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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

OREGON NATURAL DESERT ASS’N
et al.,

Plaintiffs,

v.

TOM TIDWELL, et al.,

Defendants,

v.

HARLEY & SHERRIE ALLEN, et al.,

Defendants-Intervenors.

Case No. 2:07-cv-1871-HA
[Related Case No. 3:03-cv-381-HA]
[Related Case No. 2:08-cv-151-HA]

**MOTION FOR ATTORNEY
FEES AND COSTS**

MOTION FOR ATTORNEY FEES & COSTS

Plaintiffs Oregon Natural Desert Association, Center for Biological Diversity, and Western Watersheds Project (collectively, “ONDA”) respectfully move the Court to grant this motion seeking an award of \$1,368,243.31 in attorney fees, costs, and other expenses pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(4), and/or the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412 *et seq.* Pursuant to Local Rule 7-1(a)(1), counsel for ONDA conferred with counsel for defendants Tom Tidwell *et al.*, including by transmitting an offer of partial settlement on December 12, 2011 and an offer of a global settlement, again supported by full time and expense record documentation, on December 7, 2012. The parties were unable to resolve the issue.

The issue presented by this motion is whether the Court should order that ONDA shall receive an award of attorney fees and costs of litigation, pursuant to the ESA and EAJA, in the amount of \$1,368,243.31. Now that the Court has issued a judgment (Dkt # 662) in ONDA’s favor, preceded by an order adopting the parties’ stipulation not to appeal the judgment (Dkt # 537), and pursuant to this Court’s orders (Dkt ## 650, 652, 654, 663) dealing with ONDA’s motion (Dkt # 610) for an interim fee award, ONDA hereby moves the Court for a single, “global” award. Therefore, by and through this motion, ONDA supplements and renews its request for an award for time and expenses incurred up through June 30, 2009 as documented by and through the papers filed in support of ONDA’s motion for interim fees, as well as ONDA’s attorney fee petition filed January 18, 2007 in the Ninth Circuit Court of Appeals and remanded by the appellate court to this Court.

To be clear, ONDA understands that the Court has denied as moot (Dkt # 663) ONDA’s interim fee motion in anticipation of receiving this global motion, but that the Court also has

directed that “[i]n no case shall the parties be required or permitted to file additional briefing regarding the interim fees for which compensation has already been sought” and expressed its intention to “entertain both the pending motion and a second motion accounting for those hours worked and resources expended not included in plaintiffs’ Interim Motion.” June 6, 2012 Order (Dkt # 643). To be concise, avoid duplication, and conserve the parties’ and Court’s resources, ONDA respectfully refers the Court to the briefing, declarations, and exhibits filed in support of ONDA’s interim fee motion. In support of this now-global request, ONDA only provides additional argument and evidence that is not duplicative of what already is before the Court.

As contemplated by this Court’s June 6, 2012 Order, the total requested in this global motion includes the fees and costs originally requested in the interim motion (through June 2009 and for work during 2011 and 2012 in preparing the interim motion), plus the fees and costs incurred since July 2009 (except for those already included in the interim motion). The total requested does not double-count any of the fees and costs included in the interim motion.

ONDA respectfully submits that good cause exists to grant this motion, for the reasons described in the accompanying brief and supporting papers, as well as the papers ONDA submitted in support of its interim fee award motion. ONDA has documented that the amount requested is reasonable. In its reply brief, ONDA will supplement its fees request for further work performed on reply. In addition to the papers already before the Court as described above, ONDA also supports this motion with a Memorandum in Support, the further declarations of Brent Fenty, Peter M. K. Frost, Christopher Winter, Daniel J. Rohlf, David H. Becker, Kristin F. Ruether, Peter M. Lacy, and the attachments thereto.

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DATED this 20th day of December, 2012.

Respectfully submitted,

s/ Peter M. Lacy

Peter M. Lacy (“Mac”)
Oregon Natural Desert Association

Of Attorneys for Plaintiffs