, which will make clear to visitors that only those who park a motor vehicle at the Fee Sites must pay the fee. In addition, upon execution of this Settlement Agreement, Plaintiffs will be provided with drafts of revised signs. The Forest Service will consider any suggestions Plaintiffs have on the content of the signs. The decision as to the content of the signs will rest solely with the Forest Service, which will ensure that the signs make clear to visitors that only those who park a motor vehicle at the Fee Sites must pay the fee.

D. Fee Collection at the Welcome Station. The Forest Service may continue to collect fees at the welcome station to facilitate efficient fee collection, but the Forest Service will provide a through lane providing non-stop travel for the use of visitors who do not intend to use the Fee Sites. Opportunities for visitors to pay the fee will also be available at the Fee Sites.

E. Roadside Parking. The Forest Service will not prohibit roadside parking outside any of the Fee Sites, but retains the management discretion to manage parking as necessary within each Fee Site.

F. Implementation. Immediately upon execution of this Settlement Agreement and pending review by the Colorado Recreation RAC, the Forest Service will:

- (1) Not enforce fees or issue notices of required fees outside the Fee Sites; inside the Fee Sites beyond the hours of 8:00 a.m. to 6:30 p.m.; for persons who enter the Mount Evans Recreation Area on bicycle, on foot, or on a horse; and for those who are engaged in through travel or who do not park a motor vehicle in the Fee Sites;
- (2) Post a notice at the welcome station and at the entrances to the Fee Sites that indicates where, when and how fees will and will not be enforced; and
- (3) Submit the fee changes as proposed in the Revised Mount Evans REA Implementation Plan per Paragraph 1A through 1E of this Settlement Agreement to the Colorado Recreation RAC for review and potential recommendation at the next Colorado Recreation RAC meeting.

If the Colorado Recreation RAC issues a recommendation that is contrary to the terms set forth in Paragraph 1A through 1E of this Settlement Agreement, the Forest Service will have 30 days to accept or reject that recommendation. If the Forest Service does not reject that recommendation, Plaintiffs have the option to terminate this Settlement Agreement. If the Colorado Recreation RAC issues a recommendation that supports the terms in Paragraph 1A through 1E of this Settlement Agreement, or if the Colorado Recreation RAC issues a recommendation that is contrary to the terms in Paragraph 1A through 1E of this Settlement Agreement and the Forest Service rejects that recommendation, the Forest Service will implement any provisions of Paragraph 1A

through 1E of this Settlement Agreement that were not implemented pending review by the Colorado Recreation RAC, including issuance of the Revised Mount Evans REA Implementation Plan.

**2. Refund of Fees Paid by Plaintiffs**

The Forest Service will refund up to \$50 to the Plaintiffs for their claimed use of the undeveloped parking areas in the Mount Evans Recreation Area, as attested in a declaration executed by each Plaintiff, once this Settlement Agreement is fully executed. Plaintiffs agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon settlement amount pursuant to this Paragraph.

**3. Dismissal of Action**

This Settlement Agreement constitutes the complete and final resolution of all legal, equitable, or administrative claims regarding, arising out of or in any way associated with Plaintiffs' Complaint, which Plaintiffs have asserted or could have asserted in their lawsuit, whether known or unknown. Plaintiffs and their respective affiliates, successors, and assigns hereby release Defendants, 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 of this Settlement Agreement, regarding, arising out of, or in any way associated with Plaintiffs' Complaint and/or the Forest Service's collection of recreation fees at the Mount Evans Recreation Area. Within 10 days of the effective date of this Settlement Agreement, Plaintiffs agree to dismiss their Complaint with prejudice by filing the attached Joint Stipulation of Dismissal, Exhibit D, with the Court.

**4. No Precedent**

This Settlement Agreement is executed for the sole purpose of settling Plaintiffs' Complaint. Nothing in this Settlement Agreement may be utilized for the purpose of precedent or argument in any other case, and this Settlement Agreement binds the Parties only to those claims and issues specifically addressed herein. Nothing in this Settlement Agreement, and no actions taken by any Party with regard to this Settlement Agreement, constitutes an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any Party 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**

Defendants agree to pay to the Plaintiffs the sum of \$20,000 in full satisfaction of any and all claims for attorneys' fees, costs, and other expenses related to this action. Defendants' payment, as identified in this Paragraph, shall be accomplished by electronic fund transfer. Plaintiffs' attorneys shall provide to the undersigned counsel for Defendants the appropriate account number and other information needed to facilitate payment. Plaintiffs' attorneys are receiving funds in trust for Plaintiffs, and Plaintiffs agree to this procedure. Plaintiffs and their attorneys agree to hold harmless Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon \$20,000 settlement amount pursuant to

this Paragraph.

**6. Successors and Assigns**

The releases contained in the Settlement Agreement bind the Plaintiffs' principals, agents, employees, related or affiliated entities, representatives, successors, and assigns, and any other person in active concert or participation with them.

**7. Compliance with Other Laws**

Nothing in this Settlement Agreement may be interpreted as, or constitutes 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 *et seq.*, or any other applicable law regarding the expenditure of federal funds.

**8. Integration**

This Settlement Agreement is intended to be the entire agreement of the Parties with respect to the subject matter of this Settlement Agreement and constitutes a merger of all communications, notices, representations, denials, or written or verbal agreements among the Parties which have preceded the date of this Settlement Agreement. No supplement, modification, or amendment of this Settlement Agreement will be binding unless executed in writing by all Parties. No waiver of any of the provisions of this Settlement Agreement will 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. The signatures of all Parties do not have to be contained on any one counterpart, and

each counterpart will constitute 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. Enforcement**

The Parties agree that the Court may retain jurisdiction over this matter solely to enforce the terms of this Settlement Agreement. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994). 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 seven 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 Glen Casamassa, Forest Supervisor of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, and to undersigned counsel for Defendants. The parties agree that contempt of court is not available as a remedy for any violation of this Settlement Agreement, and the Parties therefore knowingly waive any right that they might have to seek an order of contempt for any such violation.

**12. Duration of Terms**

This Settlement Agreement will terminate September 30, 2012.

**13. Effective Date**

This agreement is effective upon being signed by all Parties. The Parties have executed this Settlement Agreement as of the respective dates indicated below:

For Plaintiffs: David Scherer and Michael Bean

By: /s/Matt Kenna  
Matt Kenna, Counsel for Plaintiffs

Dated: June 26, 2012

For Defendants: Daniel Jiron and United States Forest Service

IGNACIA S. MORENO  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

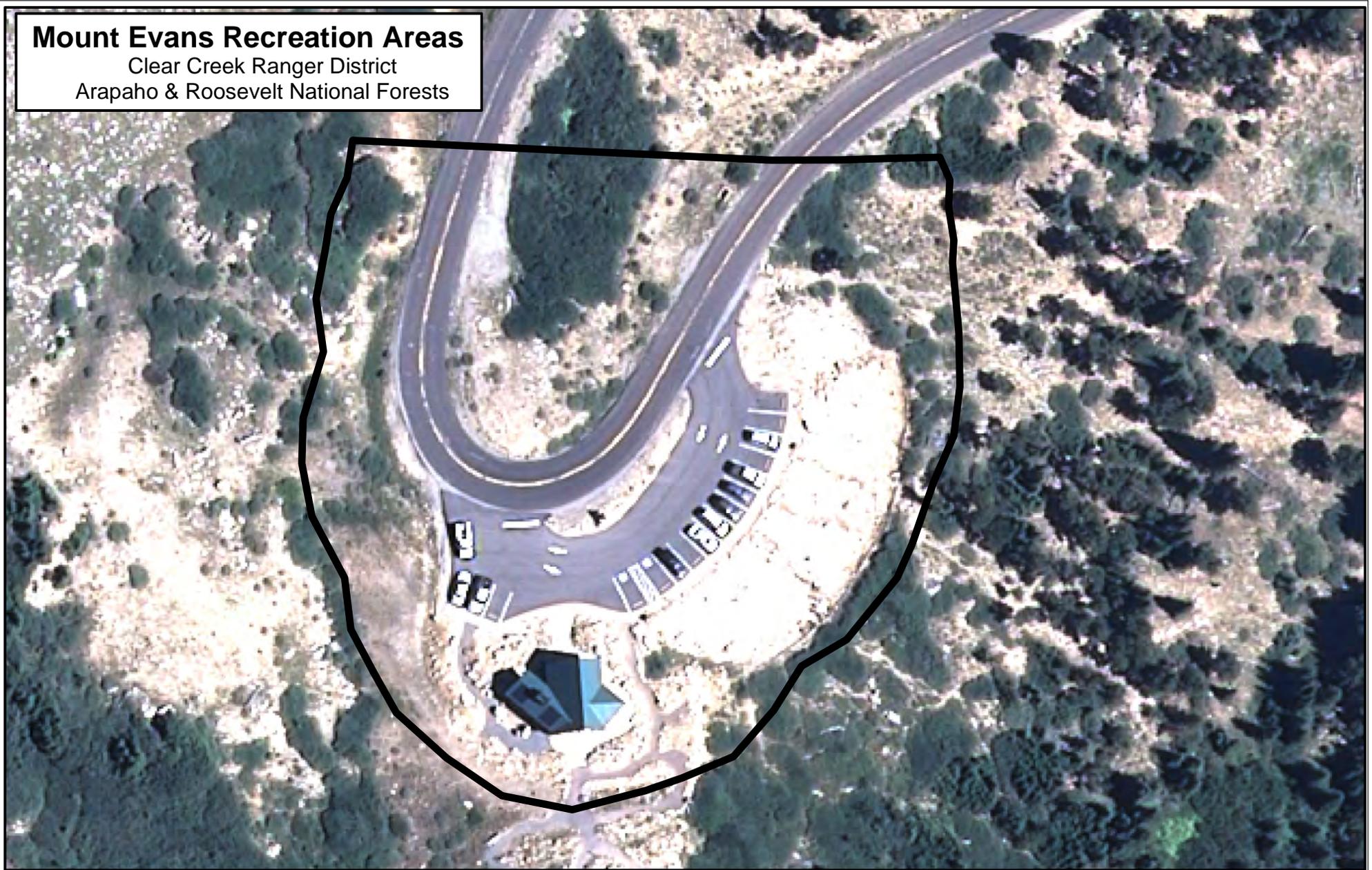
By: /s/Stacey Bosshardt  
Stacey Bosshardt, Counsel for Defendants  
Trial Attorney  
Natural Resources Section  
202-514-2912 (phone)  
202-305-0506 (facsimile)  
stacey.bosshardt@usdoj.gov  
P.O. Box 7611  
Washington, D.C. 20044

Dated: June 26, 2012

## EXHIBIT A

# Mount Evans Recreation Areas

Clear Creek Ranger District  
Arapaho & Roosevelt National Forests



## Fee Area Detail Map

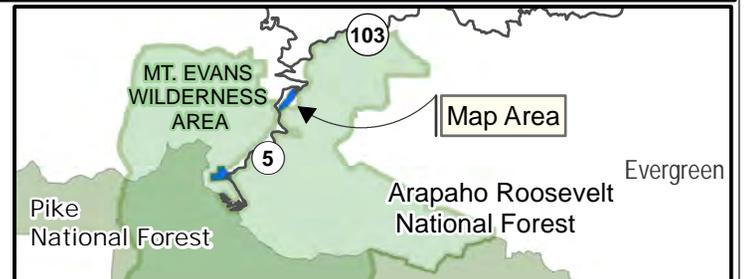
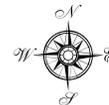
### Mount Goliath Fee Area

 Fee Area Boundary

1 inch = 70.5 feet



Map Prepared by M.Hattis May 11, 2012



## EXHIBIT B

# Mount Evans Recreation Areas

Clear Creek Ranger District  
Arapaho & Roosevelt National Forests

*Summit  
Lake*

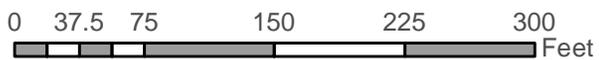


## Fee Area Detail Map

### Summit Lake Fee Area

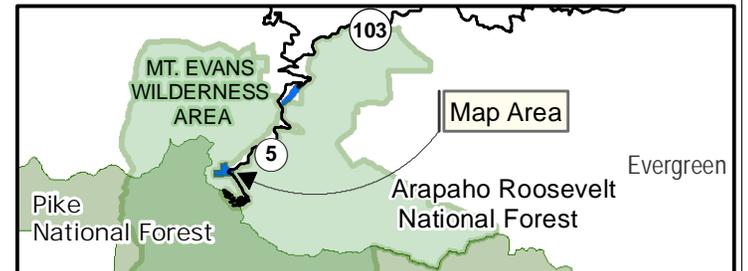
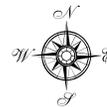
 Fee Area Boundary

1 inch = 110 feet



Map Prepared by M.Hattis April 17, 2012

Revised by: A. Coe May 25, 2012



## EXHIBIT C

# Mount Evans Recreation Areas

Clear Creek Ranger District  
Arapaho & Roosevelt National Forests

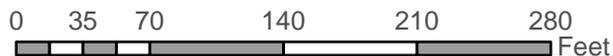


## Fee Area Detail Map

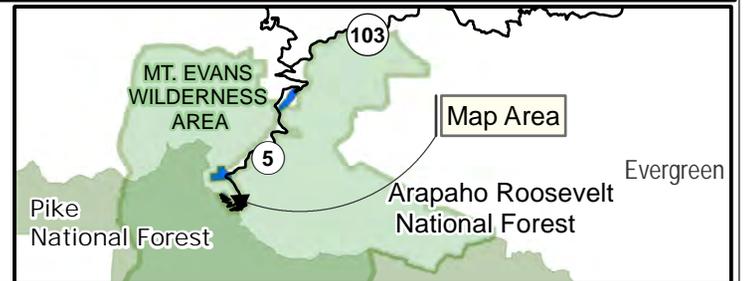
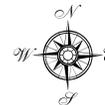
### Summit of Mount Evans Fee Area

 Fee Area Boundary

1 inch = 100 feet



Map Prepared by M.Hattis May 11, 2012



## EXHIBIT D

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

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DAVID SCHERER and MICHAEL BEAN,

Plaintiffs,

v.

DANIEL JIRON, Regional Forester, United States  
Forest Service; and UNITED STATES FOREST SERVICE,

Defendants.

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**MOTION TO ENTER VOLUNTARY DISMISSAL**

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The parties to the above captioned litigation have apprised this Court that they have reached a settlement of this matter, and hereby stipulate to the dismissal of this matter with prejudice. The Parties agree that the Court may retain jurisdiction over this matter solely to enforce the terms of the Settlement Agreement, *see Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994), as per Section 11 of the Agreement.

DATED this 26<sup>th</sup> day of June, 2012.

/s/Matt Kenna  
Matt Kenna, CO Atty # 22159  
679 E. 2nd Ave, Suite 11B  
Durango, CO 81301  
(970) 385-6941  
matt@kenna.net

Attorney for Plaintiffs

/s/ Stacey Bosshardt  
United States Department of Justice  
Environment & Natural Resources  
Division, Natural Resources Section  
P.O. Box 663  
Washington, D.C. 20004  
(202) 514-2912  
stacey.bosshardt@usdoj.gov

Attorney for Defendants

IT IS SO ORDERED

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Judge John L. Kane  
Senior United States District Judge